

SETTLEMENT OF DUAL LAND CERTIFICATE DISPUTES THROUGH MEDIATION RESULTING FROM CONVERSION OF CUSTOMARY LAND (Case Study at Padang City Land Office)

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Abstract: A double certificate is a proof of land ownership that has more than one certificate. Untruth at the time of making a land proof letter/certificate can occur because of the element of deliberateness or element of fraud (*bedrog*) and or coercion (*dwang*), at the time of making physical data and juridical data booked in the land book. A land dispute is a conflict of two or more persons to defend the legal right of ownership of each person or group to maintain its interests the same object that has to do with the land or that is in the land or on the ground. The purpose of this study is to look and further study the settlement of The Dual Land Certificate Dispute Through Mediation Resulting from the Conversion of Indigenous Lands in the City Land Office Padang. As for the formulation of problems in the first study, What causes the occurrence of double land certificate in land registration in the City Land Office Padang? Second, How is the mechanism of conversion of customary land rights carried out at the City Land Office Padang and what is the reason for the proposed conversion? Third, What is the form of settlement of double land certificate by mediation conducted by the City Land Office Padang and how effective is the mediation decision conducted by the City Land Office Padang?. This research was conducted by empirical juridical approach method. This research was conducted by Purposive Random Sampling, Research specifications in the writing of this thesis in the form of descriptive analytical research, with the type of data collected is primary data and secondary data, processed by editing techniques and analyzed with qualitative analysis. Conclusion of the first study, the issue of dual land certificates in the city of Padang is generally caused by Human Error measuring officers in the field in making and collecting floating results and physical data collection in the form of maps done manually, further human error also occurs in the community that does not maintain the boundaries of its own land. Second, of the two cases of dual land certificate disputes that the author studied in the previous discussion there were three land holdings that previously came from Indigenous Lands that were converted, the two cases encountered constraints on mapping the physical data of land tenure during the process of conversion of indigenous land. Third, Mediation settlement of the double land certificate case is conducted familiarly and accepted by both parties, and both parties avoid the completion of the double land certificate before the court.

Key Words: Double Certificate, Mediation, Land Conversion.

1. INTRODUCTION:

The importance of the use of land for the public interest demands a guarantee of legal certainty over the land. To obtain legal certainty of land rights, Law No. 5 of 1960 on Basic Rules of Agrarian Fundamentals, has placed an obligation to the Government to carry out the registration of existing land throughout Indonesia, in addition to the rights holders to register the rights to the land in accordance with the applicable provisions.[1]

Before the enactment of the Basic Agrarian Law, the law of land in Indonesia influenced by the situation in the colonial era was "dualism, where the legal status of the land there is controlled by European law (*Burgerlijk Wetboek*) and some are controlled by customary law (customary land law).[2]

The conversion of former land rights is one of the instruments to fulfill the principle of legal unification through Law No. 5 of 1960. Regulation of the Minister of Land and Agrarian Affairs No. 2 of 1962 governs the provisions on the affirmation of conversion and registration of former Indonesian rights to land in a normative manner. The purpose of land conversion registration is to provide legal certainty, legal protection to land rights holders.

Before converting land rights need to be prepared in advance *Alas Hak Surat* Statement of Physical Mastery of the land that is the object of registration. Proof with evidence of the existence of such rights in the form of written evidence, witness statements and / or statements concerned that the level of truth by the Head of the National Land Agency District / City is considered sufficient to register the rights, rights holders and rights of other parties who burden it.[3]

As it is known that in the process of land registration they must have completeness papers for the land they own. Whereas on land owned by rural communities or indigenous peoples hereditary from their ancestors, the land ownership letter they have is very minimal even some do not have at all. Recognition and affirmation of rights is from the conversion of land rights or proof of old rights, but only for former Indigenous Property Rights, while for former Western rights after 24 September 1980, conversion can no longer be carried out on it, although there is still old evidence and can only be done through the granting of land rights.

Before the enactment of Government Regulation No. 24 of 1997, many agrarian / land agencies in the region that convert through the institution of recognition / affirmation of rights because it is not clear evidence of its rights or has been repeatedly transferred to others, or the evidence of its parent is in the hands of others, or there is no evidence of its rights, but it is known that the land rights are Customary Property Rights and controlled continuously.[4]

Various land problems that arise, all of which are inseparable from the administrative conditions of land in the past, one of which is the existence of dual land certificates. The issuance of a dual land rights certificate can provide opportunities to parties who want to take advantage while harming other parties and causing land disputes. Some land problems, can be solved well by the Land office through. This is stipulated in Article 23C of Presidential Regulation No. 10 of 2006 concerning the National Land Agency, which states land disputes and conflicts can be resolved through mediation by the National Land Agency.[5]

2. CONCEPTUAL FRAMEWORK:

a. Dispute

Land disputes in quality and quantity are problems that always exist in the order of people's lives.[6] land rights disputes, namely: the occurrence of legal disputes starting from the complaint of a party (person / entity) containing objections and claims for land rights, both to the status of land, priority, and ownership in the hope of obtaining an administrative settlement in accordance with the provisions of applicable regulations.

b. Certificate

In article 32 of Government Regulation no. 24 of 1997, it is explained that certificate is a letter of evidence that applies as a strong proof tool regarding 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.

c. Conversion

Conversion of land rights is an adjustment of land rights that have been subject to the old legal system, namely: land rights according to the Western Civil Code and lands that are subject to customary law to enter the land rights system according to the provisions of the Basic Agrarian Law.[7]

3. THEORITICAL FRAMEWORK:

a. Theory of Legal Protection

The beginning of the emergence of this theory of legal protection stems from the theory of natural law. The theory of legal protection aims to integrate and coordinate various interests in society because in a traffic interest, protection of certain interests can only be done by limiting various interests on the other hand".[8]

b. Theory of Accountability

Liability in law, is a broad legal term that designates almost all characters of definite risk or liability, which depend on or that may include all actual or potential character rights and obligations such as losses, threats, crimes, costs or conditions that create the duty to carry out the law".[9]

c. Theory of Legal Certainty

Certainty is a matter of certainty, provision or determination. The law must be definitive and fair. It must be a code of conduct and fair because the code of conduct must support an order that is considered reasonable. Only because it is fair and carried out with certainty the law can carry out its functions.[10]

4. LITERATURE REVIEW:

The consideration of the Basic Agrarian Law, The National Land Law to be built is based on customary law in the sense of customary law that has been in "seneer". Ulayat land as one form of rights derived from customary law is a land with the citizens of the indigenous law community which later in the conception of national land law developed that all land in the territory of the State became a land with all Indonesians who united into the Nation of Indonesia as formulated in Article 1 Paragraph (1) Agrarian Basic Law as a statement of the formulation.

Every Indonesian citizen, both male and female, has the same opportunity to obtain a right to land and to benefit and earn good results for themselves and their families.

The Basic Agrarian Law that took effect legally on 24 September 1960, then the rights to western land rights and customary rights must be converted into land rights according to the Basic Agrarian Law. The presence of the Basic Agrarian Law is intended to realize the rule of law in the field of land, therefore the unification of land rights as stated in the law, must be implemented as soon as possible the realization and the provision of conversion is the most important wisdom in realizing the efforts to unification of land rights in Indonesia.[11]

5. METHOD:

The method used in this study is empirical juridical approach, namely legal research on the application or implementation of normative legal provisions in action on every particular legal event that occurs in society.[12] In this case the approach is used to qualitatively analyze the settlement of disputes over lapping sertipikat land through mediation due to the application for conversion derived from customary property in the City Land Office Padang.

6. DISCUSSION:

Various land problems that arise can not be separated from the administrative conditions of land in the past. The condition is due to the lack of orderly evidence of land ownership, even most of the land rights have not been registered, in addition to the many provisions of the implementation of the Basic Agrarian Law that has not been fully regulated. One of the land problems that arises is the problem in the field of land registration. This emerging land registration problem has wide-ranging consequences for the community and can reduce trust in the evidence of land ownership, especially the property rights.

News about over-lap, overlapping double-edged and so on land owners and heirs of land owners do not know the warkah or the history of the land. Engineering is done by owners and heirs who transact here and there before there is clarity on the status of the land, and the cohesiveness of the heirs who do not understand the determination and do not know exactly the correct documents become overlapping land ownership in Indonesia.[13]

Based on the above news the certificate of land history is one of the written evidence to show land ownership The proof of ownership basically consists of proof of ownership on behalf of the rights holder at the time of enactment of Law No. 5 of 1960 concerning the Basic Rules of Agrarian Fundamentals and if the right is then switched, proof of successive rights transfer into the hands of the rights holder at the time of bookkeeping of rights.

Land disputes are a symptom that cannot be ignored at all and must be resolved in accordance with applicable rules. In today's practice, it is not uncommon for 2 or more land certificates to be issued on the same piece of land, commonly known as overlapping, double certificate creates legal uncertainty for land rights holders and will cause disputes between rights holders, and is highly unexpected in land registration in Indonesia.

The issuance of a dual land rights certificate can provide opportunities for parties who wish to take advantage of it at the same time to the detriment of the other party, and cause disputes that often have to be resolved through the judiciary. The land problem that has arisen lately, is getting more complex. The trigger is not only economic aspects, but social and cultural and even religious. Some land problems, can be solved well by the Land office through "mediation".

7. ANALYSIS:

A. The Cause of Dual Land Certificate in Land Registration at City Land Office Padang

Related to the above problem from the findings of the sample that the author obtained, there are two cases selected for further study of the problem of dual land certificates derived from the application for conversion of indigenous lands namely (Primary data source):

1. Certificate of Property No. 6270/2002 on behalf of Mr. SL and Certificate of Property No. 6031/2015 on behalf of Mrs. SM located in Parupuak Tabing Subdistrict Koto Tengah.
2. Certificate of Property No. 6189/2014 on behalf of Mr. S with certificate of Property No. 250/1994 on behalf of Mr. YH located in Balai Gadang Subdistrict Koto Tengah.

From the two cases it is seen that the issue of dual land certificates in the city of Padang is generally caused by Human Error measuring officers in the field in making and collecting ploating results and physical data collection in the form of maps done manually, further human error also occurs in the community that does not maintain the boundaries of its own land.

Based on the description above, the emergence of a double certificate according to Adhe Rizal the issue of dual land certificates in the City of Padang is also caused by some elements of dishonesty from the community but there are other significant factors both from the community and the land office itself in addition to the above stated as follows:

1. Element of deliberateness.
2. Improper rights.

3. Appoint the wrong location of the land area.
4. The ownership boundary or location of the land field object is unclear or unknown to the owner.
5. There is no Situation Picture.
6. Uncharted Situation Images.
7. No map available to map Situation Images.
8. The Land Office neglected to remap the area of land that had been in the newly used kepetta.
9. Land owners do not maintain their land and do not maintain the boundary mark of their land.
10. The Head of Village / Village does not control or have map data of land areas that have been certified in the region.

Efforts to prevent the issuance of double certificates are efforts intended to prevent factors that cause the issuance of double certificates, as outlined above. The efforts made by the Padang City Land Office are also in line with the theory of legal protection, based on the description in chapter 1 preventive legal protection should aim to prevent the occurrence of disputes, which directs the government's actions to be careful in decision-making based on discretion, and repressive protection aimed at resolving disputes, including the handling of judicial institutions.

According to the author in addition to carrying out the above mentioned things, in the implementation of the obligations of land rights holders, good faith plays a very important role in the realization of land management that provides welfare to the community. Regarding the meaning of good faith this refers to the principle of good faith in the agreement. The principle of good faith is contained in Article 1338 Paragraph (3) BW which states "the agreement must be executed in good faith". Indeed this principle is found in an agreement made in the field of property law stipulated in the 3rd Book BW on alliances.

B. Mechanism of Conversion of Land Owned by Adat in City Land Office Padang and The Reason For The Proposed Conversion of The Land

1. Conversion of Indigenous Land Rights

The application for conversion of customary property rights is divided into two levels, after the process at the customary level is completed then continued the process at the City Land Office Padang, the related process using Government Regulation No. 24 of 1996 and Regulation of the Head of the National Land Agency No. 3 of 1997. Then in order to assess the correctness of evidence according to Article 25 of Government Regulation No. 24 of 1996, the collection and assessment of juridical data on the land field concerned by the Adjudication Committee in the registration of land systematically or by the Head of land office in the registration of land sporadically. Furthermore, the adjudication committee based on the authority given Article 53 number (1) regulation of the Head of the National Land Agency No. 3 of 1997 will prepare the concept of determining conversion and recognition of land rights, affirming the conversion of land rights and signing the determination of recognition of rights. The results of the research of evidence tools as referred to are set forth in a table of contents which in turn is determined by the Minister.

2. Reasons Submitted Conversion of land by the community

Based on the results of the author's research at the City Land Office Padang, namely in the Conflict and Litigation Disputes section, as well as in the field there are several reasons why the conversion was submitted by the community, namely:

- a. Members of the people want to get legal certainty and legal protection of their customary land.
- b. The desire to transfer the rights (sold) of some customary land to other parties.

In relation to land, based on research in the field, the use and management of indigenous land in the city of Padang is inseparable from the role of their rulers and ninik mamak as leaders in a people themselves. Ninik Mamak has the authority to regulate the use of land and make regulations related to ulayat land, such as: the development of land use, land use for plantations and rice fields and make rules on the discipline of people's lives.

C. Settlement by Mediation Conducted by the City Land Office Padang and the Effectiveness of mediation Decisions conducted by the City Land Office Padang

1. Mediation Settlement conducted by the City Land Office Padang

Based on the data obtained in this study on two cases of dual land certificates that occurred in the city of Padang, the certificate holders took the initiative to solve the problem through mediation channels handled by the City Land Office Padang. From these two cases the author will divide the stages of completion as follows:

- a. Certificate of Property No. 6270/2002 on behalf of Mr. SL and Certificate of Property No. 6031/2015 on behalf of Mrs. SM located in Parupuk Tabing Subdistrict Koto Tengah.

- a) Completion Stage
 - On September 22, 2020, Mr. SL came to National Land Affairs Agency stating that there had been a settlement with Mrs. SM.
 - Based on Mr. SL confession he had an informal meeting with Mrs. SM, and found an agreement that the issue of dual certificates was not continued to the District Court.
- b) Results
 - Then The Mr. SL Proposes changes to the Certificate through the mechanism of Re-Measurement and Replace Blangko and by attaching a waiver letter and a statement letter receiving the results of the size signed by the Mr. SL on the stamp is sufficient.
 - Land Office Issued a Certificate on behalf of Mr. SL with an existing area after the land area was issued 520 M² to 180 M².
- a. Certificate of Property No. 6189/2019 on behalf of Mr. S with certificate of Property No. 250/1994 on behalf of Mr. YH located in Balai Gadang Subdistrict Koto Tangah.
 - a) Stage of Summons and Examination
 - Land Office Head of Sub-Section handling conflict disputes and land matters directly make a call to both parties in dispute and act for mediation on 12 August, 2019.
 - The Land Office explained the conditions in the field that after the measurement was done by the Land Office, the boundaries of land ownership owned by Mr. YH was no longer visible physical form, so the measuring officer was less accurate in mapping Mr. S property when registration was first in 2019.
 - b) Mediation Results
 - Both Parties and the Land Office found a solution and agreed to release as much as 50% of the rights for road construction between the overlapping land holdings.
 - Then both parties Submit changes to the Certificate through the mechanism of Re-Measurement and Replace Blangko and by attaching a waiver letter and a statement letter accepting the results of the size signed by the parties.

From the description of the settlement by mediation against the two cases of dual land certificates above it appears that the settlement is familiarly accepted by both parties, and both parties avoid the completion of the double land certificate before the court. The same description of the Land Office also acknowledges the element of error in measurement and mapping in the field so that the recognition also changes and affects the outcome of the mediation, on the other hand the parties to the dispute also find a solution that is not detrimental between the two parties and voluntarily accept the results of the mediation.

2. Effectiveness of Mediation Decision conducted by City Land Office Padang

From the description of the mediation settlement of the two cases of dual land certificates above it appears that the settlement is familiarly accepted by both parties, and both parties avoid the completion of the double land certificate in front of the court. Various dispute resolution options. Of course the choice of resolving the dispute must be acceptable and satisfy both parties. At least the main role that must be performed by a mediator is to bring together different interests, in order to reach a meeting point that can be used as a basis for rejecting problem solving.

Although mediation contains many advantages does not mean there are no weaknesses. The weakness of mediation lies in the binding strength of the mediation verdict. In a dispute that is purely civil, the decision on dispute resolution is left entirely to the parties. As contained in Article 1338 Paragraph (1) of the Civil Code. The weakness of the mediation award can also occur in the follow-up to the implementation of the award. Whether or not a mediation decision can be imposed depends on their consistency to voluntarily accept or implement the agreed decision.

Based on this thought, not all mediation decisions can be carried out by the City Land Office Padang. Only the verdicts that have taken into account juridical, physical, and administrative aspects can be implemented as the two cases of dual land certificates revealed in this study. Even analogously based on the provisions of Article 5 Paragraph (1) of Law No. 30 of 1999, disputes that can be resolved are disputes regarding rights that according to law and legislation are fully controlled by the parties to the dispute.

8. CONCLUSION:

From the results of research and discussion as described in the previous chapters, it can be drawn conclusions as follows:

- The causes of the emergence of dual certificate are: dishonesty of the community but there are other significant factors both from the community and the land office itself such as improper rights, the appointment of the wrong land area, the boundary of ownership or the location of the land field object is unclear or unknown to the owner, there is no map available to map the Situation Picture, the Land Office neglects to remap the land area that has been certified to the new map in use. Meanwhile, from the two cases of double land certificates revealed in this study, it appears that the problem of dual land certificates in Padang City is generally caused by Human Error measuring officers in the field in making and collecting floating results and physical data collection in the form of maps done manually.
- In general, the mechanism of implementation of conversion and registration of customary land, can be distinguished in two levels of activities. First, activities at the indigenous level, at this stage the process of conversion of indigenous land in the city of padang generally requires ranji / lineage of descendants. The existence of ranji is very helpful in tracing the origin of the land, in addition there must also be approval from the people through, the role of MKW, ninik mamak, and KAN. and second, government-level activities. In the process of completing the application for conversion of customary property at the government level, in the land office of Padang City can be split into two mechanisms of land registration process is through the Process of Systematic and Sporadic land registration.
- Mediation process conducted by the Land Office against two cases of double land certificates revealed in this study. The mediation settlement of the two cases of dual land certificates above appears that the settlement is familiarly accepted by both parties, and both parties avoid the settlement of the double land certificate before the court. On the other hand the parties to the dispute also find a solution that is not detrimental between the two parties and voluntarily accept the results of the mediation.

9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- Land registration map which is a database of land registration owned by National Land Affairs Agency should be utilized correctly so that it will not appear again a piece of land that has a double certificate, and it is expected that the Land Office will immediately evaluate the use of the manual map as a whole in anticipation of future disputes of dual land certificates.
- To the community is expected to be honest in disclosing the juridical data of land ownership and for people who already have a land certificate must take care of the land boundaries, in order to facilitate the measurement officer in making a basic map in the land book.
- Against the object submitted sertipikatnya application first should the Land Office check the data on the spatial map in the Land Office, in order to minimize the occurrence of double certificate.

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