

# EQUITABLE DUAL CERTIFICATE DISPUTE RESOLUTION MODEL OF LAND RIGHTS

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### Abstract

Model of equitable dispute resolution of dual certificates of land rights. The purpose of this study is to analyze: 1. What is the background of the dispute over the ownership of dual certificates of ownership of land? 2. What is the process of resolving disputes over the ownership of dual titles of land titles? 3. What are the constraints on resolving disputes over the ownership of dual titles of land titles? 4. How is the dispute resolution solution to the ownership of dual title rights to land related to the principle of legal certainty? The research method used is normative juridical with a statutory approach, concept approach, and case studies. The results showed that: a) In general, land disputes arise due to the following factors: 1) Incomplete regulations; 2) Regulatory non-compliance; 3) Land officials who are not responsive to the needs and amount of land available; 4) Inaccurate and incomplete data; 5) Erroneous soil data; 6) Limited human resources in charge of resolving land disputes; 7) Erroneous land transactions; 8) The act of the right applicant or; 9) There is a settlement from other agencies so that there is an overlap of authority. b) In some cases of double certificates on title certificates, there are also errors or administrative defects that result in legal defects in certificates that appear with the same owner's name, the same object, and the same area, especially since the owners of land rights have never asked the Head of the Land Office to issue a new certificate or authorize others. c) The National Land Agency always seeks solutions to resolve land disputes based on applicable laws and regulations by taking into account the sense of justice and respecting the rights and obligations of each party. d) The dispute resolution steps that they or BPN take are deliberations.

**Keywords:** Model, Dispute Resolution, Dual Certificate, Land Rights, Equitable.

## INTRODUCTION

### Background

In agrarian law, land is an inseparable part or what is often called the surface of the earth. Land according to Indonesian law (UUPA) is only the smallest part of the earth's skin, land given to and owned by people with rights provided by the UUPA is to be used, to be utilized, given and owned land with these rights will not mean that its use is limited to land as the surface of the earth only. Land management is also regulated in Article 1 paragraph (2) of Government Regulation Number 24 of 1997 concerning land registration, that land parcels are part of the earth's surface which is a limited unit of plot. Thus, land in the sense of National Land Law in Indonesia is an inseparable part of the earth's skin including everything above and below the land concerned.<sup>1</sup>

To obtain legal certainty and certainty of rights to ownership of a land, landowners must register their land with the National Land Agency (BPN). The definition of land registration in Government Regulation No. 24 of 1997 is a refinement of the scope of land registration activities based on Article 19 paragraph (2) of PP No. 10 of 1961 which only includes: Measurement, mapping and bookkeeping of land, registration and transfer of land rights and providing proof of rights as a strong bookkeeping tool.<sup>2</sup> The National Land Agency will provide a certificate of property rights which will serve as a strong evidence of ownership of land rights in the event of a land dispute. One of the evidence of land rights called the certificate is a strong and authentic evidence, the strength of the certificate is a guarantee of legal certainty for the owner or holder of the certificate as evidence with strong or perfect legal force as long as there is no opposing party who proves that the certificate is legally defective. A person or legal entity will easily prove himself as the holder of rights to a piece of land and the state of the land, such as area, boundaries, existing buildings, types of rights and burdens that exist on the rights to the land, and so on.<sup>3</sup>

To obtain legal certainty and certainty of land rights, the community needs to register land to obtain a land title certificate that serves as a strong proof of ownership of land rights. Land rights certificates act as strong evidence as confirmed in article 19 paragraph (2) letter c of the UUPA and article 32 paragraph (1) of Government Regulation Number 10 of 1961 concerning land registration, which has now been revoked and reaffirmed in Government Regulation Number 24 of 1997.<sup>4</sup>

Certificates are strong and authentic evidence. The strength of the certificate is a guarantee of legal certainty for the certificate holder as perfect evidence as long as no opposing party proves otherwise. However, along with the high value and benefits of land, many people try to obtain proof of land ownership by having fake, original but fake certificates or double certificates where the data on the certificate does not match what is in the land book. The number of such certificates is quite large, which creates vulnerabilities. Certificate forgery occurs because it is not based on the correct basis of rights, such as the issuance of certificates based on falsified ownership certificates, other forms in the form of BPN stamps and falsification of land data. In practice, certificate holders without a certain period of time may lose their rights due to the lawsuit of other parties which results in the cancellation of the certificate due to administrative law defects. In the presence of administrative law defects, double certificates are given rise because the certificates are not mapped in the land registry map or the situation map of the area.<sup>5</sup>

The double certificate is a piece of land that has more than one certificate with the same object<sup>6</sup>. A double-certified piece of land can result in legal uncertainty for land rights holders which is certainly not expected in land registration in Indonesia.<sup>7</sup> Double certificate cases still often occur in several regions in Indonesia which result in land certificate holders accusing each other that the certificates they have are true despite the fact that one of the double certificates is fake where the object listed on the certificate is not the real one, so as to get legal certainty regarding land title certificates, one of the

dual certificate holders filed a complaint with the National Land Agency as the authorized institution in the land sector.<sup>8</sup>

From the explanation above, disputes over ownership of land rights should not be expected to occur, because it is not allowed for two people to own one piece of land. With the existence of double-certified land disputes, it is very necessary to resolve involving State Institutions authorized to handle the case, namely the District Court whose role is to examine, decide, adjudicate, and settle juridically over double-certified land cases. Based on the above background as described in the description, the researcher wants to discuss by conducting a research entitled: "**MODEL OF DISPUTE RESOLUTION OF DUAL CERTIFICATES OF LAND RIGHTS WITH EQUITABLE ONES**"

### **Problem Statement**

1. What is the background to the dispute over the ownership of dual certificates of title to land?
2. What is the process of resolving disputes over the ownership of dual titles of land rights?
3. What are the constraints on resolving disputes over the ownership of dual titles of land rights?
4. How is the dispute resolution solution to the ownership of dual title rights over land related to the principle of legal certainty?

### **Theoretical Framework**

#### **1. Theory of Legal Protection**

Legal protection according to Soekanto is basically protection given to legal subjects in the form of legal instruments. Furthermore, Soekanto explained that in addition to the role of law enforcement, there are five others that affect the law enforcement process and its protection as follows:

- a. Legal factors, namely written regulations that are generally accepted and made by the legal authority;
- b. Law enforcement factors, namely parties involved in law enforcement, both directly and indirectly;
- c. Factors of facilities or facilities that support law enforcement, such as skilled human resources or adequate tools;
- d. Community factors, namely the environment in which the law applies and is applied. Acceptance in society of the prevailing law is believed to be the key to peace;
- e. Cultural factors, namely as the result of work, creation, and taste based on human charities in the association of life.<sup>9</sup>

## 2. Theory of Legal Certainty

Legal certainty is judicial protection against arbitrary actions, which means that a person will be able to obtain something expected under certain circumstances. The community expects legal certainty, because with legal certainty the community will be more orderly. The law is tasked with creating legal certainty because it aims at public order.<sup>10</sup> Adherents of positive legal theory assert "legal certainty" as the goal of law. According to their assumption of order or order, it is impossible to exist without definite lines of life behavior. Order will only exist if there is certainty and for legal certainty to be made in a definite form (written).<sup>11</sup>

According to Utrecht, legal certainty contains two understandings, namely first, the existence of general rules that make individuals know what actions can or cannot be done, and second, in the form of legal security for individuals from government security because with the existence of general rules individuals can know what can be imposed or done by the state on individuals.<sup>12</sup>

Legal certainty according to Jan Michiel Otto defines it as the possibility that in a given situation:

- a. There are rules that are clear, consistent and easy to obtain, published by and recognized because of the nagara.
- b. The ruling agencies (government) apply these rules of law consistently and also submit and obey them.
- c. Citizens adjust their behavior in principle to these rules.
- d. Independent judges who do not think apply these rules of law consistently when they resolve legal disputes.
- e. Judicial decisions are concretely implemented.<sup>13</sup>

## 3. Theory of Proof

Evidence is the presentation of legally valid evidence by litigants to the Judge in a trial with the aim of strengthening the truth of the argument about the legal facts that are the subject of the dispute, so that the judge obtains a basis for certainty to make a decision<sup>14</sup>. Subekti, a former professor of Civil Law at the University of Indonesia, argues that evidence is the process of how evidence is used, submitted, and defended in accordance with applicable procedural law.<sup>15</sup>

## 4. Dispute Resolution Theory

Dispute according to the Big Dictionary Indonesian is a conflict or conflict, conflict means the existence of conflict between people or groups against an object of problem. Conflict or conflict that occurs between individuals or groups who have the same relationship or interest in an object of ownership, which gives rise to legal consequences between one another.<sup>16</sup>

Dispute Resolution Through Court (Litigation), Suyud Margono argues that litigation is a lawsuit over a conflict to replace the real conflict where the parties give a decision maker two conflicting choices.<sup>17</sup> The procedure in the litigation process is more formal and technical. As stated by J. David Reitzel "*There Is A Long Wait for Litigants to Get Trial*", therefore to solve one case at one judicial institution, you must queue to wait.<sup>18</sup>

## RESEARCH METHODOLOGY

This research is included in the type of doctrinal research, where the approach method used is normative juridical. The study method used in this study is normative legal *research*, **which is** a study conducted by reviewing applicable laws and regulations or applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials. The subject of study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal findings in cases *in concreto*, legal systematics, levels of synchronization, comparative law and legal history.<sup>19</sup>

The research method used in this approach is descriptive analytical, because it aims to provide an overview of the facts accompanied by accurate analysis of applicable laws and regulations connected with legal theories and practices regarding the causes of the occurrence of dual Land Rights certificates.<sup>20</sup> There are two types of research, namely quantitative and qualitative, but in this study researchers use qualitative. The data sources in this study used two types of data. The data collected are primary data and secondary data. Primary data are obtained directly on the object studied through interviews with several sources, related to legal analysis of dispute resolution of the object measured by the return of boundaries by the National Land Agency to neighboring boundaries of data objects in legal research is supporting data that becomes a provision in conducting field research.<sup>21</sup>

The data collection method in this study is carried out by literature study, which is a way of collecting data by searching and reviewing library materials (literature, research results, scientific magazines, scientific bulletins, scientific journals etc.). Legal materials are collected through inventory procedures and identification of laws and regulations, as well as classification and systematization of legal materials according to research problems.<sup>22</sup>

## RESEARCH RESULTS

### Background of the Dispute over the Ownership of Dual Certificates of Land Ownership

The land has now penetrated into complex social problems and requires solving with a comprehensive approach. The development of the nature and substance of land dispute cases is no longer only a land administration issue that can be resolved through

administrative law, but the complexity of the land has penetrated into the political, social, cultural realms and is related to nationalism and human rights issues.<sup>23</sup>

Not a few victims fell because they questioned or maintained only a few squares of land. From year to year, the number of cases in the land sector in Indonesia continues to increase. In just two years, the number of land cases reported by the National Land Agency (BPN) of the Republic of Indonesia increased by five thousand cases. The lack of transparency in terms of land tenure and ownership due to limited data and information on land tenure and ownership, as well as the lack of transparency of information available to the community is one of the causes of land disputes. This has led to the concentration of land tenure and ownership in terms of rural area and/or number of land parcels in urban areas, only in a small percentage of people. On the other hand, land titling still seems to tend towards demand access, which goes far beyond the supply side, although land administration projects such as prona and adjukasi projects have relatively succeeded in achieving their objectives. If we look closely, land conflicts that have occurred so far have broad dimensions, both horizontal conflicts and vertical conflicts. The most dominant vertical conflict is between the community and the Government or state-owned enterprises and private-owned enterprises.<sup>24</sup>

Another cause of land disputes is the high economic value of land and land is a symbol of existence and social status in the community, resulting in vertical and horizontal land conflicts. The meaning and value of land that is so strategic and special encourages everyone to own, maintain and care for their land well, if necessary to maintain it as hard as possible until the last drop of blood. The roots of conflicts and land disputes that are multidimensional cannot be seen as mere legal issues, but also related to other non-legal variables which include weak land certification regulations that have not reached 50%.<sup>25</sup>

The term certificate is indeed in the Basic Law of Agraria (UUPA) never referred to as a land certificate, but in article 19 paragraph (2) letter c there is a mention of a certificate of proof of rights. In a colloquial sense, this certificate of proof of right is interpreted as a land certificate. The certificate of proof of rights or land certificates can function to create legal order and certainty of land law that will have a positive impact on all activities of living things, especially humans, especially to owners or holders of land rights.<sup>26</sup>

At the beginning of the enactment of the UUPA, through Repelita III as mandated by the State Direction Outline (GBHN), land tenure and ownership reforms were enacted. This step became known as land reform. In short, the implementation of *land reform* in Indonesia was intended to free peasants and ordinary people from the influence of colonialism, imperialism, feudalism, and capitalism. The land reform program carried out by the government at that time included several things, such as limiting the maximum area of land tenure, land redistribution and others. However, in practice, land reform did not run smoothly in accordance with government expectations. One of the factors causing the stalling of land reform is that the justice fought for by the government and farmers is not felt by landowners. And as a result, the roots of the problem of land reform are still felt by some people. There is also one of the causes of disputes and land titles that we often forget is, natural disasters that cause proof of land rights to be lost or damaged.<sup>27</sup>

Elza Syarief expressed the opinion that, in general, land disputes arise due to the following factors:

- a. Incomplete regulations;
- b. Regulatory non-compliance;
- c. Land officials who are less responsive to the needs and amount of land available;
- d. Inaccurate and incomplete data;
- e. Erroneous soil data;
- f. Limited human resources in charge of resolving land disputes;
- g. Erroneous land transactions;
- h. The act of the right applicant or
- i. There are settlements from other agencies so that there is overlapping authority.<sup>28</sup>

Meanwhile, according to Bernhard Limbong in his book "Land Conflicts" stated two important things in land disputes, namely land disputes in general and land disputes in particular, as contained in the Decree of BPN RI number 34 of 2007 concerning Technical Guidelines for Handling and Solving Land Problems.

On the other hand, the occurrence of double certificates has indirectly opened up opportunities for legal violations such as fake certificates, misuse of certificates, double certificates influenced by internal and external factors. Internal factors include:

### **1. Internal Factors:**

- a. The non-implementation of the provisions in the Basic Agrarian Law and its implementing regulations consistently, consequently and responsibly in addition to the existence of people who act for personal gain without regard for the rights of others.
- b. The lack of functioning of the supervisory apparatus so as to provide opportunities for subordinate officers to act deviantly in the sense of not carrying out their duties and responsibilities according to their oath of office.
- c. The inaccuracy of Land Office officials in issuing land certificates is that the documents that form the basis for the issuance of certificates are not carefully examined which may not meet the requirements as determined by applicable laws and regulations.

### **2. External factors:**

- a. The community still does not know the laws and regulations regarding land, especially about the procedure for making land certificates.
- b. The supply of land is not balanced with the number of enthusiasts who need land.

- c. Development resulted in an increasing need for land while the supply of land was very limited, prompting the transition of land functions from agricultural to non-agricultural land, resulting in soaring land prices.<sup>29</sup>

The issuance of multiple certificates due to the invalidity of the data base at the BPN office, if the existing data is accurate and valid, it is certainly impossible to issue a second certificate and so on. Double land certificates are certificates issued by BPN, and this issuance can be due to data collection errors at the initial level. Data on the initial level of land in BPN is incomplete, once there is a landowner applying for a certificate, it should be compared with existing data. However, because the initial data is incomplete, there is no data comparison, then the certificate application with the data brought by the applicant can be considered complete, then the applicant's data is considered complete so that the process of making a certificate can be issued.<sup>30</sup>

The certificate of land title as the final result of the land rights registration process including changes regarding its subject, status of rights and legal acts committed against its land is a strong evidentiary tool as stated in the provisions of Article 19 paragraph (1) point c, Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) of the UUPA.<sup>31</sup>

### **Dispute Resolution Process Against Dual Certificate Ownership of Land Title**

Normatively, BPN is the only institution or institution in Indonesia that is given the authority to carry out the mandate in managing land parcels, in accordance with Law Number 10 of 2006 concerning the National Land Agency which states: "That BPN carries out tasks in the land sector nationally regionally and sectorally" Through the same Presidential Regulation, the government has also strengthened the role and position of BPN by forming Deputy V who specifically reviews and resolve land disputes and conflicts.

In accordance with the regulation of the Head of BPN-RI No. 3 of 2006 concerning the organization and work procedures of BPN-RI, the assessment and handling of land disputes and conflicts is the field of Deputy V who oversees:

1. Directorate of land conflicts
2. Directorate of land disputes
3. Directorate of land cases (Article 346 of Regulation of the Head of BPN-RI No. 3 of 2006).

Likewise, in double certificate disputes, BPN is also authorized to negotiate, mediate and facilitate the disputing parties and initiate an agreement between the parties. BPN regional offices, namely in Provinces and Districts / Municipalities, can only arrive at a decision on solving problems, while the follow-up of land administration is still carried out by the Central BPN.<sup>32</sup>

In practice, the settlement of land disputes is not only carried out by the National Land Agency but can also be resolved by the General Court and the State Administrative Court. If the general court focuses more on civil and criminal matters in land disputes, it is

different from the State Administrative Court which resolves land disputes related to decrees issued by the National Land Agency or other regional officials related to land.

In general, land disputes in this case double certificates are resolved in 3 (three) ways, namely:

1. Settlement directly by parties by deliberation:
2. Through arbitration and alternative dispute resolution
3. Dispute resolution through judicial bodies.<sup>33</sup>

### **Obstacles to Dispute Resolution of Dual Certificate Ownership of Land Title**

The certificate provides evidentiary power for the owner of the land title whose name is listed in the certificate, unless there is a physical data defect, the legal force of the certificate will be lost. With juridical defects and physical data defects that can give rise to double certificates, this happens with certificates that are not mapped incorrectly in the land registry map by the local Land Office. In some cases of double certificates on the title certificate, there are also errors or administrative defects that result in legal defects in certificates that appear with the same owner's name, the same object, and the same area, especially the owners of land rights never ask the Head of the Land Office to issue a new certificate or authorize others. The Land Office should first check or check in detail the certificate issued to find out the cause of the error that occurred so that double certificates arise, and to find out what steps must be taken to minimize losses from land rights owners, especially to the real owners of title certificates.<sup>34</sup>

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In fact, the mediation process carried out by BPN is not able to resolve existing land disputes for that is why BPN is very difficult to realize all the vision, mission and strategic programs it carries. BPN has problems in overcoming land disputes, especially double certificate problems due to overlapping existing rules or regulations.<sup>36</sup>

### **Solution for Dispute Resolution Against Dual Certificate Ownership of Land Title**

Legal certainty regarding land rights is very important, as the mandate of the UUPA contains two dimensions, namely the certainty of the object of land rights and the certainty of the subject of land rights, namely the certainty of the location of land parcels with geo-reference coordinates in a land registration map and the certainty of subjects indicated by the name of the holder of land rights listed in the land registration book at the land

agency, where copies of maps and land registration books are known as Land Certificates.<sup>37</sup>

The National Land Agency always seeks solutions to resolve land disputes based on applicable laws and regulations by taking into account the sense of justice and respecting the rights and obligations of each party. The dispute resolution steps that they or BPN take are deliberations.<sup>38</sup>

The Land Office concerned must ascertain who owns the land, the location, boundaries, stakes of the land, by calling the landowners and the owners of land bordering the applicant's land so that there is no fraud or excess or deficiency that results in losses to these parties. The Land Office as the issuing agency must really trace the legal defects that can arise caused by the agency, so as not to harm the owners of land rights.

Article 1 letter b of the Decree of the Minister of Agrarian State/Head of the National Land Agency Number 10 of 1993 concerning Procedures for Replacing Land Rights Certificates defines the old certificate as follows: "*The old certificate is a certificate that has been issued by the Land Registration Office, Land Registration and Supervision Office, Agrarian Sub-Directorate Office, Agrarian Office and District/Municipality Land Office before the enactment of the Decree of the Head of the Land Agency National No. 14 of 1989.*"

While the definition of a new certificate according to Article 1 letter c of the Decree of the Minister of Agrarian State/Head of the National Land Agency Number 10 of 1993 concerning Procedures for Replacing Land Rights Certificates defines as follows: "*A new certificate is a certificate that has been issued by the District/Municipality Land Office using certificate blanks as stipulated by the Decree of the Head of the National Land Agency Number 14 of 1989.*"

Settlement through the Court can be done if the deliberative efforts are deadlocked, or it turns out that there are principle problems that must be resolved by other authorized agencies, such as the court, then the person concerned is advised to submit the matter to the court. So in general, the nature of this dispute is due to a complaint containing a conflict over land rights and other rights to an opportunity / priority or the existence of a provision that is detrimental to him.

In the end, the settlement must always pay attention to / always base on applicable regulations, pay attention to the balance of interests of the parties, uphold legal justice and this settlement is sought to be complete. Dispute resolution through the courts is a form of dispute resolution that results in a decision (verdict) that is in the nature of justifying or blaming one of the litigants.<sup>39</sup>

## CONCLUSION

The results showed that;

- a. In general, in general, land disputes arise due to the following factors: 1) Incomplete regulations; 2) Regulatory non-compliance; 3) Land officials who are not responsive to the needs and amount of land available; 4) Inaccurate and incomplete data; 5) Erroneous soil data; 6) Limited human resources in charge of resolving land disputes; 7) Erroneous land transactions; 8) The act of the right applicant or; 9) There is a settlement from other agencies so that there is an overlap of authority.
- b. Some cases of double certificates on title certificates there are also errors or administrative defects that result in legal defects in certificates that appear with the same owner's name, the same object, and the same area, especially the owners of land rights never ask the Head of the Land Office to issue a new certificate or authorize others.
- c. The National Land Agency always seeks solutions to resolve land disputes based on applicable laws and regulations by taking into account the sense of justice and respecting the rights and obligations of each party. The dispute resolution steps that they or BPN take are deliberations.

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