

## The Legal Protection for The Parties Due to The Issuance of Overlapping Land Certificates (Decision Study Number: 1 K/PDT/2021)

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**Abstract.** *The agrarian conflicts have increased in Indonesia throughout 2022, there have been 497 cases of criminalization of agrarian conflicts, namely land disputes experienced by land rights fighters in various parts of the country. This research was conducted to find solutions to developing problems and find out the study of norms in Cassation Decision Number: 1 K / Pdt / 2021. The problem of buying and selling land that raises disputes is quite widely experienced by the community, related to taxes and forgery of both identity and certificates, especially in areas where the security system is inadequate. This also triggers a dispute in the form of overlapping certificates, because this overlap is only known if one party feels aggrieved. Theoretically, this research can help provide information about legal protection for parties due to the issuance of overlapping land certificates, as well as legal rules governing legal protection for parties due to the issuance of overlapping land certificates and become one of the contributions of academic thinking to develop legal science, especially business law, land law and land registration. This research can contribute to the addition of knowledge in the study of civil law studies, especially business law, land law and land registration can provide input and consideration for taking policies, especially those related to land law and land registration.*

**Keywords:** *Dispute; Land; Rights; Transfer.*

### 1. INTRODUCTION

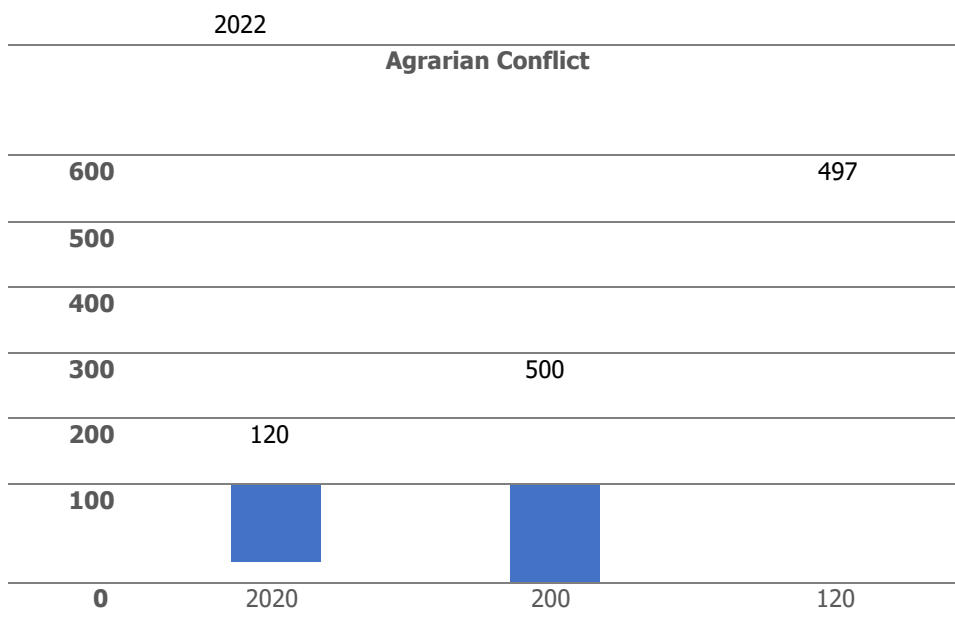
#### 1.1. Background

Land is the main capital of a development and is an important element in the lives of Indonesian people. People need land because it is a basic human need that is a source of livelihood and sustainability of life as a means of workers and is a major factor in every development activity. Humans carry out all activities in giving life and livelihood. Land being the most important for human life makes every human want to own and dominate the land, which causes soil problems. The national legal system related to land law needs to be in tandem and in line with the constitution that exists in the Indonesian state, namely the Constitution of the Republic of Indonesia 1945 (later called the 1945 Constitution), as stated in Article 33 paragraph (3) of the 1945 Constitution "Earth, water, and natural resources contained therein are controlled by

the State and used for the greatest prosperity of the people". Land as a basic human need has been regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations promulgated on September 24, 1960, known as the Basic Agrarian Law (hereinafter referred to as UUPA). UUPA was born as a legal unification of land regulation in Indonesia, so that legal certainty of land rights for all Indonesian people in the land sector can be realized. Land rights are rights that authorize the owner of his rights to use or benefit from the land he is entitled to. Based on the provisions of Article 4 paragraph (2) of the UUPA, authority is given to the holder of land rights in using the land in question, so that the body of the earth, water and the space above it are only needed for direct leisure related to the use of the land within the limits of the UUPA and other higher regulations. Land law is all laws that regulate several land tenure rights, both written and unwritten, which become legal institutions and concrete legal relationships, which are in line with the opinion of Effendi Perangin.

Individual land rights may be proven with other evidence. In the era and time that develops, land certificates often have problems or land disputes, for example in the creation of certificates. One of the problems is the existence of evidence of ownership in the form of overlapping certificates, where the Certificate describes a similar plot of land, namely proof of a certificate of ownership of documents issued by the state, namely the National Land / Agrarian Agency and Spatial Planning. Documents issued in the form of certificates that in fact overlap have an impact on the ownership rights of a piece of land overlapping each other between one owner and another. Land rights certificates in Indonesia act as strong evidence as confirmed in Article 19 paragraph (2) point c of the UUPA and article 32 paragraph (1) of Government Regulation Number 24 of 1997.

Agrarian conflicts have increased in Indonesia throughout 2022, there have been 497 cases of criminalization of agrarian conflicts, namely land disputes experienced by land rights fighters in various parts of the country. This figure even increased significantly compared to 2021 of 150 cases and 120 cases in 2020.



Source: Pradipta Pandu, 2023, *Agrarian Conflicts Increase Throughout 2022, Political Will Key to Resolution*. Kompas.id (Processed by author)

Overlapping certificates can occur due to Indonesia's weak land registration system which results in uncertain laws for land owners that are highly undesirable in land registration in Indonesia. The existence of overlapping land rights certificates brought by different people causes someone whose name is listed on the same certificate to point fingers and insist that what he has is the original certificate. Parties who have land title certificates continue to be concerned with the certificates they have, obtaining legal certainty related to land rights ownership certificates, one of which is that each party must propose a lawsuit to the court to obtain a decision on the ownership of land rights certificates and legal certainty. Individuals or legal entities who take the property of a land through the use of their land and physically dominate the land are not necessarily the parties who own the land. If you have a sale and purchase deed that is the basis for the transfer of rights, it is not certain that the transfer is not legally defective. This causes no guarantee of legal certainty in the land aspect because evidence in the form of documents cannot be ascertained whether it is true or not and the process of transferring rights is in accordance with the provisions of applicable laws and regulations. This problem can arise not only because each party is in dispute but also because employees of land registration and registration have been negligent which causes problems to arise.

One example of a case in the aspect of land certificate issuance overlapping land disputes can be seen as in the case in Cassation Decision Number: 1 K / Pdt / 2021 there are plaintiffs and defendants I and defendant II. Namely, Defendant I controls and owns a plot of land object of dispute covering an area of 143 (one hundred forty three) square meters which is part of the Certificate of Property Number 114, dated December 30, 1983, located now in Jelutung, District Jelutung, Jambi City and Defendant II issued Certificate of Property Number 657/Jelutung, Situation Picture Number 01763/1991. Declaring Title Certificate Number 657/Jelutung, is legally defective, so it has no legal force. Plaintiff's Certificate of Title No. 114 and Defendant's Certificate of Title No. 657 overlap, so the object of the dispute becomes blurred. In this overlapping land certificate occurred due to the issuance of title certificates by the Jambi City Land Agency, the Plaintiff and Defendant 1 were not aware of this. Based on the case in the ruling, the researcher intends to conduct research with the title above.

## **1.2. Certificate Overlap**

Overlapping land certificates had appeared in Indonesia, namely in the case of decision Number: 1 K / Pdt / 2021 where Indonesia is popular for its many natural resources, of course, it is a factor in order to observe the triggers for the emergence of unequal land use and not in accordance with existing laws and regulations. The emergence of these various overlapping problems must be confirmed in advance. The existence of land registration and title certificates over land owned must certainly be monitored and evaluated by relevant stakeholders, namely the land office that oversees whether the location is registered as already owned by the parties Some or not. The impact of this overlap certainly raises problems with land tenure such as the existence of disorderly land registration carried out by the State Land Agency so that there are cases of overlapping title certificates that occur on some of the land. Where also the practice of buying and selling land carried out on the basis of good faith, for which every sale and purchase transaction must be able to show proof of ownership of the certificate owned. The rise of overlapping

certificates is the impact of incorrect registration procedures and communities that do not provide legal certainty over their land ownership.

The problem of overlapping land ownership reveals that the overlap that arises triggers claims to the land it owns. Basically, the form of legal protection in the land system is plotting with online system which makes there is no certainty over the vision of land boundaries. Generally, each boundary designation certainly requires approval from each party whose boundaries are directly limited so that there are no overlapping problems. In the update issued by the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia No. 1 of 2021 concerning Electronic Certificates (later named Regulation of ATR / BPN No.I / 2021) which states that in creating modernization of land services useful for increasing indicators of ease of doing business and public services to the community, it is necessary to maximize the application of information and communication technology through the application of land services on a basis Electronic, for example, land registration activities issued in the form of documents (electronic certificates) which of course the law will trigger problems with the uncertainty obtained, so the formation of *crosscheck* forms in the field is very important. The growing digital needs to be balanced by the same and the same administrative governance pattern but needs to be considered for administrative structuring reasons to minimize the presentation of future dispute problems. In fact, so far the administrative system that is carried out as a publication media in the ownership of land, used to be a conventional system now becomes a modern system.

### **1.3. Legal Protection**

Protection based on the Preamble to the 1945 Constitution in the 4th paragraph states that "protecting the entire Indonesian nation and all Indonesian bloodshed" which means providing protection for all Indonesians and the protection aims to maintain national security and order. Satjipto Rahardjo stated that legal protection is to provide protection for human rights (HAM) that harm others and that protection is provided by law. Law is needed by those who are weak and not yet strong socioeconomically and politically to obtain social justice". This legal protection is given to everyone who feels aggrieved by their rights by others, so to maintain their rights, the law is needed as a protective umbrella for parties who have not received justice where this needs to be obtained by the parties in the case of decision Number: 1 K / Pdt / 2021. In such cases, the parties need to obtain legal protection due to overlapping land title registrations.

According to Phillipus M. Hadjon that: Legal protection for the people as a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be prudent in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in the courts.

## **2. RESEARCH METHODS**

This study is normative juridical research. It is meant by normative legal research based on library research and document studies. Called normative or doctrinaire legal

research because this research is carried out covering several things related to library research or document studies because this research is dominated by secondary data contained in libraries, laws and regulations, norm systems are the object of study, such as ideal legal values, legal theories, legal principles, legal principles, legal teachings, court decisions and general policies. Normative juridical research on legal protection for parties due to the issuance of overlapping land certificates (Decision Study Number: 1 K / Pdt / 2021) examines and analyzes legal issues regarding legal protection for parties due to the issuance of overlapping land certificates (Decision Study Number: 1 K / Pdt / 2021) provides legal protection for parties due to the issuance of overlapping land certificates (Decision Study Number: 1 K/Pdt/2021).

### **3. RESULTS AND DISCUSSION**

#### **3.1. The Legal Basis of Land Ownership**

Government Regulation Number 18 of 2021 concerning land registration. A certificate is a proof of land rights. Certificates become authentic evidence that have legal force. A certificate is a legal guarantee for someone who has a certificate that has perfect evidence, of land ownership. Certificates function as long as no person or legal entity proves them and vice versa. Many people try to obtain proof of ownership of land rights through bad means, which leads to the existence of fake land title certificates. This happens because of the high value and benefits of land for one's life. In fact, fake land title certificates appear on vacant land, using old certificate stamps but having high economic value as well. Falsification of land title certificates arises because the creation is not based on the right reasons, which is similar when the process of issuing the certificate is not based on the right reasons or when the creation of land title certificates is basically a certificate of ownership that becomes fake. Other forms are the stemple of the State Land Agency and falsification of land data. Some of these things cause problems in the land division, because there are 2 certificates with similar objects

The ownership of a piece of land generally has all legal force, both a legal protection for the legal parties to the land and legal certainty from the ownership of its rights, its physical land, from interference or other land disputes. The sentence in article 3 of Government Regulation Number 24 of 1997 describes a land registration as very identical as a guarantee of obtaining certain laws in the land sector. There is also the definition of land registration in the sentence of article 1 number (1) of Government Regulation Number 24 of 1997, land registration activities have the aim of guaranteeing legal certainty, namely the holder of ha katas land so as to simply provide evidence who has the authority to own the land, with a land certificate. The same is stated in the sentence of Article 19 paragraph (1) of the Law on Land Registration with the core discussion of the article. It is clearly understood that the main purpose of land registration is to ensure legal certainty in cases of overlapping land certificate issuance.

#### **3.2. The Systematics of Land Rights Transfer**

Based on Article 20 paragraph (1) of the UUPA is given the definition of property rights, namely "hereditary, strongest and fullest rights that people can have over land, keeping in mind the provisions contained in Article 6 of the UUPA". Salim HS detailed the position of property rights. Land ownership rights can occur in three ways according to the contents contained in Article 22 of the UUPA. Property rights can be

transferred to other parties based on Article 26 paragraph of the UUPA, namely: "Sale, exchange, grant, will, customary gift and other acts intended to transfer property rights and supervision under Government Regulations". Article 26 paragraph (2) of the UUPA, namely: "Every sale, exchange, grant, gift by will and other deeds intended to directly or indirectly transfer property rights to a foreigner, to a citizen who in addition to his Indonesian citizenship has foreign nationality is void because the law and his land fall to the State."

In this case, however, the process of transferring property rights remains strong in relation to existing laws and regulations in Indonesia.

When land registration is processed, the UUPA requires the government to carry out Land Registration in all regions of the Republic of Indonesia, and the UUPA requires interested rights owners to register their land rights. Coinciding with the opinion of K. Wanjik Saleh who revealed that: "Article 19 of the UUPA is intended for the Government to carry out land registration in all regions of the Republic of Indonesia to be the government's obligation as the highest authority on owned land, business use rights, building use rights, every change, abolition and encumbrance with other rights need to be registered is an obligation for those who have other rights to be obtained is an obligation for those who have rights This is so that they can get legal certainty about their rights. "

The transfer of ownership rights to land is stipulated in Article 20 paragraph 2 of the UUPA that property rights can be transferred and transferred to other parties. What is meant by "switching" is a change of rights because the owner of the right has passed away, so his own rights so pass to his heirs. Article 20 paragraph 2 of the UUPA reveals that property rights over land can change and can be transferred to other parties. There are two forms of transfer of land rights or property rights which can be described below:

- a. Switching is the transfer of rights to land or property rights from the right holder to another party because the right owner dies or by inheritance. This transfer of land rights or property rights arises due to law, meaning that with the death of the right holder (subject), so that his heirs get land or property rights. Where the subject in the transfer of land rights or property rights needs to meet the requirements to become a holder of land or property rights.
- b. Transfer / transfer of rights is the change of land or property rights from the holder (subject) of his rights to another party because of a legal act that is deliberately carried out so that the other party gets his rights. With the transfer of rights, the party who transfers rights must have the right and authority to transfer rights, while for those who get rights need to complete the conditions to become holders of land or property rights. Various forms of legal action that create land rights are through transfer as described in the form of buying and selling, grants, exchanges, income in the Company and auctions.

Registration, which contains several related documents, is a series of processes that begin so that a piece of land is registered, including what patterns of procedures need to be carried out and what are the obstacles to registration and restrictions for officials responsible for land registration. Land registration based on Government Regulation

No. 24 of 1997 Article 1 stipulates that: Land registration is a series of activities carried out by the government continuously, related and regularly, including collecting, managing, recording and presenting and maintaining physical data juridical data in the form of maps and lists related to land parcels and rental housing units, including the provision of certificates as a requirement for proof of rights for land parcels that already have rights and rights Ownership of the unit of the house arrangement along with certain rights that are its burden.

### **3.3. The Land Conflicts and Disputes**

Land disputes can take the form of administrative, civil, criminal disputes related to ownership, transactions, registration, guarantees, use, control and disputes over clan rights. In land disputes, of course, there are parties among them. The Parties are two or more legal subjects in dispute and one or both take their dispute to Court for resolution. The parties in this study are two legal subjects where both register their land at the Jambi National Land Agency but at the time of certificate issuance there was an error where the certificates of these parties overlapped. In this case, there is a need for legal protection of the parties in the event of overlapping land titles. Clarity on the issuance of overlapping certificates is required. The lack of clouding and overlapping certificate issuance procedures carried out by the Jambi City state land agency are serious problems. These parties are in the same situation caused by the state land agency. Unconsciously defendant I did not know that he was being sued by the plaintiff.

Nowadays a dispute over land is inevitable, because the number of ownership of various land needs has become very high while the number of plots on existing land is very limited. Land disputes that arise every year show that the handling of land policy in Indonesia has not been able to run as expected. Various factors that trigger the emergence of land disputes are:

- a. Land administration in the past was less orderly. Administration has an important role to create a guarantee of legal certainty. In the past land tenure and ownership, mainly customary land which is often not supported by valid and complete administrative evidence, whose physical data of control or ownership is different from administrative data and juridical data.
- b. Overlapping statutory regulations. Land is a subsystem of agrarian resources and natural resources that have a close relationship, whether related to subsystem ties or human ties and communities and countries. There is still a lack of role of the rule of law in the field of agrarian and natural resources with regulations in the field of land, causing conflicts and conflicts of power, ownership and use and utilization of land.
- c. The implementation of land law is less consistent. The impact of the asynchronous rule of law can lead to a conflict of authority or conflict of interest which sometimes causes laws in the land sector to be less properly and consistently implemented. Which ultimately greatly affects the quality of assurance of legal certainty and legal protection.
- d. Law enforcement that has not been able to be carried out consequentially. Law enforcement is an important part of efforts to guarantee legal certainty, especially to avoid the increasing number of land residents, forgery of evidence letters of land owners, plantation land grabbers and others.

Poor communication causes misunderstandings between some parties who participate, can be a source of problems. A study shows that semantic difficulties, insufficient information exchanged and disrupted communication networks become obstacles to communication and create problems. Based on the Head of the central BPN (National Land Agency), there are three main things that cause land disputes, namely:

- a. The problem of land certification administration is not clear, the impact is that there is land owned by two people who have certificates each.
- b. The uneven distribution of land ownership, the imbalance in the distribution of land ownership, whether agricultural or non-agricultural land, has led to inequalities both economic, political, and sociological. In this case, the bottom community, especially farmers/land cultivators, bears the heaviest burden. The imbalance in land distribution cannot be separated from economic policies that have capitalistic and liberalistic tendencies. In the name of development, farmers' arable land or land owned by indigenous peoples is taken over by low-priced financiers.
- c. The legality of land ownership is based on formal evidence (certificates), with no regard to land productivity. As a result, legally (*de jure*), many certified lands are owned by companies and large investors because they have bought from farmers or landowners, but the land has long been abandoned. Land disputes have the potential for conflict between races, tribes and religions. The impact of self-esteem needs to be at stake. There are many causes of land disputes, depending on the conditions and regions of each and the regional laws that regulate land issues. Other potential sources of dispute are personal factors, including: the value system that a person has, personality characteristics that cause a person to be unique and different from others. For example, someone who is very authoritarian, dogmatic and values others is mentioned as a potential source.

#### **4. CONCLUSION**

The issuance of land certificates aims to provide importance for rights holders based on physical data along with juridical data, for example those that have been recorded in the land book. The problem of buying and selling land that raises disputes is quite widely experienced by the community, related to taxes and forgery of both identity and certificates, especially in areas where the security system is inadequate. This also triggers a dispute in the form of overlapping certificates, because this overlap is only known if one party feels aggrieved. Such is the case in the case of decision Number: 1 K/Pdt/2021.

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Decision Number: 1 K/Pdt/2021