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## Legal policy by the National Land Agency of Pekalongan Regency in resolving Dual Certified Land Disputes through non-litigation

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### Kata Kunci :

*legal policy; dual certificate; non-litigation*

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### ABSTRAK

The current development of the land situation in Indonesia now these is crucial. Land is the basic capital for the state and development to realize the prosperity of the people. In recent years, land disputes have become increasingly complex, whether they are disputes over land area, also disputes over ownership of multiple certificates. Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles is a breakthrough in ensuring justice and legal certainty, order, and the welfare of the Indonesian people. The land problem is an issue that concerns the most basic rights of the people. The more complex human interests in a civilization will be directly proportional to the higher the potential for disputes that occur between individuals and between groups. Therefore, it is necessary to have regulations and state institutions that specifically regulate and are authorized in the land sector also dealing with the land problems. The National Land Agency (BPN) was formed whose role was to assist and serve to the community to obtain their rights in the land sector in accordance with applicable rules and regulations, also to find a way out if there were land disputes. The problem of dual certificates which is plot of land has more than one certificate with the same object, resulting in legal uncertainty for the holder of land rights. The Cases of dual certificates are still common in several regions in Indonesia. This study uses normative legal research methods combined with empirical legal research methodologies. The location of the research is in BPN Pekalongan regency. The occurrence of dual certificates is influenced by internal and external factors. There are three dual certificate dispute resolutions, namely, Deliberation (negotiation & mediation) Arbitration, and if you do not get a solutions from BPN, then Dispute Settlement through Courts.

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## 1. Background of the Research/Introduction

Pendahuluan Indonesia is an agrarian country which is quite extensive, with a land area of 1,913,578.68 ha or 70% from the total area of Indonesia. The extent of the land sector makes land an important source of life for Indonesia society. Land is an important element for humans in living and surviving, for the Indonesian nation which is an agrarian or archipelagic country, land clearly has an important role for the life of everyone. In addition to agriculture, land also has various functions such as for industry, building houses, gardening and others. The magnitude of the influence of land on human life makes it important for the state to regulate by forming laws that can accommodate the interests of the community by creating justice, order and certainty in carrying out social and state life.<sup>1</sup>

Land is the basic capital for the state and development to realize the greatest prosperity of the people. So that in such a position the ownership, utilization, and use of land is guaranteed legal protection from the government. The Indonesian state is a legal state oriented to the general welfare as stated in the 1945 Constitution, so it will not be separated from legal disputes over lands which are fundamental problems in society, especially in the land sector. Citizens always want to defend their rights, while on the one hand the government must also provide general welfare for all Indonesian citizens. Therefore, legal protection is needed for the implementation of the public interest. This can be realized if there is a rule or regulation that is obeyed by the society.<sup>2</sup>

A land case is a dispute, conflict, or land case to be handled in accordance with the provisions or applicable laws and regulations. In recent years, land disputes

have become increasingly complex, whether they are disputes over land area, as well as disputes over ownership of multiple certificates. In the beginning, when society had not developed as it is now, disputes could be resolved by the residents together with the leaders. In the current era, land disputes have become a crucial problem and develop widely if they have not found a bright spot.<sup>3</sup>

The Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles or commonly referred to as the Basic Agrarian Law. It is expected to be able to overcome the land problem, the Agrarian Basic Laws (Article 1 point 1 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 concerning the Settlement of Land Cases, 2016) with a set of regulations regarding land, aims to guarantee legal certainty of land rights throughout the territory of the Unitary State of the Republic of Indonesia can be realized. The land disputes begin with objections related to claims for land rights both on land status, priority and ownership in the hope of obtaining administrative settlements in accordance with applicable regulations.<sup>4</sup>

The Agrarian Basic Law is a breakthrough in ensuring justice and legal certainty, order, and the welfare of the people of the Unitary State of the Republic of Indonesia in relation to the applicable land regulations. The development of the land situation in Indonesia nowadays it can be said to be crucial in human life as an Indonesian society, such as in planning buildings, preparing businesses, places for livelihoods, and so on which is require individuals to be involved in it, so the function of land ownership by individuals with the rule of law that protects, it can be said to be legally valid.

Article 19 of the Agrarian Basic Laws explains that the Government has an obligation for

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<sup>1</sup> Hatta, Muhammad, *Hukum Tanah Dalam Prespektif Negara Kesatuan*, Yogyakarta: Media Abadi, 2015 hlm 5

<sup>2</sup> Prasetyo Aryo Dewandaru, Nanik Tri Hastuti, Fifiana Wisnaeni, *Penyelesaian Sengketa Tanah Terhadap Sertifikat Ganda Di Badan Pertanahan Nasional*, *Jurnal Notarius* Vol 13 No 1 2020 hlm 154

<sup>3</sup> Murad, R, *Penyelesaian Sengketa Hukum Atas Tanah*. Bandung: Alumni. . (2013). hlm 20

<sup>4</sup> Perdana, S. C. (2018). Sertifikat Ganda Pada Proyek Pembangunan Rumah Susun. *Jurnal Legal Reasoning, Ilmu Hukum*. Vol 1 No 1 2018, hlm 68

citizens throughout Indonesia to register the land in order to achieve legal certainty so as to minimize the occurrence of land disputes. Land registration which aims to provide legal certainty is known as *rechts cadaster* / legal cadaster. The guarantee of legal certainty to be realized in this land registration includes certainty of the status of registered rights, certainty of the subject of rights, and certainty of the object of rights. This land registration produces a certificate as proof of its rights. The opposite of land registration which is *rechts cadaster*, is *fiscaal cadaster*, namely, land registration which aims to determine who is obliged to pay taxes on land. The need for land is increasing all the time, where is between humans and the available land is not balanced because the population increases but the availability of land is still limited. So that, this causes individual interests which is can lead to dispute issues.<sup>5</sup>

The land problem is an issue that concerns the most basic rights of the people. The more complex human interests in a civilization will be directly proportional to the higher the potential for disputes that occur between individuals and between groups. The emergence of disputes is difficult to avoid. The contradictions, disputes, and argumentative debates are one of the efforts made by humans to maintain recognition in the process of achieving an interest. Disputes occur because of conflict interests, this condition can make serious problems with the pattern of relations between humans and land, and the relationship between humans with land objects.

The follow-up of land disputes that arise in the community certainly has efforts that can be resolved through a forum such as a state institution which is also equipped with various laws and regulations as guidelines for its implementation. Therefore, it is necessary to have regulations and state institutions that specifically regulate and are authorized in the land sector also dealing with land problems. The National Land Agency (BPN) was

formed. The legal basis for the formation of the BPN is Presidential Decree No. 26 of 1988 which is an operational guide for BPN, also Decree No. 11/KBPN/1988 jo. The Decree of the Head of BPN Number 1 of 1989 concerning the Organization and Work Procedure of BPN in Provinces and Regencies/Municipalities is strengthened by the issuance of Presidential Regulation Number 10 of 2006, which was prepared by taking into account the aspirations and roles of the community in order to realize general welfare. Therefore, BPN plays a role in assisting and serving the community in obtaining their rights in the land sector in accordance with applicable rules and regulations, also helping the community to be able to find a way out if there is a dispute between the community and other community parties related to the land sector.<sup>6</sup>

The problem of dual certificate is a plot of land that has more than one certificate with the same object, caused in legal uncertainty for the parties holding a land right which is certainly not expected in land registration in Indonesia. The Case of dual certificates still often occur in several regions in Indonesia, which causes land certificate holders to accuse each other that the certificates they have are true despite the fact that one of the multiple certificates is fake. the object listed on the certificate is not the real thing, so to get legal certainty regarding the certificate of land rights, one of the dual certificate holders makes a complaint to BPN as the authorized institution.

If the verification process through BPN's policy does not come to light, then the authority to prove the dual certificate of land rights is continued to the realm of the Court which is considered to have competence in providing legal certainty to the holder of the right and cancels one of the certificates so that only one certificate is valid. The settlement of land cases by BPN on dual certificates in Pekalongan Regency is consistent every year. Based on this background, the main problem in this research is how the legal policy by the

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<sup>5</sup> Rayi Ady Wibowo. (2010). *Penyelesaian Sengketa Tanah di Kecamatan Karanganyar Melalui Mediasi oleh Kantor Pertanahan Kabupaten Karanganyar*. Universitas Sebelas Maret. Hlm 6

<sup>6</sup> Zein, R. *Hak Pengelolaan Dalam Sistem UUPA*. Jakarta: Rineka Cipta. 2015, hlm 13

National Land Agency of Pekalongan Regency in resolving Dual Certified Land Disputes through non-litigation.

## 2. Research Method

This study will analyze the problems of dual certificates using a normative legal research methodology combined with an empirical legal research methodology.

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This research relies on secondary data and primary data. The secondary data are statutory regulations, legal principles, while the primary data are from the observations of researchers and information from the BPN Pekalongan Regency BPN.

## 3. Research Results

Every Indonesian citizen has the right to apply for land rights consisting of Ownership Rights, Building Use Rights, and Use Rights. Even foreigners residing in Indonesia have the right to apply for land rights, but the right to apply for foreigners is limited by legislations.<sup>7</sup> The application is processed through the BPN, the BPN is not only authorized to ratify the application for land title rights, but is also responsible for resolving land disputes with dual certificates. Minister of Agrarian Regulation No. 11 of 2016 states, a land case is a dispute, conflict, or land case to obtain a settlement in accordance with the provisions of the legislation and/or land policy. In the case of a land dispute with dual certificates,<sup>8</sup> BPN Pekalongan Regency has the authority to negotiate, mediate, and facilitate the handling of the disputing parties and to initiate agreements between the parties.

Land conflicts which have occurred so far have broad dimensions, both horizontal conflicts and vertical conflicts. The most dominant vertical conflict is between the

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community and the government or state-owned companies and private companies. Another cause of land disputes is the high economic value of land and is a symbol of existence and social status, resulting in vertical and horizontal land conflicts. The strategic and special meaning and value of land encourages everyone to own, maintain and care for their land properly, if necessary, defend it with all their might until the last drop of blood.<sup>9</sup>

The roots of conflicts and land disputes that are multidimensional in nature cannot be seen as mere legal issues, but are also related to other non-legal variables, including the weakness of land certification regulations which have not reached 50%. Overlapping of the issuance of a decision from agencies directly related to land. For example, the issuance of a Decree for coal mining that must be issued by several government agencies, including the Ministry of Forestry, the Ministry of Mining and others related to the Decree. Dispute after dispute occurred due to lack of coordination between the agency administering land acquisition and other related parties, such as the local land office. That means the government's inconsistency in issuing regulations in the land sector and weak supervision when implementing these regulations. There is also one of the causes of land disputes and certificates that we often forget is natural disasters that cause letters of proof of land rights to be lost or damaged.<sup>10</sup>

This study describes and also analyzes the legal policy by the Pekalongan Regency

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<sup>7</sup> Syukur, Fatahillah A., *Mediasi Yudisial di Indonesia: peluang dan tantangan dalam memajukan sistem pradilan*, Bandung: Mandar Maju, 2012. Hlm 5

<sup>8</sup> Salindeho, John, *Manusia, Tanah, Hak dan Hukum*. cet. Ke 1 Jakarta: Sinar Grafika, 2014 hlm 16

<sup>9</sup> Hutagalung, Arie S., *Perlindungan Pemilikan Tanah dari Sengketa Menurut Hukum Tanah*

Nasional, *Tebaran Seputar Masalah Hukum Tanah*, Lembaga Pemberdayaan Hukum Indonesia, 2015, hlm 20

<sup>10</sup> Isnur, Eko Yulian, *Tata Cara Mengurus Segala Macam Surat Rumah Dan Tanah*, Yogyakarta: Pustaka Yustisia, 2012, hlm 37

BPN in resolving the Dual Certified Land Dispute through non-litigation. Complaints about dual certificate issues at BPN Pekalongan Regency in the last 3 years can be seen based on the following table<sup>11</sup> :



The table above is a dual certificate dispute resolution through non-litigation. In practice, the settlement of land disputes in Pekalongan Regency is not only carried out by the BPN, but can also be resolved through the General Courts and State Administrative Courts (PTUN). The General Courts are more focused on matters relating to civil and criminal matters in land disputes, while the Administrative Court resolves land disputes related to Decrees issued by BPN or other officials related to land.<sup>12</sup>

The policy of the Pekalongan Regency BPN in resolving dual certificate disputes can be carried out based on the initiative of the ministry or complaints by the public. The ministry's initiative is carried out because it is routine to find out disputes that occur in a certain area carried out by the Head of the Land Office, Head of the BPN Regional Office or the Director General of local newspaper reports. Monitoring of the Head of the Land Office is reported to the Regional Head of the local BPN every 4 (four) months and copied to the Minister. If the monitoring results need to be followed up the Minister or the Head of

the BPN Regional Office instructs the Head of the Land Office to carry out dispute resolution activities.

Settlement of dual certificate disputes at BPN Pekalongan Regency can also be done based on public complaints submitted to the Head of the Land Office in writing through the complaint counter, mailbox or the Ministry's website. The complaint file is forwarded to the Head of the Land Office. The complaint must include the identity and brief description of the case as well as supporting data or evidence related to the complaint. After the complaint is received, it will be followed up with an examination of the complaint file.

Legal policy of BPN Pekalongan Regency, if the complaint file does not meet the requirements, then it is returned to the complainant by providing an explanation of the lack of a complaint file in writing. After the complaint is administered, the BPN Pekalongan Regency officially who is responsible for handling disputes collects data, both physical data and juridical data. The complaint data is then validated, followed by issuing documents in handling the dual certificate dispute.

BPN's proof of the dual certificate dispute begins with a complaint submitted by the community that the certified land it owns is actually owned by another party who has a land certificate with the same object. The handling mechanism is carried out with the stages of Complaints and research. Complaints contain things also illustrate the event that the applicant is the one who is entitled to the land by attaching evidence. While the research in the process of handling double certificates is in the form of collecting administrative data and the results of research on physical data in the field. The results of this study

<sup>11</sup> Data BPN Kab. Pekalongan, di akses pada tanggal 12 November 2021, pukul 13.00

<sup>12</sup> Sembiring, Jimmy Jose, Cara Menyelesaikan Sengketa di Luar Pengadilan, Negosiasi,

Mediasi, Konsiliasi, dan Arbitrase, cet ke-1, Jakarta: Visimedia, 2011, hlm 40

can be concluded that temporarily whether the complaint from the party concerned is reasonable or not for further processing. If the complaint is declared to be processed, the next step is to prevent the mutation that the land is in a state of dispute. However, if the complaint does not contain a strong reason, then the complaint cannot or cannot be considered.

The dual certificate dispute by the Pekalongan Regency BPN can be resolved in three (3) ways. *First*, Direct Resolution by Deliberation, namely an approach to the parties. BPN Pekalongan Regency becomes a mediator in resolving dual certificate disputes amicably. It is necessary to be impartial and not to apply various types of pressure, but this does not mean that the mediator is passive. District BPN mediator. Pekalongan suggests ways of solving, also conveying difficulties that may arise in the future. Deliberations if held must also consider formal procedures such as summons, minutes, deed or declaration of peace that are used as evidence for the parties or third parties. Then the results of this deliberation are made in a deed of peace, whether carried out before the judge or outside the court or notary to obtain binding legal force for the parties who have agreed.

*Second*, the resolution of multiple certificate disputes through Arbitration is the settlement of cases by a person or several arbitrators who have been appointed based on the agreement/agreement of the parties and it is agreed that the decisions taken are binding and final. The main requirement for being able to go through arbitration as a dispute resolution is that there is an agreement made in writing and agreed by the parties.<sup>13</sup>

*Third*, Settlement of Disputes through the Courts, this method is used if the

mediation does not get a meeting point, Settlement of land disputes is regulated in Law Number 4 of 2004 concerning Judicial Power. Article 1 of the law states that judicial power is the power of an independent state to administer justice to uphold law and justice. In accordance with applicable regulations, the resolution of disputes relating to the ownership of multiple certificates is submitted to the General Court, and disputes over decisions of the land institution are submitted to the State Administrative Court, and disputes concerning waqf land are submitted to the Religious Courts.

The legal policy of resolving dual certificate disputes by BPN Pekalongan Regency can be resolved through negotiation, mediation and facilitation of the disputing parties and initiating an agreement between the parties. Dual certificates open up opportunities for legal violations such as fake certificates, certificate abuse. The existence of multiple certificates is influenced by internal and external factors. Internal factors include: not implemented according to the Agrarian Basic Law, there are people who seek profit, lack of supervisors, and inaccuracy of land office officials in issuing certificates. Meanwhile, external factors, namely public knowledge about the procedure for making certificates, land supply is not balanced with the number of enthusiasts who need land, and development has resulted in increasing land needs while land supply is very limited so as to encourage the transition of land functions.

It is necessary to understand that the legal policy of the BPN Pekalongan Regency only reaches a decision on problem solving, while the follow-up to land administration is still carried out by the Central BPN. So as to minimize dual certificate disputes, the role of BPN Pekalongan Regency as a public servant

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<sup>13</sup> Winarta, Frans Hendra, Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan

Internasional, Jakarta: Sinar Grafika, 2012.hlm 15

includes: Reviewing and managing data to resolve cases, Accommodating community complaints in case of disputes over land, the settlement of which is amicable by going to the field to carry out re-measurements by involving

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parties. Disputing parties and related village officials. Prepare a draft decision regarding the settlement of multiple certificate disputes, prepare a decision concept for the cancellation of land rights that are administratively flawed and based on a peace deed.

The final process carried out by BPN Pekalongan Regency from the results of the settlement is marked and formulated in the Minutes of Settlement of the Double Certificate Dispute witnessed by village officials and if necessary strengthened through the Deed of Peace drawn up by an in the presence of a Notary. A dual certificate dispute, it can be resolved amicably and the National Land Agency as a mediator, then this kind of settlement can be ascertained to be faster, more efficient and can satisfy both parties. .

#### 4. Kesimpulan

Land conflicts that have occurred so far have broad dimensions, both horizontal conflicts and vertical conflicts. And it is multidimensional. This study describes also analyzes the legal policy by BPN Pekalongan Regency in the resolution of Dual Certified Land Disputes through non-litigation. Complaints about double certificate issues at BPN Pekalongan Regency in 2019 were 2 disputes, In 2020 were 4 disputes and 2021 were 3 disputes. Dual certificate dispute resolution by BPN Pekalongan Regency was resolved through non-litigation. Factors that affect the existence of double certificates can occur due to internal factors from the BPN and BPN supervisors and external from the community. Settlement of dual certificate disputes by BPN Pekalongan Regency can be resolved in three ways, namely,

Deliberation (negotiation & mediation) while the follow-up by the land administration is still done by the Central BPN. Arbitration, if you do not get a meeting point from the BPN, then the Dispute Resolution through the Court

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Data BPN Kab. Pekalongan, di akses pada tanggal 12 November 2021

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