

Responsibility of the Land Office Due To Issuance of Double Certificates at the Denpasar City Land Office



Luh Putu Indah Sari Yudhaningsih¹, I Ketut Kasta Arya Wijaya², I Nyoman Sukandia³

^{1,2,3}Master of Notary Affairs, Postgraduate Program, Warmadewa University, Bali-Indonesia

ABSTRACT: This thesis research uses Empirical Legal Research, which analyzes the responsibility of the land office due to the issuance of multiple certificates in the Denpasar city land office. The formulation of the problem in this thesis research is 1) How is the responsibility of the Denpasar City Land Office due to the issuance of multiple certificates? 2) How is the disclosure of disputes revealed the existence of double certificates in the Denpasar city land office? As an analytical knife to discuss this matter, the Theory of Legal Certainty, Authority Theory, Law Enforcement Theory, and Dispute Resolution Theory is used and uses the Statute Approach, case approach, fact approach, and historical approach. The conclusion of this research is that the form of responsibility that can be carried out by the Denpasar City Land Office in the double certificate dispute in Denpasar City is that the Land Office is absolutely responsible for being responsible both inside and outside the court either as a witness, defendant or plaintiff. In addition, the Land Office is morally and materially responsible, as well as administrative sanctions in the form of dismissal of Land Office staff who are negligent in carrying out their duties. And in the settlement of disputes over dual certificates in the Denpasar City Land Office, the Denpasar City Land Office resolves through litigation (judicial) or uses non-litigation channels, which non-litigation channels use arbitration, mediation, negotiation to the parties to the dispute and determine an agreement between the parties. And if the case has used the trial route, the National Land Agency and the Denpasar City Land Office will prioritize both parties to the dispute, especially for those who are declared losers in the trial and can be canceled certificates that are proven to be administratively defective or deliberately re-registered.

KEYWORDS: Accountability, Dual Certificate, National Land Agency

1. INTRODUCTION

Law No. 5/1960 on the Basic Regulation of Agrarian Principles, which is an important milestone in the history of national agrarian law politics, because the legal product contains a strong political determination to dismantle the colonial-style land tenure structure. It became a structure of control and utilisation that could create prosperity for all Indonesians. (Bernhard Limbong, 2012)

The Unitary State of the Republic of Indonesia (NKRI) is a legal state oriented towards public welfare as written in the 1945 Constitution, so it will not be separated from legal disputes over land which are fundamental problems in society, especially in the land sector. Citizens always want to defend what is their right, while on the one hand the government must also organise public welfare for all Indonesian citizens. Legal protection is needed for the implementation of the public interest. This can be realised if there is a rule or regulation that is obeyed by the community. Land rights are fundamental rights that are very meaningful to society for the dignity and freedom of a person. On the other hand, it is the state's obligation to ensure legal certainty regarding land rights even though these rights are still limited by the interests of other people, the community, and moreover the state. Land that is regulated by agrarian law is not land in its various aspects, but land from the juridical aspect, which is directly related to land rights that are part of the earth's surface as stipulated in Article 4 paragraph (1) of the UUPA which states "On the basis of the right to control from the State as referred to in Article 2, various kinds of rights over the earth's surface, called land, are determined, which can be given to and can be owned by people either alone or together with other people and legal entities". (Rachmat Trijono, 2015) The basic foundation for the government and the people of Indonesia to formulate legal politics and policies in the field of land has been stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states: Earth, water and space and the natural wealth contained therein are controlled by the state and used to achieve the greatest prosperity of the people. (Muhammad Bakri, 2007)

According to J.B.A.F. Major Polak, the relationship between humans and land throughout the history of human life can be divided into three stages, namely: The first stage, starting life by hunting and looking for fruits and looking for fish. At this stage humans live wandering from one place to another, meaning that there is only a relationship between a group of humans and a certain hunting area within a certain period of time. In the second stage, humans began to recognise farming. At this stage,

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humans began to settle in a certain place while waiting for the harvest (here begins something that binds humans to settle in a place for a rather long period of time). The third stage, the stage where humans have used livestock to help agricultural endeavours. Humans began to be bound by crop yields and livestock products. Humans began to feel secure in life by relying on agricultural and livestock products rather than nomadic life, began to feel a surplus of production from nomadic life, agricultural patterns cultivate their own land, wait for the harvest for a long period of time, then wait for the harvest results in the emergence of individual land ownership, although still subject to the power of the living alliance. At this stage, humans start in a certain place, no longer moving periodically.

The application of the meaning of dispute to the land sector gave birth to the term land dispute. Land disputes or land disputes can be defined as "disputes that make land the object of dispute". From the perspective of the conflict approach, the term land dispute is referred to as manifest conflict and emerging conflict. Furthermore, what is meant by a land case is a dispute, conflict, or land case to get proper handling in accordance with applicable laws and regulations. (B.A.F. Major Polak, 1986)

From the view of J.B.A.F. Major Polak above R.Soeprapto also expressed the opinion that, here a mental relationship arises between humans and certain areas, there begins to be an individual relationship, a relationship of dependence that is getting stronger and stronger. (R.Soeprato, 1986)

The development of organisation and work procedures within the alliance, which began to recognise individual property, led to the emergence of individual land ownership, although still subject to the authority of the alliance, individuals within the alliance began to work on their own land to meet the needs of their respective families. If the relationship between an individual and a particular piece of land became closer and was then approved by the head of the alliance or customary head to be owned individually, individual rights under customary law were born. In Indonesia, the relationship between people and land takes various forms depending on customs. However, in general, land rights under customary law consist of collective rights, namely ulayat rights and individual rights, namely customary property rights, such as in Bali called yasan rights (Boedi Harsono, 1997).

In 1988 the National Land Agency was established through Presidential Decree number 26 of 1988, which as a Non-Departmental Government Agency is tasked with assisting the President in managing and developing land administration. The use of BPN as the name of the institution did not change or reduce the scope of duties and authority previously vested in the Ministry and Directorate General of Agrarian Affairs. Instead, it provides clarity and affirmation regarding the scope of the notion of agrarian used in the Government Administration environment. What is meant by "land administration" includes both land on land and under water, both land and sea water.

The position of Minister of Agrarian Affairs/Head of the National Land Agency in the VI Development Cabinet also did not change the scope of agrarian understanding. The appointment of this position was apparently intended to show that the duties of the Minister of State for Agrarian Affairs were broader than and not limited to the scope of his duties as Head of the National Land Agency mentioned in Presidential Decree No. 26/1988. (Prof Boedi Harsono, 1998)

Issuance of certificates of land rights issued by the Office Land in the form of land title certificates involving the applicant, adjoining landowners, pamong desa and related agencies to obtain explanations regarding the documents as the basis for rights related to the application for the certificate, so that explanations from related parties have the opportunity for legal defects to arise. (Ali Achmad Chomzah, 2003)

Certificates of land rights as proof of documents have not been able to fulfill the wishes of the community, because in the process disputes/conflicts often occur in terms of determining who is entitled to the land object. The process of resolving land disputes/conflicts requires quite a long time if it cannot be resolved through mediation between the disputing parties and the Land Office as the mediator. (Syahril Abbas, 2009)

The dual certificate is a plot of land that has more than one certificate with the same object. A plot of land with multiple certificates can result in legal uncertainty for parties holding land rights which is certainly not expected in land registration in Indonesia. Cases of double certificates still occur frequently in several regions in Indonesia which result in land certificate holders accusing each other that the certificates they have are correct despite the fact that one of the double certificates is fake where the object stated on the certificate is not the real one. , so that in order to obtain legal certainty regarding certificates of land rights, one of the dual certificate holders made a complaint to the National Land Agency as the authorized institution in the land sector. If the verification process through the National Land Agency does not come to an end, then the authority to prove multiple certificates of land rights will continue to the realm of the Court which is deemed to have competence in providing legal certainty to the right holders and canceling one of the certificates so that only one valid certificate has the object and the others are not the objects listed in the certificate. (Harsono, 1992).

Efforts that make it possible to anticipate this problem is to provide legal certainty to those entitled to land. In this regard, systematic recording of land and land rights is very important, both for state administration and for planning and developing the use of the land itself, as well as for legal certainty in the transition, transfer or assignment of land rights, so as to minimize the occurrence of land conflicts. In order to guarantee legal certainty regarding ownership of land, land owned either by individuals or legal entities or the land belongs to the State, the land must be registered as mandated in the Basic Agrarian Law. (Imam Soetikno, 2002)

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The National Land Agency is one of the government agencies in Indonesia whose purpose of establishing the National Land Agency is to create a system for managing land issues in Indonesia. The basis for the formation of the National Land Agency was Presidential Decree No. 26 of 1988. The Directorate General of Agrarian Affairs at the Ministry of Home Affairs was changed to become a non-departmental government agency to become this institution, then as operational guidelines for the National Land Agency, the leadership of this institution issued Decree No. 11/KBPN/1988 in conjunction with the decision of the head of the Land Agency No. 1 of 1989 concerning the organization and work procedures of the National Land Agency in Provinces, Cities and Regencies. Land title certificates are regulated in Article 13 of Government Regulation No. 10 of 1961 concerning land registration, specifically in paragraph (3) it is formulated that: "Copies of the land book and measurement letter after being sewn together with a cover paper whose shape is determined by the Minister of Agrarian Affairs, are called certificates and are given to those who are entitled". Furthermore, in paragraph (4) it says: "The certificate in paragraph (3) of this article is a letter of proof of the rights referred to in Article 19 of the UUPA". The provisions of this Law are binding, so that every citizen or community as the owner of land rights is required to register the land under his control and will be given a copy of the land book called a certificate which is a proof of title. (J. Andy Hartanto, 2013)

In connection with this research, the authors focus on research on land disputes or conflicts due to multiple certificates at the Denpasar District Land Office or the City of Denpasar between property rights certificates and building use rights certificates and are interested in examining more deeply the land disputes by describing and analyzing the factors that give rise to multiple certificates. between certificates of ownership rights and building use rights certificates in the Regency/City of Denpasar and the responsibility of the Land Office of the Regency/city of Denpasar for the dual certificates in the Regency/city of Denpasar.

Based on the description above, is legal issues in this study, including: What is the responsibility for the issuance of multiple certificates at the Denpasar city land office?

II. RESEARCH METHODS

The type of research used in this writing is empirical research which is a field research using a qualitative descriptive method. This method is a research procedure that uses descriptive data in the form of written or spoken words from people and observed behavior. This qualitative approach does not require too much data and is monographic in nature, or in the form of cases. In contrast to the quantitative approach which requires a lot of data or large amounts of data so that qualifying in the categories is easier. This type of research emphasizes acquiring knowledge of the settlement of multiple certificate cases at the Denpasar City Land Office and to find out the responsibilities given by the Land office for their existence. double certificate in Denpasar City.

III. RESULTS AND DISCUSSION

a. Responsibilities of the Land Office of Denpasar City Due to the issuance of Double Certificates

The government's task is "to realize a strong organizational culture and guarantee legal certainty in the land registration system, it is necessary to hold land registration throughout Indonesia according to the provisions stipulated by government regulations. (Santoso Urip, 2010) There are still many irregularities in the implementation of land registration in the bureaucratic system and public services of the National Land Agency, namely the occurrence of discrimination in the bureaucratic service regarding the use, control, ownership, use and granting of land rights, indicating that there are problems in the legal system in Indonesia in the legal system. Existing indications include cases arising from the choice of using negative (positive) publicity systems, such as:

- 1) The occurrence of cases of multiple certificates and other land conflicts;
- 2) Reduced agricultural land and conversion of agricultural land to non-agricultural land;
- 3) The rise of industrialization and housing development;
- 4) The pretext of development is in the public interest. These cases have resulted in injustice, namely the occurrence of evictions and loss of jobs in the sector (Agus Salim, 2006)

The function of the bureaucracy and state apparatus is to "solve problems" (a word of solution), but in reality, the land registration system is often part of the source of problems.

One of the cases of multiple certificates issued in Denpasar is related to the Land Agency, where the Regional Development Bank Bali has issued three certificates in one location on Gadung Street in East Denpasar. The case of land disputes covering an area of 3.85 acres claimed to belong to BPD Bali turned out to be overlapping land objects. Chairman of the Regional Leadership Council of the Indonesian Advocates / Lawyers Association of Bali Province, I Wayan Adimawan S.H, M.H said, the Cassation Level Decision No.2234 K / PDT / 2017 jo High Court decision No.127 / PDT / 2016 / PT Denpasar held by the Bali Development Bank Bali still needs in-depth research in a public examination.

The above case is one of the many cases that occur in the city of Denpasar, which involves some people as victims who are lay due to their ignorance of positive law, but in fact many people in rural areas and even not a few city people or other parties have controlled the land for generations but did not get legal certainty over their land. If careful attention is paid to the fact that land conflicts and disputes are closely related to land law policies on the negative publicity stelsel (with a positive element) used

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in the bureaucratic system and public services of the National Land Agency, especially the absence of accountability for certificate products issued by the National Land Agency.

In my interview on 06 July 2023, at 10.00 WITA with Mrs. Ni Komang Ayu Diah Wahyuni as the Coordinator of the Communal and Institutional Land Registration Substance Group at the Denpasar City Land Office, explained that responsibility is human awareness of their behaviour or intentional actions. Responsibility is natural, meaning that it has become part of human life, that every human being is burdened with responsibility, when studied, responsibility is an obligation that must be borne as a result of the actions of the party who acted.

Forms of responsibility that can be carried out by the National Land Agency:

- a. Personal liability arises when a lawsuit over a land certificate is accepted by the State Administrative Court, and maladministration is found in it. This can take the form of criminal liability if criminal elements are found and civil liability if elements of unlawful acts are found.
- b. Institutional liability in the event that a lawsuit over a land certificate is accepted by the State Administrative Court and no element of maladministration can be found. This can take the form of administrative liability, namely the imposition or civil liability if the elements of unlawful acts are found.

The National Land Agency seeks solutions to land disputes in accordance with applicable laws and regulations by seeing a sense of justice and respecting the rights and obligations of each party. In dual certificate disputes, the National Land Agency is authorised to carry out mediation, negotiations with the parties to the dispute and determine an agreement between the parties. The National Land Agency as well as the District or City is absolutely responsible for the issuance of multiple certificates as a result of the inaccuracy of the land registration system. The National Land Agency is responsible for the certificates it issues in accordance with the authority to issue certificates at the National Land Agency. The absolute responsibility system obliges the National Land Agency to be responsible both inside and outside the court in the event of a lawsuit regarding land rights. The occurrence of multiple certificates as a cause of land disputes is absolutely the responsibility of the National Land Agency. The National Land Agency (BPN) is responsible for certificates issued in connection with the authority to issue certificates to the Head of the National Land Agency. The National Land Agency is absolutely responsible for the issuance of multiple certificates as a result of the negligence of the National Land Agency. This system of absolute liability makes the National Land Agency liable both in and out of court in the event of a lawsuit concerning land. The legal consequences of the issuance of multiple certificates issued by the National Land Agency are legal uncertainty because there is more than one certificate for the same piece of land, losses for both parties to the dispute, especially for those who lose in court, and the cancellation of certificates that prove to be administratively defective or are deliberately re-registered.

Land disputes occur between two parties and can be resolved in a family manner with the intermediary of the National Land Agency as a mediator and as a party responsible for land issues that occur in Indonesia. This settlement is expected to reach consensus and not harm either party. If the settlement must be done through legal channels, it is certain that it will require more energy, time and material. After the decision of the Panel of Judges who decided to cancel one of the certificates, which must be implemented by the National Land Agency. Because the decision cannot satisfy both parties, then if there are parties who feel aggrieved can submit other legal remedies. If the loss incurred is the result of negligence, negligence to the presence of deliberate from the National Land Agency then the institution can be morally and materially responsible. Victims or parties who feel aggrieved can apply for compensation by suing through the local District Court. In its implementation, the settlement of land disputes is not only carried out by the National Land Agency but can be resolved by the General Court and the State Administrative Court. If the general court is more burdensome on something related to civil and criminal in land disputes, it is different from the State administrative court which resolves land disputes related to decisions issued by the National Land Agency or other officials related to land.

The responsibility of the Land Office for the existence of multiple certificates of ownership and building use rights is to apply a system of criminal sanctions by charging the measuring officer and the Head of the Land Office with Article 423 Jo. Article 424 paragraph (1) of the Criminal Code and Article 55 of the Criminal Code on participation (*delneming*) Jo. Article 385 of the Criminal Code on cheating (*bedrog*), and administrative sanctions in the form of dismissal of Land Office officers who are negligent in carrying out their duties based on a court decision with permanent legal force.

IV. CONCLUSION

Following are the conclusions that can be drawn after paying attention to the description in the Research Results and Discussion sub:

The form of accountability that can be carried out by the Denpasar City Land Office in a double certificate dispute in Denpasar City is that the Land Office is absolutely responsible both in and out of court either as a witness, defendant or plaintiff. Besides that, the Land Office is morally and materially responsible, as well as financial sanctions in the form of dismissal of Land Office staff who are negligent in carrying out their work. And In the settlement of disputes over dual certificates at the Land Office of the City of Denpasar, the Land Office of the City of Denpasar resolves through litigation

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(judicial) or uses a non-litigation route, namely where the non-litigation route uses arbitration, mediation, negotiations with the parties to the dispute and determine an agreement between the parties. And if the case has used the trial route, the National Land Agency and the Denpasar City Land Office will give priority to both parties to the dispute, especially for those who are declared lost in the trial and certificates that are proven to be administratively flawed or deliberately re-registered can be cancelled.

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