

Land Rights Disputes In Cianjur Area (Decision No. 3119 K/PDT/2022)

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ABSTRACT

Land can be granted to individuals who have been provided by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency to be used and utilized to the best of their ability. The way to obtain land ownership rights to the land is by issuing a tangible evidence by the National Land Agency in the form of a certificate. The National Land Agency has the authority to deal with the land-related issues. One of the land disputes that frequently occurs in society is overlapping. The purpose of this research is to determine the process of resolving land pwnership disputes in the Cianjur region. The research findings indicate that the causes of overlapping are negligence of surveying officers from the Land Office or the National Land Office and the lack of public awareness among the community, especially landowners, to utilize and use their land according to the purpose of granted rights, as well as the failure to mark the boundaries of the land. This study uses normative legal research methods with a statute approach, uses secondary data types with data collection techniques, namely literature review, as well as using legal descriptive analysis.

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Introduction

Land is an area occupied by a person (either alone or jointly with others) or a legal entity that is used for survival purposes such as a place to settle and a place of livelihood. However, the person or legal entity must first have ownership rights to be able to control the territory. If a person or legal entity recognizes that this land belongs to them without having proof of ownership rights to the land then they have no right to occupy let alone control the land.

There are various kinds of land rights as listed, (Article 16 of Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles), namely:

- Proprietary
- Right to Use Business
- Building Use Rights
- Right of Use
- Leasehold Rights

- And others

There are also three types of informal land certificates that are still circulating in Indonesia even though they are legally expired or weak, including Petok D, Girik, and Surat Hijau. Before Indonesian independence, Indonesian people used customary law of each region in regulating the position of land. There was also civil law from the Netherlands which became the basis or handle by the Dutch government which at that time occupied territories in Indonesia. After independence, on September 24, 1960, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles was passed by President Soekarno. The law is a regulation that regulates free lands that are not yet owned by a person or legal entity will be directly controlled by the state. (Nasution, 2021:3-4)

The way that a person can do to obtain land ownership rights is to apply for rights at the National Land Agency Office (BPN) in the local District/Municipality. If the land has not been recorded in the land book, the land must be registered immediately to prevent land problems from arising and becoming a burden on people's lives.

Article 1 number 9 PP No. 24 of 1997:

"Land registration activities carried out on land registration objects that have not been registered based on Government Regulation Number 10 of 1961 concerning Land Registration or this Government Regulation."

The legal basis for the implementation of land registration in Indonesia is Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or usually known as the Basic Agrarian Law (hereinafter referred to as UUPA). As implementation of the UUPA in terms of land registration provisions is through the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration. With the government making these regulations, there is legal certainty and legal protection for certain parties related to land in Indonesia, then also prevent and overcome problems in the land sector (Subekti & Tjitrosudibio, 1999).

Another way to obtain rights other than the application for rights is to transfer rights such as buying and selling transactions, grants, and exchanges. The Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN) is a non-ministerial government institution in Indonesia to manage all land affairs in Indonesia, for example formulating and determining policies in the land sector, formulating and implementing in the field of determining land rights, land registration, and community empowerment, and so on. The form of ownership that has been issued by BPN, namely in the form of a land certificate, is proof of ownership that is valid and strong if there is a possibility that in the future there will be disputes or problems related to or related to the land, not as absolute evidence, in accordance with the sentence in article 32 paragraph (1) of Government Regulation (PP) Number 24 of 1997 juncto Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 16 of 2021 concerning Amendments Third, on the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (Parlindungan, 1999).

Property rights are the right to enjoy the utility of a material thing extensively, and to exercise freely over that property with full sovereignty, provided that it is not guilty of

the laws established by a power entitled to establish it, and does not interfere with the rights of others, all of which without prejudice to the possibility of revocation of that right in the public interest based on the provisions of the law and with the payment of compensation (Murni & Sulaiman, 2022).

There needs to be special attention and handling from various parties to this land problem, there must be a guarantee of certainty of land rights. Land registration is a mandate from Article 19 of Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles, clearly stated in Article 19 paragraph 1 that to ensure legal certainty by the government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation Number 24 of 1997 juncto Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 16 of 2021 concerning Amendments Third, on the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration. The main purpose of land registration is to guarantee legal certainty for the right to the land and the paragraph is addressed to the government as the person in charge in terms of regulating land registration (Parlindungan, 1980).

Thus land is so important for human life, so it is not surprising that every human being wants to own and control it. This sense of domination often results in the emergence of land problems and disputes in people's lives.

One of the overlapping soil problems is not easy to solve quickly because it requires checking data, conducting surveys to the field directly to see the boundaries, and so on. Land whose status changes to disputed land will require money for dispute resolution, quite a long time and so on. The occurrence of disputed land results from several causes, both from the community and BPN who are not careful in processing certificates. The origin of the occurrence of double certificates or disputed land is an invalid database due to the absence of input of data sources from land owners.

The problem occurred on land in Jamali Village, Cianjur Regency, there was an overlap in the Certificate of Ownership (SHM) Number 362 which was known some time after the related sale and purchase between R. Banondari Permatasari and Bima Dharmasetya as the seller with Zhongxing Zheng as the buyer. Both parties have agreed to carry out a sale and purchase transaction and have signed the Deed of Sale and Purchase (AJB) number 64/03/2020 made before the Temporary Land Deed Making Officer (PPATS), which is followed up by payment of the Land Object based on a payment receipt of IDR 330,750,000,-. One year later it was discovered that the land could not be reversed in name (transfer of rights) due to double certificates (overlapping) with other parties which turned out to be issued certificates first by other parties. Therefore, Zhongxing Zheng filed a complaint in court. The problem is What is the process of resolving land disputes in the Cianjur area in decision Number 3119 K / PDT / 2022 ?

Research methods

This research is a type of normative legal research. Normative legal research is a research method that focuses on the analysis of legal regulations, legal documents and relevant legal literature to understand the legal aspects of a particular problem or issue. This climb aims to identify, understand and analyze applicable legal norms, legal principles, legal concepts, and the relationship between applicable legal regulations. This normative legal research is used with a legal approach (*statue approach*) which is the

main source for understanding applicable legal regulations, namely laws, government regulations and other legal documents.

The data and data sources used in this study are primary and secondary data sources. Primary Data is a source of data by obtaining data directly from the first source or place where the object of research is carried out, namely by way of interviews. Interviews are conducted to obtain in-depth qualitative information about respondents' point of view, experience, attitudes, knowledge, or perceptions related to the research subject. The interview was conducted by preparing a list of questions that had been prepared before, where interaction was freer and responses from respondents became more widely explored. Secondary Data is data sourced from literature research, namely data sourced from data that has been documented in the form of legal materials, meaning that the source of research data obtained and collected by researchers is not directly but other parties. Secondary data is usually sourced from third parties in the form of documents or archives and expert opinions (DQLab, 2021). According to Wardiyanta in Sugiarto (2017: 87), Secondary Data is information obtained not directly from sources but from third parties. Secondary data used are books, theses, articles, journals, opinions from legal experts, and other references (Sugiarto, 2021).

Data collection techniques used for this research report are interviews and document studies to examine various kinds of documents that are useful for analysis and Data Analysis Techniques used are legal analysis and Prescriptive analysis. Legal analysis techniques focus on analyzing based on legal views related to applicable laws and regulations. Prescriptive analysis techniques are about what should be done or regulated based on existing legal principles.

Results and Discussions

Certificate is a statement or proof of statement issued or issued by an authorized official or institution. The definition of a certificate in the Indonesian Dictionary is a written or printed certificate that is used and stored as proof of ownership of land or events. Certificates have juridical power over the existence of ownership rights to an object or visible item (Murad, 1991). According to (Harsono, 2007), a certificate (land) is a certificate of proof of rights issued in the context of organizing land registration or is a proof letter that a person or a legal entity has a right to land over a certain piece of land (Harsono, 1999). According to Maria SW Sumardjono (1996), land rights certificates as the final result of the land registration process contain physical data (information about the location, boundaries, area of land plots, and parts of buildings or buildings on it if deemed necessary). By having a certificate, legal certainty regarding the type of land rights, the subject of rights and the object of rights becomes real. AP. Parlindungan mentioned that a certificate is a copy of the land book and a letter of measurement after being sewn together with a cover paper whose shape is determined by the Minister of Agrarian Affairs is called a certificate and given to the rightful (Syah, 2018). Based on Government Regulation Number 10 of 1961 that a Certificate is a letter of proof of rights consisting of a copy of the Land Book and a Letter of Measure, given a cover bound into one, the form of which is determined by the Minister of Agrarian Affairs or the Head of the National Land Agency. (Djatkiko, 2009)

Measuring Letter is a document that contains physical data of a plot of land in the form of maps and descriptions. The first function of the measuring letter itself is to provide detailed and clear information about the physical description of the land and its

boundaries in order to avoid unilateral claims (Parlindungan, 2002). The second is to identify land identities such as type of use, location owner, area, and others. The third is to officially register the land and its restrictions and ownership rights. (Directorate General of Agrarian Infrastructure of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, 2016)

With the title certificate, there is a guarantee of legal certainty and rights by the state for the owner or holder of land rights. This state guarantee given to the owner or certificate holder can be given because the land is already registered in the state land administration database system. If at any time we want to check the status of our land from the land area, the subject of the holder of the right to the land, the object of the right, its location, boundaries and area and the information of the certificate whether it is in dispute or there is a history of disputes, we can all see it in the state land administration database system. With the title certificate to land, the owner will be protected from the actions of a person, group of people or entities that act arbitrarily and prevent disputes over land ownership. So that with the issuance of a certificate of proof of land ownership, namely this certificate, the state provides security guarantees for land ownership and so that it can be utilized optimally. (Apriani & Bur, 2021)

A legally defective certificate is an erroneous issuance of a certificate at the time of its issuance. Certificates included in the form of legal defects are as follows:

1. Fake certificate.

According to Ali Chomzah (2002: 126) A certificate is declared a fake certificate if the data generation is fake or falsified, the signature of the Head of the Land/Municipality Office is forged, and the blank used to make the certificate is a fake blank / blank that is not issued by BPN.

2. Original but fake certificate

According to Ali Chomzah (2002: 138) Original but fake certificates are formally, certificates issued by the local District / Municipality Land Office, but proof of ownership letters or other papers are fake in making and issuing certificates. This certificate must be cancelled and declared invalid in order to be withdrawn from circulation through the process in the District Court, that the certificate is a forged certificate. Included in the category of original but fake certificates, namely certificates issued turned out to be based on evidence-0b proof of certificate or documents that are lacking / incomplete (Ruhayat, 2004: 131).

3. Double certificate.

Double certificate is a plot of land but has 2 (two) certificates. This kind of thing is also called overlapping or overlapping both the entire field and all the land (Chomsah, 2002: 139). Double titling often occurs in vacant, undeveloped areas and in city border areas where there are no land registration maps. According to Ali Achmad Chomsah (2002: 139-140) who is not included in the category of double certificates, namely:

- a. The certificate that was issued in place of the missing certificate.
- b. Certificate issued in lieu of damaged certificate
- c. Certificate issued in lieu of the revoked certificate. This is because the certificate has been declared invalid as proof.
- d. Certificate of Building Use Rights above Property Rights and above Management Rights, because according to applicable laws and regulations, it is indeed possible. (Beritno, 2020)

The emergence of land problems is based on various causes, which include the

following: (Ali Achmad Chomzah, 2003: 21)

- Invalid data base regarding land in detail in BPN. It is important to improve and update the land database regularly to improve the validity and accuracy of the information available. This can be done through careful mapping efforts, field verification, and the use of appropriate information technology in soil data management and ease of accessing soil data. Because if the data is accurate and valid, it is definitely impossible to issue a second certificate and so on.
- The element of the landowner's intention to re-register the certificate. This happens because creating a new certificate is easier and cheaper than transferring land rights. In the transfer of land rights, it must be through the Deed of Land Deed Making Officer (PPAT), PPAT with Land and Building Rights Acquisition Duty (BPHTB) which is 5% of the Selling Value of Tax Objects / Sale and Purchase transaction price minus the Selling Value of Non-Taxable Objects. From the amount of expenditure, the cost of checking the certificate, making a PPAT deed, turning the name of the certificate, official deposit for changing the name, and other costs which require considerable costs for the process of transferring rights.
- Land administration in the past was less orderly. This can have a range of negative consequences, namely uncertainty in land ownership, overlapping or land disputes, and economic losses as they hinder productive investment and sustainable development.
- The negligence of the National Land Agency in the Implementation of the Registration Map where each registration map measuring land parcels must be bound to the basic points of existing techniques and the position of the drawing of the land parcel must be precise on the land registration map. A careful system, strict supervision, adequate training for officers, and the application of modern technology can help reduce telodoran and improve the quality of services provided by BPN.
- Irresponsible parties. Certain parties who see an opportunity to seek unreasonable material gain or use it for political gain. There is bad faith of certain parties who see the opportunity to seek unreasonable material personal gain or use it for political gain.

According to Murad, (1991) that there are several kinds of problem nature of a dispute, which are as follows:

- Issues concerning priority to be determined as legal rights holders of land with the status of land rights that have no rights.
- Refutation of evidence of acquisition used as a basis for granting rights.
- Errors or errors in the granting of rights caused by the application of regulations that are inadequate/incorrect.
- Other disputes involving practical social aspects (strategic in nature).

That way, we cannot allow/ignore the land to continue to have the status of disputed land but there are various ways of settlement that can be done, namely settlement through the National Land Agency (BPN) and settlement through the judiciary.

Land Rights Dispute Resolution Process in Decision Number 3119 K / PDT / 2022 :

In the case that occurred in Cianjur judgment number 3119 K / PDT / 2022, Zhongxing Zheng as the buyer or plaintiff, had made a sale and purchase transaction with R. Banondari Permatasari and Bima Dharmasetya, as the seller or defendants, with AJB Number 64/03/2020 at PPATS Yudha Azwar, SE, Mhum. Both parties have agreed to carry out the sale and purchase process, sign the deed before a notary, and have made payments. Then followed up by PPATS Yudha Azwar, SE, MHhum who checked the certificate with clean results. One year later it was discovered that the purchased land had a problem with double certificates on the same land, resulting in the inability to return the name to the buyer, and he immediately filed a complaint in court.

Before that, they conducted a mediation process first. Mediation is carried out with a mediator by meeting directly, and negotiating to obtain agreement between both parties. But there was no solution that benefited both parties. So the case proceeded to the district court level whose decision has been issued Number 22/Pdt. G/2021/PN Cjr, appealed to the High Court with decision Number 601/PDT/2021/PT BDG, and appealed again to the Supreme Court with decision Number 3119 K/Pdt/2022.

The author concludes that even though the certificate has been checked at BPN and the results are clean, the land can still change its status to a disputed land whose double certificates occur later, but the buyer can be protected by law if the seller sells the land that is still in dispute.

Zhongxing Zheng as the buyer or Plaintiff was able to prove that the land was indeed double and unsettled, so he was won in court to be able to request cancellation of the sale and return of the money paid. The amount of money that must be returned is IDR 410,705,000 (four hundred ten million rupiah seven hundred and five thousand rupiah) without deadline and forced money (dwangsom).

A. Ideal concept in land dispute resolution.

The ideal concept in resolving land disputes through the following means:

- a. The land office can establish a separate mechanism in terms of resolving land dispute reports that are included in the form of a special division which will later focus specifically on handling all cases related to land disputes in which case the division can help provide the type of problem and develop a strategy for solving it.
- b. Have separate regulations systematically formed according to the hierarchy of laws and regulations to support each other in terms of resolving land disputes either by litigation or non-litigation (Sutedi, 2017). According to the author, this aims to reduce the cost or burden of cases compared to the General Court or PTUN, so that the resolution time is more effective.
- c. Efforts to speed up the dispute resolution process with thorough mediation between the parties to the dispute as well as between institutions such as the Land Office with the Village or Sub-District Office or the Village/Village Head can coordinate on proof of ownership and tenure to avoid miscommunication between owners of a piece of land.
- d. The process of managing land title certificates is more affordable and simple so that people who are not financially capable or do not know how to manage land title certificates can more easily take care of it.

B. Settlement through BPN agencies.

1. Complaints/objections from the community

A dispute over land rights arises because someone makes a complaint or objection from a person or legal entity whose content of the truth and guidance on a State Administration decision within BPN is considered detrimental to their rights to a particular piece of land. Land rights disputes include several types, including regarding the status of the land, who is entitled to the land, objections to evidence of acquisition that is the basis for granting rights or registration in the land book.

2. Research and data collection

When knowing the emergence of complaints or objections from the public by providing complaint files, the authorized official examines the complained files with the results of whether these complaints can be processed further or not.

3. Prevention (mutation)

Mutations must not be carried out so that the interests of the person or legal entity entitled to the disputed land receive legal protection. If deemed necessary, after the Head of the local Land Office conducts research, blocking of disputed land can be carried out or prevention/temporary suspension of all forms of changes (mutations) of disputed land.

4. Deliberation

Take a familial approach by placing the Land Office / agency as a mediator to find a middle way. Deliberation is a recommended way of resolving disputes in a good way, without taking sides with anyone and not applying pressures. Actually, the purpose of deliberation is not only to obtain an agreement on the form and amount of compensation, but also to reach an agreement on the willingness of the party who owns the land to hand over his land to the party in need and an agreement on the reward. (Ma'ruf, 2011: 35-36)

C. Settlement of Land Disputes Through Arbitration and Alternative Dispute Resolution

Arbitration is a dispute resolution process carried out outside the court involving the parties to the dispute and one or several arbitrators appointed based on the agreement or agreement of the parties and of course it is agreed that the award taken is binding and final for the parties. The arbitrator will first review the evidence and arguments of both parties, and then issue a binding and final award. Alternative dispute resolution is also a process of resolving land disputes outside the court channels including mediation, negotiation, conciliation, and adjudication. In mediation, a mediator helps the disputing parties to reach a mutually beneficial agreement. Negotiations involve direct talks.

D. Land Dispute Resolution Based on Judge's Decision

With the issuance of an inkrah/permanent and legally enforceable judge's decision, the community really hopes that the judge's decision has the value of legal certainty and can definitely solve problems, especially in this issue of resolving disputes related to land rights that occur in the community by submitting it through the court.

Conclusion

Based on the description in the discussion above, it can be concluded that a certificate is a statement or proof of a statement issued or issued by an authorized official or institution. Efforts to be made to avoid overlapping land are by registering land. With the land registration, the state will provide legal certainty and the owner or certificate holder will get legal protection.

The causes of land disputes are that land administration in the past was not orderly, land prices experienced rapid inflation/increase, land controlled by a person or legal entity is not necessarily owned by the occupying person, the process of inheritance of land that was not determined through legal mechanisms, and so on.

Settlement of double certificate disputes can be resolved through BPN agencies with an initial complaint to revoke the State Administrative Decree in the land sector by BPN, and the last alternative for the settlement of this land dispute is through litigation (court) whose settlement follows laws and regulations.

SUGGESTION

1. BPN Cianjur should conduct a complete registration map and orderly land administration so that there are no administrative legal defects.
2. There must be coordination in the mechanism of the registration system in Indonesia as a whole between BPN as the institution authorized to issue SHM on land and the Regional Government including Village Heads who usually know and sign Land Rights Certificates, to minimize the occurrence of legal vagueness over the interpretation of the legal position of land proof letters in Indonesia.
3. In order to facilitate access to land information and data recovery, land data should be stored in the form of electronic documents. In addition, it provides training to staff on the use of organized electronic document systems and provides clear usage policies and guidance on storing, managing, and searching documents to avoid administrative errors.

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