

Analysis of Land Certificate's Publication Based on Land History and No Dispute Letter of Statement by Village Head Officer (Supreme Court's Jurisprudence Number 2943 K/PDT/2016)

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ABSTRACT

Land certificate is not disputed made by the Head of Village/Village Head based on a letter of application made by the party as the applicant for land registration, as a completeness in obtaining a certificate of rights, but often in practice it is found the actions of the Head of the Village and Head/Village Head as state administration officials who misuse of its authority, causing related parties to be harmed and cause a land dispute. Problems encountered in writing this thesis are how the validity of the certificate issued based on a land history certificate and a fake land dispute certificate made by the village head official in the Supreme Court Decision Number 2943K/Pdt/2016 and how the land certificate is based on the basis of rights the falsified can be accepted by the judge. The research method used in writing this thesis is normative legal research. The results showed that the validity of the certificates based on falsified rights can be accepted by the judge in the Supreme Court Jurisprudence Number 2943K / Pdt / 2016, where this is based on the role of the Acting Village Head in issuing the land certificate. Where the judge has the consideration that the PT. Jasa Marga is a buyer in good faith who buys the object of the dispute. PT. Jasa Marga has taken sufficient care/ duty measures to reflect being a buyer in good faith by checking the status of the disputed land object at the local National Land Agency.

Keywords: *Certificate of Land History, Village Head, Land disputes*

1. INTRODUCTION

Referring to Article 33 Paragraph (3) and Paragraph (5) of the 1945 Constitution which constitutes a constitutional basis or basis, to carry out an implementation of that article is specifically regulated in the Law, which regulates the management of natural data sources, especially in the field of land and useful to overcome various kinds of land problems caused. It can also increase a sustainable national development activity, where it requires encouragement and support for the creation of guarantees of legal certainty in the agrarian field. The government, in this case, has established a rule which serves as a guideline, guideline, or regulation in question is Law Number 5 of 1960 concerning Basic Regulations on Agrarian

Principles (hereinafter abbreviated to UUPA). One of the aims of UUPA is to provide legal certainty and protection of land rights for all Indonesian people.¹ Legal certainty over land rights itself is regulated in Article 19 Paragraph (1) of the UUPA which includes legal certainty for individuals or legal entities, for the holder of a land right, or also for a subject contained in land rights, as well as a legal certainty regarding a land layout, land boundary, length, width of the land or the object of the land rights.² In Article 20 Paragraph (2) UUPA and Article 26 Paragraph (1) UUPA explains the transfer of rights and sale and purchase and the rest in other articles. Where in this case the term 'vocabulary of sale and purchase' is not written, but only written vocabulary is transferred. The meaning of the transferred vocabulary itself refers to a legal action that was intentionally carried out for the transfer of a right to land to another party. Transferring a title to the

¹ Boedi Harsono, *Indonesian Agrarian Law: History of the Establishment of the Basic Agrarian Law, Content and Implementation, Volume 1*, (Jakarta: Trisakti University Publisher, 2013), Page 219.

² Bachtiar Effendi, *Land Registry in Indonesia and Implementing Regulations*, (Bandung: Alumni, 1983), Page 20.

land is carried out in the form of buying and selling, exchanging, and giving. So this article was transferred, this is a legal act and the transfer of ownership of land rights. Talking about land ownership is a very important part of meeting the needs of the community. This relationship proves ownership of land which is used as proof of ownership of private land, whether individual, joint, or legal entity. The only proof of ownership can be in the form of a certificate.

The dominant function of a certificate is as a tool of rights or proof of ownership of land rights that are recognized by the Government.³ This certificate is a certificate of proof of a right, whereby this certificate is issued for the benefit of the party holding the right, based on the physical data of the land contained in a measurement letter along with the juridical data of the said land or which has been registered by the book of land registration.⁴ A certificate of land history is regulated in the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration (PMNA 3 of 1997) and in Article 76 Paragraph (1) letter I that certificate of land history prepared by the Office of Land and Building Tax Service accompanied by the basis for the rights transferred and a land certificate not disputed as regulated in Article 76 Paragraph (3) letter a number 4.⁵ The basic regulation stating the village head who made a certificate of land history and a letter of non-dispute can be seen in Article 76 Paragraph (3) letter b PMNA 3 of 1997. Referring to the sentence above, where each Head of Village / Headman in issuing a certificate, must apply the principle of accuracy. Ateng Syafrudin explained that the principle of accuracy is where the interested parties first listen to the acquisition of information about whether an acquisition of land rights is carried out by a party before a decision is handed down and the parties are faced with an adverse decision.⁶ In practice, it is often found that actions or actions are taken by the Camat and the Village Chief as Village Administration officials who abuse their authority for mere profit so that it causes the related parties to be harmed and causes a land dispute in the future.

This dispute originated from the abuse of the authority of the Village Head Official who made a fake letter, in which the Village Head falsified a letter for issuing

rights based on the document. As well as, using or ordering other parties to use the forged documents earlier, to make the letter as if it was a letter that was not forged or considered as an authentic one. As well as making land information not dispute over the land in question, this will certainly lead to dual ownership among the same land object.

In this study, the author takes the example of the case contained in the Supreme Court Jurisprudence Number 2943K / Pdt / 2016. In this case, the Supreme Court Judge won PT Jasa Marga. Where a transfer of rights to PT Jasa Marga has been done by a party whose name has been included in the certificate of land rights. Where this certificate is based on a non-dispute land certificate and a certificate of land history that was made and falsified by the Acting Village Head. Whereas on the other hand, there was a party who had the position of the original plaintiff, named H. Muhammad Fikri Gani, who felt disadvantaged because he also felt he had ownership of the land. While the Village Chief Official has been proven guilty of falsifying letters and has been convicted based on Bekasi District Court Decree No. 664 / Pid.B / 2004 / PN.Bks.

Based on the things stated above, the writer has an interest in conducting a legal research. concerning certificate of validity which is issued based on a certificate of land history and a land certificate of non-false dispute made by the official of the village head in the Supreme Court Jurisprudence Number 2943K/Pdt/2016. And also discusses land certificates made based on falsified bases which can be accepted by the judge.

2. RESEARCH METHODS

There are several types of research method properties. According to Soerjono Soekanto, from the perspective of the purpose of legal research itself there are two types, namely normative legal research and sociological or empirical legal research.⁷

In this study, the research used was normative legal research. The reason the author chose normative legal research is based on the search for truth to get something that is axiologically a value as a reference or reference to be studied.⁸

The research approach used by the author is the Law approach and case approach. The Law Approach is an

³ Effendi Perangin, *Practices for Managing Land Rights Certificates*, (Jakarta: Rajawali. 1986), Page 1.

⁴ Adrian Sutedi, *Transfer of Land Rights and Registration*, (Jakarta: Sinar Grafika, 2014), Page 141.

⁵ Ministry of Agrarian Affairs and Spatial Planning / Head of National Land Agency, *Regulation of the Minister of Agriculture / Head of National Land Agency regarding Provisions for Implementing Government Regulation No. 24 of 1997 concerning Land Registration*, Article 76 paragraph (3).

⁶ Adrian Sutedi, *Transfer of Land Rights and Registration*, (Jakarta: Sinar Grafika, 2007), Page 181-182.

⁷ Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: University of Indonesia, 2014). Page 50.

⁸ Peter Mahmud Marzuki, *Legal Research Revised Edition*, 8th Edition, (Jakarta: Kencana Prenada Media Group, 2013), Page 33.

approach that is carried out by examining all laws and regulations relating to cases and case approaches by examining related cases related to the issue in Supreme Court Jurisprudence Number 2943K/Pdt/2016.⁹ Data collection in this study uses secondary data. Secondary data comes from library data which has the aim to solve a legal issue and provide a prescription regarding the source of research.¹⁰ Data collection techniques contained in this study is a literature review. The collection of legal materials is from secondary legal material, which comes from articles, journals, and interviews with several sources. The analysis technique of this research is to use qualitative legal material analysis methods, namely research that emphasizes legal material obtained through various sources of legal materials including books, literature, articles, journals, and Supreme Court Jurisprudence Number No. 2943K / PDT / 2016 and related laws and regulations.

3. DISCUSSIONS

A certificate land is written evidence that shows ownership of the land. Proof of land ownership includes ownership of a name holder of a right, at the time the UUPA comes into force and a change in rights. Where a proof of a transfer of rights reaches the hands of the holder of the right at the time of bookkeeping rights. Bookkeeping rights refer to the physical control of a parcel of land, for approximately 20 years or more consecutively.

In other aspects, of course, certificate land is written evidence under the hand and has a strength of proof. But the power of proof is weaker than an authentic proof of evidence. Regarding the land certificate, it can be classified as a basis for a right or a juridical data on land and can be used as a request for registration of land rights requirements regulated in agrarian regulations. Therefore the land certificate is a very important document in the process of issuing a certificate of land rights.

The position of the letter issued by the Head of the Village / Headman, namely the statement of land, in conducting a sale and purchase of a plot of land regulated in Government Regulation Number 24 of 1997, the legal position is valid if it is known by the Camat as PPAT that is on the legal basis contained in the Explanation of Article 7 paragraph (2) and Article 39 paragraph (1) letter b number 1 and number 2 Government Regulation Number 24 of 1997, and it is classified or classified as completing requirements for the application for land rights which become a basis for rights.¹¹

The legal position of the Head of the Village / Headman on the land certificate is based on a provision in Article

24 paragraph (2) Government Regulation Number 24 of 1997. Land originating from an old right can be registered at the BPN Office, in this case, the headman / The Head of Village is the one who has the authority to issue a land certificate, which can be used as evidence of land. This is of course aimed at making the land registration process and also to obtain a certificate of land rights at the local BPN Office, where the land is located. Also, the Minister of Home Affairs Regulation No. 6 of 1972 concerning the Delegation of the Authority to Grant the Right to Land. Particularly in Article 11 which explains that the Head of the Sub-District / Sub-District Head can also give a permit to make an opening for land, which covers an area of approximately 2 ha with consideration of the Village Head / Headman, where the land is located.

Related to the land case that occurred in Jatibening Village, including one of the original but fake certificate cases arising from the abuse of power by the Acting Village Chief, resulting in ownership of the same dispute object. In this case, the certificate in the name of Dewi Astuti was issued based on a Land History Certificate and a non-dispute land certificate made by the Acting Village Head / Village Head. Procedurally, the acquisition of a certificate of ownership in the name of Dewi Astuti has fulfilled the requirements, proof of the existence of a certificate of land history and a non-dispute certificate of land that physically exists, so that the Bekasi City Land Office (BPN) issued a certificate of ownership with Number 3147 in the name of Dewi Astuti, even though the legal basis for the certificate was a falsified document (legal defect).

Related to the existence of a criminal element, then the matter should be submitted for cancellation through the State Administrative Court (PTUN) or submitted to the local Land Office (BPN). Problems arise when PT. Jasa Marga as the party who bought the disputed land object, and Dewi Astuti as the certificate holder, and then another party, Haji Muhammad Fikri, also felt that the disputed land was his land-based only on Letter C and the deed of sale. Based on this, of course, the certificate holder of land rights has a strong position as the party who has strong evidence of ownership of the land rights. However, on the other hand, it must also be known that there is a basis/basis for the issuance of a certificate of land rights, namely a certificate falsified by the Village Head. This has been proven in Bekasi City District Court Decision Number 664 / PDT.B / 2004 / PN.Bks who has convicted Defendant Ilyas (Village Head) with imprisonment of 5 (five) months. But in the Supreme Court Jurisprudence Number 2943K / Pdt / 2016 the judge stated that PT. Jasa Marga as the purchaser of the object of a dispute to Dewi

⁹ *Ibid.* Page 135.

¹⁰ *Ibid.* Page 181.

¹¹ Husni Thamrin, *Land Deed Making by Notary*, (Yogyakarta: Laksbang Pressindo, 2011), Page 56.

Astuti is a party that has good faith, so because it has such good intentions, PT. Jasa Marga must be protected by law.

Based on this, it is clear that the validity of the certificate issued based on the non-dispute land certificate and fake land history certificate made by the Acting Head of the Jatibening Village, administratively in the acquisition of certificates and formal objects in the management of the certificate have been fulfilled, then it is considered sufficient to fulfill the certificate acquisition requirements. The existence of the Circular of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 1756/15.IV/2016 concerning Guidelines for the Implementation of Community Land Registration and the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 12 of 2017 concerning Comprehensive Systematic Land Registration Acceleration into regulations to support the acceleration of land registration, abolishing land certificates as one of its requirements which often causes many problems. Protection for the injured party due to the cancellation of the sale and purchase certificate based on Supreme Court Jurisprudence Number 2943 K/Pdt/2016. In principle, land registration provides legal certainty for certificate holders as proof of their rights.

But in this case, of course, the author does not agree with the judge's decision. Because as it is known that up to now there are still communities who intentionally or unintentionally, have not registered land rights for various reasons, with reasons due to ignorance regarding land registration, complicated procedures, or other reasons. Also, the foundation which is used as the basis/basis for making certificates in the name of Dewi Astuti is falsified, so that it can be said that the law is flawed so that the certificate can undergo a cancellation of the award of rights, as written in Article 1 number (12 Ministerial Regulation The State Agrarian / Head of the National Land Agency Number 3 of 1999 concerning Delegation of the Authority to Grant and Revoke Decisions on the Granting of Rights on State Land, therefore according to the Author-it is very unfair for those who should be entitled to get their rights on the land.

The existence of a Land Certificate issued by the Headman / Village Head in the form of a permit to control a state land that is not mentioned or explained in detail. A certificate is a certificate that shows that someone controls the land, especially land that has never been registered. During the registration process, to prove that there is a legal relationship between a person and his parcel of land (the ownership of land), this is necessary as a basis for rights. The basis of rights here can be spelled out, namely concerning land tenure,

specifically the history of land ownership, to maintain when there is a claim from another party for the said land ownership.

Legal actions between a subject of rights and an object must not be separated and recorded in a history of ownership between the initial owner and the subsequent landowner so that a true land history can be traced and when a dispute or lawsuit arises, it is easily traced and sought a solution or point Intersection The land certificate generally includes the data of the owner, the location of the land, land boundary, land area, type of land, etc. and is usually signed by two witnesses and is known by the Headman / Village Head regarding the object of the intended land or where the land is located.

Ownership of land title certificate is something that can be said to be very important, so that it can be used as evidence of ownership of land and refer to Government Regulation Number 24 of 1997 where the evidence of ownership in the name of the right-holder if it is later transferred, of course the evidence of the transfer is known, given the existence of proof of rights and this, is regulated in the UUPA. In the explanation of Article 24 Paragraph (1) Government Regulation Number. 24 of 1997 states that the evidence to register rights, land rights come from the conversion of old rights. Proof of ownership can be done with witness statements or statements from the parties concerned. So that according to the Adjudikasi Committee's explanation the truth can be trusted in land registration, both systematically and sporadically.

The witness is a capable person and can give a testimony knowing the history of land ownership.¹² If the right-holder cannot explain or show proof of ownership of land rights as referred to in Article 24 paragraph (1) above, both in writing and other forms that can be trusted, then Article 24 paragraph (2) Government Regulation Number 24 of 1997 becomes a way out when there is a lawsuit from another party later on.

Proof of land rights by involving witnesses in an agrarian or land law can be used as proof of ownership of land if a piece of written evidence is incomplete or does not exist. Proof of this right can be done through statements from related parties and information on the said land can be trusted at least 2 witnesses who come from the environment where the land is located and do not have a kinship or family relationship to the second degree, both in kinship to the top or to side. This has been regulated in the Act. Proof of rights based on PP Number 24 of 1997 becomes a reference for how ownership of land rights can be maximized and aspects of this proof can be utilized.¹³

Regarding the change in land status, the right to work refers to the Certificate of Headman / Village Head

¹² *Ibid.*, Page 48.

¹³ Adrian Sutedi, *Certificate of Land Rights*, (Jakarta: Sinar Grafika, 2010), Page 178.

rights and can be upgraded to ownership rights. Land rights to become land rights refer to the Head of National Land Agency Regulation No. 1 of 2010 concerning Service Standards and Land Management. The function of the Land Certificate can be used as strong evidence for the landowner. With a record of physical data and juridical data in it, it must be accepted as true and accurate data. Physical data, as well as juridical data in a certificate book, must be taken from the land book and the land certificate which refers to the provisions of the land law. An authentic deed in the form of a certificate has a strength of evidence that is perfect and valid for its owner. Where the judge is bound by the data mentioned in the certificate as long as it cannot be proven by another party.

The issue of certificates is known as authentic but fake certificates. Original but fake certificates are certificates that formally fulfill the requirements as regulated in the Law. However, some material provisions were not fulfilled. Things like this are difficult to detect, and can only be known when cases arise where to show the truth it is necessary to examine the initial requirements for the relevant certificate application. The case of genuine but fake certificates that occurred among the community shows that if administratively in the acquisition of certificates and formal objects in the management of certificates, it has been fulfilled, then it is considered sufficient to meet the requirements for certificate acquisition, so this can become a gap for cases in later.

One of the written proofs as a basis for the right of the holder to obtain a certificate is in the form of a land certificate issued by the Village Head.¹⁴ Land certificate includes land history certificate and non-dispute land certificate. The existence of a land history statement is intended to confirm the land history and as written evidence to show ownership of land with land registration.

A land certificate that is made based on a letter of an application submitted by the party as the applicant for land registration, issued by the Village Head must be based on actual data that is in good faith. This relates to the obligations of a Village Head in the administration of government which include:

1. Maintaining peace and order in the village community;
2. Comply with various applicable laws.
3. Doing good and transparent village government administration; If a village head is unable to carry out his obligations based on abuse of power, various problems will arise including legal issues, which have a detrimental impact on many people.

Related to land certificates made based on falsified rights can be accepted by the judge, especially in

Supreme Court Jurisprudence Number 2943K / Pdt / 2016, which in this case is based on the role of the Acting Village Head in issuing the land certificate, often requires a long time and often causes disputes in the future, including problems that are often encountered, namely land ownership disputes, in where the one-party as the certificate holder is proven, that the certificate of land history and certificate land is not dispute is false. This is because of the Acting Village Head Acting role in the forgery. And other parties have made buying and selling where the buying and selling, do not check beforehand on the object of land.

On the other hand, because the judge has the consideration that the PT. Jasa Marga is a buyer in good faith who bought the disputed object on 27 November 2002 covering 1,190 m². PT. Jasa Marga has made sufficient efforts/care of duty to reflect as a buyer in good faith by checking the status of the disputed land object at the local National Land Agency and even getting a dispensation for the acquisition of ± 3400 m² of land from the Bekasi Land Office which is strengthened by the Mayor's Letter. Bekasi Number 620 / 155-Bapeda / IX / 2002 on September 20, 2002, concerning the stipulation of the Route Plan for the Pondok Gede Caman Off-Ramp Access Road Development.

Even so, the authors argue that even if the land is used as an access road construction of the Raman Caman Pondok Gede, is it fair for those who should have more rights in owning land rights do not get justice for the land. So this, makes the writer disagree with the judge's decision. According to the author, the parties, both those who registered or who issued a certificate of rights, should be more careful. So that the rights issued from the land registration do not create a problem, and can provide legal certainty as proof of rights.

4. CONCLUSIONS

Based on the results of the research that has been done, as well as the analysis that has been outlined in the previous section, then in this section, the author wants to present a conclusion regarding the validity of a certificate issued based on a certificate of land history and a land certificate of non-false disputes made by village chief officials. Whereas in MA Decision Number 2943K / Pdt / 2016 administratively has been fulfilled related to aspects of the acquisition and management of certificates. On the other hand, the base of the land certificate was falsified by the village head. thus, the certificate is legally defective and a revocation of the certificate can be carried out.

¹⁴ Muchtar Rudianto, *Binding Agreement of Sale and Purchase as a Preliminary Agreement*, (Jakarta: Rajawali Press, 2010), Page 38.

And then, based on the results of this study, related to land certificates made based on falsified rights can be accepted by the judge, especially in the Supreme Court Decision Number 2943K / Pdt / 2016, where this is based on the role of the Acting Village Head in issuing a certificate fake land. The judge has the consideration that PT. Jasa Marga is a buyer in good faith who buys the disputed object. Of course, in this case, according to the authors, the reason for good covenants cannot be justified because of the base of the certificate on which the foundation is falsified, so that the certificate cannot be justified for any reason. because in this case, the result of forgery of the land certificate causes the injured party.

Based on the conclusions outlined above, the author can provide the following advice:

1. It is recommended that the sale and purchase of land originating from a land certificate in which the letter is issued and signed by the Lurah / Village Head must be followed by a strict inspection in the registration of the land rights. So that certificates issued can provide legal certainty and legal protection without harming other parties.
2. The judge who should try the case in this decision must pay attention to the mark or file for the issuance of the certificate of intended land rights so that the decision to be taken fulfills a sense of justice.

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