



Legal Protection of Parties Harmed by Non-Application of the Contradictoire Delimitatie Principle

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ABSTRACT

Land rights which are part of the earth as regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations Article 4 paragraph (1). Several factors cause land disputes such as: issue of 2 (two) or more land certificates on the same plot of land, which is known as overlapping. One of the land disputes is located in Maros Regency, with a decision number 102/G/2016/PTUN. Mks. This dispute is based on Property Right Certificate No. 00795/Desa Baji Mangngai dated May 29, 1985 and issued 2 parts of the land parcels as a result of separation namely Certificate of Ownership No. 00811/Baji Mangngai Village and Ownership Certificate No. 00812/Desa Baji Mangngai and 1 part in 2011 namely Certificate of Ownership No. 00746/Baji Mangngai Village. The issuance of 2 or more land certificates is due to the non-implementation of the principle of contradictoire delimitatie based on Government Regulation no. 24 of 1997 concerning Land Registration. The type of research used is normative legal research with Statute Approach, Case Approach, and Conceptual Approach. The collection of legal materials was carried out using the library research method and the data obtained was analyzed qualitatively. The results of this study indicate that if the principle of contradictoire delimitatie is not applied consistently and consequently, it will certainly lead to legal uncertainty regarding land parcels. As a result, it will certainly affect the weak legal certainty of the object of the right to be used as a means for holders or owners of land rights. The dispute resolution steps that they or the BPN take are deliberations. Likewise in multiple certificate disputes, BPN also has the authority to negotiate, mediate and facilitate the parties to the dispute and initiate an agreement between the parties. However, if the problem cannot be resolved in the ways described above, then the disputing parties can make demands to the state administrative court.

ABSTRAK

Hak atas tanah yang merupakan bagian dari bumi sebagaimana diatur di dalam Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria Pasal 4 ayat (1). Beberapa faktor penyebab terjadinya sengketa tanah seperti terbit 2 (dua) atau lebih sertipikat tanah diatas sebidang tanah yang sama, yang dikenal dengan tumpang tindih (*overlapping*). Salah satu sengketa tanah yaitu berlokasi di Kabupaten Maros, dengan nomor putusan 102/G/2016/PTUN.Mks. Sengketa ini berdasarkan Sertipikat Hak Milik No. 00795/Desa Baji Mangngai Tanggal 29 Mei 1985 dan dikeluarkan 2 bagian bidang tanah hasil pemisahan yaitu Sertipikat Hak Milik No. 00811/Desa Baji Mangngai dan Sertipikat Hak Milik No. 00812/Desa Baji Mangngai dan 1 bagian pada tahun 2011 yaitu Sertipikat Hak Milik No. 00746/Desa Baji Mangngai. Terbitnya 2 atau lebih sertipikat tanah dikarenakan tidak diterapkannya asas *contradictoire delimitatie* berdasarkan Peraturan Pemerintah No. 24 Tahun 1997 tentang Pendaftaran Tanah. Tipe penelitian yang digunakan yaitu penelitian hukum normative dengan pendekatan Undang-undang (*Statute Approach*), Pendekatan Kasus (*Case Approach*), dan Pendekatan Konseptual (*Conceptual Approach*). Pengumpulan bahan hukum dilakukan dengan metode studi kepustakaan (*library research*) dan data yang diperoleh dianalisis secara kualitatif. Hasil penelitian ini menunjukkan bahwa tidak diterapkannya asas *contradictoire delimitatie* secara konsisten dan konsekuen tentu akan menimbulkan ketidakpastian hukum terhadap objek bidang tanah. Akibatnya tentu akan berpengaruh kepada lemahnya kepastian hukum objek hak untuk dijadikan sebagai sarana bagi pemegang atau pemilik hak atas tanah. Langkah-langkah penyelesaian sengketa yang mereka atau pihak BPN tempuh adalah musyawarah. Begitu juga dalam sengketa sertifikat ganda, BPN juga berwenang melakukan negosiasi, mediasi dan fasilitasi terhadap pihak-pihak yang bersengketa dan menggagas suatu

kesepakatan di antara para pihak. Namun jika permasalahan tersebut tidak dapat diselesaikan dengan cara-cara yang diuraikan tersebut, maka pihak yang bersengketa dapat melakukan tuntutan ke pengadilan tata usaha negara.

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I. INTRODUCTION

Land is one of the objects regulated in the Agrarian Law. The land regulated in the Agrarian Law is not land in its various aspects, it will still have a juridical aspect, namely those directly related to land rights which are part of the earth as regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations Article 4 paragraph (1) which determines on the basis of the right to control from the state as referred to in Article 2, it is determined that there are various types of rights to land on the surface of the Earth, called land that can be given to and can be owned by people either alone or together with other people. other people and legal entities (Arba, 2015). Domination over land is sought as much as possible to improve the welfare of human life. Various attempts were made by humans to be able to control the land and of course also defend it from other parties (Siahaan, 2003). Land is so valuable that humans always try to get it. This effort can be done by clearing forests or fields, buying from landowners who sell, exchanging, and other efforts. The above actions resulted in the transfer of ownership and control of land from one party to another. Land is given to and owned by people with the rights stated in the Basic Agrarian Law (hereinafter referred to as UUPA), is to be used or utilized. In dealing with concrete cases, the provision of legal certainty guarantees cannot be realized with the availability of legal instruments that meet the requirements referred to above (Soerodjo, 2007).

Land disputes cannot be avoided in this day and age, there are several factors that cause land disputes. The current practice is that it is not uncommon for 2 (two) or more land certificates to be issued on the same plot of land, which is known as overlapping and can result in legal uncertainty for the right holders and will lead to disputes. One of the land disputes that the authors study is located in Maros Regency, with a decision number 102/G/2016/PTUN.Mks, in which case there was a land dispute in the form of overlapping certificates, in a plot of land there are 3 (three) certificates in different names, this proves that the principle of *contradictoire delimitatie* was not applied in the land measurement process. This dispute is based on Property Right Certificate No. 00795/Baji Mangngai Village Dated 29 May 1985, Situation Figure No. 00690/2010 dated 30 August 2010 covering an area of 25,329 M² in the name of Samuddin Bin Matalitti, Jale Binti Matalitti, Mantasi Binti Badderu Egah Binti Badderu, Marahumah Binti Badderu, Mardiah Binti Badderu, Ramli Bin Saraka as the legal owner of the land rights.

In this piece of land, a partial separation was carried out in 2010, namely the issuance of 2 parts of the land parcel as a result of the separation, namely Certificate of Ownership No. 00811/Baji Mangngai Village and Ownership Certificate No. 00812/Desa Baji Mangngai and 1 part in 2011 namely Certificate of Ownership No. 00746/Baji Mangngai Village, so that the remaining area of the plaintiff's Certificate of Ownership is 24,704 M². The existence of other certificates on

the land is very detrimental to the interests of the plaintiff because the plaintiff's right to register the separation of part of the certificates of ownership cannot be continued, in other words, it is obstructed. According to Article 3 of Government Regulation Number 24 of 1997 whereas the purpose of Land Registration is to provide legal certainty and legal protection to rights holders over a plot of land, apartment units and other registered rights so that they can easily prove themselves as the holder of the rights concerned.

Based on this case, there has been overlapping certificates on a plot of land where there are three certificates with different names of certificate owners. The issuance of 2 or more land certificates is due to the non-implementation of the principle of *contradictoire delimitatie* based on Government Regulation no. 24 of 1997 concerning Land Registration. Determination of land boundaries is based on the principle of *contradictoire delimitatie*, namely the determination of the boundaries of the land in question, the agreement of the holders of rights to the land in question and the holders of adjacent rights.

Government Regulation Number 24 of 1997 Article 17 and Article 21 of the Regulation of the State Minister for Agrarian Affairs/Head of the State Land Agency Number 3 of 1997 that the registration of land rights is carried out by activities including measurement where this measurement is carried out if there are boundary marks on the plot of land that is to be measured. The absence of boundary markers as stated indicates that the control of certificates was carried out on an incomplete, inaccurate and in accurate basis. As a result of not implementing the General Principles of Good Administration (*Algeme Beginzedvan Behoulijk Bestrus/General Principles of Good Administration*) from the parties in power, this causes overlap. Based on this background, the formulation of the problem in this study is Does a certificate of land rights issued by the National Land Agency that does not apply the *contradictoire delimitatie* principle have legal certainty?

II. RESEARCH METHODS

The type of research used is normative legal research whose object of study includes statutory provisions (in abstracto) on legal events (in concreto). According to Peter Mahmud Marzuki, the research approach is divided into several forms of approach used in legal research, namely the statute approach, case approach, historical approach, comparative approach, and conceptual approach (Marzuki, 2014). The approach in this study is approach Law (Statute Approach), Case Approach (Case Approach), and Conceptual Approach (Conceptual Approach) (Hasanuddin, 2015). The collection of legal materials was carried out using the library research method and the data obtained from the results of this study were compiled and analyzed qualitatively. Then, the data is described in a prescriptive manner, namely a study that aims to get suggestions about what to do to overcome certain problems (Soekanto, 1986).

III. DISCUSSION RESULTS

1. Legal Arrangements Regarding the Principle of *Contradictoire Delimitatie*

In realizing legal certainty over land rights, based on the UUPA order to hold registration of land rights throughout the territory of the Republic of Indonesia, both initiated by the government and based on individual community initiatives. Because basically land registration is carried out to guarantee legal certainty, registration of land rights is carried out to meet the needs of the community and the government (Kolopaking, 2013). Registration of land rights in the context of guaranteeing legal certainty and certainty of land rights is an activity that is *rechtskadaster* in nature, the forms of activity include: Measurement, mapping (more precisely mapping), and land bookkeeping; Registration of these rights; and Provision of valid proof of rights as a strong means of proof (Al, 2001).

The legal basis for land registration can be found in the formulation of Article 19 of the UUPA which states that:

- a. To guarantee legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations.
- b. The registration referred to in paragraph 1 of this article includes: Measurement, mapping and bookkeeping, Registration of land rights and transfer of said rights, Provision of letters of proof of rights, which are valid as a strong means of proof.
- c. Land registration is carried out taking into account the condition of the State and society, the need for socio-economic traffic and the possibility of its implementation, according to the Minister of Agrarian Affairs' considerations.
- d. The government regulation regulates the costs associated with the registration referred to in paragraph (1) above, provided that people who cannot afford it are exempt from paying these fees.

In practice, the land registration system in Indonesia is better known as the publication system, its activity is in the form of presenting data that is collected openly to the public at the land office in the form of lists and maps as information for the public who will take legal action regarding registered land. This can be seen in Article 32 paragraph (2) of Government Regulation Number 24 of 1997, namely:

"In the event that a certificate has been issued on a parcel of land in the name of a person or legal entity who has acquired said land in good faith and actually controls it, then other parties who feel they have the right to the land can no longer demand the implementation of said right if within the time 5 (five) years since the issuance of the certificate has not filed a written objection to the certificate holder and the Head of the National Land Agency concerned or has not filed a lawsuit in court regarding land tenure or the issuance of the certificate".

The land registration system in Indonesia according to Government Regulation No. 24 of 1997 uses a land registration system for negative publications with positive tendencies. The purpose of the negative publication system with a positive tendency is that this land registration system uses the Torrens/registration of titles system, but the publication system cannot yet be purely positive. This is because the physical data and juridical data in the land certificate are not certain to be correct, although they must be accepted by the Court as correct data as long as there is no evidence proving otherwise. In this case, the negative system states that everything stated in the land certificate is considered true until it can be proven otherwise (incorrect) by a court.

2. Legal Certainty in the Application of the Contradictoire Delimitatie Principle

The application of the contradictoire delimitatie principle in Government Regulation Number 10 of 1961 concerning Land Registration can be seen in:

- a. Article 3 paragraph (2): "before a plot of land is measured, it is first carried out (a) an investigation into the history of the plot of land; and (b) determination of the boundaries".
- b. Article 3 paragraph (4): that the results of the investigation and designation of the boundaries of the land in question are written down in a list of contents and signed by the members as well as by the committee concerned or their representatives, this shows that in determining the boundaries of the land it is necessary to have the approval of the committee Head of the Registration Office Land and its members.
- c. Article 11 paragraph (2) letter g: "a measuring letter in addition to containing a picture of the land depicting land boundaries, boundary signs, buildings, roads, waterways, and other important objects must also include people who shows the limits.

The principle of contradictoire delimitatie is part of legal certainty regarding land parcels, especially in terms of the boundaries of registered land parcels as contained in the certificate of land rights. Object certainty as a result of the application of the contradictoire delimitatie principle is of course an effort to provide legal protection for parties appointed as the holders of a land right both to individuals and to legal entities (Darmawan, 2022).

Failure to apply the *contradictoire delimitatie* principle consistently and consequently will certainly lead to legal uncertainty regarding land parcels. As a result, it will certainly affect the weak legal certainty of the object of the right to be used as a means for holders or owners of land rights. In the research, it was found that talking about legal consequences if the *contradictoire delimitatie* principle is not implemented in accordance with statutory regulations, it will lead to a person's right to have legal uncertainty over the ownership of a plot of land which in turn will result in a dispute as a legal consequence so that it can lead to land conflicts in the form of overlapping certificates. at a later time (Bulan, 2022).

In handling these land disputes, the National Land Agency is obliged to make various efforts to ensure the certainty of a person's right to ownership of a plot of land. The National Land Agency must seek solutions to land dispute resolution based on the applicable laws and regulations by taking into account the sense of justice and respecting the rights and obligations of each party. The dispute resolution steps that they or the BPN take are deliberations. Likewise in multiple certificate disputes, BPN also has the authority to negotiate, mediate and facilitate the parties to the dispute and initiate an agreement between the parties. However, if the problem cannot be resolved in the ways described above. Based on the description above, it can be understood when the application of the *contradictoire delimitatie* principle is not implemented is the occurrence of legal uncertainty over land rights, especially certainty related to the object of the rights, causing disputes as summarized in the certificate of land rights.

IV. DISCUSSION RESULTS

Registration of land rights in the framework of guaranteeing legal certainty and certainty of land rights is an activity that is *rechtskadaster* in nature, the forms of the activity include: measurement, mapping (more precisely mapping), and bookkeeping of land; Registration of these rights; and Provision of valid proof of rights as a strong means of proof. The land registration system in Indonesia according to Government Regulation No. 24 of 1997 uses a land registration system for negative publications with positive tendencies. In this case, the negative system states that everything stated in the land certificate is considered true until it can be proven otherwise (incorrect) by a court.

Failure to apply the *contradictoire delimitatie* principle consistently and consequently will certainly lead to legal uncertainty regarding land parcels. As a result, it will certainly affect the weak legal certainty of the object of rights to be used as a means for holders or owners of land rights. The form of problem solving in the event of a land dispute is in the form of an overlapping certificate, then it is resolved first through deliberation by consensus, mediation, negotiation, but if the problem cannot be resolved in the ways described above, then the disputing parties can make claims to the state administrative court.

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