

## LEGAL PROTECTION FOR OWNER DUAL LAND CERTIFICATES IN INDONESIA

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### **Abstract**

*Land is something Thing what 's inside is important life society . Land is something very valuable especially in the present where land the more little , so soil bes something of value quite expensive. Not a bit appear dispute land on land , for one is ownership certificate soil double . it becomes harmful owner the real original because the land anytime can sold by unauthorized owner . \_ Owner legitimate can submit lawsuit as form protection provided inside \_ \_ law to defend right as owner legitimate from soil the .*

**Keywords:-** *certificate , double , dispute*

## A. INTRODUCTION

Land as one source power natural is wrong bounty Almighty God One . Land is needs life the most basic human as source life and eyes livelihood , even land and humans can not separated from since man born until man died . Man live and thrive breed as well as To do above activity ground , so every man relate with ground . So that's a problem this land is necessary laid out and made planning with be careful and full wisdom .<sup>1</sup>

Ownership a field ground basically has all the power law in it , good certainty law from ownership right , land physically , as well a protection law To use owner legitimate on soil the from exists disturbance or dispute soil other . Sentence in article 3 in PP 24/97 Concerning Land Registry explained a Land Registration is very identical as guarantee get certainty law in the field land . As for understanding registration soil listed in the sentence in article 1 point (1) PP 24/97, Activities registration soil have destination that is guarantee certainty law as well as certainty right above ground namely the right holder on the ground in order with simple prove who 's in charge have soil such , through a Certificate ground .<sup>2</sup>

The system used in the State of Indonesia in Thing registration soil still same with what 's there in pp 10/61 About Land Registration ie system publication containing negative element positive . Element positive meaning because registration carried out will produce sign proof rights that can made tool proof strong as it is put forward sentence Article 19 paragraph (2) letters c, article 23 paragraph (2), article 32 paragraph (2) article 38 paragraph (2) UUPA. Thus Indonesia is not pure use a system publication negative , because still applied system registration stated right that Certificate is a tool strong evidence .<sup>3</sup> Strong doesn't mean in a manner absolute , meaning is if register right on so just strengthens proof ownership , do not close possibility exists lawsuit to soil the for not receiving protection described sentence in PP 10/61.<sup>4</sup>

this causes a number of disputes that occurred in Indonesia. System Land registration is not absolute only strong could give problem regarding validity from a certificate right on ground . one dispute that occurred is about ownership certificate double . Inside some cases exist land owned by two different people so that need conducted certainty solution from owner legitimate from soil that 's the real thing .

## B. Ownership Certificate Land Rights over base registration right on land in Indonesia

Registration soil originated from the word Cadaster or in language Dutch is something term technical for a record ( record ) that applies regarding area , value and ownership to something field ground .<sup>5</sup>

Registration soil is Suite activities carried out by the government in a manner Keep going continuous , continuous , and regular covers collection , processing , bookkeeping and presentation as well as maintenance of physical data and juridical data , in form maps and lists, regarding fields land and units house stacking , incl gift certificate as letter sign proof right for fields existing land rights and rights owned by on unit house stack as well as rights certain burdens .<sup>6</sup>

Activity registration soil is obligatory obligations implemented by the government in a manner Keep going continuously in framework inventory of relevant data with rights on soil according to Constitution tree agriculture and regulations government , meanwhile registration right on soil is obligatory obligations implemented by the right holder on the land in question and implemented in a manner Keep going continuously every there is transition rights on soil the according to Constitution tree agriculture and regulations government To use get certificate sign proof strong ground .<sup>7</sup>

Inside Article 19 UUPA One destination with he did registration soil is to guarantee certainty law by the government held registration soil throughout the territory of the Republic of Indonesia according to stipulated conditions with regulation government .

As for certainty law meant is covers Certainty regarding the person/ legal entity that is the holder of the rights on soil the . Certainty regarding with who is the right holder on the land is called with certainty about the subject right on land and Certainty regarding the location land , boundaries land , length and width ground . Certainty regarding with location , boundaries and length as well as wide the land is called with certainty about the object right on ground .<sup>8</sup>

According to Wantjik Saleh in the book Right above Land mentioned certificate is copy book land and letters measure , the one after bound Becomes one together with one paper cover shape set with Regulation Government .<sup>9</sup>

Function main certificate according to Effendi Warin that is as tool proof right on land and rights dependents<sup>10</sup> Application replacement lost certificate must accompanied statement below oath from those concerned in front of Head of the Land Office or appointed official regarding the loss a hint the rights concerned .<sup>11</sup>

<sup>1</sup> H. Bagiindo Sharifuddin ,. M. Yamin Jinca , M. Said Nisar. Mobilization Seminar Orderly land In PJP II, South Sulawesi BPN Regional Office: 1996.

<sup>2</sup> Aartje Tehupeory , Importance registration land in Indonesia, ( Spreader Self-subsistent Group ; Jakarta), 2012, p.9

<sup>3</sup> Boedi Harsono , Op.Cit , p.89

<sup>4</sup>National Land Agency, Association Creation write registration soil , Research Group , p.44

<sup>5</sup>AP. Parlindungan , Land Registration and Conversion right owned by on soil according to UUPA, (Bandung, Alumni, 1988), page 2

<sup>6</sup> Boedi Harsono , Indonesian Agrarian Law , History of the Establishment of the UUPA, Contents and Implementation , (Jakarta; Djbatan , 2005), p . 474.

<sup>7</sup> Bachtiar Effendi , Land Registration in Indonesia and Regulations Implementation , (Bandung; Alumni, 1993), page 15.

<sup>8</sup> Bachtiar Effendi , Land Registration in Indonesia and Regulations Its implementation , (Bandung; Alumni, 1993), p . 20.

<sup>9</sup> Wantjik Saleh, Your Right to Land, ( Jakarta : Ghalia Indonesia, 1997), p . 64

<sup>10</sup>Effendi Warring , Practice Management Certificate Land Rights , (Jakarta, PT. Raja Grafindo Persada, 1996), page 1

<sup>11</sup> Florianus SP Sangsun , Management Procedures land certificate , (Jakarta, Visimedia , 2007), pp 74- 75

**C. Legal Protection for Owner United Right over the Land**

Certainty law in registration soil have target to achieve protection law for rights holders on land , therefore every problems that arise at the time disputes rolling in court \_ must through the process of proof . From the side certainty law , PP 24/ 97 indeed more give sufficient guarantee \_ strong compared to PP 10/61. In PP 10/61 it is not specified something period time certain to give certainty , so certificate as sign proof ownership soil still could canceled if there is evidence of the data used as base its publication disabled . Meanwhile PP 24/97 mentions after past period five years time after published , then certificate land can not sued again, so Thing the will relatively more give certainty law and protection law .<sup>12</sup>

Principle rechtsverwerking applied with purpose to deliver certainty law to party with \_ good faith reigns land and registered as a rights holder in book soil with certificate right on soil as sign proof ownership , principle rechtsverwerking will to be ineffective or unable to give protection law as well as could harmful for the owning party soil but ca n't prove with tool proof certificate right on ground . Protection the law is also difficult given to rights holders on acquired land \_ right on land only with based on principle good faith .<sup>13</sup>

kindly special in Article 59 PP 24/97 , regulates issuance certificate replacement because is lost as following :

1. Application replacement lost certificate \_ must accompanied statement below \_ oath of those concerned before \_ Head of the Land Office or appointed official regarding the disappearance relevant certificate . \_
2. Publishing certificate replacement as meant must preceded with Announcement 1 ( one ) time in one of the letter media news daily local on cost applicant . For regions certain Minister can determine way and place other announcements than specified \_ the .
3. If deep period time 30 ( three twenty ) days counted since announcement no one filed \_ objection regarding will publication certificate replacement that or someone proposed \_ object will but according to consideration Head of the Land Office object it is unreasonable , clipped new certificate .
4. If an objection is raised considered reasoned by the Head of the Land Office , then he will reject publish certificate replacement .
5. Regarding doing announcements and publications as well as rejection publishing new certificate is generated Minutes by the Head of the Land Office .
6. Certificate replacement submitted to requesting party \_ published certificate it or someone else who is given power to receive it .

Whereas in Article 138 of Permen ATR/BPN 3/97, which regulates publishing certificate replacement state as following

1. Publishing certificate replacement because is lost based top` statement from the right holder regarding the loss certificate that is stated in the Declaration Letter .
2. Statement the made below \_ swear before \_ Head of the Land Office location the land concerned or other officials appointed Head of the Land Office .
3. In the case of the holder or rights holders the live outside \_ District /City location ground , then making statement could conducted at the Land Office in the domicile concerned or in front of official Embassy Republic of Indonesia in the country of domicile concerned .
4. With remember magnitude cost announcement in letter news daily as determined in Article 59 PP 24/97 compared with price certificated land \_ is lost as well as ability applicant , then Head Head of the Land Office could determine that announcement will publication certificate the placed on the board announcement of the Land Office and at the entrance to the land with the certificate is lost with board enough announcement \_ clear for those on the outside to read field soil the .

Certificate false is certificate which data for manufacture the certificate counterfeit or forged , sign hand Head of the Land Office falsified district / city and blanks used to make \_ \_ the certificate is blank fake ( no blanks issued by the National Land Agency ) . Effort prevention forgery certificate original but false among others with increase precision and thoroughness processing apparatus \_ creation and publishing certificate .<sup>14</sup>

Certificate double is explanatory certificates \_ one field same land . \_ So with thereby one field soil outlined with 2 ( two ) different certificates or more the data . This kind of thing is also called " Certificate " . overlap Overlapping , either overlapping overlapping whole field nor overlap overlapping part from soil the .<sup>15</sup>

System registration Land in Indonesia is a nuanced negative publication system positive where different with system registration soil positive , ie sign proof right somebody on soil is absolute and impermissible disturbed sue . If it turns out there is flawed evidence , showing \_ disabled law from acquisition right such , then he could n't demand cancellation , except demands payment change loss .<sup>16</sup>

Certificate double means occur overlap overlapping field ground , both overlapping overlapping whole field soil nor overlap overlapping part from field soil the . Such thing generally happens on still ground \_ empty or not built . Appearance certificate double could occur because :<sup>17</sup>

<sup>12</sup> Soerodjo , Irawan . Legal certainty of land rights in Indonesia . Cet. 1. Surabaya: Arkola , 2003.. , p . 187-188

<sup>13</sup> Soerodjo , op. cit., p . 191.

<sup>14</sup> Supranowo , Certificates and Problems ( in results of the national seminar utility certificates and their problems ) , ( Yogyakarta: Cooperation of the National Land Agency and the Faculty of Law UGM, 1992), page 89

<sup>15</sup> Ali Chomzah , Land Law , Land Law Series I- Grant State Land Rights and Land Law Series II- Certificates and Problems , (Jakarta, Prestasi Pustaka, 2002), p.139.

<sup>16</sup> Rusmadi Murad, Settlement Legal Disputes Over Land, ( Bandung: Mandar Maju , 1991), p . 31.

<sup>17</sup> Ali Chomzah , Land Law , Land Law Series I- Grant State Land Rights and Land Law Series II- Certificates and Problems , (Jakarta, Prestasi Pustaka, 2002), page 141

1. on time recorded measurement or research in the field applicant with intentionally or unintentionally pointing location land and boundaries wrong land .
2. There is letters / tools proof / confession right behind day proven contain untruth , falsehood or is no longer valid .
3. for the region in question not yet available map registration the land

Certificate doubles too \_ occur because certificate it is not mapped in map registration land or map situation area the . If map registration land or map situation / letter measuring made in map , then possibility happening certificate double will small once .<sup>18</sup>

1. Issued certificate \_ as replacement from lost certificate . \_ Not included in category certificate double , that is :
2. Issued certificate \_ as replacement from damaged certificate . \_
3. Issued certificate \_ as replacement canceled certificate . \_ This is due because certificates referred to above has declared and not valid as sign evidence .
4. Certificate Building use rights above \_ Freehold or above \_ \_ Right Management , because according to regulation applicable laws , the matter referred to of course possible .

Certificate double could occur because a number of mistake technical as following :

1. on time conducted measurement or research in the field , applicant with intentionally or unintentionally show location land and boundaries wrong land .
2. There is letter evidence or confession right behind day proven contain untruth , falsehood or is no longer valid .
3. for the region in question not yet available map registration the land .
4. publishing case more from one certificate on a plot soil can also happen on soil legacy . Background behind the case is dispute treasure inheritance namely by the owner before his death has for sale to other party without known by their children and have published certificate on name buyers , and then the experts his heir certify the same ground , so resulted occur certificate double , because certificate earlier it turns out not yet mapped .<sup>19</sup>

Happening certificate double influenced by presence internal factors and factors external namely :

1. UUPA and regulations are not implemented implementation in a manner consistent and responsible Beside still there are people who do to get profit personal . factors the seen from in agency of the Land Office . Internal factors in question are :
2. less functioning apparatus supervisor so that give opportunity to apparatus his subordinates to act deviate in the sense of not executing duties and responsibilities in accordance oath position .
3. Inaccuracy Land Office officials in publish certificate soil that is documents that are base for publishing certificate is not checked with carefully which may be the documents the not yet Fulfill requirements as determined by the provisions applicable legislation . \_
4. Land Office as agency Government in create and publish certificate land is highly dependent on the data published by the agency government others such as government area / village and office service tax .<sup>20</sup>

#### D. Conclusion

Inside \_ implementation of ownership processes right on soil often occur dispute . Society as owner legitimate from a ha of land need given protection in have right the . Government give protection for society have right on land so that it is not abused . One of the most common cases occur is certificate soil double where can harmful Public because obscurity owner right on soil the . parties \_ could go to court for proof more More about ownership legitimate from certificate right on soil the .

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