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Juridical Study of Problematic Overlapping Land Ownership Status in Indonesia

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Abstract: Land rights, including cultivation rights, are an important aspect of a country's economic and social development. However, the complexity in implementing land rights is often a source of problems, especially related to overlapping land ownership and use status. Cultivation rights are a form of land right that has a primary nature. This means that this right gives permission to the holder to use the land in accordance with the specified purposes. The process of land registration and issuance of certificates by the National Land Agency (BPN) should provide clarity regarding ownership of land rights. However, in practice, there are still overlapping land ownership statuses which give rise to various problems. This problem involves land registration policies which are not yet fully capable of providing legal certainty for certificate holders. A land registration system that uses a negative approach, where land certificates are not an absolute means of proof, complicates the process of resolving land disputes. The impact is felt on people's lives, where land certificates become proof of ownership that has economic value. Concrete steps are needed to ensure clear land ownership and no overlap. This includes improving the land registration system, increasing coordination between relevant institutions, as well as outreach to the public about the importance of having a valid land certificate. The problem of overlapping land ownership is a serious challenge that needs to be addressed immediately. With cooperation between stakeholders and concrete steps, it is hoped that legal certainty in land ownership can be created, which will ultimately support sustainable development and community welfare.

Keyword: Problems, Land, Ownership

INTRODUCTION

Indonesia, with its vast wealth of land and sea, has become a place for various economic activities that utilize its natural resources. One important aspect is land use, whether for agriculture, industry or infrastructure. However, the rapid economic growth also poses new challenges in land management. The rapid rate of economic growth in Indonesia has led to a greater need for land. Along with that, various sectors began to develop their businesses, both on a small and large scale, to meet the needs of the growing market¹. Land

¹ Napitu, J. P., Hidayat, A., Basuni, S., & Sjaf, S. (2017). Mekanisme akses pada hak kepemilikan di kesatuan pengelolaan hutan produksi meranti, Sumatera Selatan. *J. Penelit. Sos. dan Ekon. Kehutan*, 14(2), 101-118.

rights, including business use rights, are an important aspect of a country's economic and social development. However, the complexity in the application of land rights is often a source of problems, especially in relation to overlapping ownership status and land use. Cultivation rights are a form of land rights that are primary in nature. This means that the right gives the holder permission to utilize the land in accordance with a predetermined purpose. However, in its application, the right to cultivate must meet certain specifications set by regulations. One of the main problems that arise is overlapping land use. This occurs when one piece of land is utilized for a variety of different activities, such as agriculture, fisheries, plantations, and livestock. This overlap can trigger conflicts between the owner of the land use right and other parties who have an interest in the same land.

Land rights holders need to be clear about their authority to physically control and manage land. A land title certificate is the juridical evidence that ensures that the right is recognized and protected by law. When plantation businesses have strong legal certainty over the land they manage, this will create a conducive environment for investment and business development. In addition, the protection of land rights also provides security for farmers or smallholders, so that they can enjoy the fruits of their labor safely and comfortably. By creating a stable and orderly environment, the plantation sector can continue to grow sustainably. This not only creates jobs and increases people's income, but also supports the government's efforts in improving people's welfare and reducing poverty. The plantation sector plays an important role in Indonesia's economic and social development. By ensuring legal certainty for land rights holders in this sector, we can strengthen the foundation of sustainable national development. By doing so, not only will the plantation sector thrive, but the welfare of the Indonesian people as a whole can be better achieved².

Land certificates are strong evidence of land ownership according to Article 19 paragraph (2) letter c of Law No. 5/1960 on the Basic Regulation of Agrarian Principles ("UU No. 5/1960"). This document is not just a piece of paper, but also a means of legal protection for land rights holders whose names are listed in the certificate (Mulyadi and Satino, 2019). However, the impact of certificate ownership is often a trigger for complex land disputes. Land certificates are not only proof of ownership, but also a means of legal protection that provides certainty to land rights holders. With land certificates, landowners can legally protect their rights and prevent unauthorized claims to the land they own. Although land certificates aim to provide legal certainty, sometimes this is actually a trigger for land disputes. Problems that often arise are related to conflicting land ownership claims between certificate owners and other parties who also claim ownership of the same land. Land registration is an important step in upholding legal certainty in land ownership. This includes the establishment of objectives, ways of implementation, and guidance of organizations or businesses involved in land registration activities. The process also includes data collection for legal certainty which is the basis for legal protection for land rights owners. Land registration is not just an administrative act, but is also part of the effort to ensure legal certainty and protection for land rights owners³.

A notary is a person who is authorized to make land deeds. The role of Notaries and Land Deed Officials (PPAT) in the process of creating legal documents, especially those related to property transactions, is very important. They are not only witnesses or deed makers, but also guardians of legal integrity. Here are some points related to the roles and responsibilities of Notaries/PPATs and their team of employees in carrying out their

² Rizaldi, M., Mujiburohman, D. A., & Pujiriyani, D. W. (2023). Mediasi Sebagai Alternatif Penyelesaian Sengketa Tumpang Tindih Tanah Antara Hak Guna Usaha dan Hak Milik. *Widya Bhumi*, 3(2), 137-151.

³ Mujiburohman, D. A., Arianto, T., & Riyadi, R. (2015). Kajian Yuridis Tumpang Tindih Pemilikan Tanah Di Kabupaten Kampar Provinsi Riau.

professional duties. As such, the role of Notaries and PPATs and their team of employees is key in ensuring the success and accuracy of any property transactions and legal documents they handle⁴.

The Land Office, despite its essentially administrative function, plays a key role in providing legal certainty over land ownership through the issuance of land certificates. However, land disputes often arise due to land transactions that are not officially recorded at the Land Office. This results in overlapping certificates and creates legal uncertainty. The Land Office has the responsibility to record any changes in land ownership and issue valid land certificates. Land certificates are concrete evidence of legally recognized land ownership. However, if land sale transactions are conducted outside the existing system, this can result in overlapping certificates and land dispute issues. Land transactions that are not officially registered with the land office are a major source of land dispute problems. Since there is no clear record of the transfer of ownership rights, this can lead to overlapping certificates between the old owner and the new owner⁵.

The land registration system in Indonesia has undergone a significant transformation with the adoption of electronic issuance of land rights certificates. The main objective of issuing these certificates is to provide legal certainty for land rights holders based on physical and juridical data recorded in the land book. However, this process also brings new consequences related to overlapping land ownership status. Land title certificates are legally recognized evidence of land ownership in Indonesia since the implementation of the land registration system. This document provides a strong basis for landowners to defend their ownership rights. However, with the massive issuance of certificates, there has been an increase in the number of overlapping land ownership status. The land registration system that relies on electronic certificates provides convenience in proving land ownership online. However, this has also led to many cases of overlapping land ownership status, both certified and uncertified. Previous research has highlighted the problem of multiple certificates that occur due to the deliberate and limited authority of the Badan Pertanahan Nasional (BPN). Electronic certificate issuance has advantages in terms of efficiency and accessibility, but also poses new challenges in terms of data security and validity. However, the existence of electronic certificates also provides ease of proof online, reducing reliance on manual processes at local land offices⁶.

METHOD

This paper uses the Normative Juridical Research Method. Normative legal research is one of the methods often used in the discipline of law. In contrast to empirical research that focuses on real data and observable phenomena, normative legal research concentrates on existing legal norms, principles, and concepts. This article will discuss the approach and implementation in normative legal research. Normative legal research is a type of research that examines the law as norms or rules that apply. Its main focus is the analysis of legal texts, such as laws, regulations, court decisions, doctrines, and legal literature. The purpose of this research is to understand, explain, criticize, and formulate the ideal law in accordance with the principles of justice and legal certainty. Normative legal research is a very important method in the development of legal science. By focusing on legal norms and principles, this

⁴ Putri, Elle Tasya, and Mella Ismelina Farma Rahayu. "Dampak Hukum terhadap Notaris/PPAT Akibat Tindakan Melawan Hukum oleh Pegawai Kantornya." *Syntax Literate; Jurnal Ilmiah Indonesia* 7, no. 9 (2022): 15009-15018.

⁵ Safdah, N. (2024). Penyelesaian Konflik Hak Milik Atas Tanah Akibat Adanya Tumpang Tindih Sertifikat Tanah.

⁶ Faizal, F. (2021). Problematika Tumpang Tindih Sertifikat Kepemilikan Tanah di Kabupaten Kutai Kartanegara Berdasarkan Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria. *Journal of Law (Jurnal Ilmu Hukum)*, 7(1), 247-260.

research helps in understanding and criticizing existing laws as well as formulating more just and effective laws.

RESULTS AND DISCUSSION

Problems of Overlapping Land Use in Indonesia

Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) provides a strong mandate related to the management of natural resources for the prosperity of the people. This article emphasizes that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Article 33 Paragraph (3) of the 1945 Constitution underlines the responsibility of the state in managing natural resources for the welfare of the people. This emphasizes that natural resources are a common asset that must be managed wisely for the common good. This mandate is reflected in Law No. 5/1960, which stipulates that the state has the right to control and manage natural resources for the public interest. This law provides a legal basis for the government in organizing the management, use and maintenance of natural resources. The government plays a key role in making spatial planning in accordance with the mandate of Article 33 Paragraph (3) of the 1945 Constitution. Through good planning, the government can ensure that the use of natural resources is carried out sustainably and provides maximum benefits for the prosperity of the people. By managing natural resources wisely and sustainably, the state can realize prosperity for its people. Good management will ensure that natural resources are not only utilized for the current generation, but also for future generations. The mandate of Article 33 Paragraph (3) of the 1945 Constitution emphasizes the responsibility of the state in managing natural resources for the prosperity of the people. Through proper regulation in Law No. 5/1960 and appropriate spatial planning, the government can ensure that natural resources are optimally utilized for the welfare of all Indonesians.

Law No. 26/2007 on Spatial Planning highlights the importance of natural resource management processes, especially in the plantation and forestry sectors, to be adapted to the concept of land stewardship that is integrated with existing spatial planning. In terms of business interests, land stewardship must be clear so that its use can be regulated efficiently. Land stewardship is an important concept in natural resource management. In the context of the plantation and forestry sectors, land stewardship must be regulated in accordance with the business interests to be carried out. This is important to create efficient and sustainable land use. Good spatial planning can help prevent protracted conflicts related to land use. By strategically planning land use and properly regulating land stewardship, we can create a spatial layout that is not only efficient but also avoids potential conflicts between parties. Through the implementation of Law No. 26/2007 and the concept of integrated land stewardship, we can realize sustainable spatial planning. This means creating a balanced environment between economic, social and environmental interests, and ensuring that land use does not harm the interests of society as a whole. The government plays a key role in spatial planning and land stewardship. Through appropriate policies and effective implementation, governments can ensure that land and space use is based on the principles of sustainability and equity. Sustainable land and spatial planning is an important component of natural resource management, especially in the plantation and forestry sectors. By following the concept of land stewardship in accordance with Law No. 26/2007 and planning spatially strategically, we can create a harmonious environment and avoid costly conflicts. Therefore, it is important for the government and all stakeholders to work together in realizing sustainable and efficient spatial planning.

Spatial problems in Indonesia are a major highlight, especially in land stewardship designations that often cause conflicts between the community and the government.

Unresolved conflict resolution indicates the need for an approach that can provide justice and legal certainty. The lack of clarity in spatial planning and land stewardship often triggers conflicts between communities and the government. Failure to plan and regulate land use can result in dissatisfaction and injustice for all parties involved. Conflicts often arise due to overlapping licenses issued by the government, especially in the plantation and mining sectors. The Kalimantan region, which is rich in natural resources, is a major focal point for these conflicts. Insufficiently clear regulations on business licenses often lead to overlapping land use. To address this issue, the government needs to enforce strict and legally-based regulations on business licenses, especially in the mining and plantation sectors. Clear and transparent regulations will help avoid overlaps and conflicts of interest between sectors. As a country that controls natural resources, the government has a mandate to manage and regulate the wise use of land and other natural resources. This includes good governance in granting business licenses as well as law enforcement against violations that occur. Indonesia's spatial problems require a comprehensive and law-based approach to achieve fair and sustainable conflict resolution. With strict enforcement of regulations, clear spatial planning, and attention to the state's mandate in managing natural resources, we can create a harmonious environment and avoid conflicts that are detrimental to all parties.

Government Regulation No. 40/1996 on Cultivation Rights, Building Rights, and Use Rights on Land (GR No. 40/1996) and Article 134 of Law No. 3/2020 on Mineral and Coal Mining (Law No. 3/2020) provide clear direction on the protection of land rights and the regulation of mining business licenses. GR No. 40/1996 emphasizes that any land granted with a hak guna-usaha, hak guna-bangunan, or hak pakai must be free from the interests of any party. This aims to ensure that the right holder has full control over the land and there is no intervention from other parties that could interfere with the activities being carried out. Article 134 of Law No. 3/2020 provides restrictions on the location of mining business activities, which may not be carried out in places prohibited by laws and regulations. The explanation in paragraph (3) states that mining business licenses can only be granted if there is a permit from the authorized agency and approval from the land rights holder. The explanations of these regulations indicate that a hak guna usaha license or mining business license issued must be free from interference from other parties. This aims to provide legal certainty for permit holders and protect their rights to land used for business activities. Government Regulation No. 40/1996 and Law No. 3/2020 provide a strong foundation for the protection of land rights and the regulation of mining business licenses. By ensuring that the licenses are free from the interests of other parties, the government can create a stable business environment and provide legal certainty for license holders and land rights owners.

Overlapping ownership of land rights, especially those resulting in multiple titles, is a serious problem in Indonesia, especially in the resource-rich Kalimantan region. This factor shows an imbalance in land utilization that is not in accordance with applicable laws and regulations. A major cause of overlapping land titles is the lack of confirmation of business licenses granted in various sectors. These permits are supposed to be monitored and evaluated by the land office to ensure that the locations granted are in accordance with the permitted land use and designation. These overlapping practices lead to unclear land tenure, which in turn can trigger unauthorized land transactions. Communities looking to buy or sell land must ensure that the certificates held are valid and do not overlap with other certificates. To address this issue, it is imperative to provide legal certainty over land ownership. This can be done through strict monitoring and evaluation of business licenses granted, as well as strict law enforcement against the practice of overlapping land ownership. The government and relevant stakeholders, especially the land office, play an important role in addressing the issue of overlapping land ownership. They must work together to ensure that business licenses are effectively monitored and that land tenure is conducted in accordance with applicable regulations. The issue of overlapping land ownership is a serious challenge that

needs to be addressed in Indonesia. By providing legal certainty over land ownership, carefully monitoring and evaluating business permits, and strictly enforcing the law against overlapping practices, we can reduce the adverse impacts of this problem and create a more stable environment for land use⁷.

The problem of overlapping land ownership has become a serious concern in Indonesia's land system. Overlapping often results in multiple claims to land ownership, creating uncertainty and potentially costly disputes. In the land system, legal protection is usually done through the plotting process with an online system. However, uncertainty can still occur because every designation of land boundaries requires direct approval from the party concerned. Permen ATR/BPN No. 1/2021 is an effort to reform land services by implementing electronic certificates. The aim is to improve the ease of doing business and public services to the community. However, the application of electronic certificates also raises several problems related to legal certainty, so crosschecks in the field are important. Digital development must be balanced with good administrative arrangements. An integrated administrative system from conventional to modern (digitalization) is a preventive step in minimizing the percentage of disputes in the future. The problem of overlapping land ownership is a complex challenge that requires a holistic approach. Through the application of information and communication technology, as well as integration between administrative systems and digitalization, it is expected to reduce the potential for conflict and increase legal certainty in land ownership

Problems of Land Overlapping in Indonesian Society Viewed with the Theory of Legal Certainty

Land disputes are a complex problem that often arise in Indonesia, triggered by a variety of factors including land tenure without rights, boundary disputes, inheritance disputes, multiple sales, multiple certificates, and certificates in lieu of fake sale and purchase deeds. The authenticity of a deed guarantees legal certainty for the parties involved in a land sale and purchase transaction. With a valid and authentic deed, the parties can be sure that the ownership rights and obligations stated in the deed are legally recognized. A PPAT deed is valid evidence in the eyes of the law and fulfills the formal requirements stipulated by law. In the process of a land sale and purchase transaction, the existence of an authentic deed will ensure that all procedures and legal provisions are fully met. An authentic deed provides legal protection to the parties in relation to the rights and obligations outlined in the deed. This includes ownership rights, restrictions on the use of the land, and other provisions that have been clearly agreed upon⁸. These factors demonstrate the complexity and variety of problems that occur in land ownership in Indonesia. Different perceptions, values or opinions about land often trigger disputes. A person may have a different view of land boundaries or the economic value of a particular parcel of land, which can lead to conflict. Different interests in a parcel of land can also be a source of dispute. For example, the land is desired for a particular development or investment, which can trigger disputes between interested parties. The concept of land acquisition for development, especially for the public interest, often raises juridical and implementation problems in the field. Alignment between land valuation and budget is a challenge in this process. Ineffective socialization of land acquisition and related regulations can lead to misunderstanding and dissatisfaction among the public, which can then trigger disputes. Protracted settlement of civil disputes is often an obstacle to resolving land disputes effectively and efficiently. Lack of expertise and human resource

⁷ Oktaviani, Y. W., & Yulianingrum, A. V. (2024). Urgensi Penyelesaian Tumpang Tindih Kepemilikan Tanah Akibat Kesalahan Penulisan dalam Akta Jual Beli Tanah. *Pagaruyuang Law Journal*, 7(2), 472-492.

⁸ FR, Mella Ismelina. "Tanggung Jawab Pejabat Pembuat Tanah Dalam Membuat Akta Otentik Yang Penghadapnya Menggunakan Identitas Dan Tanda Tangan Palsu (Studi Kasus Putusan Nomor 412/Pdt/2018/Pt. Dki)." *Jurnal Hukum Adigama* 4, no. 1 (2021): 580-601.

skills in land acquisition can also complicate the dispute resolution process. Intimidation and the use of violence in land dispute resolution are serious problems that threaten the security and peace of society. By understanding the factors that trigger land disputes, it is hoped that more effective steps can be taken in resolving them, so that peace and justice can be achieved in land ownership in Indonesia.

Overlapping land title certificates issued by the land office are often a source of complex disputes, both juridically and physically. Phenomena such as multiple certificates lead to legal uncertainty affecting each party's land ownership. However, technological developments open up opportunities to improve the land administration system, including in online certification services launched by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Ministry of ATR/BPN). Permen ATR/BPN No. 1/2021 is the basis for implementing digital land administration services. Digital certification is expected to accelerate the land registration process, provide convenience, efficiency, and effectiveness in services. Coordination between various related parties is very important in maintaining information disclosure and carrying out the procedures of the applicable laws and regulations. Information disclosure helps overcome ignorance of the spatial arrangement of an area. Clear spatial planning is needed to reduce environmental conflicts that may arise from activities or businesses in the forestry and mining sectors. This requires clarity on boundaries and licensing mechanisms. Although there are challenges both internally and externally, the implementation of digital land administration services is expected to overcome the existing problems. With the support of all relevant parties, including the government, the community, and other stakeholders, a more transparent, efficient, and equitable land system is expected to be realized.

Land conflicts are increasing due to the diverse interests of the parties involved, especially in areas vulnerable to industrial influence. Changes in economic structure trigger a shift from the agricultural sector to the industrial sector, leading to imbalances in the development of rural economic sectors. Unbalanced development of the industrial sector often excludes the agricultural sector, creating conflicts over land ownership and use. Developed industrial areas require land, but this can reduce space for agriculture and local livelihoods. Clear regulations are needed to provide legal certainty and protection of land rights, so that the function of law can better accommodate human needs. The settlement of unresolved land cases is the responsibility of the government, so as not to accumulate and worsen the situation. The enactment of Permen ATR/BPN No. 11/2016 is one of the government's efforts in resolving land cases through litigation and non-litigation channels. This regulation is expected to address administrative and legal defects in land certificates and provide a more effective settlement mechanism. The increasing value of land has made land ownership increasingly important for the community. However, overlapping certificates and administrative defects make settlement difficult. Through strong regulations and effective case handling, it is hoped that land conflicts can be minimized, so that land can become a source of equitable prosperity for all parties.

The conversion of agricultural land into industrial areas, agribusiness, tourism and real estate is a commonly used economic development strategy. However, this often leads to various land disputes between communities and industry players. Government support for industry often increases the complexity of the problem. Land disputes often arise due to land conversion, with some cases involving multiple titles due to land acquisition for development projects. Transmigration programs that aim to flatten the population often create new problems when not matched with good land management. Transmigration aims to open up new land and level the population, contributing to the welfare and prosperity of the people. However, achieving this goal requires effective land management and policies that support equitable population distribution. The government needs to conduct a review of agricultural land conversion and develop sustainable policies to address land disputes. The transmigration

program must be accompanied by good land management and equitable population distribution. Thus, economic development can be balanced with environmental sustainability and social justice.

The transmigration program is a government effort to level the population and utilize the potential of natural resources in areas that have not been optimally utilized. Law Number 29 of 2009 concerning Transmigration mandates that transmigrants are entitled to receive assistance in the form of business land and housing along with houses with property rights status. The community's perspective on land tenure and ownership has been part of their hereditary history, which is often understood through land ownership certificates. Land rights are recognized based on certificates, providing a formal understanding that land ownership depends on physical use and juridical legality. Different understandings of land ownership, especially in the context of transmigration and other development programs, are often the source of disputes. Incomplete resolution of land disputes can lead to overlapping land certificates, where the state cannot always guarantee the correctness of physical and juridical data in the certificate. The government needs to ensure that transmigration programs not only provide land to participants, but also include adequate legal protection mechanisms. Settlement of land disputes must be carried out in a fair and transparent manner, taking into account both parties and ensuring alignment with applicable regulations. Thus, the protection of land rights in transmigration programs is key to sustainable development that not only takes into account economic interests, but also social and environmental justice⁹.

Land ownership is a vital aspect of property law that requires clarity and certainty. However, in practice, overlapping land ownership status is often a source of conflict and legal uncertainty. The role of the National Land Agency (BPN) in issuing policies related to land ownership status is crucial in providing clarity on land rights. Land certificates are considered absolute proof of ownership, but in the context of resolving overlapping land ownership, the land registration system that uses a negative publication approach creates its own complexities. This system, although it produces a certificate of title, does not guarantee absolute certainty of land ownership because it relies on evidence contained in the land registration system. The problem is further complicated by the increasing number of overlapping land ownership, which has an impact on people's lives and the economic value of land certificates. In addressing this, it is necessary to review the land registration system, taking into account that parties who feel aggrieved can file an objection or lawsuit to cancel the issued certificate. Until now, the problem of overlapping land ownership still occurs frequently, and is the main focus to be resolved quickly and accurately.

CONCLUSION

The process of land registration and certificate issuance by the National Land Agency (BPN) should provide clarity on the ownership of land rights. However, in practice, there are still overlapping land ownership statuses that give rise to various problems. These problems involve land registration policies that have not been able to fully provide legal certainty for certificate holders. The land registration system that uses a negative approach, in which land certificates are not an absolute means of proof, complicates the process of resolving land disputes. The impact is felt in people's lives, where land certificates become proof of ownership with economic value. However, overlapping land ownership results in uncertainty over the status of ownership, which in turn can lead to conflict between parties. A review of the land registration system is crucial to address this issue. Relevant stakeholders, including the government and relevant institutions, need to work together to find effective solutions.

⁹ Manurung, S. H. R., & Sadad, A. (2017). *Strategi Badan Pertanahan Nasional Kota Pekanbaru Dalam Meminimalisir Permasalahan Tumpang Tindih Sertifikat Tanah (Overlapping) di Kota Pekanbaru* (Doctoral dissertation, Riau University).

One of the main challenges is to ensure that the policies issued can be implemented consistently and efficiently in the field. Concrete steps are needed to ensure clear and non-overlapping land ownership. This includes improving the land registration system, improving coordination between related institutions, and socializing to the public about the importance of having a valid land certificate. The problem of overlapping land ownership is a serious challenge that needs to be addressed immediately.

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