PROBLEM OF LAND OWNERSHIP CERTIFICATES AS LEGAL PROOF OF OWNERSHIP

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Abstract

Agrarian is the natural resource that humans need most, as a place to live and develop land resources. This development aims to achieve shared prosperity, maintain collective order and guarantee every community's rights in every region. So it is necessary to regulate in law a policy that determines land ownership according to the rights of each individual. Because if it is not regulated it will cause problems in social life. Because of this, the government passed a legislation regulating the significance of land ownership as attested to by a Certificate of Ownership or Letter of Ownership (SHM). The government hopes that with SHM, every person who owns land or buildings (certain objects) can have their ownership rights guaranteed in compliance with relevant laws and regulations. Thus, if there is a struggle for property rights, it can be proven by the existence of SHM. Based on Law No. 5 of 1960 and Government Regulation No. 24 of 1997 emphasizes the crucial role of land ownership certificates as legal proof of ownership. This contributes to legal certainty, protection, and justice in the context of land ownership and transactions.

1. INTRODUCTION

Land is an asset with very complex problems. Land from the point of view of ownership in social life is always faced in buying and selling transactions, matters of inheritance and ownership. Based on Law no. 5 of 1960 Article 16 concerning Basic Agrarian Principles (UUPA)¹, that the rights to land as intended in article 4 paragraph 1 are: a. right of ownership, business use rights, c. building use rights, d. use rights, e. rental rights, f. right to open land, g. right to collect forest products, h. Other rights which are not included in the rights

mentioned above will be determined by law as well as temporary rights as mentioned in Article 53. From the points in Law no. 5 of 1960 Article 16 is clear that land has been classified into its respective functions.

This article is entitled "The Problem of Land Ownership Certificates as Legal Proof of Ownership". According to the Big Indonesian Dictionary (KBBI), problematic comes from the word problem. Problem means things that are still unresolved, and something that must be resolved. To provide legal certainty to land rights holders, the implementation of land registration requires support from various parties, especially from land rights holders. The purpose of holding land registration, especially land registration resulting from registration of land rights, is to provide legal certainty in the land sector, especially land registration resulting from certificates issued by land rights holders. Therefore, land ownership deeds are issued as proof of ownership by the government.

In implementing UUPA, the government issued Government Regulation no. 24 of 1997 concerning Land Registration. The General Explanation of the UUPA states that the law was created with the aim of creating a national agrarian law that will produce prosperity, happiness, and justice for the State and its people, especially farming people, in a just and prosperous society. The UUPA also establishes the basis for ensuring legal certainty regarding land and land rights. The emphasis on the aim of agrarian law is to align with the nation's ideology, Pancasila. In an equally important effort to build legal certainty in land ownership. For this reason, the certificate is a guarantee of legal certainty.

To obtain this legal certainty, every person who owns land according to their respective rights must register their land ownership rights so that a certificate is issued as a guarantee of ownership. As regulated in article 23, namely:

(1) Ownership rights, as well as any preservation, deletion and encumbrance with other rights must be registered according to the provisions referred to in article 19.

(2) Registration referred to in paragraph 1 is a strong means of proof regarding the elimination of ownership rights and the legality of the transfer and encumbrance of these rights.

In this case, the registration of land certificates as explained in Article 19 is:

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2 Ibid., page 184.
(1) To ensure legal certainty, land registration is carried out by the Government throughout the territory of the Republic of Indonesia according to the provisions stipulated in Government Regulations.

(2) The registration referred to in paragraph 1 of this article includes:
   a) land measurement, maintenance and bookkeeping;
   b) registration of land rights and preservation of these rights;
   c) providing documents of proof of title, which act as strong evidence.

(3) Land registration is carried out taking into account the state and community conditions, socio-economic traffic needs and the possibility of implementation, according to the consideration of the Minister of Agrarian Affairs.

(4) The Government Regulation regulates the fees related to registration as referred to in paragraph 1 above, with the provision that people who cannot afford are exempted from paying these fees.

Land title certificates provide legal protection to their owners. Even though the law guarantees legal certainty of ownership rights to land, the community holding the rights still has to act. If people are not proactive in registering land ownership rights, land problems will persist. This is due to the author's location, extent, and boundaries, which often cause conflict. Ignorance of the purpose and procedures for registering the right to obtain a certificate is one of the factors that causes people to be reluctant to take action to maintain their right to legal certainty. To achieve this, people must understand agrarian law, especially regarding land registration. Communities benefit greatly from effective land registration. Issuance of land title certificates to provide legal protection for land registration. This non-proactive action often causes legal problems in land ownership rights. For this reason, it is important to understand the Land Ownership Certificate (Certificate) as legal proof of ownership before the law.

2. RESEARCH METHODOLOGY

The research used "Normative Juridical Legal Research" in accordance with Soerjono Soekanto's opinion that legal research is carried out by examining secondary materials or library materials or library legal research, through searching for books, laws, literature, and other legal materials.

5 Ibid., page 197.
6 Soerjono soekanto, Penelitian Hukum Normatif, Suatu Tinjauan Singkat, (RajaGrafindo Persada, Jakarta, 2011, hal.12)
3. DISCUSSION

A certificate of land rights is issued to the right holder concerned in order to provide legal certainty and protection (Sahono, 2012). This is done through the activities of land registration for the first time and data maintenance. The differences and meanings of these activities are explained below:

1) Making My First Land Registration. The definition of "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," as stated in Government Regulation Number 24 of 1997 Article 1 point (9). Next, the following land registration operations are listed for the first time in Article 12 Paragraph 1:
   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.7

2) Activities for Maintaining Land Registration Data. Land registration data maintenance is defined as "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" in Government Regulation Number 24 of 1997, Article 1, Paragraph 12. As stated in Article 36, Paragraph 1: "Maintenance of land registration data carried out if there is a change in the object registered land registration's physical or legal data." "The rights holder who is concerned shall register the changes as referred to in paragraph (1) to the Land Office," reads paragraph (2) after that.8

The previously mentioned definitions of legal and physical data are as follows: Information about the location, boundaries, and area of registered land and apartment units, as well as the presence of buildings or portions of buildings on them, is referred to as physical data. By contrast, information about the legal status of registered land parcels and apartment units, rights holders, and other parties, as well as other burdens that burden them, is referred to as judicial data (Sadpri, 2014).

8 Ibid., page 8.
The value of a land ownership certificate as evidence of land ownership can be understood from the process of proving land ownership as prescribed in Article 23 of Regulation No. 24 of 1997 of the Government on Land Registration. This article regulates the proof of land ownership and states that to obtain legal certainty over new rights and for registration purposes, proof is carried out by:

1) The determination of the grant of rights by competent officials is consistent with applicable regulations whether such rights arise from state land or land management rights. Determinations by competent officials regarding the granting of rights to state lands may be issued individually, collectively or jointly.

2) The original PPAT (Official Land Deed) consists of the owner granting to the recipient the right to occupy a building, use or ownership of land. The granting of building use rights, land use rights or ownership rights, in addition to being regulated by Government Regulation No. 40 of 1996, is also governed by Regulation No. 9 of the Minister of Agriculture/Fecology. National Land Administration 1999 regarding procedures on granting and revoking land use rights and land management of the State. In addition, in Article 32, paragraph (2), Regulation No. 24 of 1997 of the Government relating to Land Registration, specifically in cases where the land plot has been issued a legal certificate in the name of a natural or legal person who has received land in good faith and has actual possession of the land, other parties having ownership rights to the land cannot claim the exercise of rights if within 5 (five) years from the date of grant land certificate, they have not filed a written objection to the landowner certificate and the head of the land agency concerned or filed a lawsuit related to the land possession or issuance of the certificate. Considering the provisions of article 32, paragraph (2), land use rights can be converted into documents with absolute evidence if all requirements are met, specifically:

1) The certificate is legally issued in the name of a natural or legal person.

2) The land was acquired in good faith. The land is actually owned Within (five) years from the date of issuance of the certificate, the certificate holder and the head of the local land agency shall have no written objections nor any lawsuits related to the occupation.

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According to Yamin Lubis and Rahim Lubis, if a parcel of land has been legally deeded in the name of a natural or legal person who has acquired the land in good faith and actually owns the land, the other parties will claim ownership of that land. Landowners cannot claim their rights if, within 5 (five) years from the date of issuance of the certificate, they do not send a written protest to the certificate holder and the land management agency or submit Complaints related to land possession or issuance of land use rights certificates. Modified from the definition of authentic document under Article 1868 of the Civil Code, a certificate may be considered an authentic document if it meets the following elements:

1) Its form is determined by law.
2) Done by or before a public official.

The act is done by or before an officer authorized for the purpose and at the place where the act is done. If the terms relating to a certificate of authenticity relate to an authenticator, the certificate is called a root certificate if it meets the legal requirements of form and content and if it exists in its form.

As previously stated, the registered party receives a substantial legal guarantee under the positive system of land registration. The negative system is the opposite of the positive system. A land registration product is created under a negative publication system in the form of a certificate of land rights, which is regarded as a reliable proof of ownership. Nevertheless, if another party provides evidence to the contrary, the registered rights holder may still lose their rights. Documentary evidence is crucial to obtaining justice, truth, and certainty in a case, according to the description of the evidence in the civil case settlement. A documented certificate of land rights serves the owner's interests in numerous ways. The certificate's primary purpose is to provide solid proof. As previously indicated, this is contained in Article 19 of Basic Agrarian Law Number 5 of 1960. Therefore, if it is evident that the name on the certificate corresponds to the holder, anyone can demonstrate their ownership of land.

4. CONCLUSION

This article explores the complexities of land ownership, emphasizing the importance of land registration and title deeds for legal certainty. Discusses the classification of land functions based on Law no. 5 of 1960 and the issuance of certificates as proof of ownership by the government. This research uses normative juridical legal research methods to analyze

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11 Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.
the legal aspects of land registration. The Land Registration Regulations (Government Regulation Number 24 of 1997)\(^\text{12}\) have an important role in ensuring legal certainty, in line with the national ideology of Pancasila. Land title certificates are considered important to provide legal protection to their owners. This article also highlights the importance of proactive land registration by individuals to avoid prolonged land problems and conflicts.

This research explores the first land registration activities and maintenance of land registration data, considering the importance of physical data and juridical data. The issuance of land ownership certificates is being explored as an effort to create legal certainty and protection for land rights holders. Further discussion describes proof of land ownership, conversion of land use rights, and the importance of documentary evidence in a positive land registration system. So in conclusion, this article underlines the important role of land ownership certificates as legal proof of ownership, contributing to legal certainty, protection and justice in the context of land ownership and transactions.

REFERENCES

Journal/Article


Regulation/Constitution/Law


\(^{12}\) Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 1997 tentang Pendaftaran Tanah Presiden Republik Indonesia.