

Legal Efforts for Owners to Regain Their Certificates Related to the Criminal Case of Embezzlement of Land Certificates by Notaries

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Abstract

In Indonesia, every land right, management right, waqf land and ownership right to a condominium unit are registered by recording them in a land book, which contains physical data and legal data of the land area in question and as long as there is a measurement letter, which is also recorded in the measurement letter. Normative research method. Civil Code (KUHPerdata) Article 1866 KUHPerdata: States that the legal owner of a land right has the right to prove his ownership. In cases of embezzlement, the owner can use legal proof of ownership to file a claim. Article 197: Regulates the restoration of lost rights, which can be used as a basis for filing an application for restoration of rights to embezzled certificates. Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA): Article 1 Paragraph (1), Article 37, Article 672. Government Regulation No. 24 of 1997 concerning Land Registration: Article 1 Paragraph (1). PP NO. 18 OF 2021: a series of activities carried out by the Government continuously, continuously and regularly including the collection, processing, bookkeeping and presentation as well as maintenance of physical and legal data from each plot of land owned by the community, legal entities and government agencies. In its implementation, the definition above is carried out based on the principles of simplicity, safety, affordability, up-to-date and openness. Basically, the issuance and cancellation of land title certificates can be done in two ways, namely cancellation due to a court decision and cancellation carried out by the BPN itself. because the court decision only assesses the validity / does not have legal force, while the cancellation of the certificate is the authority of the BPN, are two different things.

Keywords: *Criminal Acts, Embezzlement, Certificates*

INTRODUCTION

In order to guarantee certainty of rights and legal certainty over land, the Basic Agrarian Law (UUPA) Number 5 of 1960 has outlined the requirement to carry out land registration throughout Indonesia. To support the development of National Land Law where customary law is the main source and in accordance with the provisions of Article 19 paragraph (1) and paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) which reads: "To guarantee legal certainty, the Government shall carry out Land Registration throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation. The registration includes: a) Land measurement, mapping and bookkeeping; b) Registration of land rights and the transfer of these rights; c) Provision of valid proof of rights as strong evidence." According to Boedi Harsono, land registration is a series of activities carried out by the government continuously, sustainably and regularly, including the collection, processing, bookkeeping and presentation as well as maintenance of physical data and legal data, in the form of maps and lists of land plots and apartment units, including the issuance of certificates as proof of rights for land plots that already have rights and Ownership Rights for Apartment Units and certain rights that burden them.

In Indonesia, every right to land, management rights, waqf land and ownership rights for apartment units are registered by recording them in a land book, which contains physical data and legal data of the land plot in question and as long as there is a measurement letter, which is also recorded in the measurement letter. The recording in the land book and its recording in the

measurement letter is proof that the rights concerned and the rights holders and the land plots described in the measurement letter have been legally registered according to Government Regulation Number 24 of 2003.

Furthermore, according to Article 31 of PP Number 24 of 1997, it is stated that for the benefit of the relevant rights holder, a certificate is issued in accordance with the physical data contained in the measurement letter and the legal data in the land book. The purpose of land registration as regulated in UUPA and PP Number 24 of 1997 is to provide legal certainty and legal protection to land rights holders. This legal certainty and protection is proven by the existence of evidence produced from land registration in the form of a Land Book and Land Certificate consisting of a Copy of the Land Book and Measurement Letter. After the issuance of the land rights certificate by the relevant agency, in this case the National Land Agency, it does not guarantee that the party whose name is listed in the certificate cannot be sued by another party who feels that they have the same rights to the land.

This is because the land registration system adopted by UUPA is a negative registration system, namely where another party who feels that they have stronger rights, accompanied by the evidence they have, can file a lawsuit with the Court. If the evidence can be proven, the certificate that has been issued can be canceled. The land rights certificate is absolute evidence. This means that if there is an error in the certificate, it is still possible to correct it through cancellation. In addition, when processing certificates, it turns out that there are still many certificates that contain errors in issuance, both procedural errors, measurement errors, errors in the application of laws and regulations, errors in the inclusion of the subject of rights, errors in the object of rights, errors in the type of rights, errors in calculating the area of land, errors in overlapping rights, errors in physical and legal data, and other administrative errors as stated in Article 107 of the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 9 of 1999.

For rights holders, certificates that contain errors in the issuance of certificates should be given legal protection as intended by the law regarding land registration, namely the guarantee of legal certainty of land rights so that it can be detrimental to the rights holder. Certificate holders who have errors in their issuance have implications not only for rights holders who have good intentions in obtaining the land, but also for third parties or parties who will have an interest in the land in question. To overcome the occurrence of errors in issuing certificates, there needs to be active efforts and participation from all levels of society and agencies related to the land sector such as Notaries/Land Deed Officials (PPAT), the National Land Agency Office, as well as the role of law enforcement or judicial bodies.

RESEARCH METHODS

The type of research used in this study is normative legal research methodology, focusing on the examination of legal principles and written regulations. Normative legal research involves a literature review, utilizing legal texts and documents as primary sources. The approaches applied in this study include the Statute Approach and the Case Approach. The Statute Approach entails a comprehensive review of all relevant laws and regulations pertaining to the legal issues discussed, ensuring the research remains grounded in legal analysis. Meanwhile, the Case Approach involves the analysis of legal cases that share similar issues, serving as a reference for resolving legal matters. Specifically, this research analyzes the documents related to Decision Number 9/pid.b/2023/PN Mlg. The methodology includes observational and analytical techniques to descriptively outline the legal problems identified within the case. Additionally, the legislative approach is utilized to create regulations that can

serve as guidelines for addressing legal issues. The research was conducted at the Badan Pertanahan Nasional in Malang, which served as the primary location for data collection and analysis.

RESULT AND DISCUSSION

Criminal Decision Against Notary Proven to Embezzle Land Certificate Can Be Legal Basis for Certificate Owner to File Application for Restoration of Rights to Certificate Civil Code (KHUPerdata)

The truth of an event can only be obtained through the process of proof and in order to be able to make a fair decision, the judge must know the event that has been proven true. Civil procedure law recognizes various types of evidence, while according to civil procedure, the judge is bound by valid evidence, which means that the judge may only make a decision based on evidence determined by law. The evidence in civil procedure law mentioned by law as regulated in Article 1866 of the Civil Code, namely

- a) written evidence/evidence with a letter
- b) witness evidence
- c) suspicion
- d) confession
- e) oath.

Evidence in civil cases, not all circumstances and/or objects of dispute in the trial can be explained and presented in court. Therefore, if deemed necessary, the judge can conduct a local examination (descente). Finding formal truth through evidence in a civil trial is not easy, often found many difficulties because in terms of evidence one with another contradict each other.

Land disputes for example, often found differences regarding facts that are not clear and sometimes uncertain. Not infrequently regarding land boundaries, area, street names, and land conditions submitted by both parties in dispute are also contradictory. Judges also have difficulty in providing evidence, considering that the object of the dispute cannot be presented in court. So the step to provide evidence regarding the clarity and certainty of the object of the dispute is to conduct a local inspection.

Law Number 5 of 1960 Concerning Basic Agrarian Principles (UUPA)

The types of land rights that can be legally granted by the state to individuals or legal entities as legal subjects are determined by Article 4 of the UUPA, in accordance with the authority of the state as stated in Article 2 Paragraph (2) of the UUPA. act. Civil land rights granted in accordance with Article 16 of the UUPA, with the aim of guaranteeing legal certainty over the land.

In accordance with the provisions of Article 19 paragraph (1) of the UUPA, the government issues certificates as important and valid evidence for land rights holders in ensuring legal certainty. The main objective of the UUPA is to advocate for the implementation of land registration procedures by the government to ensure legal certainty. The land registration process is regulated in Article 19 of the UUPA number 5 of 1960, and was subsequently implemented through the enactment of Government Regulation number 10 of 1961 which was in effect for 27 years.

Criminal Code (KUHP)

P.A.F. Lamintang and C.D. Samosir translated Article 362 of the Criminal Code, "whoever takes something that is wholly or partly owned by another person, with the intention of controlling the object unlawfully, because he has committed theft, is punished with a maximum imprisonment of five years or a maximum fine of nine hundred rupiah".

Based on several translations quoted previously, it can be stated that as elements of Article 362 of the Criminal Code, namely as follows: 1. Whoever; 2. Taking; 3. Something, which is wholly or partly owned by another person, 4. With the intention of being owned unlawfully. The following will discuss each of these elements of the crime of ordinary theft briefly as follows. 1. Whoever. Whoever is the perpetrator or subject of the crime (delict). By using the word "whoever" means that the perpetrator can be anyone, anyone can be the perpetrator. This is by remembering that in the Criminal Code system, only humans can be the subject of a crime (perpetrator), as stated by Mahrus Ali that, "the subject of a criminal act recognized by the Criminal Code is a human (natuurlijk person)".

Government Regulation No. 24 of 1997 concerning Land Registration

A certificate is a valid proof of rights as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the measurement letter and the land book concerned. As regulated in the Basic Agrarian Law Article 19 paragraph (2) letter c, namely the provision of proof of rights, which serve as strong evidence and Government Regulation Number 24 of 1997 Article 1 Paragraph (1): States that land registration aims to provide legal certainty to land rights owners. In the case of embezzlement, the owner has the right to request re-registration. Article 1 number 20 states that a certificate is a proof of rights.

Legal efforts can be made by the owner to get back his certificate related to the criminal case of embezzlement of land certificates by a notary

Article 54 of the Regulation of the Head of BPN No. 3 of 2011 mandates that the BPN implement court decisions that have permanent legal force, except in cases where there are valid reasons for non-compliance. Such reasons may include conflicting rulings, the imposition of liens, or ongoing litigation. Although it is hoped that the parties subject to the ruling will voluntarily comply, execution is often necessary due to non-compliance. Before registering land rights based on court decisions, it is essential to consider the characteristics of the rulings to avoid future legal issues. For instance, in case Number 9/pid.b/2023/PN Mlg, the certificate owner can request the issuance of a new certificate after it has been proven that a notary committed certificate fraud. The application procedure involves submitting a copy of the court ruling, relevant supporting documents, and the necessary steps that the BPN must follow to issue a replacement certificate after an announcement and potential objections from third parties.

The Procedure for Court Determination Applications is as follows:

1. First, a copy of the court ruling declaring the act of certificate fraud must be provided. This ruling will serve as the basis for the application.
2. The application for determination can be submitted to the relevant court. The application must include all relevant supporting documents, including proof of land ownership and a copy of the court ruling.
3. After the application is submitted, the court will process it. If the court approves the application, a determination will be issued stating that the certificate can be issued.
4. With the court's determination, a request for the issuance of a land certificate can be submitted to the National Land Agency (BPN), along with the court determination and other supporting documents.
5. If all requirements are met and there are no other disputes preventing it, the BPN will issue the land certificate in accordance with the court determination.

After the court's determination is issued, the National Land Agency (BPN) will take the following steps:

1. The application must be accompanied by a sworn statement from the applicant before the Head of the Land Office or a designated official regarding the loss of the relevant land certificate.

2. Before issuing the replacement certificate, an announcement must be made once in a local daily newspaper at the applicant's expense.
3. Other parties may file objections to the issuance of the replacement certificate within 30 days from the date of the announcement.
4. If the objections raised are deemed valid by the Head of the Land Office, the issuance of the replacement certificate will be denied. If the objections are considered unfounded, the new certificate will still be issued.

Subsequently, the Head of the Land Office will announce the issuance of the replacement certificate for the land rights and declare the old certificate invalid in one of the local daily newspapers at the applicant's expense.

CONCLUSION

1. Civil Code (KUHPerdata) Article 1866 KUHPerdata: States that the legitimate owner of a land right has the right to prove his ownership. In cases of embezzlement, the owner can use legitimate proof of ownership to file a claim. Article 197: Regulates the restoration of lost rights, which can be used as a basis for filing an application for restoration of rights to embezzled certificates. Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA): Article 1 Paragraph (1): States that land rights are regulated by applicable law. This provides a basis for legitimate owners to regain their land rights. Article 37: Regulates land registration and ownership, and gives owners the right to file an application for restoration of certificates in the event of embezzlement or loss. Criminal Code (KUHP): Article 672: States that embezzlement is a criminal act. A criminal verdict against a notary who embezzles a certificate can be strong evidence in filing a civil lawsuit by the legitimate owner. Government Regulation No. 24 of 1997 concerning Land Registration: Article 1 Paragraph (1): States that land registration aims to provide legal certainty to land rights owners. In the case of embezzlement, the owner has the right to request re-registration. Article 38: Regulates the procedure for replacing lost or stolen land certificates, which can be followed by the legitimate owner after proving ownership. PP NO. 18 OF 2021: a series of activities carried out by the Government continuously, continuously and regularly including the collection, processing, bookkeeping and presentation as well as maintenance of physical and legal data from each plot of land owned by the community, legal entities and government agencies.
2. The issuance of land title certificates based on court decisions must adhere to strict procedures as stipulated in Article 54 of the Regulation of the Head of BPN No. 3 of 2011. The BPN is obligated to execute court rulings that have permanent legal force. The process for court determinations and the issuance of replacement certificates must be conducted transparently, ensuring that the rights of third parties to file objections are respected. Consequently, it is expected that the issuance of new certificates can occur effectively and in accordance with principles of justice, thereby protecting the rights of landowners

REFERENCES

Abdul Ghofur Anshori, Indonesian Notary Institution, Legal and Ethical Perspectives, (Yogyakarta: UII Press, 2009)

Abdul Kadir Muhammad, Legal Profession Ethics, Third Edition, (Bandung: Citra Aditya Bakti, 2006)

Anke Dwi Saputra, Identity of Indonesian Notaries Past, Present, and Future, (Jakarta: Gramedia Pustaka, 2009)

Adrian Sutedi, Transfer of Land Rights and Registration, (Jakarta: Sinar Grafika, 2010)

Amirudin and Zainal Asikin, 2003, Introduction to Legal Research Methods, PT. Raja Grafindo Persada, Jakarta

Ali Achmad Chomzah, 2002, Land Law, Prestasi Pustaka, Jakarta

Andi Heriaksa, Farida Patittingi., Kahar Lahae. "Legal Protection of Land Ownership by the Community in the Coastal Area of Tanjung Balai Karimun, Riau Islands". Journal of Law, Faculty of Law, University of Riau. 9, No. 1, (2020)

A. P. Parlindungan, Land Registration in Indonesia (Bandung: Mandar Maju Publisher, 1999)

Boedi Harsono, Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, Contents and Implementation (Jakarta: Djambatan Publisher, 2003)

Dody Radjasa Waluyo, Authority of Notaries as Public Officials, Media Notariat (Menor) October-December 2001 Edition, p. 63. Muctar Wahid, Interpreting Legal Certainty of Land Ownership Rights, (Jakarta: Repulika, 2008)

Effendi Perangin, Agrarian Law in Indonesia (Jakarta: PT. Raja Grafindo Persada, 1994)

G.H.S. Lumban Tobing, Notary Position Regulation, Erlangga, Jakarta, 1983

Habib Adjie, Civil and Administrative Sanctions Against Notaries as Public Officials, 2nd Edition, (Bandung: Refika Aditama, 2009)

Harsono, B. (2002). Towards the Improvement of National Land Law. Jakarta: Trisakti University

Hartanto, A. (2014). Land Law Characteristics of Land Sale and Purchase with Unregistered Land Rights. Surabaya: LaksBang Justitia

Johnny Ibrahim, Normative Legal Research Theory and Methodology, Bayumedia Publishing, Malang, 2005

Jonathan G. Shailor, 1994, Emporwerment in Disput Mediation: a Critical Analysis of Communication, Westport Connecticut, London, 1994. Lawrence M. Friedman, Legal System: Social Science Perspective, Nusa Media Publisher, Bandung, 2018

Ishaq, Basics of Legal Science, Sinar Grafika, Jakarta, 2016

Subekti, Principles of Civil Law, (Jakarta: Intermasa, 2001)

Sudikno Mertokusumo, Agrarian Law and Politics, Karunika Open University, Jakarta, 2002

Mario Julyano, Aditya Yuli Sulistyawan, Understanding the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning, Credipo Journal, Volume 01, Faculty of Law, Diponegoro University, Semarang, 2019

Mas Ahmad Santosa and Anton L.P. Hutapea, 1992, Utilizing Alternative Environmental Dispute Resolution Mechanisms (MAPS) in Indonesia, USAID and Walhi, Jakarta

Meidiana Cahya Nugraheni Putri, 2019, Validity of Cancellation of Double Certificates by BPN Based on Regulation of the Minister of ATR/Head of BPN Number 11 of 2011

Nia Kurniati, 2016, Land Disputes, First Edition, Refika Aditama, Jakarta

Rozi Aprian Hidayat. "Legal Analysis of the Cancellation Process of Land Rights Certificates in Forest Areas". IUS Journal of Legal and Justice Studies 4.2 (2016).

R. Soegondo Notodisoerjo, Notary Law in Indonesia: An Explanation, (Jakarta: Rajawali, 1982)

Nico, Responsibilities of Notaries as Public Officials, (Yogyakarta: Center for Documentation and Studies of Business Law (CDBSL), 2003)

Herlien Budiono, Principles of Balance for Indonesian Contract Law, Contract Law Based on the Principles of Indonesian Wigati, (Bandung: Citra Aditya Bakti, 2006)

Peter Mahmud Marzuki, Introduction to Legal Science, Prenadamedia Group, Jakarta, 2008, p. 137.

Philipus M. Hadjon, Legal Protection for the People in Indonesia, Bina Ilmu, Surabaya, 1987

Peter Mahmud Marzuki, Legal Research, Prenadamedia, Jakarta, 2005

Salim HS and Erlies Septiana Nurbani in Muhamimin, Legal Research Methods, Mataram University Press, Mataram, 2020

Satjipto Rahardjo, Legal Science, Citra Aditya Bakti, Bandung, 2014

Soerjono Soekanto, Introduction to Legal Research, UI Publishing, Bandung, 2020

Soerjono Soekanto and Sri Mamudji, 2009, Normative Legal Research: A Brief Review, PT. Raja Grafindo Persada, Jakarta

Satjipto Rahardjo, Law, Citra Aditya Bakti, Bandung, 2000

Setiono, Rule of Law (Supremacy of Law), Master of Law, Sebelas Maret University, 2004

Shirly Claudia Permata., achmad Safa'at., R. Imam Rahmat Safi'i. "Implementation of Judge's Decision on Cancellation of Land Ownership Certificate (Case Study at Malang City Land Office)". IUS Journal of Legal and Justice Studies 6.3 (2018)

Tedi Sudrajat, Endra Wijaya, Legal Protection Against Government Actions, Sinar Grafika, Jakarta, 2020

Van Mourik M. J. A, in Herlien Budiono, Collection of Civil Law Writings: in the Notary Sector, Bandung: Citra Aditya Bakti, 20218