Research Article

Utilization of Measurement Technology to Prevent Double Certificate

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Abstract: The purpose of this study is to find legal certainty aspects and legal protection for honest subject of land rights holders as there is still double certificate appeared. One of the way to solve it is through litigation in the State Administrative Court. The research method is normative with a legislative, analytic and case approach. From the legal material obtained in the form of a dispute document on a piece of land that had a double certificate, after examining the method of registration, it was found there was an oddity, that is both certificate were obtained through conversion. From the legal material in the form of documents both in the form of process documents and result documents, it can be concluded that one of the parties is as the legal owner of the land rights according to the certificate that is owned through conversion. The validity of ownership is based on the implementation of the principles of land registration and the principle of nemo plus juris jo presumption juris. So the function of this court is truly as the final safety valve to create legal certainty in the resolution of double certificate disputes. This requires the judges’ integrity who are able to provide justice, certainty and usefulness in law enforcement for human welfare. In addition to the use of measurement technology in the form of the Global Navigation Satellite System (GNSS) and mapping technology using the Nir Awak Air Vehicle (UAV/Drone) will accelerate land registration and simultaneously prevent double certification.

Keywords: legal certainty, registration of land rights, legal protection, double certificate.

1. INTRODUCTION

The "double" certificate triggers land conflicts therefore legal assurance and legal protection are the objectives of land registration as mandated by Government Regulation 10 of 1961 and those that have been replaced by Government Regulation 24 of 1997 are beyond expectations, because people are forced to resolve their problems through justice institution. This condition also proves that the principle of land registration is not implemented properly and correctly. Irawan Soerodjo found several obstacles that caused the land registration tdoes not work properly, which includes: tools and energy, the number of pieces of land spread throughout Indonesia, and the budget.\(^{1}\)

The Ministry of Agrarian Affairs and Spatial Planning or the National Land Agency (ATR/ BPN) are working on accelerating land data reform. The Basic Registration Map is the main tool or THE first filter to analyze when a certificate for a piece of land will be issued for the first time with the aim of not issuing double certificates. That was stated by Kusmiarto. Ideally all piece of land parcels shall be issued the certificate are mapped on the Registration Base Map. Unfortunately, not all certified piece of land are mapped on the Registration Map.\(^{2}\)

Further explained. Whereas in fact, since 1997, The Ministry of Agrarian Affairs and Spatial Planning or the National Land Agency Ministry has tried to overcome the mapping in the Registration Base Map through Graphical Index Mapping (GIM) activities, but these efforts have not been optimal. "The GIM is carried out sporadically. Not all Land Offices carry out this GIM activity consistently," It is recognized that there are various obstacles including the unavailability of the Basic Map and the lack of human resources (HR). Currently, by utilizing GNSS and PTSL, these constraints have begun to be

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\(^{1}\)Irawan Soerodjo, 2003 *Pendaftaran Hak Atas Tanah di Indonesia* [Legal Assurance of Rught on land in Indonesia], Arkola, Surabaya, pp. 176.

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overcome. This is thanks to the development of measurement technology using the Global Navigation Satellite System (GNSS) and mapping technology using the Nir Awak Air Vehicle (UAV/Drone). Construction of a Basic Map in the form of a Photo Map using these two technologies can be done more quickly, at a lower cost with quality that is as needed.

From the results of observations, several phenomena can lead to land disputes can be conveyed due to the existence of a "double" certificate, which includes: asynchronous physical data and juridical data in the certificate, land registration for the first time through conversion can be done twice over plot of land that are similar, there is a wrong perception of those who have SPPT (Letter of notification of land tax payment) as a claim of ownership of land rights.

In the concept approach, land registration is stated as a series of activities carried out by the Government continuously, sustainability and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical and juridical data, in the form of maps and lists, regarding plot of land, and apartment units, including the granting of proof of rights for plots of land in which there are already rights and ownership rights for the apartment units and certain rights which burden them (Article 1 number 1 Government Regulation 24/1997).

2. LEGAL ISSUE

From the phenomena observed and examined as described above, the legal issues can be raised, namely: how the existence of certainty assurance and legal protection of the Land Ownership Certificate obtained by first registration through conversion compared to the certificate obtained by registration for the second (maintenance) through conversion of the same plot of land?

3. DISCUSSION

3.1 The Principle of Land Registration

The mandate of the issuance of Act No. 5 of 1960 on Basic Agrarian Law or called BAL is the registration of land throughout the territory of Indonesia to ensure legal certainty of ownership of land rights. In the implementation, Government Regulation is issued, namely Government Regulation. 10 of 1961 which was then alternated with Government Regultion 24 of 1997. The principle of land registration regulated in Article 2 Government Regultion 24/1997 is in the form of a simple, safe, affordable, up-to-date principle. The simple principle means that in the registration of land it is intended that the basic provisions and procedures can be easily understood by the parties concerned, especially the holders of land rights. The principle of safety shows the accuracy and accuracy in its administration so that the results can provide guarantees of legal certainty as well as protection according to the purpose of registration. The principle of affordable is intended to pay attention to the needs and abilities of the economically weak group. This means that the services provided can be reached by those who need it. The latest principle means adequate completeness in its implementation and continuity in maintaining its data. Available data must indicate the latest state. For this reason it is necessary to follow the obligation to register and record changes that occur in the future. The latest principle demands the maintenance of land registration data continuously and sustainability, so that the data stored in the Land Office always matches the real situation on the ground, and the public can obtain information about the correct data at any time. For this reason, an open principle is also applied, which is to provide information to interested parties, including the government, so that they can easily obtain the data needed to conduct legal actions regarding land parcels and apartment units that have been registered.

In land registration, a "land book" is known, namely as a document in the form of a list containing juridical data and physical data of an object land registration has rights. Physical data is a description of the location, boundaries and area of the land and units of flats listed, including information on the existence of buildings or parts of buildings above it. Juridical data is a description of the legal status of the land plot and listed apartment units, their rights holders and other parties' rights and other burdens that burden them.

In the context of presenting physical and juridical data, especially to provide an opportunity for interested parties to easily obtain the information needed, the Head of the Land Office organizes the land registration administration known as the public register, which consists of registration maps, land registers, measurement letters, land book and list of names (Article 33, 34 Government Regulation 24/1997).

There are two types of land registration activities accordance with Government Regulation 4/1997, namely land registration for the first time, and second for maintaining land registration data. Land registration activities for the first time, are land registration activities carried out on land registration objects that have not been registered based on Government Regulation 10 / 1961 or Government Regulation 24/1997 (UAV/Drone). Const
Regulation 24/1997. This land registration activity is carried out sporadically or systematically. Whereas the activity of maintaining land registration data, is the activity of land registration to adjust physical and juridical data in the land registration map, list of names, measurement letters, land books, and certificates with changes in the future. Systematic land registration is the activity of land registration for the first time carried out simultaneously which includes all land registration objects that have not been registered in the territory or territory of a village. Whereas sporadic land registration is the activity of land registration for the first time regarding one or several objects of land registration in the territory or parts of a village / individually or collectively.

3.2 Legal Assurance of Ownership of Land

Legal assurance of Land Ownership in Sociological perspective has two parts of the study, namely:

1. The process of issuing certificates of ownership of land by the Land Institution.
2. The process of testing the certificate of ownership of land in the Judicial Institution that functions as a filter which Achmad Ali called the final safety valve.

The two processes above are relevant to John Rawls's "Justice as Fairness" Theory, where the acquisition of certificates of land rights registered is oriented towards the procedures and processes for issuing rights. So good and true results are obtained by procedures and processes that are good and right too. Whereas the second issued certificate for the same object is not the first time registration, but it is data maintenance (maintenance). From the aspect of justice it can be stated, that the act is fair or unfair highly dependent on the suitability between the process and the results associated with legal obligations that do not violate the rights of others. Article 3 Government Regulation 24/1997 emphasizes that land registration in Indonesia aims to:

1. Provide legal certainty and legal protection to holders of rights over a plot of land;
2. Providing information to interested parties;
3. The implementation of orderly administration of land.

The negative significance of the element that contains a positive element in land registration (according to Government 10 / 1961-24 / 1997), is the Certificate as evidence of rights which is valid as a means of proof. So on the one hand it guarantees legal certainty over ownership of land rights. Also provide balanced legal protection both to those who own land to be controlled and used according to the type of their rights as well as to those who acquire and control it in good faith which we strengthened by evidence of registration of their rights.

In this "negative" system the principle of "nemo plus juris" applies, which means that a person cannot surrender or transfer rights beyond what he has. Or in other words it can be stated, that "a person cannot take legal actions that exceed his rights" and the consequences of such violations are null and void (van rechtswegeneig). The implication is, the said legal action is considered never to have existed and therefore has no legal consequences, and if the action causes loss, the injured party may request compensation from those who carry out the legal action. Further implications, that the subject of rights who feel they have rights to land, can still defend their rights by making a lawsuit against the parties whose names are registered in the land book. For the unification of the National Land Law, then the old rights of both Western rights and Indonesian rights that existed at the time the enactment of BAL No. 5 of 1960 was converted into an appropriate right. So conversion according to Boedi Harsono is a change of the old right into a new right according to the BAL.

Conversion provisions since the enactment of Government 24/1997 jo PMNA/ Head of National Land Agency (referred as BPN) No. 3 of 1997 concerning Provisions for the Implementation of Land Registration undergoing improvement and development, among others: bookkeeping of old rights can be carried out based on physical control of land parcels for 20 years or more in a row (Article 24 paragraph 2). So there is an alternative solution to

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3Urip Santoso, 2010, Pendaftaran dan Peralihan Hak Atas Tanah [Registration and transfer of of right on land], Kencana Prenada Media group, Jakarta, pp. 172.


5Muchtar Wahid, 2008, Memaknai Kepastian Hak Hak Milik Atas Tanah, Suatu Analisis dengan Pendekatan Terpadu Secara Normatif dan Sosiologis [understanding legal assurance of right on land ownership. An Analysis with comprehensive approach normatively and sociologically], Republika, Jakarta, hal. 111.

the recognition of property rights with "presumptio juris". That the land being applied for conversion is "true" former Indonesian rights obtained in the right way (good faith).

The written evidence in the conversion also experienced an expansion in Article 76 PMNA No. 3 of 1997, inter alia, with a proof of ownership issued based on the swapraja regulation and other forms of written evidence in whatever name as referred to in the provisions of the conversion of the BAL. It is relevant to the provisions of Article 56 of the BAL which has mandated the tracing of the history of land ownership through a legal cultural approach to overcome the weaknesses of the lack of formal evidence contained in the customary legal system.

In the context of consistency, it will be relevant to be examined from the theory of legal certainty according to Gustav Radbruch, namely certainty due to law, and certainty in or self-law. This means that there are no multiple interpretations, there is a guarantee of certainty on one party to the other party. In the context of this theory, it can be interpreted that certificates of ownership of land have legal certainty value by examining the consistency of physical and juridical data with documentary evidence, historical mastery from the beginning until the registration process, ownership of pipil and SPPT (Letter of notification of land tax payment) issuance, testimony, implementation of the process. The measuring instrument is the principles of land registration, the principle of nemo plus juris jo presumption juris.

The influence of the legal system of land registration on the legal certainty of land rights, is relevant to the Legal System Theory which was conveyed by Friedman, namely:
1. Legal substance, which consists of the purpose, system and procedure of land registration;
2. Legal structure, which consists of land officers and legal certainty testing institutions, even related government institutions;
3. Legal culture, which consists of community legal awareness and social reality.

So the operation of the law as a system with due regard to the implementation of the principles of land registration by the legal structure of the Land Agency or the Land Office, the existence of community culture support, namely the mentality of the community to register parcels of land which are their rights. So that the honesty of the community in registering their land rights is one of the main indicators of achieving legal certainty on land ownership certificates. With respect to the resolution of double certificate disputes arising through litigation over claims of ownership of land rights, the judge's decision is the final safeguard against legal certainty while providing protection of ownership rights from proof of certificate.

Since the end of 2016, The Ministry of Agrarian Affairs and Spatial Planning or the National Land Agency has also launched a massive acceleration of land registration activities. The target is that all plots of land in Indonesia (216 million) in 2025 can be issued certificates. The acceleration is carried out through the Comprehensive Systematic Land Registration (referred as PTSL). "The essence of PTSL is to map all plot of land, both those that are not yet certified those that have been certified more systematically by involving the active participation of the community and stakeholders." The use of measurement technology is very helpful in accelerating land registration.

4. Conclusion and Recommendation

Conversion as a process of changing old rights into new rights according to the BAL can only be carried out for land rights registered for the first time. The output is in the form of Ownership Certificate/Freehold title (SHM) as a strong evidence and can provide guarantees of legal certainty as long as it is not proven otherwise by other parties. The existence of a double certificate proves that the land registration administration system in Indonesia has not been able to implement the principles in land registration that can be caused by the legal structure given the task of carrying out the certificate completion process, or from the culture of the community who have not been able to carry out good faith in supporting the implementation of the principles in the registration of land and principles of nemo plus juris jo "presumptio juris". Guarantees of legal certainty over certificates of land rights can also be provided through judges' decisions on disputes over the ownership of a double certificate called the final safety valve. Through dispute resolution is also reflected in the legal protection of the parties most entitled to claims from other parties. So the certificate of ownership rights over a piece of land obtained in accordance with the principles in the registration of the land, its existence can be
guaranteed legal satisfaction, therefore it should be protected through judicial decisions. Considering the role of the judiciary as the final safeguard against the guarantee of legal certainty, it is necessary to have an integrity that will carry out the mandate to be able to provide legal certainty guarantees as well as protection for owners of certificates of land rights obtained in accordance with the principles in land registration and honesty as a reflection of good faith. In addition to preventing the issuance of multiple certificates, a Registration Base Map needs to be made by utilizing the measurement technology called the Global Navigation Satellite System (GNSS) and mapping technology using the Nir Awak Air Vehicle (UAV / Drone)

5. References

4. Irawan Soerodjo, 2003, Kepastian Hukum Pendaftaran Hak Atas Tanah di Indonesia [Legal Assurance of registration on right of land in Indonesia], Arkola, Surabaya.