

# Decision Analysis of Ptun Number 11/G/2018/ PTUN-SRG Concerning Overlapping Land Certificates

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## ABSTRACT

The issue of land issues is still being questioned in the community, namely the double certificate. One of them is case number 11 / G / 2018 / PTUN-SRG which sued Tangerang City BPN for the issuance of SHM No.1640 in the name of Jaka Perkasa on the land owned by Shawie Yustira as Plaintiff owner of a 1788 SHM land plot. Why do the factors arise whether is what causes land certificates to overlap in the same plane? and how is BPN responsible if there is a certificate of overlap in the Decision Number: 11 / G / 2018 / PTUN-SRG? The method used in this research is normative juridical. The results of the study revealed the fact that the factors that led to the emergence of a double agreement in the same land with the ignorance or negligence of the people who did not update the land data after renewal related to the new registration, and the land administration information system of the land mafia that took advantage of the land weakness of the BPN land administration system. The responsibility of BPN for the emergence of a double certificate in Decision Number 11 / G / 2018 / PTUN-SRG cases, the Tangerang City BPN is obliged to settle it in accordance with legal procedures in accordance with deliberations, arbitrase, and justice. Forms of moral responsibility, BPN must conduct compilation research that is known to have overlapping problems, namely verification of physical data and juridical data.

**Keywords:** *overlapping, land certificate*

## I. INTRODUCTION

### 1.1. Background

The land and all the contents contained therein are gifts that God has given to humanity to be utilized as well as possible so as to create the welfare of human survival on earth. For this reason, everyone needs land to fulfill their daily needs through land management businesses such as agriculture, animal husbandry, industry, and others.<sup>1</sup> Given the existence of land as an inseparable part of life, it is only natural that land ownership is also one of the primary needs of humans.<sup>2</sup> Once the importance of the use of land for people or legal entities requires a guarantee of legal certainty over the land. To get a guarantee of legal certainty over a parcel of land, it requires legal instruments that are written, complete, clear and

implemented consistently in accordance with the soul and contents of the applicable provisions.<sup>3</sup>

A material right is a right that someone can use against anyone who tries to violate it. The most important material rights are ownership. To be able to be guaranteed legal certainty and legitimacy from the state, every control and use of agricultural land, including in handling land issues, must be based on law,<sup>4</sup> and be settled legally and based on the constitutional basis as regulated in Article 33 Paragraph (3) of the Law Basis of the Republic of Indonesia 1945, hereinafter referred to as (1945 Constitution) as follows:

"The earth and water and the wealth contained therein are controlled by the state and used for the greatest prosperity of the people."<sup>5</sup>

<sup>3</sup> Florianus SP Sangsung, *Procedure for Managing Land Certificates*, (Jakarta: Visimedia, 2007), p. 2

<sup>4</sup> The State of Indonesia is a state of law, this provision is guaranteed in the provisions of the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (3).

<sup>5</sup> Provisions in Article 33 of the Constitution and Political Manifesto of the Republic of Indonesia, as confirmed in the President's speech on

<sup>1</sup> Sri Hajati, et al, *Books Teachings Politics of Law Land First Matter*, (Surabaya: Airlangga University Press, 2017), p.1.

<sup>2</sup> Jimmy Joses Sembiring, *Panduan Mengurus Sertipikat Tanah*, Cetakan Pertama, (Jakarta: Visimedia, 2010), hal.1.

To carry out the mandate contained in Article 33 Paragraph (3) of the 1945 Constitution, the government has issued a law that regulates agrarian issues, namely Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, hereinafter referred to as (UUPA). It is stated in the dictum of UUPA which is a reform of agrarian law and is a land policy that applies in Indonesia to bring happiness, prosperity, peace and independence in society in terms of perfectly sovereign Indonesian law.<sup>6</sup>

The main objective of the UUPA is not only to provide legal certainty and legal protection regarding ownership of land rights for the people, but the UUPA also regulates the types of land rights that can be granted and owned by individuals, both alone and together with other people or entities law. This is because, the state guarantees certainty of rights and legal certainty for the ownership of one's land as stipulated in the UUPA which has required the registration of land in Indonesia. Basically, what is registered on the land is rights. The function of rights is more dominant in the registration of registered land, not rights but the function of rights, where the ultimate goal of land registration is to enable these rights. Registration of land rights is intended to meet the principles of publicity and special principles. The principle of publicity intends that the registration is known by everyone, while the principle of specialism is intended to be known where the land is located.<sup>7</sup>

The registration for the first time can be seen in Government Regulation Number 10 of 1961 concerning land registration which then based on its development the Government Regulation was perfected by Government Regulation Number 24 of 1997 concerning Land Registration (PP No.24 of 1997) and came into force on October 8 1997 hereinafter referred to as PP No. 24 of 1997, and further regulation through the Regulation of the Minister of Agrarian / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing PP No. 24 of 1997 concerning Land Registration.

The implementation of land registration makes it possible for holders of land rights to easily prove the rights to the land under their control. For interested parties, such as prospective buyers and prospective

creditors, it is easy to obtain the necessary information regarding the land that is the object of the legal actions to be carried out, while the government can assist in implementing policies in the land sector. One of the main objectives of the adoption of the UUPA is to realize legal certainty regarding land rights for the people of Indonesia.

Provision of legal certainty and legal protection for legal holders of land rights who have registered their rights, as proof of rights issued certificates that are copies of registers.<sup>8</sup> It is stated in Article 32 Paragraph (1) PP No.24 of 1997 concerning land registration, namely that "A certificate is a proof of rights which is valid as a strong proof of physical and juridical data contained therein, as long as the physical and legal data are in accordance with the data contained in the relevant land title and measurement book".

To better guarantee land ownership, a person goes to the Notary / Land Deed Making Officer to be forwarded to the National Land Agency (BPN) so that a land certificate can be made as proof of ownership. Therefore, it is highly recommended that any land ownership be made as an authentic proof in the form of a land certificate containing physical and juridical data so that their ownership rights can be protected and guaranteed by law. Land certificate is proof of rights and acts as evidence that has a strong evidence.<sup>9</sup>

If the land being applied for is a certificate, and the BPN has issued or issued a certificate of land that was obtained legally in good faith and actually controls the land, then other parties who feel they have rights to the land can no longer claim their rights if within 5 (five) ) the year since the issuance of the certificate did not file a written objection to the certificate holder and the local BPN or did not file a lawsuit with the court regarding land acquisition or certificate issuance.<sup>10</sup>

Problems that often arise which then lead to court are usually equally claimed and both have proof of ownership in the form of a certificate even though only a portion of the existing land object is claimed. In various cases a double certificate was issued for a single land object. The issuance of a double certificate is certainly inseparable from the actions of the applicant who when submitting land data to the PPAT to later request a land certificate from the BPN.

A claim for a land object which is then applied for is made a certificate in front of the Notary / PPAT which then the BPN issues the certificate means that it has simply trusted the data submitted by the applicant without having to re-check the truth of whether the proposed land object already has a certificate or proof of other rights . If the certificate issuance occurs. As a profession whatever its field, it will never be separated from responsibility. Notary / PPAT and BPN who are carrying out their office assignments that do not apply

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August 17, 1960, which obliged the State to regulate land ownership and lead its use, until all land in the entire sovereign territory of the nation is used for the greatest prosperity. the people, both individually and cooperatively. See, Arguing Law No. 5 of 1960, see also Prof. Dr. Muhammad Bakri, SH., MS, Right to Control Land by the State (New Paradigm for Agrarian Reform), (Malang: Brawijaya University Press, Revised Edition, 2011), p. 1.

<sup>6</sup> Notonagoro, *Political Law and Agrarian Development in Indonesia*, (Jakarta: Bina Aksara, 1984), p. 4-5.

<sup>7</sup> Bachtiar Effendi, *Land Registration in Indonesia and the Implementing Regulations*. (Bandung: Alumni, 1993), p. 44.

<sup>8</sup> *Ibid*, p. 78.

<sup>9</sup> Aartje Tahupeiory, *The Importance of Land Registration in Indonesia*, First Matter, (Jakarta: Achieve Asa Success, 2012), p. 38

<sup>10</sup> *Ibid*.

the principle of vigilance and trust the data submitted by the applicant, while the data may be a falsity used for the requirements for submission of the cancellation of land title, which is actually the object of land. there are parties who have, or there are parties who are not responsible for utilizing the weaknesses of the absence of a basic map owned by BPN, then these actions can still be held accountable because they have harmed the legal owner of the relevant land object.

This condition is exactly what is experienced by Sauwie Yustira who owns a plot of land ownership number 1789 with an area of 1,600 m<sup>2</sup> (one thousand six hundred square meters) in the City of Tangerang precisely in the Kavling DPR Block B 153-B / 164-A, Kelurahan Pinang, Pinang District, Tangerang Regency. After the division is now entered the city of Tangerang. Sauwie Yustira (Plaintiff) as the land owner sued the local BPN (Defendant I) through the State Administrative Court (PTUN) in case Number 11 / G / 2018 / PTUN-SRG because it was considered to have issued a deed of ownership certificate Number 1640 / Keloktog Village with an area of 696 m<sup>2</sup> (six hundred twenty six square meters) in the name of Jaka Perkasa (Intervening Defendant) on January 28, 2018. The deed was discovered after the Plaintiff checked BPN for a purpose, the land object was certified in the Plaintiff's name.

The Plaintiff then sent a request to BPN for the revocation of ownership number No. 1640 / Keloktog Kelurahan owned by the Defendant because there had been overlapping with the existence of two land rights status in a part of the land area, namely between Certificate of Ownership Number 1789 / Pinang, an area of 1,600 M<sup>2</sup> (one thousand six hundred square meters) currently registered in the name of the Plaintiff and Certificate Number 1640 / Kelurahan of Neroktog with an area of 696 m<sup>2</sup> (six hundred twenty six square meters) in the name of the Intervening Defendant.

Starting from this, in this study the author will only focus on the completion of the double certificate and the responsibility of the National Land Agency so that the research study is not too extensive. With the completion of the double certificate there is at least a guarantee of legal protection so as to create a legal certainty for landowners.

## **1.2. Problems**

In accordance with the background above that has been described by the author, then several problems can be taken, namely:

1. What factors cause the land certificate to overlap in the same parcel object?
2. What is the BPN's responsibility if there is an overlapping certificate in Decision Number: 11 / G / 2018 / PTUN-SRG?

## **1.3. Research Methods**

The research method becomes an important part in scientific research. Therefore, in research on land ownership with overlapping certificates, the author

puts forward the normative legal research method with the nature of descriptive research because it further explains the legal norms of land registration through BPN with two claims, namely the law and the double certificate case in the PTUN Decision. No.11 / G / 2018 / PTUN-SRG obtained from primary data sources in the form of PTUN court decisions and secondary data obtained through library research. The data collection technique is carried out through document studies and interview data.

## **2. ANALYSIS**

### **2.1. Claim of Double Certificates in Case Decision Number 11 / G / 2018 / PTUN-SRG**

#### **2.1.1. Case Chronology**

In a parcel of land objects that have been certified sometimes appear double certificates on a part of the land area or all existing land objects. The issue of double certificates often appears to the public after the case is filed in court, one of which is case number 11 / G / 2018 / PTUN-SRG. The parties in this case, namely Sauwie Yustira (Plaintiff) had a case with Tangerang City National Land Agency (BPN) Office (Defendant I), and Jaka Perkasa (Defendant II Intervention). The lawsuit of the Tangerang City BPN for issuing a certificate of land in the name of Defendant II of the Intervention on land owned by the Plaintiff so that there was an overlapping of land ownership over the same object.

The Plaintiff is the owner of a plot of land owned by Number 1789 with an area of 1,600 m<sup>2</sup> (one thousand six hundred square meters) in the City of Tangerang precisely in the Kavling DPR Block B 153-B / 164-A, Pinang Village, Pinang District, Tangerang Regency. After there was an administrative division, the area is now included in the City of Tangerang. The Plaintiff as the land owner sued the Tangerang City BPN through the State Administrative Court (PTUN) because it was considered to have issued a deed of ownership certificate Number 1640 / Keloktog Village with an area of 696 m<sup>2</sup> (six hundred twenty six square meters) in the name of Jaka Perkasa (Defendant II Intervention II) on January 28, 2018. The deed was discovered after the Plaintiff had checked BPN for a purpose, the object of the land had been certified in the name of Defendant II.

The Plaintiff then sent a request to BPN for the revocation of ownership number No. 1640 / Keloktog Kelurahan owned by the Defendant because there had been overlapping with the existence of two land rights status in a part of the land area, namely between Certificate of Ownership Number 1789 / Pinang, an area of 1,600 M<sup>2</sup> (one thousand six hundred square meters) currently registered in the name of the Plaintiff and Certificate Number 1640 / Kelurahan of Neroktog with an area of 696 m<sup>2</sup> (six hundred twenty six square meters) in the name of the Intervening Defendant.

The legal basis for the issuance of Certificate of Ownership Number 1789 / Pinang is obtained through the buying and selling process. Previously the land owned by Johannes Hasan was sold to the Plaintiff based on the sale and purchase deed number 290/32 / Tangerang / JB / 1993 dated October 1, 1993. After the land was controlled, stakes were made in the form of land boundaries which became proof of ownership and since the land the Plaintiff's property is routinely checked and treated properly. Not only that, land and building taxes are always paid every year as proof of compliance as a citizen in paying taxes.

The Plaintiff is aware of the existence of a double certificate on his land when there is an interest in breaking the land to the Tangerang City BPN. After checking by the Notary Public to the Tangerang City BPN, it was obtained that the land object information had been issued a certificate on behalf of Intervening Defendant II. Related to this, it is confirmed that there has been an unlawful act when applying for the issuance of Certificate of Ownership Number 1640 to Tangerang City BPN because it is not careful in conducting and checking physical data, juridical data both during the process of filing and issuing certificates on behalf of Defendant II Intervention.

As a follow up to the issue of the double certificate, the Plaintiff has made several legal efforts, namely submitting an application for blocking, sending a request for revocation of certificate of ownership on behalf of Defendant II of the Intervention to BPN Kota Tangerang. The efforts made did not get a response, so the Plaintiff took legal action through the Serang City State Administrative Court because it was considered to have taken an illegal action to issue a certificate on the plaintiff's land which legally exists with a certificate and has never been canceled and has never been changed. ownership in any way as evidenced by no change to the Plaintiff's certificate of ownership in the BPN office Tangerang City.

The issuance of a certificate on behalf of Defendant II by the Tangerang City BPN on the plaintiff's land is clearly very detrimental to the Plaintiff as the legal owner of the said land object. This action is very contrary to the applicable laws and regulations and violates the general principles of good governance (AAUPB), which are the basis of AAUPB, namely Law Number 30 of 2014 in Article 10 Paragraph (1) concerning Government Administration which among others is stated 8 (eight) principles, namely the principle of legal certainty, the principle of expediency, the principle of impartiality, the principle of efficiency, the principle of not abusing authority, the principle of openness, the principle of public interest and the principle of good service. In the overlapping dispute or ownership over ownership of the Plaintiff's land, Defendant II's certificate issued by the Tangerang City BPN Office was issued.

With the issuance of the double certificate, it can be indicated that there is inaccuracy and inaccuracy of the Tangerang City BPN Office in the issuance process, because based on Article 25 Paragraph (1) PP No.24 of 1997 concerning Land Registration, it is not accurate in assessing the truth of the evidence

regarding the proof of old rights / prior when collecting and researching juridical data regarding the parcels concerned by the adjudication committee in systematic land registration. Thus it can be ensured that the City of Tangerang BPN did not carry out a thorough research and examination in the issuance of certificates on Defendant II's name so that overlapping occurred or overlapping of the issuance of the certificates on the land owned by the Plaintiff.

### **1. Legal Considerations and Decisions of the State Administrative Court on Overlapping Land Certificates**

The intent and purpose of the Plaintiff to bring a lawsuit to the Serang City Administrative Court as the only way to be taken by the Plaintiff to obtain legal certainty and justice over the issue of the emergence of a double certificate issued by the Tangerang City BPN. Based on the overall considerations of PTUN judges whose descriptions are too long, the legal considerations can be summarized briefly as follows.

Matters considered by the PTUN judge in the case included proving the right of past / previous rights. In the concept of administrative law, the concept of proving a new right and proving an old right of a right to land can lead to legal consequences of the difference in the character of a juridical instrument of evidence of ownership between the two. Proof of new rights as evidenced by the determination of the government in the form of a Decree on Granting Rights (SKPH) has a constitutional juridical character. Meanwhile, proof of old rights (conversion) is followed by state recognition of old rights (customary / western) that are converted to new rights and the type of land rights created by the UUPA produces a certificate model that has a declarative juridical character (adopting its nature).

Therefore, if we pay attention to the disputed object purchased by Defendant II, the land was owned by Sunaryono based on a letter issued by the Tangerang City BPN No.397HM / BPN.36.71 / 2016 concerning the granting of ownership rights to a land area of 696 M2 (six hundred ninety six) meters The square is located in Neroktog Sub-District, Pinang District, Kotang Tangerang as the origin of the land rights owned by the disputed object. Thus, the object of the dispute can be identified as an instrument of proof of ownership of new land titles that have a constitutive juridical character that was born from the decision of a government official.

Conceptually, the norm if the disputed object is connected with the concept of proving a new right to a land title that has a constitutive juridical character and is associated with the norms of Article 1 number 9 jo Article 1 number 7 and Article 87 of the Administrative Law of the Government, according to the court the object of the dispute has fulfilled the elements and / or can be qualified as a government administration decision or state administration decision. By paying attention to the Plaintiff's claim with a claim for a request for cancellation or declared invalid the object of the dispute is a government administrative decision or a state administration decision in which contains a state administrative



dispute in the field of land located in the field of administrative law (public law), then the court Serang state administration has absolute and relative authority to examine, decide upon, and resolve the dispute.

In their consideration, the judge stated that the Plaintiff had a legal standing to file a lawsuit because of the plaintiff's interests in the overlapping case. The Court considered that overlapping land rights between the Plaintiff's land rights and Defendant II's land rights Interventions that were the object of the dispute, were a real concern that the Plaintiffs' interests were specific and actual that had a causal relationship (causal verband). directly with the publication of the dispute object. The judge also considered that the Plaintiff's claim was not obscured (obscuur libel) because it had fulfilled the formal requirements of a lawsuit.

The relationship between the concept of proving a new right and proving an old right to a land title that can lead to legal differences in the character of a juridical instrument of ownership evidence between the two in a dual certificate dispute, can at least be used to identify the juridical character of a certificate of ownership of Noomr 1789 / Desa Pinang, published January 5, 1994 picture of situation number 6523, December 27, 1993, area of 1600 M2 (one thousand six hundred square meters) in the name of Plaintiff Sauwie Yustira casu owned by the Plaintiff and the juridical character of the object of the dispute namely certificate of ownership number 1640 / Keloktog Kelurahan, published date December 14, 2016, measuring letter dated May 18, 2016 Number 1316 / Nerkotog / 2016, area of 696 M2 (six hundred ninety six square meters) in the name of Jaka Perkasa (Defendant II Intervention).

Based on tracing the plot of the origin of the land rights in the Plaintiff's certificate found a legal fact in the form of juridical data in the Plaintiff's land book which in the statement section explains the origin of the plot from the replacement of the old certificate from the title of land in the land rights book belongs to number 218 / Pinang Village. Furthermore, juridical data on the origin of land ownership rights number 218 which also explains that the origin of land ownership rights is based on the Decree of the Governor of the Region of West Java, December 28, 1981, Number Sk.2562 / DA.PHT / HM / 1981.

Through a search of the plot of origin of the land rights, the legal facts were found in the form of legal data from which the rights were obtained from the granting of ownership based on the Decree of the Head of the Land Office of Tangerang City Number 397 / HM / BPN.36.71.2016.

Accordingly, according to the court both certificate of ownership number 1789 / Pinang Village owned by the Plaintiff and the object of dispute, both are certificates of ownership of land which has constitutional juridical character. This means that the granting of title to the land owned by the two certificates is obtained from a plot of land that is controlled directly by the state (state land) as evidenced by a Government decree in the form of a Decree on Granting Rights (SKPH).

Starting from the description above, the court agreed in substance to the existence of the two certificates that both have proof of rights in the form of assigning rights from the competent authority / overlapping their land rights on 1 (one) plot of land, of course causing problems the law in it is known as logical resistance in the form of contradictory resistance which implies that the existence of a certificate of ownership number 1789 / Pinang Village owned by the Plaintiff and the existence of the object of the dispute cannot be equally true. One of the existence of a certificate must be wrong, although in the law of contradictory logic also allows both of them to be wrong.

The overlap occurred, according to the court the issuance of the object of the dispute by Defendant II clearly did not provide legal certainty and did not provide legal protection to the holders of land titles in this case belonging to the Plaintiff. Apart from that, the existence of a certificate of ownership in the name of the Plaintiff which has long been issued since January 5, 1994, should have been registered with his land rights as compared to the purpose of the land registration activity that requires a guarantee of legal certainty and orderly administration of the land itself. As stipulated in Article 3 PP No.24 of 1997 concerning land registration, the purpose of land registration itself is to provide legal certainty and legal protection to the holders of rights over a parcel of land so that they can easily prove themselves to be holders of the relevant rights and to exercise order land administration.

The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of Tangerang City as an element that carries out governmental functions within the scope of service functions and protection functions in administering land administration, should regulate disputed objects based on laws and regulations and AUPB including the principle of legal certainty that requires every government administration policy prioritizes the basis of laws and regulations, propriety, justice and justice. Meanwhile, the principle of accuracy requires a decision and / or action must be based on complete information and documents to support the legality of the determination and / or implementation of the decision and / or action, so that the relevant decision and / or action is prepared carefully before the decision and / or action it is determined and / or done.

Based on these considerations, the court judged that the substance of the issuance of the object of the dispute was contrary to Article 3 of PP No.24 of 1997 concerning Land Registration and contrary to the principle of due diligence and the principle of legal certainty. Therefore, it can be stated in the Serang City state administrative court decision in its decision to adjudicate and state that:

- a. Defendants of Defendant and Defendant II were declared not accepted;
- b. Grant the plaintiff's claim in full;
- c. Declare the cancellation of the government administrative decree in the form of certificate of ownership number 1649 / Kelurahan of Neroktog, issued on December

- 14, 2016, measurement letter on May 18, 2016, Number 1316 / Neroktog / 2016, area of 969 M2, in the name of Jaka Perkasa;
- d. Require Tangerang City BPN to revoke and write off land titles certificate number 1649 / Keloktog Kelurahan; and
  - e. Punish Defendant and Defendant II paid the court fee.

### *2.1.2. Factors That Cause Land Certificates Become Overlapping in the Same Plane Object*

Land becomes the most important part in every activity of human life whose existence will not be separated from each other. The importance of land for community life and land needs that are increasing every time, has resulted in various complexities of social problems in the middle of the community in the field of land ownership, both among fellow citizens, with legal entities, and with the government. In dealing with these problems, it requires problem solving (problem solving) by promoting a more comprehensive approach because the problem of land is a problem that is quite sensitive in the community that must be handled properly and correctly.

Cases of overlapping land ownership which generally occur are caused by buying and selling events or overlapping documents and evidence of land ownership documents. Land issues such as this can trigger social unrest for the community because it creates uncertainty of ownership and legal uncertainty. Therefore, in order to avoid or minimize cases of overlapping land issues, the government has issued a legal policy regulation through the LoGA calling for all parcels of land in Indonesia to be registered as regulated in Article 19 Paragraph (1) of the UUPA which constitutes legal basis for land registration. More detailed are regulated in the derivative regulations to improve regulations on land registration in Indonesia, the issuance of PP No. 24 of 1997 concerning Land Registration. The implementation of land registration is not only an obligation of the government as affirmed in Article 5 PP Number 24 of 1997, but also becomes an obligation for holders of land rights to register their land rights.

This condition is exactly the case experienced by landowners in the case of Decision Number 11 / G / 2018 / PTUN-SRG which is one of the land cases arising from the discovery of a double certificate or overlapping in which more than one certificate occurs where the land object is partially or partially the same. or based on the mapping of land objects whose coordinates are on land that has been certified by another person or is in contact with other land parcels that are certified.

The double certificate, which is still widely encountered in the midst of society, does not just appear. Of course there are factors that cause the emergence of multiple certificates in the same land object and this point is the subject of discussion in this study because of the many disputes about land

ownership there are more than one basis for land ownership rights or multiple certificates resulting in two (or more) fields land overlaps with all or part of the land.

In this case relating to land dispute cases that have been decided at the Serang State Administrative Court with Case Number 11 / G / 2018 / PTUN-SRG relating to the overlapping of a plot of land in the Neroktog Village, Pinang District, Tangerang City, Banten Province which became the object of the dispute and those who felt disadvantaged their interests were suing the Head of the Tangerang City BPN (Defendant I) as the authorized official who had issued Certificate of Property Rights No.1640 covering 696 M2 (six hundred ninety six square meters) on behalf of Jaka Perkasa (Co-Defendant II). The problem is that the issuance of SHM No.1640 in the name of Jaka Perkasa is located on land owned by Shawie Yustira as the Plaintiff of the owner of a piece of land of SHM No.1789 with an area of 1,600 m2 (one thousand six hundred square meters) in the City of Tangerang, precisely in the DPR Plot Blok B 153-B / 164-A, Pinang Sub-District, Pinang Sub-District, Tangerang Regency which is currently administratively after an area expansion is now included in the City of Tangerang.

In order to find out the answers to the factors that led to the emergence of a double certificate in the same parcel object, the author has conducted further studies from various literatures and a series of interviews. The factors that cause double certificates are quite complex problems because they are not caused by one factor but rather multiple factors. As for several factors causing the emergence of a double certificate in the same soil object, after further study the authors found 2 (two) factors that caused it, namely:

1. Ignorance or negligence of the people who do not update the land data after changes to the regulation of land registration regulations greatly affect the potential for the emergence of a double certificate

One of the legal principles states that when a statutory provision has been enacted widely applicable in the community, then at that time it is also considered that all the people already know (presumption iures de iure) and that the provision is binding so that it does not become a reason for ignorance freeing or forgive someone apart from lawsuits (ignorantia jurist non excusat). The statement is appropriate to be used for ignorance or negligence of the community who did not update the land data after changes to the regulation of land registration regulations that previously referred to PP No.10 of 1961 which then has now been amended by PP No.24 of 1997 there are provisions that require Landowners whose land registration is based on a new cadaster namely PP No.10 of 1961 are required to re-register changes to the local BPN office. The potential for a double certificate to be in a certified land that refers to the old rules and is not renewed with a new rule is very likely the potential for a double certificate.

This is in line with the opinion of Nazirwan as a representative of the Central National Land Agency,

the occurrence of double certificate cases that have arisen at this time could have occurred because at the time of submission of registration to BPN and then obtaining the certificate which was first published in 1993 which still follows the old rules or can be called the new cadastral period, namely Government Regulation No. 10 of 1961 and has not followed the new rules, namely Government Regulation No. 24 of 1997 concerning Land Registration. Therefore, many cases like this occurred before 1997 due to different systematics, which in the end after being replaced by the new Regulations the lands registered before 1997 became random because there were also some who did not re-register their land rights for ratification. From each parcel of land and its boundaries as well as those entitled to the land to be recorded in the land book along with the measurement letter on the measurement of each parcel of land along with its boundaries.

Based on Nazirwan's opinion above, then if you look at the case in the Decision No. 11 / G / 2018 / PTUN-SRG, certificate of ownership rights to 1789 owned by the Plaintiff issued by the Tangerang City BPN published before PP No. 24 of 1997 concerning Land Registration. If you look at its history, the issuance of SHM No.1789 is a replacement from SHM No.218 / Pinang on behalf of Johannes Hasan as the previous land owner and after being bought by the Plaintiff, his land rights were shut down because he changed ownership to SHM No.1789 on behalf of the Plaintiff.

Since the purchase in 1993 landowners have not updated juridical or physical data to be legalized by BPN. By not updating the data, so that the Tangerang City BPN does not have land keeping data or land mapping that is more up to date (updated) in accordance with the real conditions on the ground today. The land owner only maintains by making land boundaries and paying taxes according to his obligations until finally a double certificate emerges with the object of the land being on his own land.

By not updating the land registration data to adjust the physical and juridical data in the land register registration map, list of names, measurement letters, land books and certificates with changes that occur later by land owners who have been certified based on new regulations (PP No. 24 of 1997) resulted in the Tangerang City BPN not having the latest data on these land objects. Whereas in Article 36 Paragraph (2) PP 24 of 1997 it is determined that the relevant rights holders must register the intended changes to the local Land Office. Provisions regarding the mandatory list are also included in Article 4 Paragraph (3). PPAT is even required to match the contents of the certificate of rights in advance with the registers in the Land Office before making the necessary deed. No updating of land data published based on the old rules by adjusting to the new rules, so that the potential for overlapping double certificates can not be avoided.

## 2. Weak land administration system at BPN

One of the most important parts in managing land is administrative discipline. Land cases that arise that often lead to prolonged conflict in the community due to the weakness of the land administration system that is still not optimal in the

presentation of land data, for example BPN that does not yet have a basic land map or the latest data on land registration in the form of land documents or certificates. The absence of such data makes it difficult for BPN officials to explain to the wider community who have an interest in their land ownership.

This is in line with the opinion of Gunawan Djajaputra,<sup>11</sup> that double certificates often occur usually due to administrative errors in which the BPN does not check or keep archives of land certificates properly as sometimes they can cause overlapping of land objects rather than intentionally. Weak land administration data is in the form of unclear rights or history of land ownership in dispute, so that overlapping ownership in administration and land tenure often occur in the field. In addition, the overlapping factor is usually due to inaccuracy from the land administration, which does not carry out structured database management, land that has been registered or not yet registered, but if the fraud factor of the BPN itself is very minimal. These things are factors that often occur.

In the case of Decision Number 11 / G / 2018 / PTUN-SRG, the authors see the cause of the double certificate due to the negligence of officers in the process of granting and registering land rights due to lack of supervision and control of a land policy that has been issued. As a result of the official's negligence, an error occurred in the calculation of the area of the land resulting in a double certificate between SHM No.1789, on behalf of the Plaintiff and SHM No.1640, on behalf of Defendant Prosecutor Jaka II on the same land object. Another factor is that there is no data checking by the Tangerang City BPN Office that causes someone to claim the land is theirs. In addition, at the time of measurement and research in the field, applicant SHM No.1640 was judged intentionally or unintentionally showing incorrect boundaries.

The weak land administration system at the Tangerang City BPN is also evident from the absence of the SHM No.1789 document when the Defendant submitted an application for the issuance of SHM 1640 even though it was on the same land object. The existence of SHM No.1789 / Pinang Village which has been published since January 5, 1994 should have already registered its land rights as from the purpose of the land registration activity which is nothing but to create legal certainty and orderly administration of the land itself. This is in line with the provisions of Article 3 PP No.24 of 1997 which emphasizes that the purpose of registering land itself is to provide legal certainty and legal protection to the holders of rights over a plot of land so that they can easily prove themselves to be holders of the relevant rights and to implementation of orderly administration of land.

By looking at the weaknesses of the land administration system, it is often also exploited by unscrupulous land mafia members who take advantage

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<sup>11</sup> Author, Interview with Mr. Dr. Gunawan Djajaputra, S.H., S.S., Op.Cit.

unlawfully by multiplying certificates with fake papers. For example, making fake C letters, heirs and fake deaths as well as false reporting on BPN as the certificate maker.

Based on the two factors causing the occurrence of a double certificate on the same land object in the case of Decision. 11 / G / 2018 / PTUN-SRG mentioned above, is part of the land legal issues that must receive serious attention from the government so that conflict over land disputes that occur in the community can be avoided. Therefore it is needed an understanding of the government apparatus in this case BPN officials and citizens, regarding agrarian law accompanied by a good governance system of administration and land management, including inventory and recording. Efforts to increase understanding of land or agrarian law and good governance, especially among government officials are needed. In order for land administration to be orderly, there needs to be a strengthening of the land administration system so that land disputes resulting from double certificates do not occur in the future or at least the cases can be minimized.

### *2.1.3. BPN responsibility if an overlapping certificate occurs in Decision Number 11 / G / 2018 / PTUN-SRG*

BPN divides land cases into three parts, namely land disputes, land conflicts, and land cases. All three are equally as land cases, but the difference lies in the scope of the impact of the land problem. If the land case has a broad impact, then it is called a land conflict and vice versa if it only affects two conflicting parties then it is called a land dispute, whereas if the case is processed up to the court level it is referred to as a land case. Based on this understanding, the case of a double certificate in decision Number 11 / G / 2018 / PTUN-SRG as a form of land dispute / case.

If we look at the factor of the emergence of a double certificate in this case, one of the writer's spotlight is the inaccuracy of the Tangerang City BPN Official in issuing Defendant SHM 1640 owned by Defendant II even though in the same land object earlier SHM No.1789 belonged to the Plaintiff whose existence BPN should have known it before issuing the Defendant II certificate. The PTUN Judge has also considered that the substance of the issuance of certificate of SHM No.1640 is contrary to Article 3 PP No.24 of 1997 and contradicts the principle of rigor and the principle of legal certainty.<sup>12</sup>

That in theory, the concept of responsibility arises due to a causal relationship or cause and effect in the sense that the person responsible is considered to be the cause of one of the effects that has been done.<sup>13</sup>

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<sup>12</sup> Copy of Decision Number 11 / G / 2018 / PTUN-SRG, p.78.

<sup>13</sup> Aholiab Watoly, Knowledge Responsibility: Considering Cultural Epistemology, Fifth Matter, (Yogyakarta: Kanisius, 2005), p. 208.

Based on the concept of the responsibility theory, in the case of overlapping certificate of land ownership of the Plaintiff and Defendant II issued by BPN, the Tangerang City BPN must be responsible for the issuance of a double certificate because it has caused legal uncertainty and certainty of land ownership for the Plaintiff. The form of BPN responsibility, procedurally, can be done by the City of Tangerang BPN, which is obliged to resolve the problem in accordance with applicable legal procedures.

According to Nazirwan, the responsibility of the Tangerang City BPN must carry out efforts to resolve land disputes in accordance with applicable laws and regulations by upholding justice and respecting the rights and obligations of the parties by taking steps to resolve disputes in several ways, namely by carrying out settlement directly with the basis of deliberation, settlement through aribtrase, and settlement through the judicial body.<sup>14</sup>

In addition to the settlement mechanism as explained above, in the opinion of the authors the settlement by deliberation must be prioritized before any legal proceedings are made to the court. Settlement by inviting both parties to be deliberated with the aim of finding a solution. If the meeting does not meet a meeting point, then the next step is to settle a legal route through a civil suit or a state administration court suit conducted by the disputing party. The legal route through the civil court is a dispute over ownership of overlapping parcels of land, while the legal route through the TUN court is the settlement of a dispute over administrative procedures for the alleged or administrative legal defect in the area to request the cancellation of SHM No.1640 belonging to the Defendant.

Furthermore, Nazirwan also stated that in addition to those mentioned above, if losses are caused by negligence, inaccuracy and / or intentionality of the BPN, the BPN is morally and materially responsible. According to the author, morally what can be done by Tangerang City BPN as a form of its responsibility must conduct research when it is known that there are overlapping problems in the issuance of certificates. Research that can be done is by examining physical data and juridical data which in the practice of implementation there are usually BPN employees who specifically handle the examination of physical data and juridical data. The next step after all research is done, the BPN is obliged to cancel one of them and announce it to the public.

For material liability, the Plaintiff may take legal action through a civil suit to claim damages to BPN. However, in this case, the Plaintiff did not take legal action against the civil lawsuit so that the material responsibility of the Tangerang City BPN was free from the Plaintiff's claim.

Based on the Regulation of the Minister of ATR / Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases, in Article 4 that disputes, conflicts and or land cases can be submitted with complaints or objections from persons

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<sup>14</sup> Author, Interview with Nazirwan, Op.Cit.



/ legal entities who feel disadvantaged because of overlapping or certificates land rights for which one of the foundations of the right there is clearly an error (Article 11 paragraph 3 letter e), in this case the Plaintiff before his case was taken through a legal process has made a legal effort that is sending a letter requesting the blocking and revocation of SHM No.1460 on behalf of Defendant II to BPN Kota Tangerang. However, the legal remedies were not responded by the Tangerang City BPN so the Plaintiff took legal action to the state administration court. The PTUN judge stated that the government administration decision was canceled in the form of certificate of ownership number 1640 / Kelurahan of Neroktog, issued on December 14, 2016, measurement letter on May 18, 2016, Number 1316 / Neroktog / 2016, area of 969 M2, in the name of Jaka Perkasa.

### 3. CLOSING

#### 3.1. Conclusion

1. Factors that cause double certificate problems in the same land object are ignorance or negligence of the community who do not update land data after changes in new registration regulations, and weaknesses in the weak BPN land administration system and the existence of mafia elements. Land that takes advantage of the weaknesses of the land administration system.
2. The responsibility of BPN for the emergence of a double certificate in the case of Decision Number 11 / G / 2018 / PTUN-SRG, Tangerang City BPN is obliged to resolve the problem in accordance with applicable legal procedures namely through deliberation, arbitration, and justice. Form of moral responsibility, BPN must conduct research when it is known that there are overlapping problems, namely by checking physical data and juridical data.

#### 3.2. Sugestions

1. The Tangerang City BPN should be more responsive in dealing with land dispute resolution problems that are indicated to be overlapping by applying legal procedures in force because in this case, the Plaintiff has made legal efforts by sending a letter requesting the cancellation of certificate and blocking of SHM No.1640, but did not get a response so that the case continues to be resolved through the state administrative court.
2. For people who have certificates made before PP No.24 of 1997, it is necessary to update physical and juridical data which is then requested for authorization from BPN so that BPN has up to date data (novelty) so that these efforts can minimize the emergence of double certificates at a later time.

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