



Legal Protection for Holders of Land Ownership Certificates in Jayapura Regency

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<http://dx.doi.org/10.18415/ijmmu.v10i3.4545>

Abstract

Legal protection for land rights holders in Jayapura Regency is very important because until now there are still many cases of land disputes in Jayapura Regency, even though land rights holders already have legal proof of ownership, namely land certificates. The purpose of this study is to determine the legal certainty of landowners after a period of five years and above. The method used in this study is normative and empirical law, where the normative can be seen from the written regulations that apply, while the empirical is by looking directly at the reality that occurs in the field. The results of this study indicate that legal protection for owners of land certificates is regulated in Article 32 paragraph (2) PP No. 24 of 1997 concerning Land Registration. However, PTUN's decision does not consider this provision because it is caused by the negative publication system introduced in the Indonesian land registration system, where the rights of the actual owner are highly protected, which is also reflected in the wording of the article, which does not strictly apply the concept of *rechtverwerking*, which causing ambiguity in the wording of the article that allows the issuance of certificates after five years and above. Therefore, the government must update the land data with notification of land rights, announcements about the right owner, regulations regarding the location, boundaries and area of land owned by real estate law to avoid disputes in the future. If other people dispute the ownership of someone's property, they can immediately report it to the land office and prove ownership of the property.

Keywords: *Protection; Legal; Certificate*

Introduction

UUD 1945, the Unitary State of the Republic of Indonesia is a constitutional state that guarantees and protects the rights of citizens, including the rights of citizens to acquire, own and enjoy land rights.¹ Realization of legal certainty and protection for owners of land rights if they have registered their material rights so that the owner of these rights can prove himself that he is the owner of the property who gets a deed as strong evidence, commonly called a certificate.

Article 28G of the 1945 Constitution means that every citizen has the right to receive state protection for himself, his family, his honor and dignity and the property he controls. Everyone has the

¹ Adrian Sutedi, *Peralihan Hak Atas Tanah dan Pendaftarannya*, Sinar Grafika, Jakarta, 2018, hlm 1.

right to feel safe and protected from threats of actions or actions that violate human rights. Land ownership rights according to Article 20 (1) UUPA, are hereditary land rights, the strongest and the best realized, where the strongest in relation to other land rights and the most complete in relation to the power of the right holder.

Basically, the term "certificate" comes from English (certificate), which means a diploma or certificate made and issued by an authorized official. Issuing a certificate means that the official in question has granted status to that person. The Indonesian term "Land Certificate" is also interpreted as a certificate of the holder of land rights and is strong proof of legal ownership of the land.

The purpose of making this land certificate is the same as the purpose of holding land registration activities as stipulated in PP No. 24 of 1997 concerning land registration, article 3 which states that the purpose of land registration is:

- a. We guarantee legal certainty and legal protection for owners of land, flats and other registered rights, so that they can easily prove their ownership.
- b. Providing information to the parties involved, including the Governing Board, so that the information needed to carry out litigation related to registered land and housing can be easily available.
- c. Organizing good state administration.

Legal certainty of land rights can be guaranteed by requiring a process of registration of rights whose final product is a certificate of land rights. Title documents serve as strong evidence. That is the main function under Article 19 (2) letter c of the BAL. Individuals or legal entities can easily prove that they have rights to real estate if their name is clearly stated on the certificate.

Harjono,² argues that in English legal protection is called legal protection. Whereas in Dutch it is called *rechtsbecherming*. Harjono understands that legal protection is protection through the use of legal means or protection provided by law, the purpose of which is to protect certain interests, making protected interests a legal right.

In addition, legal protection is the protection of human dignity and recognition of the human rights of legal subjects based on arbitrary legal provisions or as a set of rules or regulations that can protect one thing from another. That is, the law protects a person's right to something that leads to the non-fulfillment of that right.

However, in reality in Jayapura Regency there are still many cases of land disputes that occur between parties related to ownership of land rights deeds even though a person's deed is more than 5 (five) years old. This is the main phenomenon that occurs anytime and anywhere, where there are other parties who admit that a person's land does not belong to him, resulting in a dispute over land rights. Sometimes the disputing parties can resolve it through negotiation and mediation, there are also cases where it must be brought to court so that the judge can decide who is really entitled to the land.

Method

The method used in this study is normative and empirical law, where the normative can be seen from the written regulations that apply, while the empirical is by looking directly at the reality that occurs in the field.

² Harjono, *Konstitusi sebagai Rumah Bangsa*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008, hlm 357.

Result and Discussions

Property rights are the most powerful rights to land, giving the owner the power to return other rights to the land he owns (can be in the form of occupation or constructive occupation, excluding occupation and profit rights), which is almost the same as state power. as the ruler) to grant land rights to its citizens.

Communities in Jayapura Regency often experience land disputes even though the land already has proof of ownership of the land, namely a certificate and has been owned after five years and above, even though obtaining a certificate is through a fairly lengthy process known as the land registration process. In fact, there are other parties who are suing the land and the certificate owned has not been fully proven in terms of ownership, so to ascertain who is actually entitled to the land, it is usual to go through a trial in court with a judge's decision that has permanent legal force.

PP No. 24 of 1997 concerning Land Registration, in Article 1 Paragraph 20 explains as follows: "The certificate is a certificate of land ownership rights, administrative rights, waqf land, house ownership rights, mortgage rights, each registered in the relevant land register in accordance with Article 19 paragraph (2) letter c UUPA ".

Paragraph 2 Article 32 PP No. 24 of 1997 states that if a plot of land has been legally issued a certificate in the name of a person or legal entity who acquired the land in good faith and really controls it, other parties who think that they have rights on that basis can no longer demand confirmation of these rights. , if 5 (out of five) people do not submit written objections to the owner of the certificate and to the head of the authorized land office within one year of the certificate or Complaint in court regarding land ownership or issuance of this certificate.

Furthermore, the certificate holder's qualifications cannot be contested within five years if another party does not contest the certificate. In reality, a certificate that has exceeded its five-year term is a tort. This is of course contrary to the applicable laws and regulations in this case, article 32 paragraph 2 PP No. 24/1997 which was enacted as positive law. This can lead to confusion in the application of the law and a lack of legal certainty and protection for landowners.

Conversely, in a negative system, everything written in the law on land registration is considered true until proven (false) otherwise in court. The principle of transfer of land rights in this system is the *nemo plus juris* principle, namely the protection of the owner of the actual land rights from the actions of other people who transfer their rights without the knowledge of the actual owner of the rights.

The main feature of this negative system is that the registration of rights does not guarantee that the registered name cannot be sued if the registered name is not the real owner. Registered name rights are based on specifier rights, whose acquisition is a link in the chain of legal processes for registration of basic rights.

Meanwhile, another main feature of this negative system is that the land transfer officer plays a passive role, which means that the officer concerned is not obliged to verify the accuracy of the documents submitted to him. Provisions of Article 32 (1) PP No. 24 of 1997 has weaknesses, namely the state does not guarantee the accuracy of the physical and legal information sent, and there is no guarantee for the certificate, because there are other parties. act through the deed feel aggrieved, at any time can file a lawsuit. certificate issuance.

The good thing about this negative system is that the real owner is protected. Meanwhile, the weaknesses are the passive role of the land owner which causes duplication of land certificates, and the working mechanism of the land certification process is such that ordinary people do not understand it well.

To cover the weaknesses in the provisions of Article 32 (1) Government Regulation No. 24 1997 and provide compensation to the certificate holder against third party claims and make the certificate as absolute evidence. Therefore, the provisions of Article 32 (2) of Government Regulation No. 24 of 1997, a certificate as proof of legal status is mandatory if it cumulatively fulfills the following elements:

- a) The certificate is legally issued in the name of an individual or legal entity.
- b) Land purchased in good faith.
- c) A truly governed country.
- d) Within five years of the issuance of the certificate, no one wrote to the certificate holder and the head of the local district/city office to challenge or challenge the ownership or issuance of the certificate.

According to the author, article 32 paragraph 2 PP No. 24 of 1997 basically follows a positive disclosure system, because within 5 (five) years it is impossible to sue people with experience in the country concerned. With the provision that the application and registration process as well as the transfer of rights are always carried out in good faith and in accordance with the *Nemo Plus Juris* principles.

If through the application of these two principles, namely the principle of good faith and the principle of *Nemo Plus Juris*, legal protection is given to the owner of a certificate of land rights, then the application of these two principles must also be followed by this principle. physical control over the land in question, because through physical control and without resistance from other parties, it means that a community or person has acknowledged someone's ownership of the land they control.

Continuous ownership of this property means that the owner indirectly rejects or circumvents the principle of management rights. This principle states that those who are entitled to land must defend their rights, but the failure of the landowner to defend or defend his rights to land means that he has relinquished his rights.

This protection guarantees legal certainty in a negative land registration system, which contains positive elements for both, namely where there is a limitation on the right to sue a person against a land registration issued for a period of five years, provided that the registration does not conflict with the ownership and ownership of an item, whether it's a deed or a cadastral survey, a request from a negative system. has a positive element that provides more guarantees of legal certainty.

Conclusion

Legal protection for people in Jayapura Regency where land rights holders after 5 (five) years have passed under Article 32 paragraph (2) PP No. 24 of 1997 aims to guarantee legal certainty for ownership certificates that are more than five years old. However, this provision was not considered in the PTUN decision, due to the negative publication system introduced in the Indonesian land registration system. Therefore, the application of Article 32 paragraph (2) PP No. 24 of 1997 concerning the legal protection of land rights holders requires that State Institutions must be more active in communicating the land registration of procedures and fees, and also the importance of registration. This land is for the right holder. Likewise, the land office must always update information on assets so that there is no duplication in the granting or registration of rights which can lead to legal problems, namely disputes/cases caused by duplicate or fake documents. In addition, the government must issue a letter of notification of land rights which includes a letter of notification of the right holder, regulations regarding the location, boundaries and area of agricultural land with land rights.

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