LEGAL CERTAINTY ON THE PROOF OF LAND OWNERSHIP STATUS

By:

Tarmeizi, Herawan Sauni, Emilia Kontesa

Abstract

The aims of this study were to determine and analyze the legal certainty on the proof of land ownership status, as well as to find out and analyze the legal certainty in dispute settlement of the proof of land ownership status. The method used in this study was normative juridical method with qualitative research type. The data used was secondary data consisted of primary and secondary legal materials which were collected by conducting literature studies. Materials analysis was performed by using grammatical interpretation. From the results of the study, it can be concluded that the legal certainty of the proof of land ownership status was determined by the way of acquisition, such as by applying the provisions of the rules and laws governing land ownership. If the acquiring method was still being a dispute for several parties, then it will be determined by the decision of the judge in the trial. Legal certainty in dispute settlement of the proof of land ownership status can be done through the judicial (litigation), the General Court if the lawsuit was concerned about the status of land ownership, and through the State Administrative Court if the lawsuit was concerned about the decision-making by the officials of the state administration. It can also be done outside the court (non-litigation) conducted through Mediation by the National Land Agency or conducted through Customary Institutions.

Keywords: Legal certainty, Land Ownership
A. Introduction.

Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (BRAP) Article 1 Paragraph (2) has determined the land ownership issue, even in Article 19 of the BRAP the state guarantees to provide legal certainty on land ownership. In the development of the nation, there comes a lot of interest across the Indonesian nation respectively to the soil, making the land a specific problem for the State of Indonesia.

Disputes relating to land can occur among individuals or between individuals and legal agencies. The problems being disputed are diverse, both concerning the soil physical data, the juridical data, and due to legal actions carried out on the land, even the Certificate of Property Rights that has legal certainty and strong evidence can be the object of dispute. The defendants are the National Land Agency (BPN), which the government is given the authority to issue the proof of land ownership status to provide legal certainty.

Settlement of land disputes during this time not only had been implemented effectively but also lack of legal protection to the owners of land. Although the state has given space to resolve the disputes through the courts or out of court, but in the examination in court there were still a lot of arguments that must be proven in an examination at the trial. It provides space for the Plaintiff to file a lawsuit in court, adding to the lack of legal certainty in dispute resolution, where each judicial decision can be different and not exactly filed the judicial authorities. While the settlement is carried out outside the court does not find the decision of an agreement between the parties.

Based on the background, the identified problems to be issued in this research and discussion were:
1. How legal certainty for proof of land ownership status?
2. How can the rule of law in resolving disputes proof of the ownership status of land rights?

B. Method of the Research

The research method used was normative juridical method with the type of qualitative research. The approach used was legislation and case approaches. The type of data used was secondary data consisted of primary legal materials in the form of laws, Regulations and the Court's decision, secondary law material in the form of law books and research results collected through literature studies. Materials analysis was performed through grammatical interpretation.

C. Results and Discussions

1. Legal Certainty on the Proof of Status Land Ownership Rights.

Proof of land ownership can be either in the form of Certificate of Land Rights Ownership, Certificate of Land, Letter of Appointment of Local Government on Land Use, or Agreement Letter of Land Sale and Purchase. However, the ownership of such evidence has not given legal certainty to the current proof of land ownership. Evidence of the ownership status of land rights, namely Certificate of Land Ownership issued by the competent authorities (NLA), and is guaranteed to provide legal certainty over land rights as stipulated in Article 19 of BRAP and arranged well in Government Regulation No. 24 of 1997 on Land Registration (PP 24/1997), can also be the object of dispute filed by the plaintiffs in the Administrative Court. In other cases, Certificate of Land Rights Ownership was still overlapping or overlapping between Certificate of Land Rights Ownership proofs owned by one of the parties to the evidence held by other parties on the same ground location of the object. Even overlap occurs between two Certificate of Land Rights Ownerships boarded on same object but with different measuring letter.

Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (BRAP) on Article 21 states, property rights are the supreme rights of Indonesian citizens of the land from the state (primary right). The occurrence of Property Rights under Article 22 of BRAP may occur according to
customary law which is regulated by the State Minister of Agrarian / Head of National Land Agency Number 5 of 1999 concerning Guidelines for Settlement on Land Rights Issue of indigenous Society(PMA 5/1999) and can occur because the provisions of law and Decision of the Government. From these provisions there are 2 sources of law to obtain Property Rights which are derived from customary law and national law regulated through laws and regulations. Properties customary law or any concerned with customary land, customary rights, for example, about the sale and purchase of land are still recognized in the society. But the customary rights recognized in the present article must not be conflicted with regulations and legislation. Thus the Letter of traditional communal land may be the evidence of the ownership status of land rights. If a problem occurs on customary land, then settlement was done by customary law communities concerned in accordance with the provisions of local customary law.

BRAP in Article 20 states "Property rights are hereditary rights, the strongest and the fullest that can be possessed by people on the land, and has a social function. Property rights can be switched and transferred to another party". "Properties are hereditary (may be inherited by the owner of the land), and continuously with no need to invoke his right back after the transfer of rights. It can be said that Property Rights could not be removed and or missing as far as no other laws that govern ".4 Property rights can become a master of the rights over other land rights.5 Property rights have material value that can be used as collateral in financial transactions.6 Nevertheless Property Rights over land can also be removed, or lost and returned to state control."7

Legally there are three landowners in Indonesia, namely the State, indigenous society and individuals (person or legal

4 A.P. Parlindungan, Komentar Atas Undang-Undang Pokok Agraris, Mandar Maju, Bandung, 1993, p.124
5 Adrian Sutedi, Peralihan Hak Atas Tanah dan Pendaftarannya, Sinar Grafika, Jakarta, 2007, page 61
7 Soejono and Abdurahman, Prosedur Pernadaftaran Tanah, Rineka Cipta, Jakarta, p.5
agency).[^8]

State ownership is the power of authority as stipulated in Article 2 of the BRAP. Ownership by indigenous society is defined in Article 3 of the BRAP. Moreover, the ownership of individual communities is mentioned in Article 9 of BRAP. From these provisions, the obtaining proof of ownership rights over land can be described as follows:

1) If the land comes from the certain state’s land the initial proof of land ownership is a letter of designation of soil management or Certificate of Land. Request ownership of state land can be seen in PP 24/1997 and Regulation of the State Minister of Agrarian / Head of BPN No. 9 of 1999 on Procedures for Granting and Cancellation of Land and Rights Management (PMA 9/1999).

2) If the land is customary land then the initial evidence of ownership rights over communal land certificate is customary, of procedures under the terms of unwritten customary law or through acquisition of rights events, followed by application for land rights accordingly. Guidelines and application procedures of customary land ownership can be seen in the Regulation of the State Minister of Agrarian / Head of National Land Agency Number 5 of 1999 concerning Guidelines for Settlement on Land Rights Issue of indigenous Society (PMA 5/1999).

3) If the land was in the status of land rights (rights over land state land and communal land), then the determinant is the rights holder (whether willing or not willing to give up their land). If willing to give up their land then it is used the event transfer of rights (sale, exchange, donation), then the initial evidence of land ownership is the letter of the Certificate of Land, Certificate of Sale and Purchase and or Certificate of Property Rights. Guidelines and procedures for the transfer of these rights can be seen in the PP24 / 1997 Article 37.

The existence of the Certificate of Land, Letter of Appointment of Local Government

---

[^8]: Urip Santoso, Hukum Agraria & Hak-Hak Atas Tanah, Kencana, Jakarta, 2007, p.75
Land as proof of ownership of the Right to the land can also be seen in the provisions of Article 23 and Article 24 of Regulation 24/1997. In Article 23, states that for the purposes of registration of rights are:

a) The land right is proven by the establishment of entitlements of officials who grant the rights in question in accordance with the applicable provisions when granting rights derive from the State land or land management rights.

b) the management rights is proven by the determination of entitlement management by the authorized official.

c) waqf land is proven by endowment pledge;

d) ownership of the apartment units is proven by certificate of separation;

Accordingly with the BRAP of Article 19 Paragraph (1), to ensure legal certainty by the Government it was held land registration according to the provisions stipulated by Regulation 24/1997. In PP 24/1997 Article 23 stated that for the purposes of registration of rights on new land entitlement evidenced by the establishment of a competent authority if the rights derive from the State land or land management rights. Proven by a certificate of pledge endowments, for the waqf land. Proof of this is done by NLA as the authorities carried out land registration. If it is not proven, the NLA will do refusal, and if it can be proved then NLA will do Bookkeeping of Right to be proceed to registration process so that the Certificates of Land Ownership can be issued.

BRAP has been very clear and consistent in determining norms of property rights as evidenced by proof of land ownership. Property rights provisions in the BRAP are the guarantee of the State to provide legal certainty to citizens. Evidences of land rights such as the Certificate of Land Ownership Rights, Certificate of Land, Letter of Land Use of the Local Government, and Agreement Letter of Land Selling and Purchasing are the basic mastery of land rights. As far that it is obtained with no unlawfully action, then evidence is valid and recognized before the Certificate of Land Ownership is issued.
However, the Certificate of Land Ownership as the strongest evidence as guaranteed by Article 19 of Law PA is still not provide the legal certainty of land rights because the non-conscientious of the officials who are authorized to publish certificates as defined in Regulation No. 24/1997.

2. Legal Certainty in Dispute Settlement of Proof of Land Ownership Status.

Of the two cases as the verdict No. 5-G-2013-PTUN-BKL and Court Verdict No. 14 / G / 2011 / PTUN-BKL, it is known that the dispute settlement of proof of land ownership status as follows:

a. The lack Explanation of Provisions that Set Time Limits to File Lawsuit.

Article 55 of Law on Administrative Court states that: “action may be filed within the period of ninety days from the receipt or publication of the Decision Agency or Official State Administration”. The explanation also mentions that "That person whose are mentioned in the Administrative Decision contested, then a grace period of ninety days is calculated from the day of receipt of the Administrative Decision being sued". Similarly in provision of Supreme Court Circular Letter (SEMA) No. 2 of 1991 which states that "for those who are not targeted by the Administrative Decision but felt their interests get harmed, then the time limit referred to Article 55 is casuistry calculated from the moment he felt their interests get harmed by the Administrative Decision and aware of the decision".

From these provisions, there are two constraints started 90 days after the issuance of the State Administration officials’ verdict formally and or when the land owners know the physical land owned is disadvantage. If the judge considers that the time filed past the deadline, and then the corresponding absolute competence of the Court may be terminated at any time if the judge knew it, he declares that the court is not authorized to adjudicate the dispute. This is set under the Law on Administrative Court of Article 77 verse (1) and (4). If the lawsuit filed in is declined, so it is clear that the proof of the status of land ownership which is the object
of dispute does not get legal certainty.

b. Exerts Up for the Plaintiff to File Lawsuit

It provides space for the Plaintiff to file a lawsuit either through the public courts when it regards to land ownership and through the Administrative Court when it regards to the decision of the state administration officials, resulting in the dispute between the parties is still questioning the Legal Standing judicial is executing the judiciary of lawsuit one of the parties.

In the Administrative Court Decision, Article 1 point 12, which reads "The defendant is the corporation or state administrative official who issues the decision by the authority that belongs to him or delegated to him being sued by a person or body of civil law". Certification of Registration (SKT), Freehold Title (SHM) and Letter of Land Use of Local Government (SPPTP) are the administrative decision as provided in Article 1 of verse (9) of the Administrative Court which states "the State Administrative decision is a determination in writing issued by the Agency or State Administrative Officials containing legal action of the State Administrative based legislation in force, concrete, individual and final legal consequences for the person or body of civil law". To file a lawsuit over ownership of land rights to the Administrative Court, the Defendants parties are government institutions. In the dispute over land ownership rights, claims made to the village chief / headman who make the decision to publish the Certificate of Land (SKT) or National Land Agency (BPN) issuing proof of land rights ownership.

It provides space for the plaintiff to file a lawsuit, then the losing party (rejected) after following the decision of the judge at first instance may be appealed even an appeal to the Supreme Court in resolving disputes over land ownership rights. During the grace period processes and remedies, each party will still persist in the attitude of individual rights, or it can be said to be the loser (declined) on the first level court decision maintained that the decision is not final and has the
force of law fixed, so it cannot be implemented.

The Court of absolute competence in resolving disputes over land ownership rights which is principally the ownership issue is within the scope of civil law and therefore judicial authorities to prosecute him is General Jurisdiction. The Absolute authority of General Jurisdiction / Court in resolving the case over ownership of land rights is stipulated in Article 50 of the Law on General Courts that "Criminal Case and Case Code that has the authority to hear the State Court in Case Civil is covering all disputes about the cause of Ownership or rights arising, debts and receivable or other civil rights". While for the authority of the State Administrative Court to adjudicate dispute over the ownership of land rights has expressly granted limitations on the Absolute authority of the Administrative Court as defined in Article 47, Article 1 point 9 and Article 3 of the Law on the Administrative Court, which essentially explains that the dispute becoming the Absolute Authority of State Administrative court is the dispute about the State Administrative Decision with the exception of Article 2 and Article 49 of the Law on Administrative court.

To test whether the dispute over land rights included within the competence of the competence of the District Court or the State Administrative Court, it is first important knowing what actually becomes the object of dispute in the case. If the object of the dispute is the issuance of proof of ownership rights to land by Administrative Official such as Certificate of Land (SKT) by Headman or Freehold Title (SHM) by National Land Agency (BPN), the action should have been submitted to the Administrative Court. If there is a legal fact which is still disputed between the Plaintiff by Defendant on land ownership, origin of the soil, the origin of the letter, or there are disputes about land tenure based on evidence is still much contradict one another, it can be said that the meaning of this dispute is included in title disputes and therefore the settlement of dispute is the authority of the General Court. This provision can be seen in the rule of law Jurisprudence which is Supreme Court of the Republic of Indonesia.
Number 88.K / TUN / 1993 dated September 4th 1994 which asserts that "although the dispute is the result of the officials Decree, but if in the case concerning the proof of ownership rights on a plot, the action on the dispute must be submitted in advance to the General Court for the civil dispute.

Based on the rule of law contained in Jurisprudence, although the right to examine the validity of the officials Decree of State Administration in terms of authority and or procedural is the authority of the State Administrative Court, but if the dispute of the State Administration containing a dispute of Civil Code regarding the proof of land ownership, the civil dispute must be resolved in advance of the General Courts. The Administrative Court Decision will be easier discretion, if the dispute over the ownership rights of land has been broken off by the General Court. It can also be said that with the decision of the General Court, it can be proven that the Plaintiff is the owner and has the right of ownership over the disputed objects. Thus the Plaintiff has filed a lawsuit against the interests of the Administrative Court to get a decision relating to the State Administrative Decisions.

Although the dispute has been proposed and implemented in the Administrative Court, one party (Defendant) can file a demurrer on the court authorized to implement the court in resolving disputes over land ownership rights. This provision is stipulated in Article 77 verse (1) of the State Administrative Court that "Exception of Court Absolute Authority may be filed at any time during the examination, and although there are no exceptions on the Court Absolute Authority, if the judge knows it, he selected for his post shall declare that the Court is not authorized to judge the concerned dispute". On this provision, the judge of State Administrative Court in his ruling can reject the Plaintiff with consideration, or the ruling keeps continuing the trial with the consideration that the object of the lawsuit is the authority of the Court of State Administrative.

Seeing from the Plaintiff to public court through civil judicial with their request for the lawsuit and the decision of the Court of tort.
Thus the dispute settlement land rights can also be processed through the criminal justice, then the claimant may proceed dispute land ownership in the criminal area, which Torts regulated in Article 1365 of the Civil Code, which states that "Every unlawful act which brings harm to someone else, require a person who due to his fault issuing losses, replaces such losses". Principal Agrarian Laws (UUAP) also regulates the provision of land disputes with elements of criminal acts. This provision is mentioned in Article 52 which reads:

a. Whoever willfully violates the provisions of article 15 shall be punished with imprisonment for maximum 3 months and / or a maximum fine of Rp10,000, -.

b. Government regulation and legislation referred to in Article 19, 22, 24, 26, verse (1), 46, 47, 48, 49, verse (3) and Article 50 verse (2) may provide criminal sanctions for violations by imprisonment for maximum 3 months and / or a maximum fine of Rp10,000, -.

c. Criminal in verse (1) and (2) of this article is a violation.

According to these provisions, the settlement of disputes over the land ownership may also enter into the criminal law areas, so the verification through the examination process is in the district court. The procedural law used is Criminal Code Procedures, which is Constitution N0. 8 year of 1981. Whereas the verdict of the criminal case only gives punishment to the perpetrators of criminal acts, not determine the land ownership. It means that such judgement is a verdict that is different from civil law’s adjudication.

c. Dispute Settlement Outside The Court Has Not Attained a Deal yet and Still Use the Trial Judge Mediator

Not only in court (litigation), can the settlement of disputes on proof of the ownership status of land rights also be settled by out of court (non litigation). Therefore, the settlement of disputes over the land ownership through the judiciary are still not able yet to provide legal
certainty, it is considered necessary for settlement of disputes over the land ownership by outside of the court by mediation way. In the mediation efforts, it can be conducted through the authorized institution which are the mediation by the court before the implementation of the trial or through the national land affairs agency and or traditional institutions.

In conducting the trial in Court, the judge can make peace between the parties through the mediation to appoint one of the judges on the court as a mediator. It is carried out according to the instructions of Supreme Court of Indonesia No. 01 year of 2008 on the Mediation Procedure in Court. This instruction was created in order to realize the simple process, fast and cheap based on the principle of Civil Procedural Law that organize the peace efforts that can be intensified through the mediation process integration in procedure case. Nevertheless, it is known from some of the decisions that have been elaborated, the mediation in the judiciary has not been able to resolve the settlement of disputes.

The settlement of disputes on the status of the ownership status of land rights through the mediation or the National Land Agency (BPN). The settlement of disputes of land should be authorized by the National Land Agency (BPN) particularly in respect of the administrative management of land administration. Even less the National Land Agency is as one of the defendant, the settlement of disputes of the ownership status of land rights does not have to being solved through the court (litigation). Moreover, in the provision on the Article 56 of National Land Agency’s regulation No. 4 year of 2006 about Organization and Working Procedure of the National Land Agency and Article 12 letters (a) the Regulations of Minister of Agrarian State No. 3 year of 1999 about delegation of authority to grant and cancellation the decision to grant on state land, not all of the cases should be solved by court verdict, because in the process mediation, the defendant who is already known in real about there are two Freehold Titles that overlapping with two others actually has the authority to propose the recommendations of
cancellation and termination the relationship between people or legal entity and land on the basis of law disability. The authority given not only as one means of embodiment of granting legal certainty and legal protection of the Defendant to the holder of Freehold Title, but also as a form of correction and supervision by a superior to a subordinate.

Likewise in the National Land Agency’s regulation of Republic of Indonesia No. 3 year of 2011 about Management Assessment and Handling of Land Cases (Supreme Court of Indonesia 3/2011) was clearly mentioned in the paragraph 2 verse (2) that the purpose of management assessment and handling of land cases was to give the law certainty in control, ownership, use and exploitation of land in Indonesia. In the paragraph 36 was mentioned the type of degree case in the handling land cases disputes includes the mediation title.

For successful in doing mediation, the officials of National Land Agency / Land Agency have to implement rule of law that regulates the legal rights to land like buying and selling law, marriage law, inheritance law, the law grants, endowments law and nationality laws to civil status and the subject of rights request. Buying and selling law is to value in which the seller or buyer were legally in front of official certifier of title deeds (conveyance) and what are they a Indonesian Citizen and since when being a Indonesian Citizen, what is the purchase is done in accordance with the terms of the legality of buying and selling in paragraph 1320 of Civil Codes. Inheritance law is to value whether the subjects of applicants are actually the rightful heir or the object that was requested on rights.

Legal heir was to assess whether the subject applicant is really legitimate heirs or whether the object that invoked the right to land is inheritance and object does have fulfilled the provisions of Islamic law, criminal code, and customary law in force. It is not allowed to escape the reach of the National Land Agency Officials/Land Office. This research also should be done to the lands that come from a levy on land (land reform) and conversions.

For the areas which the community still holds firm and enforcing customs, land dispute
resolution generally done by community figures that respected from local citizens. The role of the indigenous leaders was very decisive in land dispute resolution. They are playing a role in determining the allocation and supervision of the use of the land by the local citizens. This is because the head or Chief local customs generally have soil data in their respective territory, good amount of happenings, limits, as well as the use of the land by the local citizens. Despite the land data were rarely written but usually they know their history. In addition, indigenous institutions are still function as a place of settlement of the dispute that took place between members of the local customary law community. Therefore, to areas that still have the culture and customs, the most feasible and be able resolve disputes over land ownership rights was by way of negotiation and mediation.

D. Conclusion

The legal certainty against proof of ownership status of land rights is determined from the way his acquisition is by way of implementing the provisions of regulations or laws that govern ownership rights over the land. In a way his acquisition was still a dispute then legal certainty towards the status of evidence is determined by the ruling of the Judge in the trial. Therefore to get the proof of ownership status of land rights should apply the provisions of the law that regulates the ownership rights over the land. Further the evidence of base property rights registered to the National Land Agency so it can issue a certificate of rights ownership (SHM).

The legal certainty in the ownership status of evidence for dispute resolution rights over land can be done via the judiciary (litigasi) and outside of the judiciary (non-litigasi). Settlement through judicial Justice is done through common to property rights lawsuit or decision of land ownership, and through the State of Administrative Court (PTUN) in a lawsuit relating to the determination of the administrative officials of the decision of the State over the issue of the proof of ownership rights over the land. While the settlement outside of the judiciary can be done by way of Mediation through the Court or by the National Land
Agency or done through Indigenous Institutions. The dispute settlement of the ownership of land rights should not have to be resolved through judicial but can be resolved through Mediation outside the judiciary so that it does not require a longer time and the absence of Appeal Remedy or Cassation.

REFERENCES


Boedi Harsono, 1995, *Hukum agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria Isi dan Pelaksanaannya*, Jakarta, Djambaran


Parlindungan A.P., 1993, *Komentar Atas Undang-Undang Pokok Agraris*, Bandung, MAndar Maju