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The Guarantee of Legal Certainty on The Issuance of A Building Use Land Rights Certificate (Case Study of The Decision of The State Administrative Court Number 30 / G / 2016 / PTUN. SMD)

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Abstract

Article 19 Paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles instructs the government to carry out land registration activities throughout the territory of Indonesia in order to ensure legal certainty. The registration activity includes the provision of certificates of proof of rights that are valid as a strong evidence, which in this case is a certificate of land rights. However, in practice, the effectiveness of certificates in providing legal certainty and protection is still often questioned. In connection with this, there is a case raised by the author, namely a lawsuit by AM on the validity of the certificate of Hak Guna Bangunan on behalf of PT. KRA issued by the Balikpapan City Land Office. The problem in this research is how to guarantee legal certainty for the issuance of the certificate of Hak Guna Bangunan on behalf of PT. KRA? And how is the decision of the State Administrative Court Number 30/G/2016/PTUN.SMD in accordance with the provisions of the National Land Law? To answer these problems, a normative juridical research was conducted on the legal rules of land registration in Indonesia and the concepts of legal certainty. Data processing is carried out qualitatively and conclusions are drawn using a deductive mindset. The conclusion of the research is legal certainty over the issuance of a certificate of Hak Guna Bangunan on behalf of PT. KRA can be realized because of the efforts of legal discipline, both from PT. KRA as a legal entity and the Land Office as a representative of the government.

Keywords: *Legal Certainty; Land Registration; Certificate.*

A. Introduction

In Article 28D Paragraph (1) of the 1945 Constitution it is affirmed that "Everyone has the right to the recognition, guarantee, protection, and certainty of fair law and equal treatment before the law", the state of Indonesia as a country based on law needs to provide guarantees of certainty and legal protection to the community, which in this case is against the rights to the land it owns. Legal certainty itself is one of the terms that are widely heard among the general public. Legal certainty is the certainty of rights and obligations, of what according to the law can or cannot be¹, then obviously legal certainty needs to be realized to maintain the interests of every legal subject, regardless of the interests related to the land field.

To realize the guarantee of legal certainty in the field of land there are two things that must be considered, namely the need for written land law and the implementation of land registration. The understanding of land registration itself is explained in Article 1 number 1 of Government Regulation No. 24 of 1997 concerning Land Registration, which is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land plots and units of flats, including the

¹ Donald Albert Rumokoy; Frans Maramis, *Pengantar Ilmu Hukum* (Jakarta: Rajawali Pers, 2017).

provision of a letter of proof of his rights for areas of land that already have rights and property rights to the unit of flats and certain rights that burden him.

Furthermore, the land registration is also contained in Article 19 of the Agrarian Basic Law (hereinafter referred to as UUPA), especially Paragraphs (1) and (2), which determine that:²

1. To ensure legal certainty by the Government held land registration in all regions of the Republic of Indonesia in accordance with the provisions regulated by Government Regulation.
2. The registration in paragraph (1) of this Article includes:
 - a. Measurement, land acquisition and bookkeeping;
 - b. Registration of land rights and transfer of such rights;
 - c. The provision of proof of rights, which applies as a strong proof of proof.

Article 19 of the UUPA clearly states that the land rights certificate is a strong proof tool, but this needs to be underlined because although it has been affirmed so in fact the certificate has not fully provided certainty and legal protection for land rights holders, because the land registration system in Indonesia adheres to a negative publication system that contains positive elements. Then further in Article 32 Paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration it is stated that the certificate is a letter of proof of rights that applies as a strong proof of physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the measuring letter and land book of the rights concerned. The land rights certificate still faces the possibility of a lawsuit from other parties who feel they have the Right to the Land, so that if it can be proven legally that he is the real owner then the land rights certificate can be canceled.³

The possibility of land problems is not only against areas of land that have not been registered, even those that have been registered (certificated) still save problems.⁴ thus the guarantee of legal certainty against the certificate of land rights is very important to discuss.

Based on the brief description above, the author is interested in studying more about the legal certainty of the issuance of the land rights certificate. So the author wants to make a thesis with the title: "Guarantee of Legal Certainty on the Issuance of Building Use Rights Certificate (Case Study of State Administrative Court Decision Number 30/G/2016/PTUN). SMD)". Based on the background mentioned above, the author raised several subjects to be researched and discussed, namely as t:

1. How is the guarantee of legal certainty on the issuance of a Building Use Rights certificate on behalf of PT.KRA?
2. How is the alignment of the Decision of the State Administrative Court Number 30 / G / 2016 / PTUN. SMD in accordance with the provisions of the National Land Law?

B. Literature review

Primary legal material is legal material that is authoritative, meaning it has authority.⁵ Laws and regulations related to the problems presented, namely: 1. 1945 Constitution, 2. Law No. 5 of 1960 concerning Basic Rules of Agrarian Principles, 3. Law No. 9 of 2004 concerning

² *Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria*, n.d., Pasal 19.

³ Boedi Harsono, *Hukum Agraria Indonesia (Himpunan Peraturan-Peraturan Hukum Tanah)*, Cetakan Ke-15, Edisi Revisi (Jakarta: Djambatan, 2002).

⁴ Muhammad Yamin Lubis; Abdul Rahman Lubis, *Hukum Pendaftaran Tanah* (Bandung: CV. Mandar Maju, 2010).

⁵ Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi, Cet. Kesembilan* (Jakarta: Kencana, 2014).

Amendments to Law No. 5 of 1986 concerning State Administrative Courts, 4. Government Regulation No. 24 of 1997 concerning Land Registration, 5. Government Regulation No. 38 of 1963 concerning the Appointment of Legal Entities That Can Have Land Title, 6. Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 9 of 1999 concerning Procedures for granting and canceling state land rights and management rights, and 7. Regulation of the Head of the National Land Agency Number 2 of 2013 concerning the Distribution of Land Rights Granting Authority and Land Registration Activities.

Secondary legal materials in the form of all publications on the law that are not official documents that include textbooks, legal dictionaries, legal journals, and comments on court decisions.⁶ related to the guarantee of legal certainty on the issuance of the HGB Certificate.

C. Research Methods

Research on "Guarantee of Legal Certainty on the Issuance of Building Use Rights Certificate (Case Study of State Administrative Court Decision Number 30/G/2016/PTUN). SMD)" is a type of normative juridical law research, where the legal research method used is carried out by researching existing library materials. This type of research is normative legal research on the principles and norms of law, which aims to examine the existing regulations in its application with everyday events or events. As a normative juridical legal research, the data used in this study includes applicable laws and regulations.

Normative juridical legal research is also carried out using secondary data that includes writings on the law, either in the form of books or journals or in other words obtained from pre-existing literature. The nature of the research used is descriptively analytical. This research is more of a description of the literature study. The data that has been obtained will be qualitatively analyzed and outlined in descriptive form. After the data is obtained and collected in full, then the data is associated with the literature, expert theory, and applicable Laws and Regulations.

D. Results and Discussion

1. Guarantee of Legal Certainty at the Issuance of Building Rights Certificate on behalf of PT. KRA

About the connection with a case in the State Administrative Court Decision Number: 30/G/2016/PTUN. SMD is between PT. KRA with AM where AM claims to be the holder of rights to plots of land that have been named PT. KRA. In 2009, PT. KRA in the framework of the expansion of the working area and the establishment of the head office explored the available plots of land in the Balikpapan city area before finally establishing options on 8 (eight) plots of land with a total area of 150,000 m² located in Karang Joang Village KM 12.50 Balikpapan City, which at that time was still in the status of Property Rights which all had been certified, with the evidence of the letters listed in the verdict. PT. KRA several times met with the original landowners for negotiations, which then ended with the agreement between the original landowner and PT. KRA.

That if referring to the provisions in Article 21 Paragraph (1) of the UUPA which states "Only Indonesian Citizens can have Property Rights", if direct buying and selling is carried out with the land area still has the status of Property Rights, then automatically the buying and selling process becomes null and void. However, in the ruling found a legal fact that before the process of buying and selling plots of land, the landowners had originally applied for a change

⁶ Marzuki, *Penelitian Hukum, Edisi Revisi, Cet. Kesembilan*.

in the status of the land rights concerned in writing to the Balikpapan City Land Office in the same year. This is done based on the provisions stipulated in Article 93-96 of the Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights.

PT. KRA also expressly stated that the plots of land were purchased directly from the owner, after the application for rights change was approved by the Balikpapan City Land Office. To fulfill the provisions of Article 37 Paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, the sale and purchase of land parcels is registered at the Balikpapan City Land Office. Prior to the issuance of the certificate of rights to the land concerned, the Balikpapan City Land Office stated unequivocally in the ruling that research had been carried out on the completeness and correctness of physical data and juridical data on carefully litigated land plots, which were implemented in order to comply with the provisions of Articles 97 and 98 of the Regulation of the Minister of Agrarian State / Head of the National Land Law Number 9 of 1999 concerning Procedures for Granting and Canceling Land Rights State and Management Rights.

The Balikpapan City Land Agency has also made an announcement within 60 days and during that period no objections have arisen. At the time of measurement, no one party expressed objection and the activity has also received approval from witnesses of land boundaries directly adjacent to the land plots in question, as evidenced by the signature on the veld werk (measuring image). After carrying out various procedures required until the implementation of buying and selling plots of land, the Balikpapan City Land Office finally issued a Building Use Rights certificate on behalf of PT. KRA.

Nevertheless, the publication system adopted by the National Land Law is a system of impure negative publications, that is, the negative publication system contains positive elements. So, this means that those whose names are listed on the land rights certificate will always face the possibility of a lawsuit against their rights. In connection with this matter, in 2016, in a Lawsuit Letter dated September 22, 2016, suddenly a lawsuit appeared questioning the validity of the Building Use Rights certificate on behalf of PT. KRA from the party on behalf of AM. AM filed a lawsuit and requested the cancellation of the relevant land rights certificate to the Samarinda City Administrative Court. Basically, In the lawsuit, AM claims to be the owner of the plots of land in question. The lawsuit filed by AM included proof of ownership of land rights claimed as his own in the form of a Certificate of Land Dated April 23, 1995, known by Karang Joang Village with Register Number: 441 / Reg / BU and Karang Joang District based on Grant Decree Number: 08 / KKKN / 1902 and Principle Permit issued by the Mayor of Balikpapan Number: 503.05/236/BPMP2T regarding Principle Permit Approval on behalf of PT. KAS dated September 14, 2016, and The Decree of the Head of the Investment Board and Integrated Licensing Services of Balikpapan City Number: 503.06/85/BPMP2T concerning Location Permit to PT. KAS covers an area of 140,372 m² for the construction of shops, offices, and student dormitories.

The issue of land registration in the UUPA is based on the statement affirmed in Article 19. As confirmed in Article 19 Paragraph (1), uupa ordered the Government to carry out land registration activities throughout Indonesia. The purpose of issuing certificates in essence is so that rights holders can easily prove their rights. Furthermore, regarding land rights certificates are listed in the provisions of Article 32 of Government Regulation No. 24 of 1997 concerning Land Registration which reads:

Verse (1):

Certificate is a letter of proof of rights that applies as a strong proof of physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the measuring letter and the land book of the rights concerned.

Verse (2):

In the event that a plot of land has been issued legally on behalf of the person or legal entity who obtained the land in good faith and manifestly controlled it, then other parties who feel they have the right to the land can no longer demand the exercise of the right if within 5 (five) years since the issuance of the certificate has not submitted a written objection to the holder of the certificate and the Head of the Land Office concerned or not file a lawsuit with the Court regarding the possession of land or the issuance of such certificates.

In this ruling, PT. KRA proves its ownership of the land rights concerned with the existence of a certificate on 8 (eight) pieces of land ownership that are used as the object of the lawsuit as stated in the Ruling. Then the thing that can be researched by looking at the object of the lawsuit is the area of the land area permitted to be owned by PT. KRA meets the requirements listed in Article 9 letter b of the Regulation of the Head of the National Land Agency Number 2 of 2013 concerning the Distribution of Land Rights Granting Authority and Land Registration Activities. With the implementation of a series of processes by fulfilling the applicable legal provisions and then the original plots of land before buying and selling have been certified, then PT. KRA in this case can be qualified as a good-faith buyer, so it is appropriate that according to the law should get legal protection for its rights to fulfill the principle of legal certainty.

Furthermore, it again refers to Article 32 Paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration. Buying and selling transactions of land plots carried out by PT. KRA occurred in 2009. For ±7 (Seven) years there was no submission of objections from any parties. Thus, this means that when filing a related lawsuit in 2016, AM has lost its right to file an objection or lawsuit, both to the Head of the Land Office and the court. Next is the matter of proof of ownership of land rights owned by AM. Considering the provisions of Article 19 Paragraph (2) c of uupa jo. Article 32 Paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, that certificate is a letter of proof of rights that applies as a strong proof of physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the measuring letter and the relevant land book. In this case, there is no fact that AM has ever registered the rights to the relevant plots of land claimed as his own. On the basis of this fact, it is very difficult to prove ownership of land rights.

Given *the principle of legal fictie*, then there is no reason for a person to break free from the law with the statement of not knowing the existence of the law. Then this is no exception. Based on the author's analysis as outlined above, the arguments proposed by AM in the State Administrative Court Decision Number: 30/G/2016/PTUN. SMD is actually only a personal claim without being based on strong reasons and evidence, making the lawsuit has no legal force. The accusation from AM that the land rights certificate is flawed by administrative law is not proven. Based on these provisions, the certificate of rights to the land concerned that is the object of the lawsuit cannot be canceled.

2. Decision of the State Administrative Court Number: 30/G/2016/PTUN. SMD In Accordance With National Land Law

Regarding how to harmonize the Decision of the State Administrative Court Number: 30 / G / 2016 / PTUN. SMD has been by the National Land Law, actually more towards absolute competence or absolute authority of the State Administrative Court body. Article 1 number 3 of Law No. 5 of 1986 concerning State Administrative Justice affirms that what is meant by a State Administrative Decree is a written determination issued by a State Administrative Agency or Official containing legal actions of State Administration based on applicable laws and regulations, which are concrete, individual, and final, which cause legal consequences for a person or civil law entity, which in this case is a certificate of Building Use Rights on behalf of PT. KRA Based on this understanding can be concluded the juridical elements of state administrative decisions, namely as follows:

- a) A written determination
- b) Issued by a State Administrative Agency or Officer
- c) Contains state administrative law actions
- d) Concrete, individual, and final
- e) Cause legal consequences for a person or civil legal entity

In connection with the case in the State Administrative Court Decision Number: 30/G/2016/PTUN. SMD, AM as a Plaintiff filed a lawsuit against the Balikpapan City Land Office, with PT. KRA as Defendant II Intervention 3, to the Samarinda City Administrative Court with a request to cancel the certificate of rights to the land in question. AM filed a lawsuit based on Article 53 Paragraph (1) of Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning State Administrative Justice.

Certificate of Building Use Rights on behalf of PT. KRA issued by the Balikpapan City Land Office which is used as an object in the lawsuit filed by AM is basically included in the classification of cases that are the competence of the State Administrative Court, but in the lawsuit filed by AM the substance in question is essentially about ownership and control of land, or rather about "who belongs to whom the land plot against which the State Administrative Decree is issued", which causes the subject matter of the lawsuit to fall into the realm of civil law. Thus making this case a competence of the General Court.

Based on the Explanation of Article 4 of Law No. 5 of 1986 concerning State Administrative Court jo. Supreme Court Decision No. 88/K/1993 dated September 7, 1994 which reads: "Although a dispute in a case due to the Official Decree, but if in the case concerns ownership or rights, then the lawsuit over the dispute must first be filed with the General Court."

The Panel of Judges of the Samarinda State Administrative Court considered that the Panel of Judges was not absolutely authorized to examine and adjudicate the case, so the case did not need to be considered further, and handed down the result of a ruling that rejected the lawsuit from AM. With this, it can be judged that the actions taken by the Samarinda State Administrative Court Judge Panel against the lawsuit are appropriate in line with the provisions of the National Land Law.

E. Conclusion

The realization of legal certainty guarantees on the issuance of Building Rights certificates on behalf of PT. KRA is the object of a lawsuit in the State Administrative Court Decision Number: 30/G/2016/PTUN. SMD is basically the result of pursuing legal discipline, both from

PT. KRA and the Balikpapan City Land Office, during the issuance process of the certificate, starting from the procedure for obtaining land until finally issued a certificate. Each stage is carried out by meeting the conditions specified in the laws and regulations in the National Land Law. That the law guarantees legal certainty over the data contained in the land rights certificate as long as it is not proven otherwise.

Then from the results of the analysis of the case between AM and PT. KRA can be understood how important the activity of organizing land registration for the realization of legal certainty guarantees in the field of land, especially regarding ownership issues. As it is well known that land registration is the beginning of the birth of proofs of ownership of land. The issuance of certificates is intended so that rights holders can easily prove their rights. Land rights certificates act as a strong proof of rights have a very important role in providing protection to rights holders so as not to lose the rights they have.

Decision of the State Administrative Court Number: 30/G/2016/PTUN. SMD is correct and precise in accordance with the National Land Law. Although the object in the lawsuit filed is included in the classification of cases that are the competence of the State Administrative Court to meet the elements in Article 1 number 3 of Law No. 5 of 1986 concerning the State Administrative Court, it can be seen in the ruling that the lawsuit filed by AM contains propositions that actually do not dispute the validity of the certificate of land rights issued by the Balikpapan City Land Office, but rather the issue of ownership and control of the land rights to the land issued certificate (Decree of State Administration), which makes it included in the realm of civil (private) law which should be the competence of the General Court.

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