

## LEGAL PROTECTION FOR OWNERS OF LAND RIGHTS CERTIFICATES WHO OBTAINED IN GOOD FAITH IN THE FRAMEWORK OF JUST LEGAL CERTAINTY

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### ABSTRACT

Certificate according to Article 1 point 20 PP No. 24 of 1997 is a certificate of proof of rights as intended in article 19 paragraph (2) letter c UUPA for land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in the land book. concerned. Based on Article 32 Paragraph (2) PP No. 24 of 1997, certificates that have been issued for more than 5 years cannot be sued, but in reality there are certificates that have been sued and decided by a judge who stated that the certificate was legally defective and had no legal force. This research examines the legal protection for owners of land title certificates who obtain them in good faith within the framework of just legal certainty, especially in relation to lawsuits against land title certificates that have been issued for more than 5 years. This research aims to examine and assess the legal certainty of land title certificates, especially regarding lawsuits in court. This research is normative juridical research that is descriptive in nature. The author uses secondary data consisting of primary legal materials in the form of norms or basic rules, basic regulations, statutory regulations, jurisprudence, and court decisions and secondary legal materials in the form of literature consisting of draft laws, books, scientific works. legal scholars, research results, journals, magazines and so on.

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### INTRODUCTION

Indonesia is a rule of law state based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) Third Amendment which reads: "The State of Indonesia is a state of law". As a legal state, Indonesia has an obligation to protect all Indonesian people, including regulating the benefits of all aspects of life in order to provide prosperity for all Indonesian people.

The Indonesian legal state is based on the concept of a welfare state , which aims for the greatest prosperity of the people. This is a constitutional mandate in Article 33 paragraph (3) of the 1945 Constitution which states that "the earth, water and natural resources contained therein are controlled by the state for the greatest prosperity of the people".

The State's right to control land originates from the rights of the Indonesian people to land, where the task of managing all the land together cannot be carried out alone by the entire Indonesian people, therefore in its implementation the Indonesian people as bearers of these rights and mandate bearers at the highest level are empowered by the Indonesian State. as an organization of power for all the people.

Land is one of the important needs in life, every individual or group of land can be used as a place of livelihood or residence. Indonesia as an agricultural country, land is important for the lives of its people. Because of humans' need for land as a place to live and carry out activities, almost all social activities cannot be separated from the land. Therefore, the relationship between humans and land cannot be separated.

Land has been an actual problem for humans at all times. Everyone needs land while its availability is very limited. In addition, there are too many parties interested in land, for various reasons and purposes. Despite the fact that this is not a new phenomenon, soil is a complex and urgent problem to be solved.

Land is a fixed or immovable object due to its nature. Land cannot be moved, what can be moved or transferred are the rights to a plot of land. The transfer or transition of land rights must be proven by an authentic deed.

Land in the juridical sense is the surface of the earth, land rights are rights to a certain portion of the earth's surface, which is limited, has two dimensions with length and width. The importance of land for human life was appreciated by the Government of the Republic of Indonesia through the national land policy with the issuance of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA).

UUPA is the main basis for the birth of land regulations in Indonesia, it regulates various types of land rights. Of the various types of land rights that exist, land ownership rights are the strongest, fullest and hereditary land rights that people can have over land and only ownership rights have no validity period limited by the state compared to other land rights. .

The UUPA is a mandate for the implementation of Article 33 paragraph (3) of the 1945 Constitution which stipulates that the land, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people, then in Article 19 of the UUPA the regulation of land registration is implemented by Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP No. 24 of 1997).

PP No. 24 of 1997 regulates that land registration 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 condominium units, including the provision of letters of proof of title to parcels of land to which there is already title and ownership rights to the condominium units as well as certain rights encumbering them.

Control over land should be guaranteed by the government regarding legal certainty so that people can be assured of their land ownership. Tenure in the juridical sense means control based on rights, which usually gives the land owner the authority to physically control the land, such as using or exploiting the land or not giving the land to someone else.

The government guarantees land rights by holding land registration. This is done for the benefit of land rights holders so that they can easily prove that they are the land owners. Communities must register land to obtain legal certainty and authentic proof that they own land, which can be proven with a land certificate.

Land registration will result in the granting of a certificate of proof of land rights, commonly known as a land certificate, to the party concerned and acts as a strong means of proof of the land rights they own.

A certificate is a deed that is deliberately made as proof of the existence of a certain event. Certificate according to Article 1 point 20 PP No. 24 of 1997 is a certificate of proof of rights as intended in article 19 paragraph (2) letter c UUPA for land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in the land book. concerned.

Based on PP no. 24 of 1997 provisions of Article 32 Paragraph (2) which reads:  
"In the event that a certificate has been legally issued to a plot of land in the name of a person or legal entity who acquired the land in good faith and actually controls it, then other parties who feel they have the right to the land can no longer demand the implementation of that right if within a certain period of time 5 (five) years after the issuance of the certificate, do not submit written objections to the certificate holder and the Head of the Land Office concerned or file a lawsuit to the Court regarding control of the land or the issuance of the certificate."

From these provisions it is known that land certificates have an important meaning and role for the holder concerned, and also function as proof of land rights. In other words, land owners who have strong evidence with clear status will be guaranteed legal certainty, so it will be easier to prove that the land is theirs.

Likewise, other parties who have an interest in the land concerned will find it easier to obtain reliable information. However, even though it is expressly regulated in the UUPA and PP no. 24 of 1997 to ensure legal certainty of land ownership, the land must be registered, however there are still many people who own land but do not have a certificate as proof of land ownership, because the land in question has not been registered.

Practice in the field shows that there is a lot of evidence other than certificates of land rights which are disputed and become cases in the Judicial Institution. Some of them even produced decisions that have permanent legal force (*Incracht Van Gewijsde*) which stated that the certificate of land rights was legally defective and had no legal force by the Court even though it had been issued for more than 5 (five) years.

The obstacles mentioned above can be seen from several case examples in court decisions. First, in Decision Number 220/Pdt/2016/PT.Bdg dated 13 June 2016 where Mrs. Eucharia Sastramidjaja as the heir of the late. Neneng Sastramidjaja does not have a land title certificate and has filed a lawsuit against Mr. Lukman Sudjana as Defendant I, Mr. Junaedi Gunawan Luis as Defendant II, Mr. Kurniawan Luis as Defendant III, Mr. Lukman Hadiwijaya Luis as Defendant IV who has a land title certificate that has been issued more than 5 years, the Head of Pasawahan Village as Co-Defendant I, the Head of Regol District as Co-Defendant II, Notary/PPAT R. Suyadiman as Co-Defendant III and the Bandung City Land Office as Co-Defendant IV, in the lawsuit the Defendants are deemed to have committed an unlawful act in owning the object of the dispute, which was then based on the lawsuit by the Panel of Judges of the first level, it was declared that the Defendants had committed an unlawful act and stated that the certificate of title to the land belonging to the Defendants was legally defective and had no legal force, based on this decision the Defendants filed an action appeal law but the Panel of Judges at the appeal level upheld the decision at the first instance.

Second, in Decision Number 299/Pdt.G/2022/PN.Blb dated 10 July 2023 , where Martini is Plaintiff I, Marlina Suminar is Plaintiff II, Iis Sopiah is Plaintiff III, Fitria Anggraeni is Plaintiff IV, and Debi Epania Julianti as Plaintiff V as the heir of the late. Ento Arkadi Ahdi who has a child named Alm. Emin Suminar who married the late. Ujang Sumarna, who during his marriage had several children, including the Plaintiffs who did not have a certificate of land rights, filed a lawsuit against Fredy as a Defendant who had a certificate of land rights that had been issued for more than 5 years and the Bandung Regency Land Office as a Co-Defendant, In this lawsuit, the Defendant was deemed to have committed an unlawful act in possessing the object of the dispute, and then the Panel of Judges decided that the lawsuit was unacceptable.

The creation of law certainly has a goal to be achieved. Law also has a function to provide protection for human survival. So in general the law has the aim of being a guiding star by making the law like welfare and legal certainty.

The teaching of legal certainty (*Rechtzegeerheid*) originates from a juridical-dogmatic understanding which is based on a school of thought that adheres to legal positivism, which often has a perspective on law as an autonomous thing.

"*Rechtzegeerheid*" can be manifested by the law itself in accordance with legal characteristics that can create a norm in law whose qualifications are in general form. Gustav Radbruch narrated that legal certainty and justice are integrated parts of the law. So that when the two collaborate with each other, they can achieve essential legal objectives.

Legal certainty, according to Sudikno Mertokusumo, is a guarantee that the law must be implemented correctly. Legal certainty requires legal regulatory efforts carried out by authorized and authoritative parties, so that the law has a juridical aspect that can guarantee that the law functions as a regulation that must be obeyed.

Law without the value of certainty will lose meaning because it can no longer be used as a guideline for behavior for everyone. *Ubi jus incertum, ibi jus nullum* (where there is no legal certainty, there is no law). Legal certainty is something that is quite complicated, which has a lot to do with factors outside the law itself. Regarding certainty, as *Radbruch said* , what is more appropriate is the certainty of the existence of the regulations themselves or the certainty of regulations (*sicherheit des Rechts*) .

Understanding the concept of justice must be translated in relation to Pancasila, then linked to the interests of the Indonesian nation as a nation that must experience justice. Some experts

agree that justice is a great and universal value that must be realized for the welfare of society in a country. Justice is the main requirement for realizing prosperity.

To make something happen is fair, not easy as imagined. Something that some people or groups say is fair is not necessarily fair for other people or groups. For example, a person or legal entity owns a plot of land and has been issued a certificate of land rights and is then sued by another party who feels they have rights to the land.

The other party files a lawsuit regarding the ownership of the certificate of title to the land belonging to the person or legal entity to the Court and the Court then decides that the certificate is legally defective and has no legal force or the certificate of title to the land belonging to the person or legal entity is cancelled.

That the consequences of this decision could be detrimental for one of the parties, because the other party will not be able to enjoy the "rights" that he has obtained. Therefore, legal protection is very necessary for interested parties, especially owners of land title certificates who obtained the land in good faith.

The beginning of the emergence of the theory of legal protection originates from natural law theory or the school of natural law. This school was pioneered by Plato, Aristotle (Plato's student), and Zeno (founder of the *Stoic school*). According to the school of natural law, it is stated that law originates from God who is universal and eternal, and that law and morals cannot be separated. Adherents of this school view that law and morals are internal and external reflections and rules of human life which are realized through law and morals.

Legal protection is to provide protection for human rights (HAM) which are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. Law can be used to create protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.

Juridical protection, also known as legal protection, is an effort to protect interests related to the legal interests of every legal subject, both individuals and legal entities, so that it does not cause harm.

In essence, there is a relationship between legal subjects and legal objects who have rights and obligations protected by law. This shows that legal protection can be interpreted as providing a guarantee or certainty that someone will get what is their right and obligation.

## RESEARCH METHODS

This paper is normative juridical research that is descriptive in nature. The author uses secondary data consisting of primary legal materials in the form of norms or basic rules, basic regulations, statutory regulations, jurisprudence, and court decisions and secondary legal materials in the form of literature consisting of draft laws, books, scientific works. legal scholars, research results, journals, magazines and so on.

## RESULTS AND DISCUSSION

### **Legal Protection For Owners Of Land Rights Certificates Who Obtained In Good Faith In The Framework Of Just Legal Certainty**

Land registration is a requirement in efforts to organize and regulate the designation, ownership, possession and use of land, including resolving various land problems. The purpose of land registration is to ensure legal rights and protection for those who have rights to land through proving land certificates, and as a tool for regulating land ownership and use.

Based on Article 3 PP no. 24 of 1997, land registration aims to:

1. Give certainty And protection law to owner land, unit flats and right registered other, so that makes it easier verification ownership on right Which concerned.
2. Providing information to interested parties, including the government, so that they can easily obtain the information needed to carry out legal actions regarding registered land parcels and apartment units.
3. To maintain orderly land administration.

The purpose of land registration is to ensure legal certainty regarding land rights, which includes individuals or legal entities who own the rights, location, boundaries and area of land. To provide legal certainty regarding land rights, both in terms of subject and object, the government must issue an announcement regarding land rights, which includes:

- a. Announcement regarding the subject who is the right holder is known as the principle of publicity with the aim of allowing the wider public to know about the subject and object of a plot of land. The implementation of this publicity principle is by holding rights registration.
- b. Determination of the location, boundaries and extent of plots of land that a person owns over a land right is known as the principle of specialization and its implementation is by holding a *Cadastral*.

Land registration will result in the granting of a certificate of proof of land rights, commonly known as a land certificate, to the party concerned and acts as a strong means of proof of the land rights they own.

Article 19 paragraph (1) UUPA reads: " To ensure legal certainty, the Government will carry out land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations." This is done to ensure that the subject's land rights are legally guaranteed.

Article 19 paragraph (2) letter c UUPA states that land registration carried out by the government produces a certificate of proof of title which acts as a strong means of proof. Likewise, the land registration process for the first time through systematic land registration and sporadic land registration produces proof of rights, namely a certificate.

Land title certificates are issued as the final result of the land registration process, providing legal certainty to the rights holders. In order to prove land rights, a land rights certificate is issued so that the person listed as the right holder can easily prove that the name listed is the right holder.

Legal certainty is a condition that is certain and in accordance with the requirements for the purpose for which the law was created. Providing certainty regarding anything that contains doubts, uncertainties or concerns is an important characteristic of legal certainty. Among the legal certainty referred to in the land registration process is that the right holder must have legal certainty regarding his rights and that the government must have clear directions regarding this matter. This legal certainty includes legal certainty regarding the subject of rights, objects of rights, and land status.

Article 32 paragraph (1) PP No. 24 of 1997 states that a land title certificate is a proof of proof that acts as a strong means of proof. The rights of land rights holders that have been guaranteed by law are marked with a certificate, which is issued for the benefit of the relevant rights holder based on the physical data stated in the measurement letter and the juridical data registered in the land book.

Article 32 paragraph (2) PP No. 24 of 1997 states that "In the event that a certificate of land has been legally issued in the name of the person or legal entity that acquired the land in good faith and actually controls it, then other parties who feel they have rights to the land can no longer demand implementation. This right is if within 5 (five) years of the issuance of the certificate, no written objection has been submitted to the certificate holder and the Head of the Land Office concerned or has not submitted a lawsuit to the Court regarding control of the land or the issuance of the certificate."

According to these provisions, land certificates have important meaning for land owners and function as proof of land rights. In other words, land owners with strong evidence of clear status will find it easier to prove their land rights.

Even though PP no. 24 of 1997 has strictly regulated that certificates that have been issued for more than 5 years cannot be sued, but in reality there are still lawsuits against certificates that have been issued for more than 5 years and the judge decides that the certificate is legally defective and has no legal force.

This obstacle can be seen from Decision Number 220/Pdt/2016/PT.Bdg, where Mrs. Eucharia Sastramidjaja as the heir of the late. Neneng Sastramidjaja does not have a land title certificate and has filed a lawsuit against Mr. Lukman Sudjana as Defendant I, Mr. Junaedi Gunawan Luis as Defendant II, Mr. Kurniawan Luis as Defendant III, Mr. Lukman Hadiwijaya

Luis as Defendant IV who has a land title certificate that has been issued more than 5 years, the Head of the Pasawahan Subdistrict as Co-Defendant I, the Head of Regol District as Co-Defendant II, Notary/PPAT R. Suyadiman as Co-Defendant III and the Bandung City Land Office as Co-Defendant IV, in the lawsuit the Defendants are deemed to have committed an unlawful act in owning the object of the dispute, which was then based on the lawsuit by the Panel of Judges of the first level, it was declared that the Defendants had committed an unlawful act and stated that the certificate of title to the land belonging to the Defendants was legally defective and had no legal force, based on this decision the Defendants filed an action appeal law but the Panel of Judges at the appeal level upheld the decision at first instance.

That this decision caused losses for the certificate holders, namely Defendant II, Defendant III and Defendant IV, where Defendant II, Defendant III and Defendant IV obtained the land based on the results of the sale and purchase with Defendant I.

Defendant I argued that the Plaintiff's deceased biological father gifted all his land to Defendant I and a deed of gift had been drawn up. Based on the deed of gift, Defendant I sold it to Defendant II, Defendant III and Defendant IV and the land sale and purchase transaction had a sale and purchase deed drawn up by Co-Defendant III.

That Defendant II, Defendant III and Defendant IV are legal subjects that must be protected by law. Because, as a legal subject, Defendant II, Defendant III and Defendant IV can be said to be buyers in good faith. In accordance with the Republic of Indonesia Supreme Court Circular No. 7 of 2012 in point IX, which states that protection must be given to buyers who have good intentions even if it is known that the seller is an unauthorized person. The original owner can only file a claim for compensation against the seller who is not entitled.

Supreme Court Circular Letter No. 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court, which states as follows:

- a) Carry out buying and selling of land objects using valid procedures/procedures and documents as determined by statutory regulations, namely:
  - 1) Purchase of land through public auction or;
  - 2) Purchase land before the Land Deed Official (in accordance with the provisions of Government Regulation Number 24 of 1997) or;
  - 3) The purchase of customary/unregistered land which is carried out according to the provisions of customary law is carried out in cash and clear (in the presence/known of the local Village Head/Lurah) and is preceded by research regarding the status of the land of the object of sale and purchase and based on this research shows that the land of the object is buying and selling is the property of the seller;
  - 4) Purchases are made at reasonable prices;
- b) Exercise caution by examining matters relating to the land object under contract, including:
  - 1) The seller is the person who is entitled/has rights to the land which is the object of sale and purchase, according to proof of ownership, or;
  - 2) The land/object being traded is not in confiscated status;
  - 3) The land object being traded is not under collateral/mortgage status, or;
  - 4) For certified land, information has been obtained from BPN and a history of the legal relationship between the land and the certificate holder.

RI Supreme Court Decision No. 176 K/Pdt/2011, which states "the buyer purchases land that has been certified as having ownership rights from the seller before the Land Deed Making Officer (PPAT). The buyer thought the sale and purchase was legal, but it turned out that later he was sued by someone who claimed to be the heir of the original owner. The definition of good faith here is more defined as the fulfillment of formal requirements. According to the Supreme Court's consideration, *Judex Facti* did not apply the law incorrectly, because Defendant I purchased the disputed land which had already been certified as having ownership rights from the seller before the Land Deed Official (PPAT). Therefore, as a Buyer in good faith you must be protected.

Whereas based on the criteria of buyers in good faith based on the Supreme Court decisions mentioned above, it can be said that Defendant II, Defendant III and Defendant IV are buyers in good faith, so they must be given legal protection, because the land sale and purchase was carried

out before the PPAT, the land being traded is not in confiscated status, the land being traded is not in the status of collateral/mortgage rights.

Whereas based on the explanation above, the legal position of Defendant II, Defendant III and Defendant IV is as buyers in good faith who must be protected

## CONCLUSIONS

Legal protection for holders of land title certificates who obtained them in good faith within the framework of just legal certainty has not been achieved even though there are already regulations in place, this can be seen from Decision Number 220/Pdt/2016/PT.Bdg.

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