



Dispute Resolution of Land That Has Certified Rights in Bungo District Office

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Abstract

A land certificate is a proof of title granted as legal proof of ownership of land rights obtained through the land registration process at the National Land Agency Office. Although as a valid proof, in practice there are still conflicts over ownership of land rights. One of the land disputes that took place at the Bungo District Land Office was a type of Certificate of Ownership rights, with settlement through outside the court. Regarding this matter in this paper, the researcher formulated several issues to be the focus of the study, namely 1) What is the authority of the National Land Agency (BPN) in resolving land disputes that have a certificate of ownership? 2) What is the process of resolving land ownership disputes at the Bungo District Land Office? 3) How is the implementation of the results of the settlement of land disputes through the Bungo District Land Office for legal certainty of land ownership? The method used in this paper is Empirical Juridical study of existing problems and examined based on legal material or regulations and implementation in practice. From the results of the study, the authors found that the National Land Agency has the authority to facilitate the parties to the dispute to be resolved through mediation as well as the resolution process and the decisions made by the parties to the mediation are accepted as regulations that must be implemented by the parties.

Keywords: *Settlement of Land Disputes; Certificate of Ownership; Bungo District Land Office*

I. Background of Research

Land ownership is the type or status of the highest land rights when compared to other types of status of rights. It is also based on article 20 paragraph 1 of the 1960 BAL which states that:

"Proprietary rights are hereditary, strongest and most fully owned rights that can be owned by people on land, bearing in mind the provisions in Article 6".

Nevertheless, land property rights are also prone to become the object of dispute, in fact, still a lot of lands that already has a certificate of ownership suddenly then be certified by others for "bitumen" (real or fake) or 100% false.

From the description above, problems still occur because of violations in the land sector, even though regulations have been made. In general, land dispute cases arise because of "claims" of ownership of property rights, as well as control over land. Each party to the dispute feels most entitled to the disputed land. This is as a result of the ownership of the dual land certificates between the parties in conflict. Not infrequently cases of disputes also cause physical conflict and take victims

According to the regulations the Minister of Agrarian and Spatial Planning / Head of National Land Agency of the Republic of Indonesia Number 11 Year 2016 concerning Case Settlement Land, Article 1, paragraph 2, states that:

"Land Disputes, hereinafter referred to as Disputes, are land disputes between individuals, legal entities or institutions that have no broad impact".

The typology of land dispute cases in general can be divided into five groups, namely:

1. Cases relating to community cultivation or plantation lands, forestry, etc.
2. Cases relating to violations of Landreform regulations.
3. Cases relating to access to land provision for development.
4. Civil disputes relating to land issues.
5. Disputes regarding customary land.

Disputes relating to land constantly growing, along with increasing human needs for land, land disputes generally arise partly as a result of the following factors:

1. Incomplete regulations.
2. Discrepancy of regulations.
3. Land officials who are less responsive to the needs and the amount of land available.
4. Inaccurate and incomplete data.
5. Incorrect data.
6. Limited human resources tasked with resolving land disputes.
7. Wrong land transaction.
8. The right of the applicant, or
9. There is a settlement from other agencies so that overlapping authority occurs.

The emergence of land rights disputes can occur due to a lawsuit from a person or legal entity that contains lawsuits due to legal actions that have harmed the land rights of the plaintiff, while the lawsuit material can be in the form of claims for legal certainty regarding who is entitled to the land, status land, evidence that is the basis of granting rights, and so on.

The Bungo District Land Office is also not devoid of public complaints about land disputes. This was confirmed by the Bungo District Land Office Staff who stated that there were indeed complaints from the public that were reported to the Bungo District Land Office. Both the problem of land grabbing, double certificate, land boundary issues, and others. And the land disputes submitted by the Bungo District Land Office Employees, one of which occurred on land that had certificates of ownership. With the land dispute complaints reported by the community, the Bungo District Land Office immediately

followed up on the report with the initial steps to explore the cause of the problem and bring together the parties to resolve the land dispute, and try to provide a mutually beneficial solution for the parties.

Land certificate disputes generally occur because of negligence committed by the owner who do not maintain or manage their land, and can also be caused by mistakes due to inaccuracy in mapping and measurement conducted by the Bungo District Land Office. For example the case of the transfer of rights that occurred at the Bungo District Land Office which resulted in changes in data concerning the area of land against Certificate of Ownership Number 72 / Pasir Putih, on behalf of Ahmad, covering an area of 29,459 M² (twenty nine thousand four hundred fifty nine meters longitude cage) located in the Pasir Putih Village, Muara Bungo District (now Rimbo Tengah), Bungo District, Jambi Province. On Certificate of Ownership Number 72 / Pasir Putih, on behalf of Achmad, a land sale and purchase transaction has been carried out between Achmad as the rights holder or seller with The Herman Suteja and Margatreaan as buyers who objected to the difference in land area listed in the certificate with the land area exist in the physical land, there is a shortage of land area because part of it has also been controlled by the community and the construction of the mosque.

In the description of the case above, the land dispute is land registered with the Bungo District Land Office. As a result of differences in land area and control of a physical portion of the land from other parties that cause the buyer can not transfer rights and manage the land, and this causes disputes between the parties. To ensure legal certainty over the size of the land and the ownership of the land which was completed by the Bungo District Land Office, which was carried out by means of deliberation to achieve consensus and legal protection against ownership of land rights.

In connection with the background written above, the author intends to examine how land disputes occur that are detrimental to parties, who both feel they own the same land and whether the Bungo District Land Office has the authority to resolve land dispute complaints from the community. Therefore, the authors in this paper conduct research on **"DISPUTE RESOLUTION OF LAND THAT HAS BEEN INCLUDING OWNERSHIP IN THE BUNGO DISTRICT LAND OFFICE."**

II. Research Methods

The method used in this thesis research is empirical juridical research, which is research based on field research to get primary data in the field of law. The specifications of this study are descriptive analysts, because this study is expected to obtain data that clearly illustrate what is discussed in this study. The type of data used in this study are primary and secondary data, where secondary data consists of Primary, Secondary and Tertiary Legal Materials. The data collection techniques used for research in the field are interviews and study of documentation documents. While the data obtained from this research will be analyzed using qualitative methods, namely analysis of data without using statistical formulas because the data used are not in the form of numbers. Thus what is used is only by logical explanation of the sentence based on the rules and opinions of experts.

III. Result of Research

The National Land Agency as an institution or institution that is given the authority to carry out governmental tasks in the field of land, whose functions include in the formulation and implementation of policies in the field of control and handling of land disputes and cases as formulated in Article 3 letter f Presidential Regulation of the Republic of Indonesia Number 20 of 2015 about the National Land Agency. In terms of resolving land disputes, the National Land Agency establishes its supporting elements in the regions by establishing Regional Offices of the National Land Agency domiciled in the Province and Land Offices domiciled in Regencies / Cities whose authority, duties and functions are

mutually compatible, as mandated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency Number 38 of 2016 concerning Organization and Work Procedure of Regional Offices of the National Land Agency and Land Offices.

The Regional Office of the National Land Agency has a Department of Land Affairs and Control, while in the District / City Land Office there is a Unit of Problem Management and Land Control, and in the resolution of land disputes the National Land Agency always tries to find solutions to resolve land disputes according to applicable provisions and still pay attention to the sense of justice including respecting the rights and obligations of the parties to the dispute. Related to the settlement of land disputes, the National Land Agency conducts settlement steps through deliberations with a mediation settlement mechanism.

In Article 4 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 11 of 2016, the settlement of land disputes is carried out based on two settlement mechanisms, namely on the basis of "Ministry Initiatives" or "Public Complaints". With regard to the mechanism of dispute resolution, they are distinguished respectively in the administrative process and recording the handling of incoming complaints. After reviewing the complaint or report, it can be seen whether the complaint / report is the ministry's authority or not the ministry's authority.

If the complaint / report is the authority of the Ministry or the National Land Agency, the official responsible for handling Disputes, Conflicts and Cases reports the results of data collection and analysis results to the Head of the Land Office. In the event that the dispute is not the authority of the Ministry or the National Land Agency, the official responsible for handling the Dispute, Conflict and Case shall submit a written explanation to the complainant. Whose settlement of land disputes is left to the complainant.

In the event that a Dispute or Conflict is not the authority of the Ministry, the Ministry can take the initiative to facilitate the resolution of Disputes or Conflicts through Mediation. the mediation is carried out provided that the parties to the litigation are prepared to carry out mediation. And the Bungo District Land Office, in dispute resolution can be done by mediation, the settlement technique is guided by the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases.

In connection with land disputes, the National Land Agency seeks solutions to resolve land disputes based on the legislation in force by paying attention to and respecting the rights and obligations of each party. The steps to resolve the land problem they are taking is deliberation. They have the authority to mediate, negotiate and facilitate the parties and initiate an agreement between the parties.

In an interview with staff at the Bungo District Land Office represented by Hardiansyah, SH as the Head of the Land Affairs and Control Section, confirmed that the National Land Agency was authorized to settle land disputes and land conflicts, and for its completion the Bungo District Land Office referred to the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency of the Republic of Indonesia Number 11 Year 2016 concerning Settlement of Land Cases.

Land disputes over land with certificates of ownership that have been resolved by the Bungo District Land Office through mediation are Land with proof of ownership in the form of Ownership Certificate Number 72 / Kelurahan Pasir Putih in the name of Achmad with a land area of 29,459 M² (twenty nine thousand four hundred fifty nine square meters), the problem that appears on the certificate begins with the blocking of the certificate, the sale and purchase transactions, and the overlapping of land rights. From this case, the settlement of land disputes through non-court (non litigation), by conducting mediation for the parties can be carried out in the Land Office and the settlement process is also suitable to the nation's culture which is described as a society that prioritizes the sense of side without overruling the rational side.

According to the Head of the Land Handling and Control Section, the Bungo District Land Office, Mr. Hardiansyah, SH said that the resolution of disputes over land rights was guided by the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 11 Year 2016 concerning Settlement of Land Cases. Settlement of land disputes Ownership certificate at the Bungo District Land Office begins with a complaint on land disputes that enter the Bungo District Land Office and is followed by the following stages:

1. Disposition of cases by the Head of Office. After all the provisions on dispute complaints have been completed and received by the Head of the Land Office, he gives a disposition to the section that handles land disputes or conflicts, namely the Head of the Land Affairs and Control Section to follow up in accordance with statutory regulations.
2. The Head of PMPP studies the incoming files and submits them to the Dispute, Conflict and Land Management Subsection, to record in the register book and submit the receipt of the complaint and proceed with administering the data through the information system of Disputes, Conflicts and Cases
3. Analysis of the complaint file in the form of physical data, juridical data and other related data, court decisions to witness statements.
4. Presentation of the Case as an institutional mechanism of the National Land Agency of the Republic of Indonesia in the context of handling and / or settlement of the Land Case. Degree of handling and / or settlement of land cases both internally and externally.
5. Make a Mediation Invitation. After exposing the Case, the officials who handle Disputes, Conflicts and Cases at the Land Office conduct activities to determine the timetable for mediation and make and submit invitations to the disputing parties and related parties.
6. Implementation of Mediation. Mediation participants consist of:
 - a. Processing Team;
 - b. Ministries, BPN Regional Offices and / or Land Offices;
 - c. Mediator from the Ministry, BPN Regional Office and / or Land Office;
 - d. The parties and / or other parties involved; and / or
 - e. Experts and / or experts related to Disputes and Conflicts, related Agencies, and community elements, community / adat / religious leaders, or agrarian observers / spatial planning, and other elements, if needed.
7. Minutes of Mediation. Implementation of Mediation is recorded in minutes and results of the implementation of Mediation are set forth in the Minutes of Mediation, which include:
 - a. main problem;
 - b. chronology;
 - c. description of the problem; and
 - d. Mediation results;

The Mediation Minutes are signed by participants participating in the mediation, and if there are participants who are unwilling to sign the minutes of the mediation, the unwillingness is recorded in the minutes of the mediation.

According to investigators from the case sample submitted at the beginning, who take dispute resolution outside the court can be carried out if the parties can be present and submit clear ownership data, and have the intention or desire to resolve it. Until finally an agreement and solution can be reached to resolve the dispute.

The implementation of dispute resolution on Certificate of Ownership Number 72 / Pasir Putih, changes occur, namely changes in the data on the Certificate, Measure Letter, Land Book and / or other Public Register in accordance with the data found both physical data and juridical data. Whereas certificates which are included in the overlapping case are Certificate of Ownership Number 4951 in the name of Ajis, Certificate of Ownership Number 5292 in the name of Basri, Certificate of Ownership Number 4321 on behalf of Amrizal, Certificate of Ownership Number 5290 in the name of Ponizan, Certificate of Ownership Number 5292 in the name of Basri, Certificate of Ownership Number 4321 on behalf of Amrizal, Certificate of Ownership Number 5290 in the name of Ponizan, Certificate of Ownership Number Number 5292 5289 in the name of Jaswir, Certificate of Ownership Number 5291 in the name of Darman Hendra, Certificate of Ownership Number 4953 in the name of Aswin, Certificate of Ownership Number 4322 in the name of Indrizal, and Certificate of Ownership Number 4952 in the name of Fatmawati was revoked. Then related to the sale and purchase of land for certificate of ownership number 72 / Pasir Putih, the transfer of rights is carried out in accordance with statutory provisions.

Decision in the form of cancellation of land rights, the official authorized to record the abolition of the decision to grant rights, certificates, measurement letters, land books and other Public Register, on the certificate of land rights, Land Book and other Public Lists. While the decision in the form of revocation of certificate of authority authorized to record the abolition of rights on the Certificate, Land Book and other Public Register. Decisions in the form of changes to the data of the official authorized to make improvements to the Certificate, Measure Letter, Land Book or other Public Register and then to repair the certificate is given back to the right holder or issued a replacement certificate.

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Interview

- Interview with Mr. Kasan, Section Head of Land Management and Land Management at the Bungo District Land Office, at the Bungo District Land Office, on Thursday, March 15, 2019, at 15:00 WIB.
- Interview with Mr. Hardiansyah, SH, Head of the Land Handling and Control Section, the Land Office of the Bungo District, at the Bungo District Land Office, on Thursday, March 15, 2019, at 11:00 WIB.

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