

## **Analysis of Legal Protection for Owners of Multiple Land Certificates Issued The Badan Pertanahan Nasional**

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### **Abstract**

The research objective is to analyze the legal consequences of multiple land certificates with the same object. To study the law for holders of various certificates. To analyze the Supreme Court Decision number 1820K/Pdt/2021. The research method uses a qualitative approach that narrates events that occurred in the field. Data collection techniques through interviews with judges and plaintiffs and documentation studies in the form of archives at the supreme court. The conclusion is that the legal consequences of multiple certificates on land with the same object due to the negligence of the head of the land agency are legal uncertainty in the ownership of various certificates so that multiple certificates can be canceled through a Court Decision because they have permanent legal force (Eintracht van gewijsde), the land agency must be responsible for issuing double certificates and revoking them because they have been declared null and void. Legal protection for land certificate holders, as stated in Government Regulation no. 24 of 1997, Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2), and Article 38 paragraph (2). The certificate is valid as strong evidence; with the Supreme Court's cancellation decision Number 1820 K/Pdt/2021, with Property Rights Certificate no. 535 in Cipatujah Village, legal protection for certificate owners has yet to materialize.

**Keywords:** Legal Protection, Certificate Holders, Dual Land

### **1. Introduction**

The meaning and value of land, which is considered as one that has high value and a strategic and special asset, encourage everyone to own, maintain and take good care of their land, if necessary, defend it as hard as they can to the last drop of blood. Therefore, land ownership is a basic need in human life, both as a place to live for other conditions and as a source of income to meet the necessities of life. (Febrianti, Suci, 2021). Ownership of land and state guarantees for it is regulated in the constitution of the Republic of Indonesia, as stipulated in the 1945 Constitution of the Republic of Indonesia. Article 4, paragraph (2) of the UUPA emphasizes that the lands referred to in paragraph (1) give the authority to use the land in question only as needed for direct interests related to land use within the boundaries according to the UUPA and higher regulations.

Property rights are one of the land rights included in the primary category. Property rights are the most important, strongest, and fullest primary rights compared to other prior rights,

such as usufructuary rights, building use rights, usufructuary rights, or other rights. (Harahap, Yahya, 2016). The UUPA reads: "Property rights are hereditary, strongest and fullest rights that can be owned by people on land, taking into account the provisions in Article 6. Property rights can be transferred and transferred to other parties."

In the provisions of Article 19 of the UUPA, the legal consequence of land registration is in the form of giving a letter of proof of rights, commonly known as a land certificate, that is valid as a powerful means of evidence against the holder of land rights. (Alwajdi, M. Farid, 2021). The land certificate given will give meaning and role to the right holder concerned. However, in current practice concerning land certificates, it is not uncommon for 2 (two) or more land certificates to be issued on the same plot of land. Two or more land certificates issued on the same land are commonly known as overlapping certificates, resulting in legal uncertainty for land rights holders, which is highly undesirable in implementing land registration in Indonesia.

Double certificates can occur due to errors in the designation of land boundaries by the applicant or the owner himself when the Land Office officer makes the measurements. Limits indicated by the applicant or owner, intentionally or unintentionally (Hakim, A. Rahman, 2021). Failure to separate from the main certificate can occur because, in the data collection carried out by the Land Office officers, the mainland that has been divided is still counted and added to the land that has been divided so that the land area increases.

Land issues have long been complicated and complex legal issues and have broad dimensions in developed and developing countries, so it takes time to solve quickly. An example of multiple certificates can be found in the Supreme Court Decision Number 1820 K/Pdt/2021. (Santoso, Urip, 2019). In this case, it was discovered that Mrs. YATI (plaintiff) already owned a plot of land and a building along with the land book's certificate (proof of title). Cibalong Village is now Cipatujah Village, Property Rights Number 535, Situation Drawing (G.S.) Number 1452, the Year 1980. Date 7-10-1980, Prapat block area of 525 M<sup>2</sup>.

The Tasikmalaya District Court, in this case, rejected the plaintiff's claim. (Ismaya, Samun, 2018). So Mrs. Yati (plaintiff) filed an objection by appealing to the Bandung High Court; in its decision, the Bandung High Court accepted the appeal from the plaintiff's original Appellant and canceled the Tasikmalaya District Court Decision with Number 16/Pdt.G/2015/PN.Tsm dated March 10, 2016. The reason for the Supreme Court's rejection of Mr. Asep was that the lawsuit filed by Mr. Asep was based on something other than strong and convincing evidence, not based on actual legal facts and statutory regulations. Valid invitation, so this lawsuit is far-fetched.

## **2. Research methods**

The type of research applied is a case study. (Lexy J. Moleong. 2018). A case study is an approach that aims to maintain the integrity of the symptoms studied.

The approach method used in this paper is to use a normative juridical approach, namely research that refers to the legal norms contained in the applicable laws and regulations as a reference that starts from the premise and then ends at a specific conclusion so that a new understanding or meaning is obtained from the term.

### **2.1. Data collection techniques**

Data collection tools can be done utilizing document studies or library research. Document study is the first step in any legal analysis (both normative and sociological) because legal research always starts from normative premises. (Sugiyono. 2018). Documentation Study. This literature study is carried out to obtain or look for concepts, theories, principles, and results of other thoughts related to research problems.

## 2.2. Data analysis

Research needs a useful data analysis to provide answers to the problems studied. Data analysis organizes and sorts data into categories in a basic description so that themes can be found and working hypotheses can be formulated as the data suggests. Data analysis in this study uses qualitative methods.

Research using qualitative methods departs from assumptions about reality or social phenomena that are unique and complex. There is a certain regularity or pattern in it, but full of variations (diversity).

## 3. Results and Discussion

### 3.1. Analysis of Supreme Court Decision Number 1820 K/Pdt/2021

Since the land and building were purchased in the late. R.R., according to the Deed of Sale and Purchase Number 64/PPAT/2000, dated October 10, 2000 (vide evidence of Product P.2., Ad Informandum, to be proven) (Iwan Permadi, 2016). the Plaintiff requested the assistance of “the late. Raden Rusman, when he was still alive, continued to manage, inhabit and maintain the land and buildings. (Arba, 2018). With No. SPPT 005-0096, land area 560m<sup>2</sup>, Building 60m<sup>2</sup>, Earth Class 077, Building Class 028, on behalf of the taxpayer Mrs. Yati (Plaintiff), until now (vide product evidence P.3., ad informant, will be proven).

Certificate No. 739/Desa Cipatujah, December 16, 1994, Situation Drawing Number 6138/1994, dated 25-11-1994. (Setiawan, I Ketut Oka, 2019). Declared invalid, legally invalid and null and void or must be canceled as long as annexing and inserting SHM No. 535/Cibalong Village, Cipatujah, Tasikmalaya Regency

Based on the reasons above, the Plaintiff requests the Tasikmalaya District Court to render the following decision:

- a. Stating land and building as well as SHM, Cibalong Village is now Cipatujah Village, SHM No. 535, Drawing of Situation Number 1452, 1980, dated 10-7-1980, Block Parapat with an area of 525m<sup>2</sup>, the origin of Persil Conversion of Customary Property Rights Number C.3675 in the name of a valid Plaintiff and has binding legal force with all legal consequences;
- b. Land ownership SHM No. 535/Cibalong Village is now Cipatujah Village, and all its contributions to Defendant I and other parties;
- c. The amount of Rp. 20,000,000.00 (twenty million rupiahs) to be paid in cash, in cash and at the same time no later than 8 (eight) days after the decision was rendered;
- d. Punish the Defendants (Defendant I and Defendant II) to pay court fees; If the Court has a different opinion, ask for the fairest possible decision based on Belief in the One and Only God (ex aequo et Bono);

### 3.2. Incomplete Parties;

Whereas the legal history of Defendant I's ownership of land and buildings with SHM No. 739/Desa Pengandran, locally known as Block Parapatan, Cipatujah, Tasikmalaya, West Java, are as follows: (Tito Inneka Widyawati, 2016).

- a. December 17, 1997, where Brother Wawan Gunawan transferred his ownership rights to land and buildings in the Parapatan Block to Rudi before H.C., S.H., Notary and PPAT of Tasikmalaya Regency;
- b. Based on the Deed of Sale and Purchase 1025/2014 dated October 13, 2014, where Sister Raden Ritta Kurniawati transferred her rights to land and building owners in the

Parapatan Block to Asep before Notary NS, S.H., Notary and PPAT in Tasikmalaya Regency;

Whereas based on the legal history of Defendant I's ownership of the Land and Buildings in the Pengandar Block mentioned above, Wawan, Rudi, and the Notaries and PPAT who made the deed of transfer of land and building rights according to law should have participated as Para Party in case Number 16/Pdt/PNTsm. (Shinta, N. Wardhani.. 2018). Whereas the withdrawal of brothers Wawan, Rudi, Notary, and PPAT, who made and issued the deed of sale and purchase, resulting in the issuance of a certificate of ownership in this case, which resulted in an incomplete process because the result was even more fatal namely that the examination was only carried out based on very minimal legal facts even though the purpose of the case process is so that existing problems become resolved; This is following MARI Jurisprudence Number 1078 K/Sip/1972 dated November 11, 1975, which states.

### **3.3. Lawsuit Escape;**

Plaintiff had alleged Defendant I annexed in the posita lawsuit of the Plaintiff's land owned by Plaintiff; if Plaintiff discussed the annexation issue, plaintiff should first prove his crime. (Butar-Butar, E. Nurhaini, 2018). Whether the Plaintiff is proven to have committed annexation or not, because the Plaintiff acquired the land with SHM No. 739/Desa Cibalong has complied with the procedures justified by law.

Thus it is proven and irrefutably that the Plaintiff's lawsuit is vague and unclear, whether the criminal act was with the existence of the sentence of annexation or the suit for Unlawful Acts. (Susilo, Adityo, 2020). Therefore, the Plaintiff's claim must be rejected or at least cannot be accepted because the lawsuit is obscure, not based on facts and evidence according to law, so such a lawsuit does not meet clear and firm principles (ern duidelijke en bepaalde conclusive) therefore it is appropriate to declare unacceptable; Based on the previous, Defendant I requests that the Panel of Judges who examined and decided on this case agree to accept Defendant I's Exception and reject.

### **3.4. Defendant II Exception**

The BAL and P.P. No. 24 of 1997 and the elements of unlawful acts have not been fulfilled. (Wenhong, Zhang, 2020). The issuance of the two certificates above originates from a different basis for the number C rights and with adjacent boundaries, so this claim, according to the law, is deemed unacceptable (Net Onvankelijk Verklaard) and received the original Appellant's appeal from the Plaintiff.

- a. In the Principal Case:
- b. Granted the Plaintiff/Appellant's lawsuit in part;
- c. Declare that Defendant I and Defendant II have committed "Unlawful Acts which are very detrimental to Plaintiff;

Stating the land and building as well as SHM, Cibalong is now Cipatujah Village, Property Right Number 535, Situation Drawing Number 1452, 1980, dated 10-7-1980, Parapat block area of 525 m<sup>2</sup>, original parcel of Conversion of Customary Property Rights Number C .3675 on behalf of the Plaintiff is valid. It has binding legal force with all its legal consequences. (Salfutra, Reko Dwi, 2019). Declared invalid and null and void or null and void by law the land and building SHM/Certificate (Land Book Number 739/Cipatujah Village) dated December 16, 1994, Situation Drawing Number 6138/1994, dated 11-25-1994, declared invalid, and do not have binding law. Declare invalid, null, and void by law all letters and evidence resulting

in/resulting in the change or change of hands of land ownership SHM Number 535/Desa Cibalong now Cipatujah Village and all the contributions to Defendant I or other parties; Reliability and all its derivatives are legally the property of the Plaintiff.

- a. Punish Defendant I or anyone else to hand over the land and building to Plaintiff in an empty state without any burden;
- b. Rejecting the Plaintiff's lawsuit for other than and the rest;
- c. Sentenced the Appellant originally the Defendants (Defendant I and Defendant II) to pay court costs at both levels of the judiciary, which for the appeal level was set at Rp. 150,000.00 (one hundred and fifty thousand rupiahs)

### **3.5. Verdict Rule**

Following Articles 31 and 32 No. 24 of 1997, a certificate as proof of right is issued for the benefit of the right holder concerned following the biological data contained in the measurement letter and juridical data registered in the land book. (Syah, M. Iskandar, 2019). Obtaining a title certificate is the right of the holder of land rights guaranteed by law—article 32 P.P. No. 24 of 1997.

These reasons cannot be justified because the Judex Facti/Bandung High Court canceled the Court's Decision that Defendant I cannot be protected as a buyer in good faith because when the sale and purchase were carried out on October 13, 2014. (Sutedi, Adrian, 2018). Rusman owned the land object in dispute on permission from Plaintiff and SHM No. The land object of the argument has been issued. 535/Desa Cibalong, Situation Drawing 1452/1980, dated July 10, 1980, on behalf of the Plaintiff.

Considering that because the cassation petition of the Cassation Petitioner was rejected and the Cassation Petitioner was on the losing side. (Waskito, 2019). The Cassation Petitioner was sentenced to pay court costs at this cassation level. Judging: (1). Rejecting the cassation request from Cassation Petitioner Tommy Adi Permana Turmawan (2). Punish the Cassation Petitioner/Defendant I/Appeal to pay court costs at all levels of the judiciary, which at this cassation level is set at Rp—500,000.00 (five hundred thousand rupiah).

### **3.6. Implementation of Supreme Court Decision Number 1820 K/Pdt/2021**

The Tasikmalaya District Court Decision No. 16/Pdt.G/2015/PN-Tsm Mr. Asep., at the Tasikmalaya District Court, and Mrs. Yati as the plaintiff who was harmed appealed to the Bandung High Court Decision No. 347 /Pdt/2016/P.T./Bandung, NY. Yati won at the Bandung High Court, then Mr. Asep. (Zuman, Malaka., 2021). The Bandung High Court, which can question the government or state administration decisions, is an attempt by the plaintiff to obtain legal protection.

Based on the results of research and analysis of cases carried out previously, the author generally believes that Civil Case No. 1820 K/Pdt/2021 is a "follow-up to the Plaintiff's victory. (Novianggraini, Putri. 2018). which refers to the decision of the Tasikmalaya District Court No. 16/Pdt.G/2015/PN-Tsm, which was upheld by the Bandung High Court Decision No. 347/Pdt/2016/P.T./ Bandung, which already has permanent legal force, where the certificate

Legitimate property rights over the two plots of land in dispute between SHM/Certificate No. 535/Cibalong Village Now Cipatujah Village with SHM/Certificate No. 739/ Cipatujah Village is SHM/Certificate (Proof of Title) Land Book, Cibalong Village is now Cipatujah Village, Property Rights Number 535, Situation Drawing Number 1452, 1980 dated 10-7-1980, Parapat 525 m2 Block, both on behalf of Mrs. Yati (respondent to cassation II).

Implementation of the Supreme Court Decision Number 1820 K/Pdt/2021, which declared the cancellation of Property Rights Certificate no. 535 Cibalong Village, now

Cipatujah Village, formerly under the name Yati switched to under the name of Mr. Asep. (Sahnan, 2018). Legal certainty and protection for certificate holders of land rights have not been fully realized. The Supreme Court Decision Number 1820 K/Pdt/2021 provides legal protection to the party won by the State Administrative Court, in this case, the Plaintiff. It, therefore, has the right to request an increase in fairness based on land rights regulated in Article 16 of the UUPA and to request registration of the land rights in question.

#### **4. Conclusions and recommendations**

##### **4.1. Conclusion**

From the description and discussion above, several conclusions can be drawn, namely as follows:

- a. The legal impact of duplicate land certificates on the same object is because there is carelessness. There is a failure of the head of the land agency, which can result in the issuance of multiple certificates—following the legal agreement regarding land ownership rights. So that the position of the certificate of ownership becomes weak, the dual certificate must be canceled by the court and then revoked the double certificate. So with a Court Decision, it can become a permanent legal force (Eintracht van gewijsde). Legal protection for holders of certificates of land rights, namely the holders of rights, namely the plaintiffs, receive legal protection as stated in P.P. No. 24 of 2016, Article 19 paragraph (2) letter c, Article 23 section (2), Article 32 paragraph (2) and Article 38 paragraph (2) of the UUPA, that letters of evidence of rights are valid as strong evidence. Holders of land rights that are the object of dispute do not get legal protection after the decision to revoke the land certificate because they adhere to a publication system in land registration, namely a negative publication system that contains positive elements.
- b. Analysis of the Supreme Court Decision Number 1820 K/Pdt/2021, which states that canceling the Certificate of Ownership no. 535 Cibalong Village, now Cipatujah Village, formerly under the name Yati switched to under the name of Mr. Asep., it can be seen that legal certainty and legal protection for certificate holders of land rights have not been fully realized. On the contrary, the decision provides legal protection to the party won by the State Administrative Court; in this case, the Plaintiff and therefore has the right to apply for an increase in requests based on land rights stipulated in Article 16 of the UUPA as well as apply for registration of the said land rights.

##### **4.2. Suggestion**

Suggestions from the author to prevent the occurrence of multiple certificates in the future, among others

- a. To prevent the occurrence of multiple certificates, optimizing land administration and making land maps is necessary. A good land map and land administration can identify mistakes in placement and boundaries. The double certificate must be blocked (given a note), stopped (the process is on hold), turned off (the right number), or canceled when the case is over.
- b. Inland registration, a positive publication system should be used so that the holder of land rights really gets absolute protection for the ownership of the certificate of ownership of the land and cannot be contested again.

- c. To the owners of land certificates, with many cases of land disputes, resulting in mistakes and authority by the courts, with overlapping decisions, to consider suggestions from land experts to form a special land court. Of course, the judges who will handle land disputes are equipped with knowledge of the BAL and other regulations related to land issues.

## Reference

- Alwajdi, Muhammad, Farid, 2021, Setting Electronic Certificates in the Land Law System and Efforts to Increase the Ease of Doing Business Index during the Covid-19 Pandemic, *Journal of Land*, Vol.11 Number.1.
- Amal, Bakhrul, 2021, Introduction to National Land Law, Yogyakarta: Thafa Media.
- Arba, 2018, Spatial Law and Land Use, Jakarta: Sinar Graphic.
- Butar-Butar, Elisabeth Nurhaini, 2018, Legal Research Methods, Medan
- Febrianti, Suci, 2021, Legal Protection for Holders of Electronic Land Title Certificates, *Indonesian Notary*, Vol.3 Number.3.
- Hakim, Arif Rahman, 2021, Procedure for Issuing Electronic Certificates as Authentic Evidence of Mastery of Land Rights, *Juridica*, Vol.3 Number.1.
- Harahap, Yahya, 2016, Discussion of Problems and Application of the Criminal Procedure Code, Jakarta: Sinar Graphic.
- Ismaya, Samun, 2018, Land Administrative Law, Yogyakarta: Suluh Media.
- Lexy J. Moleong. 2018. Qualitative Research Methodology Revised edition, Thirty-eighth printing, Publisher, Bandung: PT Remaja Rosdakarya.
- Novianggraini, Putri. 2018. <https://wordpress.com/2015/11/07/certifikat-ganda-above-law-agraria/> accessed December 1, 2018
- Sahnan, 2018, Indonesian Agrarian Law, Malang: Setara Press.
- Setiawan, I Ketut Oka, 2019, Land & Mortgage Registration Law, Jakarta: Sinar Graphic.
- Setiawan, I Ketut Oka, 2020, Agrarian Law, Bandung: Copyright Engineering Library.
- Sugiyono. 2018. Quantitative, Qualitative, and Mixed Methods Research. Alfabetha Bandung Publisher
- Supreme Court Decision Number 1820 K/Pdt/2021. Number 1820 K/Pdt/2021.
- Sutedi, Adrian, 2018, Transfer of Land Rights and Registration, Jakarta: Sinar Graphic.
- Syah, Mudakir Iskandar, 2019, Guide to Managing Certificates & Settlement of Land Disputes, Jakarta: Bhuana Popular Science.
- Shinta Novi Wardhani. 2018. The Legal Force of Land Title Certificates is Associated With with Legal Certainty in Land Registration. *Journal of Al-Qanun*, Vol. 21, No. 1, June 2018.
- Susilo, Adityo, 2020, Corona Virus Disease 2019: Review of the Latest Literature, *Journal of Indonesian Internal Medicine*, Vol.7 Number.1.
- Tehupeiory, Aartje, 2018, Recognition of Evidence of Land Rights Ownership in the Digital Age, UKI Press, ISBN: 9789798148712

- Tito Inneka Widyawati, 2016. Control of Issuance of Freehold Land Certificates at the Tangerang City Land Office, *Journal of Tangerang*, Vol. 13 No. 2.
- Waskito, 2019, *Implementation of Land Registration in Indonesia*, Jakarta: Prenadamedia Group.
- Wenhong, Zhang, 2020, *Guide to Prevention and Control of Covid-19*, Depok: Papas Sinar Sinanti.
- Zuman, Malaka., 2021. Responsibility of the Land Office for the Issuance of Double Certificates (Case Study of Supreme Court Cassation Decision No. 162 K/TUN/2012) *Al-Qānūn*, Vol. 20, no. 2, December.