Advances in Social Science, Education and Humanities Research, volume 478
Proceedings of the 2nd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2020)

Proof of Land Rights Ownership Over the Land Disputes in the Study of the Supreme Court's Decision Number 57 PK / PDT / 2016

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ABSTRACT
Proof of land rights ownership for every Indonesian citizen is in the form of land certificates. The certificate is a proof of right consisting of a copy of the land book and a measurement letter determined by the National Land Agency with the aim of creating a strong means of proof with the provisions of the Basic Agrarian Law No. 5 of 1960 so that a legal certainty is achieved. Matters are examined, namely regarding the definition of legal actions referred to in article 1365 of the Civil Code which is applied in a court decision. In a law there must be certainty and protection for holders of land rights certificates.
Keywords: *certificate, right, land, legal protection, legal certainty*

1. INTRODUCTION

Historically, ownership of land rights in Indonesia underwent various changes. When the population is still small and the amount of land is unlimited, then land is just a commodity that is processed and utilized for individual interests and not traded. However, as the population grows, this makes the land begin to be bought and sold where there is the principle of supply and demand in it. Land ownership changed from the concept of land as commodity to land a property[1]. In the beginning, land rights were absolute. Land gives various rights to the owner, which consists of the right to cultivate and utilize the land, the right to enjoy the use of land including the air above it, the right to obtain financial benefits from the land, the right to sell, give and inherit land to others and the right to develop.

Over time, these absolute rights began to be restricted. In the public interest, land rights that provide rights to enjoy and act freely on land, may even be revoked. In this case the public interest began to demand attention so as to make land ownership change to land social property.

The Basic Agrarian Law does not regulate the land, but is a matter of the right to the surface of the earth, so it does not include the entire earth, water and natural resources contained therein. The land referred to in the Basic Agrarian Law is not the same as the land referred to in the Civil Code as immovable property. However, the land in the Basic Agrarian Law has a very specific principle and is the culture of the Indonesian nation. With the principle covering land in Indonesia, Indonesian land does not fully have material properties as immovable objects based on the Civil Code.

The Basic Agrarian Law through the State determines various kinds of land rights granted to people, as well as to legal entities in which all land rights have a social function, meaning that they contain an element of togetherness and a balance between personal interests and public interests. Therefore, each holder of land rights will not be separated from the right to control the State because national interests are above the interests of individuals or groups. However, this does not mean that the interests of individuals or groups can be sacrificed for the public interest because at any time the State requires the land in the public interest so that the landowner must release the land rights with compensation.

The basic provisions of national land law are contained in the Basic Agrarian Law No. 5 of 1960 which is the basis and legal basis for owning and controlling land by other people and legal entities in the context of fulfilling their needs for business or development purposes. Therefore, the existence of individual rights to the land always originates from the Indonesian Nation's Right to land in Article 1 paragraph (1) of the Basic Agrarian Law. Each of the land tenure rights in the National Land Law covers, the rights of the Indonesian people to land article 1 paragraph (1) and the right to control the State Article 2 paragraph (1) and (2) the Basic Agrarian Law, as well as individual rights over land consisting of land rights (primary and secondary) and security rights to land[2].

The procedure that can be used to obtain land rights depends on the status of available land, namely State Land or Land Rights. If the available land is State Land, the procedure that must be used to obtain the land is through an application for rights. Meanwhile, if the available land is Land Rights (primary rights) then the procedures that can be used to obtain land rights through transferring

rights (buying and selling, grants, exchanging)[3]. Every land rights obtained through the application for rights must be registered at the Office of the Land Agency (BPN) in each Regency / Municipality.

In long-term development, the role of land for meeting various needs will increase, both as a place of settlement and for business activities. In this connection, the need for support in the form of guarantees of legal certainty in the land sector will also increase. The first thing needed in granting legal certainty in the field of land is the availability of written, complete and clear legal instruments that are carried out consistently in accordance with the soul and contents of the provisions.

Besides in dealing with concrete cases, it is also necessary to carry out land registration so that the verification of their rights to the land under their control can be carried out easily. As for the parties concerned, such as prospective buyers and prospective sellers, in order to obtain the necessary information regarding the land which is the object of the legal act to be carried out, as well as for the Government is to implement land policy.

Related to this matter, in Article 19 of Law Number 5 of 1960 which discusses the Basic Regulations on Agrarian Principles, it is explained the registration of land in order to guarantee legal certainty over land ownership. The land registration was then regulated further through Government Regulation No. 10 of 1961 concerning Land Registration which until now has been the basis for land registration activities throughout Indonesia.

In Government Regulation No. 24/1997 which enhances Government Regulation No. 10/1961, the purpose of the regulation and the system used therein are maintained which are essentially stipulated in the Basic Agrarian Law, namely that land registration is held in order to provide legal certainty in the field of land issues and that the publication system contains a positive element because it will produce proof of rights documents that serve as a strong proof. This is as stated in Government Regulation Number 24 of 1997 Concerning Land Registration Article 19 paragraph 2 (two) letter c, article 23 paragraph 2 (two), article 32 paragraph 2 (two) and article 38 paragraph 2 (two) Article 19 paragraph (2) letter c which states that "Provision of letters of evidence of rights, which act as a strong means of proof" and Article 23 paragraph (2) which says that: "Registration included in paragraph (1) is a means of proving that strongly regarding the abolition of ownership rights and the validity of the transfer and imposition of these rights. Basic Agrarian Law[4].

Article 32 paragraph (2) of the Government Regulation states that: "The registration referred to in this paragraph states a strong means of proof concerning the transfer and the abolition of the right to use the business, except in that right, is deleted because the time period is expired." Article 38 paragraph (2) which states that: "The registration referred to in paragraph (1) is a strong means of proving the abolition of the right to build and the validity of the transfer of the right, except in that right, is deleted because the time period is expired.

"The improvements made include the assertion of various rights that are not yet clear in the old regulations, including the understanding of land registration itself, the principles and the purpose of the settlement, which in addition to providing legal certainty as mentioned above, are also intended to collect and present information that is complete data on physical and juridical data concerning the parcels concerned. The procedure for collecting land tenure data is also emphasized and shortened and simplified in this regard.

In guaranteeing legal certainty in the field of land tenure and ownership, the certainty of the location and boundary of each parcel of land cannot be ignored. It can be learned from past experience, quite a lot of land disputes have arisen as a result of the location and boundaries of parcels of land being incorrect. Therefore, the problem of measurement and mapping and the provision of large-scale maps for the purposes of conducting land registration is something that should not be ignored and is an important part that needs serious and careful attention, namely not only in the context of collecting land tenure data but also in the study data on business / land ownership and data storage.

In the Basic Agrarian Law Number 5 of 1960, land certificates are never mentioned, but as found in Article 19 paragraph (2) letter c, some are referred to as "proof of rights". In everyday terms, this proof of title is often interpreted as a land certificate[5].

A certificate is a proof of rights which is therefore also very useful and functions as a "proof". Evidence that states that ownership of this land has been administered by the state. By administering it and giving evidence to the person administering it, the evidence or certificate belongs to someone according to what is stated in the relevant certificate. For the land owner, the certificate is a strong guideline in proving his ownership rights because the certificate is issued by a legitimate and legally authorized agency. The law in this case protects the certificate holder which makes the certificate holder stronger if the holder is the name mentioned in the certificate. So if the certificate is not yet in the name of the certificate holder, it is necessary to reverse the name of the person holding it so as to avoid interference from other parties.

If there is a dispute over the plot of land, then by the land owner, the certificate in his hand is used to prove that the land belongs to him. The land certificate or land certificate can function to create an orderly land law and help to develop people's economic activities (for example if the certificate is used as collateral). In this case the certificate is proof of land that has been registered by an official body that is legally carried out by the State on the basis of the Act.

With the issuance of this certificate, it indicates that there has been land registration. However, in practice, the issuance of land certificates can still be questioned about their effectiveness in providing legal certainty and protection, namely whether the certificate really protects its rights (subjects) or land (objects) or only physical proof of the certificate. This is because it often happens when a certificate is brought to court, the certificate can be formally recognized, but does not protect the subject and object. The State Administrative Court may refuse to

declare to cancel the land certificate, but the general court has the right to declare that the person whose name is registered in the certificate is not entitled to the disputed land.

Although the main function of land title certificates is as evidence, certificates are not the only means of proof of land rights. In this case, a person's land rights may still be proven by other evidence. The certificate is as a very important evidence such as in the case of transfer of rights and legal acts of transfer of rights aimed at transferring land rights to other parties (who qualify as rights holders), in the form of: sale of land, exchange, grants or wills and others. But in reality in society there are often various problems related to certificates.

Thus, land rights are rights that give authority to those who have the right to use and take advantage of the land that is his right. A person who feels his right has been impaired by another person can file a lawsuit with the District Court in the legal area of residence or domicile of the Defendant, as well as requesting the District Court to stop or delete all acts related to the land in dispute and ask the Defendant to pay compensation. The lawsuit arose after one of the parties suffered losses due to the other party's actions. As we have seen, every person in a civil relationship is always given the rights and obligations of a material and material object, where these civil rights and obligations are always regulated in the material civil law.

If a person's civil rights are disturbed, he will try to restore that right, that is, if the peaceful efforts between the two parties are unsuccessful, then the way to take it then is to file a lawsuit through the District Court to restore his rights. In the examination at the District Court, after question and answer in the case examination, the next process is to prove. In the process of proof, both the plaintiff and the defendant can be subject to proof, as stated in article 163 HIR or article 283 RBG and article 1865 BW which determines whoever says that he has a right or suggests an act to suspend his right or to deny other people's rights, must prove the existence of that right or the existence of that act[6].

If the land dispute is filed by the plaintiff through the District Court, the plaintiff must prove the truth of the claim and if the defendant refutes it, then he must prove his rebuttal, because proof is very important. This means that in a civil case, whether a lawsuit is granted or rejected depends on whether the lawsuit is proven or not before the Court[7].

With the above explanation, Article 33 paragraph (3) of the 1945 Constitution is a constitutional basis for the birth of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), stating that "Earth, water, and natural resources contained therein, are controlled by the State and can be used as much as possible for the prosperity of the people. Customary law as a legal system has its own pattern in resolving disputes. Customary law has a unique and unique character when compared to other legal systems. UUPA Article 5 was born and grew from the community, so that its existence is compounded and cannot be separated from the community.

Settlement of disputes in the legal community is based on the outlook on life determined by state regulations based on applicable laws. Society has a democratic nature in which the common interests are preferred without ignoring or detrimental to the interests of individuals where the atmosphere of a dominating life and social justice can work together with a communal spirit and mutual cooperation in society in the rule of law. Democratic behavior is imbued with universal legal principles. This value is in the form of general power, the principle of deliberation, and representation in the customary government system, the tradition of resolving customary community dispute based on the values of communal philosophy, sacrifice, supernatural value, and justice[8].

Land disputes often occur in Indonesia. One example is the case in Tuminting Village, Tuminting Sub District, Manado City. It is known that as a plaintiff, Jhony Takasana, Alci Takasana, and Hans Alexander Abuthan stated that the Plaintiff's land was obtained by Carlina Manamuri from Mr. Gaspar Voges in 1930 who ordered Carlina Manamuri to overhaul the entire garden in Tuminting (at that time) to be planted with coconut trees. After that, Carlina Manamuri carried out the order with the help of her children in return for a portion of 2 (two) hectares of land. Whereas after that, in 1931, after Mr. Gaspar Voges at that time saw Carlina Manamuri had planted approximately 200 coconut trees (two hundred) trees, Mr. Gaspar Voges invited Carlina Manamuri to appear before Mr. Willem Carel Lamers, Notary in Manado to give part of the land to Carlina Manamuri for 2 (two) hectares[9].

However, the defendant, Djenny Lamurangiang filed a review (PK) of the Prosecutor's decision on the grounds that a portion of the land which was an inseparable part of the separation and / or transfer of Defendant II to Certificate of Ownership Number 102 on behalf of Defendant II Dr. Hans Alexander Abuthan with an area of 7,223 M^2 (seven thousand two hundred twenty three square meters) on November 29, 1966, with Situation Drawings Number 226/1978 dated April 11, 1978, to Defendant I without right and against the law and by Defendant III was published Certificate of Ownership Number 161 / Tuminting in the name of Defendant I Djenny Lamurangiang with an area of 570 M^2 (five hundred seventy square meters) with Measurement Letter Number 497/1978, by Defendant I on it has already been built and / or a permanent building has been built without rights and against what is hereafter called the object of dispute.

Based on the description above, the writer in this thesis took the title:

"Proof of Land Rights Ownership over the Land Disputes (Study of Supreme Court Decision Number 57 PK / Pdt / 2016)."

2. UNDERSTANDING OF ONRECHMATIGE DAAD AS IS INTENDED IN ARTICLE 1365 CIVIL CODE IMPLEMENTED IN THE DECISION OF COURT

There are various kinds of terminology against the law according to legal experts, for example R. Wirjono Prodjodikoro uses the term Violating Laws, Utrecht uses the term Actions That Are Contrary to Legal Principles, and Sudiman Kartohadi Prodjo put forward the term Action Against Law[10].

Basically, the definition of unlawful acts regulated in article 1365 of the Civil Code is "Every act that violates the law, which brings harm to another person, obliges the person who because of his mistake to cause the loss, must compensates for the loss."

From some of the above meanings, then article 1365 of the Civil Code contains several elements, namely:

Elements of Unlawful Acts are acts or actions of perpetrators who violate / oppose the law. According to the Doctrine of Civil Law, the notion of an element of acts against the law is not only limited to acts that are against a provision of applicable laws and regulations, but also includes:

a. Actions that are contrary to the legal obligations of the offender, means that an obligation given by law to someone, both written and unwritten law.
b. Actions that are contrary to the subjective rights of others, meaning that actions violate the rights of others granted by law to use their interests.
c. Actions that oppose the rules of morality, which means that actions are expressed as moral norms which in social relations have been accepted as legal norms.

Acts that violate decency that have been recognized by the community as unwritten law are also considered as acts against the law, when the act of violating decency has caused damage to other parties.

d. Actions that are contrary to the principles of propriety, accuracy and caution that should be owned by someone in association with fellow citizens or to the property of others, both written and unwritten laws.

The Loss Element is divided into2, in the form of:

a. Material Losses, i.e. actual losses suffered and the benefits that should have been obtained.
b. Immaterial losses, i.e. losses arising from fear, disappointment, pain and loss of pleasure in life.

The Fault Element consists of 2 factors, namely:

a. Fault due to deliberate, meaning awareness by people who are free from mental disorders must know the consequences of his actions to the detriment of others.
b. Fault due to negligence, meaning the act of ignoring something that should be done or acts without being careful so that it causes harm to others.

The element of the Causal Relationship between Acts and Losses is losses that occur due to the actions of the perpetrators.

The law recognizes certain rights, both regarding personal rights and regarding material rights. Therefore the law will protect through the imposition of strict sanctions for those who violate these rights, namely by the responsibility of paying compensation to the party whose rights are violated.

In civil law, responsibility for wrongdoing includes the following:

1. Every act that causes harm to other parties, then there must be compensation for losses resulting from such actions (Article 1365 Civil Code)
2. A person is not only responsible for losses resulting from intentional acts, but also must be responsible for his negligence / careless attitude (Article 1366 of the Civil Code)

From the explanation above, it can be concluded that the responsibility due to acts against the law is the responsibility due to an error from the legal subject, which causes losses from other parties.

By their nature, the types of verdict in civil cases are divided into 3 (three) types, namely:

1. *Declaratoir* Verdict is a court decision whose ruling states a condition where the said condition is declared lawful.
2. *Constritutief* Verdict is a decision that ensures a legal condition, both of which is to eliminate a legal condition or that gives rise to a new legal condition.
3. *Condemnatoir* Verdict is a decision which is to punish the losing party to fulfill an achievement determined by the judge. In this decision, the civil proceedings of the Plaintiffs which were prosecuted against the Defendants were recognized by the judge in advance of the trial.

Based on the case of the decision of the Supreme Court Number 57 PK / PDT / 2016, that the application for Reconsideration that has actually committed an illegal act against the deceased landowner Carlina Manamuri covering 7,223M^2 (seven thousand two hundred twenty three square meters) Certificate of Ownership Number 102 which has been partially transferred or sold to Defendant I / Compared I and has issued Certificate of Ownership Number 162 / Tuminting which, according to law, is invalid and has no evidentiary value.

3. CONCLUSION

From the discussion described above, some conclusions can be drawn as follows:

Based on the Supreme Court Decree Number 57 PK / PDT / 2016 that land recognized by someone who turns out not to be his property so that it harms other parties and must be accounted for. Acts against the law do not only include acts that are contrary to the law, but also include actions that violate the rights of others, are contrary to decency and the nature of caution, propriety and appropriateness in community traffic.

ACKNOWLEDGMENT

Thank You to the rector of Universitas Tarumanagara and all the faculty members who gives supports in writing and presenting this paper.

REFERENCES

[1] Harsono, Budi. *Hukum Agraria Indonesia,* Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya, Jakarta: Djambatan, 2005.
[2] Hutagalung, Arie S. *Perlindungan Pemilikan Tanah dari Sengketa Menurut Hukum Tanah Nasional*, (Jakarta: Tebaran Seputar Masalah Hukum Tanah, Lembaga Permberdayaan Hukum Indonesia, 2005).
[3] Basuki, Sunario. *Garis Besar Hukum Tanah Indonesia Landasan Hukum Penguasaan dan Penggunaan Tanah.* (Jakarta: Program Spesialis Notariat FHUI).
[4] Indonesia. *Undang-Undang Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah*.
[5] Lubis, Mhd. Yamin dan Abd. Rahim Lubis, *Hukum Pendaftaran Tanah*. (Jakarta: Mandar Maju, 2008).
[6]Francis, Fukuyama. *TRUST : Kebajikan Sosial dan Penciptaan Kemakmuran,* Jogjakarta : Penerbit Qalam, 2007.
[7] Djojodiharjo, Moegni. *Perbuatan Melawan Hukum*. Cet. I, (Jakarta: Sinar Grafika, 1979).
[8] Khadduri, Majid. *Teologi Keadilan Perspektif Islam*. (Surabaya: Risalah Gusti, 1999).
[9] Indonesia. *Putusan Mahkamah Agung Nomor 57 PK/Pdt/2016.*
[10] Setiawan, R. *Tinjauan Elementer Perbuatan Melawan Hukum*. (Bandung: Alumni, 1982).
[11] Indonesia. *Kitab Undang-Undang Hukum Perdata*.
[12] *Undang-Undang Pokok Agraria Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria*.