

Certificate of Land Property Rights as an Evidence in Land Dispute Settlement

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Abstrak

The goal to be achieved in this writing is to study specifically about certificates of ownership as a means of evidence in resolving land disputes with problem limitations, namely: How is the strength of proof of certificates of Land Rights in land dispute resolution. The research method used is normative juridical research. Namely legal research by conducting a review of literature related to problems with a statutory approach. The results of the study show that land ownership certificates issued by the National Land Agency have strong evidentiary power to be used as evidence in resolving land disputes that are carried out either by deliberation or through the settlement process in the judiciary.

Keywords: Title Certificate, Land, Dispute



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INTRODUCTION

Constitutionally, the 1945 Constitution in Article 33 paragraph (3) states that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people" (Indonesia, 1945). The meaning contained in these constitutional provisions explains that the main objective of the use of natural resources including land is controlled by the state for the sake of realizing people's prosperity. The state as an organization of power for all the people must be able to regulate and manage it properly so as not to cause problems in its implementation.

By being aware of the importance of land for human life, as well as the increasing human need for a place to live, a place to do business in agriculture and the economy as a source of livelihood, it is also increasingly felt the need for arrangement and control in the land sector so that land functions can be utilized as much as possible. and best for the interests of all the people in the territory concerned (Teja, 2015). The use of land for utilization is not only limited to land that is on the surface of the earth, but also that which is in the earth related to substances that are in the bowels of the earth, water and so on. Soil that is on the surface of the earth is a source of life as well as a place to carry out daily activities.

Indonesia is a country based on law (rechstaat), recognition of the right to ownership has been regulated in various laws and regulations. The rules imposed by the state are binding on every citizen, even the government as the maker of these rules must be able to guarantee legal certainty regarding the rights of a person as a citizen. One form of the state's obligation to provide legal certainty and legal protection is in relation to regulating land rights in order to safeguard the rights of each party.

In Law no. 5 of 1960 concerning the Basic Agrarian Regulations, the principle of the state's right to control over land is regulated and reduced to various types of land rights granted to individuals and legal entities. The state grants several types of land rights to individuals or legal entities with the intention that the right holder manages the land according to these rights as long as they do not conflict with the boundaries set by the state. The rights holder is also burdened with the obligation to register the land rights in order to support legal certainty (Sibuea, 2011). Law No. 5 of 1960 concerning the Basic Agrarian

Regulations and its implementing regulations provide the embodiment of legal certainty guarantees for land rights throughout Indonesia. Registration of land rights is an important tool in building and realizing legal certainty and realignment of land use, control and ownership.

Land registration is carried out to provide or guarantee legal certainty and legal protection. Based on Article 19 of the of the Basic Agrarian Law for land, the government orders land registration throughout the territory of the Republic of Indonesia(Haryati, 2007). From this registration activity, a certificate of land rights will be obtained as a strong means of proof of Article 19 paragraph (2) letter c of the of the Basic Agrarian Law for land. Land registration aims to obtain a letter of evidence in the form of a certificate of land rights issued or issued by the National Land Agency. In Government Regulation no. 24 of 1997 concerning Land Registration will provide protection, certainty, and legal force for the person whose name is stated in the certificate.

However, in people's lives, land disputes often arise both on lands that already have certificates of ownership, as well as on lands that have not been registered with the National Land Agency. Various problems arise related to land, for example the emergence of multiple certificates which often becomes a polemic in the community. Bearing in mind that the ownership of a certificate of property right so far has been considered as strong evidence of ownership of a piece of land as the strongest and fullest right, meaning that the right to own land is the strongest right and will become the full right for the name stated on the certificate(Klaudius Ilkam Hulu, 2021).

Based on the description above, the author wants to study specifically about certificates of ownership as a means of evidence in the resolution of land disputes with the limitations of the problem, namely: How is the strength of proof of certificates of land rights in land dispute resolution?

RESEARCH METHODS

The research method used is normative juridical research. Namely legal research by conducting a review of literature related to the problem being studied. Peter Mahmud Marzuki emphasized that normative legal research is one way of tracing the rule of law, the principles of the rule of law and the doctrines of the rule of law in order to answer actual legal issues that are currently happening (Mahmud, 2005). A juridical normative approach based on existing laws or regulations. The research approach uses a statutory approach, namely research on legal products. Normative legal research always focuses on secondary data sources. The secondary data used in this study include statutory regulations, namely Law no. 5 of 1960 concerning Agrarian Principles and Government Regulation no. 24 of 1997 concerning Land Registration. To obtain data related to the problem under study, the author uses a type of descriptive research with the main research material sourced from the library (library research), namely: the writing process is carried out by studying books or literature related to the problem at hand. examined from the library.

RESULTS AND DISCUSSION

Overview of Land Rights

Referring to the provisions of Article 4 paragraph (1) of Law no. 5 of 1960 concerning Principles of Agrarian Affairs provides the meaning of land rights as rights that give authority rights holders (either individually or in groups, people jointly or legal entity) to use in the sense control, use and or take advantage of certain plots of land. Furthermore it is said that the right to land is as a legal relationship defined as a right to the surface land that authorizes

the holder to use the land concerned, along with the body of the earth and water and the space above it, simply necessary for purposes directly related to use the land, within the limits according to the BAL and other legal regulations (Maria, 2009).

As implementing regulation of the Basic Agrarian Law for land, government regulations No. 24 In 1997 the similarity of terms was set forth in Article 1 paragraph (20) stating": "Certificate is a letter of proof of rights as referred to in Article 19 paragraph (2) letter c of the Basic Agrarian Law for land rights for the right to land, management rights, waqf land, ownership rights to flats and rights each dependent has been recorded in the land book concerned."

Physically reviewed in Government Regulation No. 10 of 1961 regarding Land Registration, what is meant by a certificate is a certificate of proof of title consisting of a copy of the land book and measurement certificate, is provided the covers are bound together, the shape of which is determined by the Minister of State Agrarian Affairs/Head of the National Land Agency (Peraturan Pemerintah Republik Indonesia (Pp) Nomor 24 Tahun 1997 (24/1997) Pendaftaran Tanah, 1997).

Review of the Issuance of Land Rights Certificates

To provide legal certainty and legal protection, to the right holder concerned is given a certificate of land rights (Sahono, 2012). Issuance of certificates of land rights is carried out through land registration activities for the first time and land registration data maintenance activities, to find out the differences and meanings of each are explained as follows:

1. Land Registration for the First Time. The definition of land registration for the first time as referred to in Government Regulation Number 24 of 1997 Article 1 point (9) namely "Land registration for the first time is the activity of land registration carried out on land registration objects that have not been registered based on Government Regulation Number 10 of 1961 concerning Registration Land or this Government Regulation." Then in Article 12 paragraph (1) Land registration activities for the first time include:
 - a. Collection and processing of physical data;
 - b. Proof of rights and bookkeeping;
 - c. Issuance of certificates;
 - d. Presentation of physical data and juridical data;
 - e. Storage of general lists and documents.

It should be noted that land registration for the first time can be carried out systematically and sporadically. Referring to Article 1 point 10 of Government Regulation Number 24 of 1997, what is meant by systematic land registration is "The activity of land registration for the first time which is carried out simultaneously which includes all land registration objects that have not been registered in an area or part of the territory of a village/kelurahan".

Systematic registration is carried out on the initiative of the National Land Agency which is based on a long-term work plan and a continuous annual plan. Meanwhile, the definition of sporadic land registration is contained in Article 1 number 11, namely "Sporadic land registration is an activity of land registration for the first time concerning one or several land registration objects in an area or part of a village/kelurahan area individually or in bulk." Systematic land registration and sporadic land registration produce certificates as proof of rights, certificates issued by the District or Municipal Land Office.

2. Land Registration Data Maintenance Activities. The definition of land registration data maintenance activities is contained in Government Regulation Number 24 of 1997 Article 1 paragraph (12) it states that "Land registration data maintenance is land registration activities to adjust physical data and juridical data in registration maps, land registers, name lists, measurement letters, land books and certificates with subsequent amendments." As Article 36 paragraph (1) "Maintenance of land registration data carried out if there is a change in the physical data or juridical data of the object registered land registration. Then paragraph (2) "The rights holder who concerned must register the changes as referred to in paragraph (1) to the Land Office."

While the definition of physical data and juridical data as referred to in above, namely:

- a. Physical data is information regarding the location, boundaries, and area of land and apartment units that are registered, including information regarding the existence of buildings or parts of buildings on them;
- b. Juridical data is information regarding the legal status of land parcels and apartment units that are registered, rights holders and other parties as well as other burdens that burden them (Sadpri, 2014).

Overview of Land Title Certificates as Evidence

A tool for proving the strength of a certificate in the of Law no. 5 of 1960 concerning Principles of Agrarian

1. Article 19 paragraph (2) letter C:

- a. To guarantee legal certainty by the Government held land registration throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations.
- b. The registration referred to in paragraph (1) of this article includes:
 - 1) land surveying and bookkeeping;
 - 2) registration of land rights and the transfer of said rights;
 - 3) the provision of letters of evidence of rights, which act as tools strong evidence.
- c. Land registration is carried out taking into account the condition of the State and society, the need for socio-economic traffic and the possibility of implementing it, according to the considerations of the Minister of Agrarian Affairs.
- d. The government regulations regulate the costs involved with the registration referred to in paragraph (1) above, provided that people who cannot afford are exempt from paying these fees.

2. Article 23 paragraph (2) :

- a. The right of ownership, as well as every transfer, cancellation and encumbrance with other rights must be registered according to the provisions referred to in article 19.
- b. The registration referred to in paragraph (1) is a means of proof regarding the elimination of property rights and the legality of the transfer and imposition of these rights.

3. Article 32 paragraph (2)

- a. The usufructuary right, including the conditions for granting it, as well as any transfer and abolition of said right, must be registered according to the provisions referred to in Article 19.
- b. The registration referred to in paragraph (1) is a means of proof regarding the transfer and the abolition of the usufructuary right, except in the event that said right is abolished because the term expires.

4. Article 38 paragraph (2) :

- a. The right to build, including the conditions for granting it, as well as every transfer and cancellation of said right must be registered according to the provisions referred to in Article 19.
- b. The registration referred to in paragraph (1) is a means of proof strong authority regarding the abolition of building use rights and their legality the transfer of said right, except in the event that said right is terminated because the period of time has expired.

The provisions of the Basic Agrarian Law and Government Regulation Number 24 of 1997 on land registration adhere to a negative system which contains a positive system. In a positive land registration system, everything is listed in the book land registration and letters of proof of rights issued are is an absolute thing and is an absolute means of evidence. The function of the land registration is to provide assurance that the name the person listed on the public register is irrefutable, though the person is not the real owner of the land in question (Adrian Sutedi, 2014).

Every registration of rights and transfer of rights in a positive system requires a very thorough and thorough examination before the person is registered as the owner in the public register, the registrar plays very active role besides there must be sufficient equipment. According to positive system a given land certificate is valid as proof absolute land rights, and is the only proof of land rights land. For this reason, the characteristics of a positive land registration system are as follows following (Adrian Sutedi, 2014):

1. Land registration/registration of land rights guarantees perfectly that the name registered in the land book cannot be disputed and cannot be contested, even though it turns out that he is not the owner who has the right to the land. Giving absolute trust to the land book.
2. Land registration officers, officials behind the title of land in this system play a very active role. The officer/official investigates whether the rights to the transferred land can be registered or not. They investigate the identity of the parties, their powers and whether the required formalities have been complied with or not.
3. The legal relationship between the rights of the person whose name is registered in the land book and the owner of the previous right is terminated since the right is registered.

As mentioned above, the positive system of land registration provide a very large legal guarantee to the registered party. While the negative system, namely the negative system, is the opposite of the positive system, in the negative system, the principle of transfer of rights is known as *nemo plus juris*, which protects the actual land rights holder from the actions of other people who transfer their rights without the actual right holder knowing (Safitri et al., 2020). In a negative publication system, a land registration product is produced in the form of a certificate of land rights which is valid as a strong proof of title, but there is still the possibility that the registered rights holder will lose his rights if another party proves otherwise. For that negative system, it shows the characteristics that what it listed on in the land certificate is considered correct until it can be proven something otherwise (not true) before the court (Bur & Apriani, 2017).

Main features of the system negative is that the registration of land rights is not a guarantee a person registered in the land book is the holder of land rights the. In other words, the land book may change as long as the parties involved objected can prove that he is the real owner through court decisions that have permanent legal force (certain) (Mamesah, 2012). This often happens in a country that uses a negative publication system in its land registration. In this publication system, the state does not guarantee the accuracy of the land data presented so that people absolutely cannot believe the truth of the data. Because it will

produce a strong means of proof as mentioned in the articles above. The negative system with positive tendencies is not a pure negative publication system, because it uses a rights registration system. A pure negative publication system does not use a rights registration system and there is no statement that the certificate is strong evidence.

In accordance with the provisions of Article 32 of Government Regulation No. 24 of 1997 which states that a certificate is a proof of right that applies as a tool strong evidence regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the measurement certificate and land title book concerned. In the event that a land parcel has been issued a formal certificate legally on behalf of the person or legal entity that acquired the land in good faith and actually master it, then the other party who feel that they have rights over the land and can no longer demand implementation the right if within 5 (five) years from the issuance of the certificate it does not raise objections in writing to the certificate holder and The Head of the Land Office concerned or does not file a lawsuit with the Court regarding the ownership of the land or the issuance of the said certificate.

Setting the strength of evidence in PP No. 24 of 1997 there is no explanation, there are no further regulations on the implementation of the power of proof, it is only found in 32 paragraphs (1) and (2) where the intent and purpose are clear. 5 years is a long time to provide an opportunity for parties with an interest in the land, if there is a lawsuit that must be filed it can be said that such an arrangement has been effective. Provisions for the age of the certificate before 5 years are given the opportunity:

1. To sue
2. To object
3. To prove otherwise
4. Declare its rights to the issuance of certificates.

Age requirements for certificates after 5 years:

1. There is no opportunity to sue, object, prove otherwise.
2. Be strong who adhere to a negative system with positive tendencies, third party opportunity does not exist to challenge the certificate.

In connection with the registration of land in the context of guaranteeing legal certainty, a certificate will be issued to the entitled party as proof of his rights. In Article 32 paragraphs (1 and 2) of Government Regulation Number 24 of 1997 concerning Land Registration states that: The certificate is a proof of right that is valid as a strong means of proof regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the measurement certificate and land title book concerned. If at any time there is a lawsuit or lawsuit in court over the land object for which the certificate has been issued, then all the information contained in the certificate has strong evidentiary power as long as there is no other evidence to deny it.

In settling cases in court, proving is an action taken by the litigants in a dispute, so that the truth that has the value of certainty and justice is obtained. The evidence in cases such as in civil cases are: Article 164 HIR:

1. Letter proof
2. Witness evidence
3. Predictions
4. Oath

Based on the description of the evidence in the settlement of the civil case, documentary evidence is very important evidence in obtain truth, certainty and justice in a case. Certificate of land rights as evidence (written) has many functions for the owner. The main function of the certificate is as strong evidence. This is stated in Article 19 of the Basic Agrarian Law Number 5 of 1960 as previously explained. Thus, anyone can prove their land rights if it is clear that the name listed on the certificate is the holder.

CONCLUSION

In accordance with the provisions of Article 32 of Government Regulation No. 24 of 1997 which states that a certificate is a proof of right that applies as a tool strong evidence regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the measurement certificate and land title book concerned. The strength of proof of product certificates originating from the Land Office is in accordance with the regulatory basis. Regarding the strength of proof of certificates that are less than 5 years old, there is still an opportunity for interested parties to sue, file objections or prove otherwise and regarding the strength of proof of certificates that are 5 years or more old, there is no opportunity for interested parties to sue, file objections or prove otherwise. Because after a period of 5 years after a certificate is issued, it cannot be contested so that it has strong evidentiary power to be used as evidence both by deliberation and up to court proceedings.

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