



Contrarius Actus Principle as BPN's Basis in Settlement of Dual Certificate Disputes (Case Study of Maluku BPN Dispute No. Reg. Case: 02/SKP/2018)

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Abstract

The writing of this study aims to examine and analyze the role of BPN in resolving dual certificate disputes using the Contrarius Actus Principle (case study of BPN Maluku Dispute No. Reg. Case: 02/SKP/2018). This research is an empirical legal research, using a sociological approach. Based on the results of the study, it can be concluded as follows: The resolution of the dual certificate dispute No. Reg. Case: 02/SKP/2018 by the Maluku BPN is based on the Contrarius Actus principle, so that the recommendation from the Maluku BPN states that in the context of orderly land administration the existence of a Property Rights Certificate Number 893/Tawiri on behalf of Simon Sipasulta as the last owner overlapping on the land of Ownership Certificate Number. 346/Tawiri on behalf of Marthen Hentiana is deemed necessary to be immediately canceled in accordance with the mechanism as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN RI Number. 11 of 2016 concerning Settlement of Land Cases.

Keywords: *Certificate; Actus, Law; Disputes; Maluku*

Introduction

Earth and life are one breath. The law cannot keep them away.¹ Land has a very important function for human life, the rights to land ownership are also regulated by the constitution Article 33 paragraph 3 (UUD 1945) the regulation of land uses the term agrarian which has a wider scope, namely earth, water and natural resources contained in it is controlled by the State and used for the greatest prosperity of the people. From this provision, it can be concluded that the utilization of the earth, water and space as well as the natural resources contained therein is aimed at the greatest prosperity of the people. The constitution that specifically regulates land, such as rights to land ownership, is regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations or what is often known as the Basic Agrarian Law (UUPA).²

¹ Rocky Gerung dalam Bakhrul Amal, Pengantar Hukum Tanah Nasional Sejarah,, Politik, Dan Perkembanganya, (Yogyakarta:Thafa Media Yogyakarta,2017) hlm. Cover.

² Undang-undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria selanjutnya disebut UUPA.

The LoGA contains the basics for an even distribution of land ownership (land reform), and the purpose of the promulgation of the UUPA is to provide legal certainty. This goal can be realized through two efforts, namely:³

1. Availability of written, complete and clear legal instruments which are implemented consistently in accordance with the spirit and provisions.
2. The implementation of land registration which makes it possible for holders of land rights to easily prove the rights to the land they control, and for interested parties, such as prospective buyers and potential creditors, to obtain the necessary information, and for the Government to implement land policies.

The Decree of the MPR RI Number IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management emphasizes the urgency of agrarian reform, which includes a continuous process that is concerned with restructuring control, research on the use and utilization of agrarian resources to achieve legal certainty and protection as well as justice and prosperity for all Indonesian people. Based on the state's right to control as regulated in article 2 paragraph 1 of the UUPA and its implementation, the regulation of the Minister of Agrarian Affairs No. 9 of 1965 concerning the implementation of the Conversion of Right to Control over State Land and the provisions of Book II of the Civil Code as long as it is related to land cases So the rights of Western land as regulated in Book II of the Civil Code are no longer valid and must be converted⁴.

The purpose of providing legal certainty is contained in Article 19 paragraph (1) of the UUPA which reads:

"To guarantee legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated in a Government Regulation" In addition, it is also explained that the purposes of land registration are:⁵

1. To provide legal certainty and legal protection to the holder of the right to a parcel of land, an apartment and other registered rights so that he can easily prove himself as the holder of the right in question;
2. To provide information to interested parties including the Government so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units;
3. For the orderly implementation of land administration.

In Indonesia, land rights certificates serve as strong evidence, as has been explained in Article 19 paragraph 2 and letter c of the UUPA and Article 32 paragraph 1 of Government Regulation No. 24 of 1997. Regarding the validity of the certificate, it is very important because first, the certificate provides legal certainty. ownership of rights so as to prevent land disputes. Second, with the ownership of a certificate, the land owner can take any legal action as long as it does not conflict with applicable laws, public order, and morality. In addition, certificates have a high economic value if they are used as future investments.

³ Elza Syarif, Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan, (Jakarta: Kepustakaan Gramedia) hlm. 6

⁴ Elza Syarif, Persertifikatan Tanah Bekas Hak Eigendom, (Jakarta: Kepustakaan Populer Gramedia). Hlm. 3

⁵ Pasal 3 Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah

The problem that arises is what is the role of BPN in resolving dual certificate disputes using the *Contrarius Actus* principle (case study of BPN Maluku Dispute No. Reg. Case: 02/SKP/2018)?

This research is a type of empirical juridical research or called field research which examines the applicable legal provisions and what happens in reality in society.⁶ Empirical juridical research is legal research regarding the enforcement or implementation of normative legal provisions in action on every particular legal event that occurs in society.⁷ This research was conducted to find out how the legal protection is for buyers who have good intentions but have problems with double certificates which can result in losses for themselves. The research approach used by the author in this study is a sociological juridical approach, which is an approach that examines problems from a legal perspective based on realities in the field.

Discussion

Land is a source of life for humans, not only as a place to live but also as a place for human development. The existence of land for humans is very important, because the emergence of a desire from every human being to control the land in various ways. This causes various land conflicts that lead to disputes.

Land issues often lead to prolonged conflicts, both between individuals and between individuals and legal entities. Disputes regarding this land seem endless and always occur, because the human need for land always increases with population growth. In Indonesia, the population in 2021 has reached 271,349,889 people and all of them require land to be used as a place to live.

The advancement of the community's economy and the national economy, also increases the need in the land sector, which requires a much deeper legal certainty. The number of problems related to the sale and purchase of land resulted in frequent land disputes that even reached court proceedings.

Land ownership can be transferred to another person. The transfer of land rights can be through buying and selling, exchanging, grants or because of inheritance. In Article 26 paragraph 1 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, it is explained that; buying and selling, exchanging, granting, giving, with wills and other acts intended for the transfer of property rights and their supervision shall be regulated by government regulations. Article 1457 of the Civil Code concerning Sales and Purchases explains that buying and selling is an agreement in which the existing party commits himself to surrender an object and the other party pays the promised price.

In buying and selling there are two sides of civil law, namely material law and contract law. It is said so because in terms of material law, buying and selling gives birth to rights for both parties to invoices, in the form of delivery of goods to one party and payment of the selling price to the other party. Meanwhile, from the engagement side, buying and selling is a form of agreement that gives birth to obligations in the form of delivery of goods sold by the seller, and delivery of money by the buyer to the seller.

In practice, buying and selling land does not always run smoothly, there are times when things arise that are actually unexpected, usually this problem arises in the future. As much as possible in making an agreement, it is undeniable that there are loopholes that one day if a dispute occurs, it becomes gaps to be used as excuses and self-defense and parties who will cancel, even seek their own benefits from the agreement.

⁶ Abdulkadir Muhammad, **Hukum dan Penelitian Hukum**, Citra Aditya Bakti, Bandung, 2004, Hlm 134

⁷ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, 2002, Hlm 15

Provisions regarding legal certainty of land rights are regulated in Government Regulation Number 24 of 1997 concerning Land Registration. In this government regulation, there are indeed many simplifications of requirements and procedures for the implementation of land registration. The implementation of land registration according to Government Regulation No. 24 of 1997, it can be concluded that legal certainty regarding land rights as contained in the UUPA contains two dimensions, namely certainty of objects of land rights and certainty of subjects of land rights. One of the certainty of the object of land rights is indicated by the certainty of the location of the land parcel with geo-referenced coordinates in a land registration map, while the certainty of the subject is seen from the name of the holder of land rights listed in the land registration book at the land agency. The copies of the maps and land registration books are known as Land Certificates. However, in practice the legal certainty of land rights is often not guaranteed as expected.

The implementation of land registration is carried out by the Government, in order to provide legal certainty in the land sector for the community. Land registration is an activity carried out by the Government, in a continuous, continuous and orderly manner which includes, collecting, processing, documenting and presenting as well as maintaining physical data and juridical data in the form of maps. Regarding land parcels and apartment units, it is also the provision of proof of their rights.

The data collection process includes two kinds, namely physical data, which includes the land (location, boundaries, building area and plants on it). And juridical data, which includes the rights (what is the name of the right, who is the holder of the right and whether there is/isn't the right of another party). Granting of valid proof of rights as strong evidence.

The implementation of land registration is carried out considering the state and community conditions. Ideally, land registration should cover all Mainland areas in Indonesia, if all land is registered then the possibility of conflict in land disputes is very small. The boundaries of state land, including forest area land and proprietary land will be fixed, so that boundary disputes can be avoided as early as possible.

The objectives of the implementation of land registration are:

1. To provide legal certainty and legal protection to holders of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as rights holders.
2. Provide information to interested parties including the government. So that it is easy to get the data you want.
3. To ensure that their offspring are in an orderly manner in Land Administration.

The existence of a dispute in the land sector, can lead to a prolonged conflict between the disputing community members, even this conflict can reach the respective heirs of the dispute, sometimes this conflict over the land sector can also cause many victims involved in it. The disputants are competing to prove that they are more entitled to the land.

There are several cases of double certificates that occurred in the city of Ambon, one of which was a case that researchers researched. This dual certificate dispute arose because of the submission of an application for cancellation of land rights to the Ambon City Land Office from Marthen Hentiana as the holder of SHM Number 346/Tawiri who felt disadvantaged in the issuance of SHM Number. 893/Tawiri. This civil dispute occurred between Marthen Hentiana as the applicant party, namely the party who was disadvantaged in the issuance of this double certificate with Simon Siposulta as the respondent. Marthen Hentiana obtained the land by buying and selling with the previous owner, namely Jacobus Maspaitela certificate number 346 with a land area of 4,625 M². Based on the deed of sale and purchase of PPAT Muhammad Gimin Kotta, SH No. 10/06/Baguala/1991 dated June 10, 1991.

Starting from the existence of physical development in the form of lodging carried out by Simon Sipatula. The existence of this building made Marthen Hentina surprised by the construction carried out on part of his land. Marthen stopna also went to the owner of the building and asked on what basis did you build on my land? Simon also explained that I built it because this land is mine with proof of the certificate of ownership. From this, Marthe Hentina did not accept because she felt aggrieved by the certificate issued on part of her land. Then Marthen Hentina submitted a request for cancellation to the Ambon City National Land Agency Office. The Ambon City BPN is following up on the problems that occur, through direct meetings with the disputing parties and also conducting direct inspections of the land in question.

The following are the results of the dispute assessment conducted by BPN Maluku:

I. KEY PROBLEMS

The main problem is starting from the process of issuing the Certificate of Ownership Number. 893 with an area of 1,385 M2 a.n. Dalno dated December 22, 2010 Letter of Measurement dated December 21, 2010 is located in Tawiri Village, Teluk Ambon District, Ambon City, Maluku Province. Furthermore, Land Certificate of Ownership Number. 893 with an area of 1,385 M2 a.n. Dalno dated December 22, 2010 Letter of Measurement dated December 21, 2010 was granted by Dalno to one of his biological children named Abdi Handoyo based on the Deed of Grant of Land Deed Official (PPAT) Abigael Serworwora, SH Number. 563/2011 dated October 17, 2011. Then the holder of the Certificate of Ownership Number. 893 with an area of 1,385 M2 a.n. Abdi Handoyo made a sale and purchase transaction on land with Certificate of Ownership Number. 893 to Mr. Simon Sipasulta through Legal Acts of Sale and Purchase Transactions before PPAT Lidya Gossal, SH according to the deed dated September 27, 2012 Number. 04/2012 and re-registered at the Ambon City Land Office on October 04, 2012. Whereas then the issuance of Certificate of Ownership Number. 893 turns out to be above or overlapping part of the land of Certificate of Ownership Number. 346/Tawiri was first recorded by a.n. Jacobis Maspaitela, cs dated June 7, 1991 covering an area of 4,625 M2. Drawing Measure Number. 756/1990 dated November 3, 1990, located in Tawiri Village, Teluk Ambon District, Ambon City, Maluku Province, then based on the deed of sale and purchase of PPAT Muhammad Gimin Kotta, SH No. 10/06/Baguala/1991 dated June 10, 1990, was transferred to Marthen Hentiana, which is evidenced by the result of the return of land boundaries with Certificate of Ownership No. 893 according to the Minutes of April 17, 2014 Number. 02/BAP/IV/2014. Then Mr. Marthen Hentiana as the holder of SHM Number. 346/Tawiri feels disadvantaged in the issuance of SHM Number. 893/Tawiri then submitted a request for cancellation of land rights to the Ambon City Land Office.

II. CHECKED DOCUMENTS

- a. Application for Cancellation of Property Rights Number. 893 Dated April 20, 2014 submitted by Mr. Marthen Hentiana;
- b. Minutes of Data Processing Reg Case Number. 07/RPD-81.71/VII/2014, August 4, 2014;
- c. Minutes of the Implementation of Land Dispute Handling Tasks Number. 07/BAP/GK/VI/2014;
- d. Minutes of Measurement of Return of SHM Land Boundary No. 893 Number. 02/BAP/IV/2014 Date. 17 April 2014;
- e. Minutes of Mediation Exposure Number. 01/BA.Mediasi/VIII/2018 dated 04 August 2017;
- f. Minutes of Field Examination Results of Land Disputes Number. 02/BA.PLS/VIII/2018 dated 06 August 2018;
- g. Photocopy of Certificate of Ownership Number 893/Tawiri a.n. Simon Sipasulta;
- h. Photocopy of Certificate of Ownership Number 346/Tawiri a.n. Marthen Hentiana;
- i. Photocopy of the Decree of Saniri Negeri Tawiri Number. 01/PHT/VII/75 July 12, 1975;

III. CASE DESCRIPTION

a. Root of the problem

Whereas the root of the problem in this dispute is an indication of a procedural error in the process of the Certificate of Ownership No. 893/Tawiri.

b. Juridical Analysis

1. Civil Aspects

- ✓ The Complainant from the civil aspect is the party entitled to the land object of the dispute which legally the land is part of the Land Certificate of Ownership No. 346/Tawiri obtained by the applicant Marthen Hentiana through the Legal Action of the Sale and Purchase Transaction with Mr. Johanis Maspaitela Cs Before the Official Making the Land Deed Muhammad Gimin Kotta, SH according to the Deed of Sale and Purchase dated June 10, 1991 Number. 10/06/Baguala/1991.
- ✓ The respondent Mr.Simon Sipasulta obtained the land based on the Legal Actions of the Sale and Purchase Transaction with Mr. Abdi Handoyo as the holder of the Certificate of Ownership Number. 893/Tawiri according to the PPAT Deed of Lidia Gossal, SH dated 27 September 2012, Number 04/2012, while Br. Abdi Handoyo obtained the land/object of dispute based on the legal act of the Grant from his father, the late Dalno, in accordance with the Deed of Grant PPAT Abigael Serworwora, SH dated October 11, 2011 Number. 563/2011, Dalno subsequently obtained the land based on the relinquishment of rights from the party who sold the disputed land object to the complainant/applicant Marthen Hentiana, namely Mr. Johanis Maspaitella Cs in accordance with the Declaration of Release of Rights dated 17 May 1993.

2. Aspects of State Administration

- The applicant party controls a land area of 4,625 M2 including the disputed object of the parties covering an area of 1,385 M2 which is part of the Certificate of Ownership Number. 346/Tawiri dated 7 June 1991.
- The respondent owns the land/land object in accordance with SHM Number 893/Tawiri based on the legal action of a sale and purchase transaction from Abdi Handoyo before PPAT Lidia Gossal, SH in accordance with the Deed dated 27 September 2012 Number. 04/2012 and registered under name at the Ambon City Land Office on October 4, 2012.

3. Criminal Aspect

- In this land dispute, there is a criminal act of embezzlement of rights and land grabbing carried out by Mr. Johannes Maspaitella Cs as referred to in the provisions of Article 2 and Article 6 of Law No. 51 PRP 1960 concerning Prohibition of Control and/or Use of Land Without the Authorized Permit or Proxy.

c. Physical/Social/Economic/Political/Benefit Analysis:

Judging from the Physical/Social/Economic/Political/Useful Aspects, the process for the proposal to cancel the Certificate of Ownership Number. 893/Tawiri dated December 22, 2010 covering an area of 1385 M2 located in Tawiri Village, Teluk Ambon District, Ambon

City, Maluku Province by the Head of the Land Office only had an impact on the physical, economic and benefit aspects of the respondent, but did not affect the social and political aspects.

III. STUDY RESULT

a. Opinion

1. That based on the description of the juridical aspect above, the object of the dispute is legally the property of the applicant, Mr. Marthen Hentiana as the holder of the Certificate of Ownership Number. 346/Tawiri was first recorded by a.n. Jacobis Maspatela, cs dated June 7, 1991 covering an area of 4,625 M2. Drawing Measure Number. 756/1990 dated November 3, 1990, located in Tawiri Village, Teluk Ambon District, Ambon City, Maluku Province, then based on the deed of sale and purchase of PPAT Muhammad Gimmin Kotta, SH No. 10/06/Baguala/1991 dated 10 June 1990 was transferred to Marthen Hentiana.
2. Whereas from the civil aspect the process of issuing Certificate of Ownership Number. 893/Tawiri on behalf of Simon Sipasulta as the last owner overlapping on the land of Ownership Certificate Number. 346/Tawiri on behalf of Marthen Hentiana, in our opinion, is an act against the law and violates the civil rights of Mr. Marthen Hentiana.
3. Whereas for the arbitrary actions carried out by Johanis Maispatella, Cs through the Declaration of Release of Rights to Mr. Dalno according to the letter dated May 17, 1993 on part of the land, Certificate of Ownership No. 346/Tawiri covering an area of 4,625 M2 is a violation and against the law because the object of the disputed land is part of the Certificate of Ownership Number. The first 346 registered under the name of Johanis Maispatella Cs covering an area of 4,625 M2 have been sold by the same seller to Marthen Hentiana according to the PPAT deed Muhammad Gimmin Kotta, SH dated June 10, 1991 Number 10/06/Baguala/1991 which was registered under the name of the City Land Office Ambon dated June 29, 1991.
4. Whereas based on this analysis, we are of the opinion that based on the given authority, the Head of the Maluku Province BPN Regional Office, based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN RI No. 11 of 2016 article 26 paragraph (2) letter b reads: The authority to cancel as referred to in paragraph (1) consists of: the Head of the Regional Office of the National Land Agency for granting rights whose decisions are issued by the Head of the Land Office, then if the issuance of the certificate in question contains elements administrative defects (overlapping land rights) can then be cancelled.

To resolve the dual certificate dispute, BPN must state that one of the certificates is declared not in accordance with the established procedure. As has been done by the Maluku BPN above. It is based on the principle of *contrarius actus*. *Contrarius actus* is a term for an action taken by a state administrative agency or official that issues a State Administrative Decree by itself or automatically has the authority to cancel the said State Administrative Decree. This principle is a juridical term. In the event that the previous act (*actus primus*) is canceled or abolished, in other words the *actus contrarius* has the same legal force as the *actus primus*. For example, the issuance of a law can only be revoked through the issuance of a law which explains that the law is revoked or amended, and cannot be revoked through a regulation under it. The legal transaction can only be canceled through other legal transactions which, the concrete action is that the contract agreement can only be changed or canceled with a similar contract agreement.⁸

Philipus M. Hadjon and Tatiek Sri Djatmiati also conveyed a similar opinion, they provide an understanding that, the *contrarius actus* principle in administrative law is defined as the authority attached to the state administrative body or official who issues state administrative decisions can also cancel the

⁸ Chakim Lutfi M, “‘*Contrarius Actus*’ Kamus Hukum, Majalah Konstitusi’, Nomor 126, 2017, p. 78

decision, although in In state administrative decisions it is not regulated related to the usual security clauses, this can usually be found in various kinds of state administrative decisions which usually include the clause "if in the future it turns out that there is an error or oversight, this decision will be reviewed".⁹ In its application in the field, if a state administrative decision issued by a state administrative official contains a juridical defect or an administrative error, then the one authorized to revoke it is the state administrative official who issued the decision through a state administrative decision that has equality. the same or a higher level. It is different if the law prohibits it. Therefore, state administrative officials must carefully look at the applicable legal provisions.

So based on the *Contrarius Actus* principle, the steps taken by the Maluku BPN regarding the dispute No. Reg. Case: 02/SKP/2018 were correct. This is because state administrative officials who issue state administrative decisions can also cancel the decision. And not only that, in the event of a dual certificate dispute, the state must provide legal protection for its citizens.

Indonesia which has declared itself as a state of law¹⁰ must uphold and protect the rights of its citizens. There is an important thing in the rule of law, namely the existence of a commitment and respect for upholding human rights and guarantees for all citizens with their position under the law. As stated in Article 27 paragraph (1) of the 1945 Constitution¹¹.

The principles contained in these Articles are ideally not just contained in the 1945 Constitution and legislation. But the most important thing is in practice or implementation.¹²

Legal protection is very important for every country, therefore it is necessary to understand the meaning of legal protection. Legal protection is a protection given to legal subjects as outlined in a statutory rule. In other words, that legal protection is one manifestation of the purpose of law, where the law has the aim of regulating and protecting the interests of the community.¹³ A person's property rights should obtain maximum legal protection from the state. such as the case of land certificate disputes above, the state must carry out its function to realize the legal protection. As stated in the written constitution of Indonesia, especially in Article 28 H paragraph (4) which reads:

"Everyone has the right to have private property rights and these property rights cannot be taken arbitrarily by anyone"

Satjipto Raharjo, explained that legal protection is the protection of human rights that are violated by others and that protection is given to the community so that they can enjoy all the rights granted by law.¹⁴ Philipus M. H. is of the opinion that legal protection is a protection of the dignity and worth, as well as the recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness.¹⁵ To provide an explanation of legal protection, Muktie. A. Fadjar narrows the meaning of the protection itself, namely the protection that is only given by law. The protection that is only given by the law, also has a relationship with the rights and obligations, which are owned by humans as legal subjects in their interactions with fellow humans and their environment. As legal subjects, humans have rights and obligations to be able to carry out legal actions.¹⁶

⁹ Tatiek, Philipus M Hadjon, *Argumentasi Hukum* (Yogyakarta: Gadjah Mada University Press, 2009)

¹⁰ Pasal 1 ayat (3) UUD 1945.

¹¹ Pasal 27 ayat (1) UUD 1945 "segala warga Negara bersama kedudukannya di dalam hukum dan pemerintahan dan wajib menjunjung hukum dan pemerintah itu dengan tidak ada kecualinya".

¹² Bambang Waluyo, *Viktimologi Perlindungan Korban Dan Saksi*, (Jakarta: Sinar Grafika, 2011), hal 1

¹³ H. Salim, *Perkembangan Teori dalam Ilmu Hukum*, (Jakarta: Rajawali Pers, 2012), hlm, 41.

¹⁴ Satjipto Raharjo, *Penyelenggaraan Keadilan dalam Masyarakat yang Sedang Berubah*. Jurnal Masalah Hukum, 1993.

¹⁵ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987), hlm. 38.

¹⁶ Muktie, A. Fadjar, *Tipe Negara Hukum*, (Malang: Bayupedia Publishing, 2005), hlm 24.

To be able to better understand the meaning of legal protection, it is necessary to first know the objectives of the law, because it is the purpose of the law that will be protected. In providing views regarding the purpose of law, experts have different views, the following will explain the objectives of law according to experts:¹⁷

Roscou Pound¹⁸, argues that the law has a purpose to protect human interests. Human interest is a demand that is protected and fulfilled by humans in the legal field. According to Riskou Pound, there are three kinds of human interests that must be protected, namely:

1. *Public interest* (kepentingan umum);
2. *Social interest* (kepentingan masyarakat); and
3. *Private interest* (kepentingan individual).

There are several aspects in the public interest, including:

1. The interest of the State as a legal entity in maintaining its personality and substance; and
2. The interests of the State as the guardian of interests.

On the second point, namely the social interest, there are six points that must be protected by law, namely:

1. The public interest for public safety, such as health, security, welfare, guarantees for transactions and income;
2. Against social institutions, including protection in marriage, politics such as freedom of speech, and the economy;
3. Society against moral corruption, such as corruption, gambling, swearing against God, invalid transactions that are contrary to good morals.
4. Community needs in protecting social resources, such as opposing legal protection for abuse of rights;
5. Community needs in general progress, such as protection of property rights, industrial independence, free trade and monopoly, and new inventions;
6. The interests of society in individual human life, such as protection of a decent life, freedom of speech, and choice of office.

On the third point, namely individual interests (private interests) that need to obtain legal protection are:

1. Personal interests, including protection of physical integrity, freedom of will, good name (reputation), security of personal secrets, freedom to practice one's religion, and freedom to express opinions;
2. Interests in domestic relations include protection of marriage, demands for family maintenance and legal relations between parents and children;
3. Substance interests, including protection of property, independence in the preparation of wills (testaments), industrial and contractual independence, and legal expectations of the benefits to be obtained.

The reason for the above classification of legal interests is that law is an instrument of social interest, helping to make obscure premises clear, and making legislators aware of the principles and values concerning specific issues. Law is different from other norms because it contains commands and prohibitions and divides rights and obligations. Therefore, the law can provide protection for human interests.

¹⁷Op Cit, H. Salim, hlm. 41.

¹⁸Ibid, hlm. 42.

The classification of legal interests above is in the interest of substance which must obtain legal protection including protection of property, including certificates of property rights. So in accordance with the legal protection theory above, the steps taken by the Maluku BPN against the dual certificate dispute No. Reg. Case: 02/SKP/2018 are based on the *contrarius actus* principle and provide legal protection for the property of Marthen Hentiana by stating that " in the context of orderly land administration, the existence of a Certificate of Ownership Number. 893/Tawiri on behalf of Simon Sipasulta as the last owner overlapping on the land of Ownership Certificate Number. 346/Tawiri on behalf of Marthen Hentiana is deemed necessary to be immediately canceled in accordance with the mechanism as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN RI Number. 11 of 2016 concerning Settlement of Land Cases".

Conclusion

The resolution of the dual certificate dispute No. Reg. Case: 02/SKP/2018 by the Maluku BPN is based on the *Contrarius Actus* principle, so that the recommendation from the Maluku BPN states that in the context of orderly land administration the existence of a Property Rights Certificate Number. 893/Tawiri on behalf of Simon Sipasulta as the last owner overlapping on the land of Ownership Certificate Number. 346/Tawiri on behalf of Marthen Hentiana is deemed necessary to be immediately canceled in accordance with the mechanism as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN RI Number. 11 of 2016 concerning Settlement of Land Cases.

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1945 Constitution of the Republic of Indonesia.

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles

Government Regulation Number 24 of 1997 concerning Land Registration

WILLEM. O. LOPPIES, S.Sos, Head of Land Problem Resolution Team, MINISTRY OF AGRARIAN AND SPATIAL/NATIONAL LAND AGENCY, REGIONAL OFFICE OF THE NATIONAL LAND AGENCY, MALUKU PROVINCE MALUKUANTARA MARTHEN HENTIANA VS SIMON SIPASULTA No. Reg. Case: 02/SKP/2018

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