

The Implication of Negative Publication System on the Issuance of Double Certificates in Bandar Lampung City

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Abstract

The purpose of this study is to see how the negative publication mechanism affects the issue of double certifications in Bandar Lampung. In this study, the topic of land disputes is whether using the negative publication method in land registration in Indonesia is reasonable, and what are the repercussions of the negative publication system on the issuance of dual certificates in Bandar Lampung City. The author employed the normative juridical law technique using deductive syllogism analysis to create this work, which consisted of a major premise, minor premise, and conclusion. The researcher also obtained data from library sources to back up his claims. The lack of legal certainty for land/property owners was the rationale for using the negative publication system in land registration in Indonesia, according to the findings, because even though the owner was listed as the owner of the land on the certificate, the owner could still face a lawsuit from those who believe they have an interest in the land. The impact of a negative publication system on the issuance of double certificates in Bandar Lampung was that they did not receive legal protection because they were not based on the principle of justice, because a certificate of land rights can be sued by other parties who have an interest in the land and believe they have been harmed.

Keywords: Implication, Publication System, Double Certificate

Introduction

Land is one of the most basic human necessities; it is also a source of both economic and political resources. Legal certainty regarding land ownership is required to provide legal certainty to the legal right holder of the land or to the means of economic activity. In order to provide legal certainty and protection to landowners, the prerequisites for land law that is written clearly and comprehensively and governs land registration must be met. (Ishak, Hasibuan, & Arbani, 2020)

The importance of legal certainty of land rights certificates for land rights holders is to provide legal certainty and protection to the community in relation to these rights. However, in the midst of the conflict, society failed to recognize the significance of land registration, which issues land certificates, resulting in a lack of certificate ownership. (Soediro, Handayani, & Karjoko, 2020) Most of the land owned by Indonesians does not yet have certificates or, to put it another way, is not yet registered. They do not wish to register their land for a variety of reasons. One of the instances is the registration costs, which might be too expensive. They are oblivious to the significance of land registration. Those who understand but refuse to register their land do so because the National Land Agency's (BPN) management process is regarded difficult. (Karjoko, Rosidah, & Handayani, 2019)

The issuance of land certificates for the purposes of legal certainty, legal protection, and the rights holders' interests in relation to juridical and physical data that have been registered in the land book. It is

necessary to register judicial data (Zhou, Peng, & Bao, 2017) in the form of land status (types of rights), subject matter, rights of other persons who burden it, and if there is a legal action or legal event. Meanwhile, physical data (mapping) comprises the area of land, as well as any buildings or plants on it, as well as the land's position and limits.(Nurjanah & Karjoko, 2019)

As proof of rights, a certificate is produced that is a copy of the register, which is related to the supply of legal guarantees and legal protection for legal holders of land rights who have registered their land rights. The following is taken from Article 32 paragraph (1) of Government Regulation Number 24 of 1997 on Land Registration: "a certificate is a certificate of proof of rights that is valid as a strong proof of physical data and juridical data contained therein, as long as the physical data and juridical in accordance with the data contained in the letter of measurement and the book of land rights in question".(Kadir Jaelani, 2019)

Land registration is seen as a useful tool for ensuring legal certainty and protecting land ownership rights. However, they frequently receive double proof of land title in the form of double certificates. Because the aim of registering land is to get strong and flawless proof of land ownership, the existence of a double certificate on the status of land ownership rights raises legal confusion.(Agus Surachman, Handayani, I Gusti Ayu Ketut Rachmi, 2017)

The procedure of executing land registration is determined by the publicity system in place in the country at the time of registration. The publicity system is a list-based announcement system. There are two (two) publication systems in relation to the purpose of land registration, which is to offer legal clarity to holders of property rights:

1. The general list which at the time of land registration has strong evidence is called a publicity system that has positive legal force (positive system).
2. The general list which during the process of administering land registration does not have strong evidence is called a publicity system which has negative legal force (negative system).

The national land law employs a negative publicity system, but one that is not entirely negative and has a positive slant; this is stated in Article 19 paragraph (2) letter c, which states that registration entails "the process of providing certificates of proof of rights, which apply to tools that are valid and strong evidence." "Registration is a solid method of proof," according to articles 23 paragraph (2), 32 paragraph (2), and 38 paragraph (2) of the Basic Agrarian Law. With a pure negative publication system, this statement does not exist in the land registration requirements.(Susanti, 2020)

Since the enactment of Government Regulation No. 24/1997 on Land Registration (referred to as PP No.24/1997), and particularly Article 32 paragraph (2) of PP No. 24 of 1997 concerning Land Registration, which is a legal effort by the government to create legal certainty and legal protection for those who hold the certificate of land rights free from fear of a lawsuit over the ownership rights of the land.(Zubaidi, Pratama, & Al-Fatih, 2020)

There are still numerous cases of land disputes in the city of Bandar Lampung, bringing the researcher's attention to land dispute cases involving double certificates, where there would be no problems if the land registration process had been carried out in line with protocols at the time. There are still many land issues today as a result of its development. One of the most common types of disputes is the problem of double certifications, which are certificates that certify two bases on separate land lots.(Karjoko et al., 2021)

According to the problem's basic definition, a certificate is a written statement that serves as proof of ownership and is crucial for ensuring legal certainty and government protection. It is carefully crafted so as not to hurt the holder of legal land rights. To investigate the effects of the negative publication system on dual certificate issuing in Bandar Lampung City. As a result, the author formulates the issue as follows: (1) What is the justification for using the negative publishing technique in Indonesian land registration? (2) What are the implications of Bandar Lampung City's negative publication method for the issue of double certificates?

Results and Discussion

1. *Rationality of The Utilization of Negative Publication System of Land Registration in Indonesia*

The publication system is used to assess the strength of certificates, which can be strong or weak, and absolute or non-absolute, as proof of land rights. The negative publication system and the positive publication system are the two sorts of publication systems. According to the Basic Agrarian Regulations (abbreviated as UUPA), land registration in Indonesia is based on a negative publication system with a positive tendency, which means that Indonesia has not only used a purely positive publication system, but has also used a purely negative publication system. (Sudarwanto et al., 2021)

One of the hallmarks of the negative publication system is that land registration is not a legal guarantee for names that have been registered in the land book. Another claim is that the land book can be changed as long as the land owner can show the facts through a permanent legal judgement from a court. When it comes to registration, the first thing that is done is to register the object, followed by ownership, which is linked to land rights. A landowner who has registered his land usually wishes to re-register his ownership. (Prasetio et al., 2020) There are also those who merely register their land rights, rather than their ownership. Land rights and ownership are frequently confused, despite the fact that they are two distinct concepts. Land rights can be lost owing to legal causes and consequences, or they might be revoked by the Land Office because the owner has abandoned the land, despite the fact that land ownership cannot be revoked. (Erina & Yanis, 2020)

Legal certainty related to land rights based on what is governed in the Basic Agrarian Regulations (particularly UUPA) has two dimensions, according to Government Regulation Number 24 of 1997 regulating land registration, namely the certainty of the subject of land rights and the certainty of the object. The name of the holder of property rights listed in the land registration book at the land agency indicates one of the subject's certainty. (Karjoko et al., 2020) Meanwhile, the certainty of the item represented by the land rights expressed in the certainty of the position of the land parcel in a land registration map with geo-referenced coordinates. As a result, a land certificate is commonly referred to as a copy of the map and the land registration book. (Hardiyanto, 2021)

Government Regulation No. 10 of 1961 was repealed with Government Regulation No. 24 of 1997, which governs land registration. According to paragraph 1 of article 1 of Government Regulation Number 24 of 1997. land registration is a process of activities carried out by the Government in a continuous, continuous, directed and orderly manner, which includes collection, bookkeeping, processing, as well as presentation and maintenance of juridical data and physical data, in the form of maps and lists, related to land parcels and apartment units, and also related to the issuance of certificates of rights to land parcels for which rights have been established and property rights to flat units and these rights that burdened him. (Intaniasari, 2020) It was stated that Indonesia conforms to a negative publication system that contains positive aspects, in response to the remark that land registration in Indonesia does not normally adhere to a positive publication system or a negative publication system. (Hanum, 2020)

The procedure of obtaining an evidence (Bruce, 2018) of ownership of land rights begins with land registration. The importance of land registration is reflected in the fact that the LoGA directs the government to register land in all parts of Indonesia. This is in conformity with the following requirements of Article 19 of the LoGA: (Roestamy, 2019)

1. To ensure legal certainty, the government is holding land registration throughout the territory of the Republic of Indonesia according to the provisions stipulated in a Government Regulation.
2. The registration referred to in paragraph (1) of this article includes:
 - a. Measurement, mapping, and bookkeeping of land;
 - b. Registration of land rights and the transfer of such rights;
 - c. Provision of letters of proof of rights, which serve as strong evidence.
3. Land registration is carried out taking into account the state and community conditions, the needs of socio-economic traffic and the possibility of its implementation, according to the consideration of the Minister of Agrarian Affairs.

The Government Regulation governs the costs of land registration mentioned in paragraph (1) above, with the exception of those who cannot afford to pay these fees. There are benefits and drawbacks to using a negative publicity strategy with positive tendencies.(Sukmoro, Sulistiyono, & Karjoko, 2019) The benefit of using a negative publicity system with a positive tendency is that the status of customary land ownership is better protected; most customary lands in Indonesia cause someone to act in bad faith, causing them to falsify data, resulting in the issuance of double certificates of actual land rights belonging to customary land. The adoption of a negative publication system in land registration results in the certificate being withdrawn, preserving legal possession.(Estikomah, 2019)

When it comes to the flaws of employing a negative publication method with a positive tendency, even if someone already holds a land title certificate, the lack of legal certainty for the land owner is the rationale for using a negative publication system in land registration in Indonesia, because even though it has been listed as the owner of the land on the certificate, the land owner may still be subject to a lawsuit from those who believe they have an interest in the land. In Indonesia, land registration employs a negative publication system, in which the state does not guarantee the accuracy of the data gathered, but it is not a totally negative publication system, but rather one with positive tendencies.(Ismoyo, 2020)

2. *The Implications of a Negative Publication System on the Issuance of Dual Certificates in Bandar Lampung City*

Land is a basic need in the lives of citizens, related to Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which is contained in Article 19 which orders that land registration be held in order to ensure legal certainty. Government Regulation Number 10 of 1961 concerning Land Registration governs the implementation of land registration, which has since been refined into Government Regulation Number 24 of 1997 concerning Land Registration.(Kajoko, Rosidah, & Handayani, 2019)

The purpose and system that can be used are maintained in Government Regulation Number 24 of 1997 concerning Land Registration, which have been stipulated in essence in the Basic Agrarian Law (UUPA), namely that land registration is held as a framework to provide legal certainty in the land sector and related the publication system is a negative system, but it contains positive elements, because A certificate is a letter of proof of rights that applies to solid evidence, as stated in Article 19 paragraph (2) letter c of the BAL.(Handayani, Sulistiyono, Leonard, Gunardi, & Najicha, 2018) This means that it must be recognized as valid data as long as the legal and physical data included in it cannot be established. The legal or physical data listed in the certificate book must match the information on the letter of measurement and the land book. As a result, the certificate is a legitimate deed that provides the owner with faultless and solid proof of power. The certificate is a certificate of proof of rights that has been valid for strong evidence connected to juridical facts and physical data contained therein, according to Article 32 paragraph (2) of PP No. 24 of 1997 concerning Land Registration.(Susanti, 2020)

The Basic Agrarian Law (UUPA) Number 5 of 1960, which consists of two components, namely certainty of the subject of land rights and certainty of the objects of land rights, namely certainty of location, emphasizes the importance of legal guarantees for land rights. The name of the holder of land rights that has been listed in the land registration book at the land agency, where a copy of the map and land registration book is called a Land Certificate, is marked with the area of the plot of land with geo-referenced coordinates on a land registration map and the certainty of the subject.(Jaelani, Handayani, & Karjoko, 2020a)

The principle, which is the fundamental underpinning the occurrence of anything and is the base of an action, also supports legal certainty.(Rumadan, 2012) The execution of land registration must adhere to a set of principles that must serve as the foundation for the process. This is true for land registration as well. The principle of land registration is carried out on the basis of the following, according to Article 2 of PP 24/1997 concerning Land Registration:(Jaelani, Handayani, & Karjoko, 2020b)

- a. Simple Principles: the principles used for the main provisions or the process are easier to understand for interested parties, especially land rights;

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- b. Safe Principle: it is intended that land registration needs to be carried out carefully and carefully so that the results can provide legal certainty guarantees according to the purpose of registration;
- c. The principle of affordability is intended to be affordable for those in need, taking the needs and abilities of the weak economic group into account. The services provided in the context of carrying out land registration must be affordable by the parties who need it.
- d. Up-to-date Principle: means completeness that meets the requirements in its implementation and balance in data maintenance. And the available data must show the current state. For this reason, it is necessary to fulfill the obligation to register and record changes that occur in the future;
- e. Open Principle: This principle also requires that land registration data be maintained continually, so that the data stored at the Land Office is always in accordance with the real situation when in the field, and the public can obtain certainty about the correct data at any time.

A description of the legal principles of agrarian reform, which consists of:

1. Sustainable Principles

The notion of sustainability has become one of the most important aspects of environmental management (Article 3 of Law No. 23 of 1997). Because one of the competing challenges in the agrarian process is the loss in environmental quality, the principle of sustainability is now the principle in agrarian reform. It is vital to refresh the principles of land preservation and social functions contained in the LoGA in order to prevent environmental degradation. If the principles of land maintenance and social function of land are related to the principle of sustainability, then these two principles can be interpreted to mean that a conscious and planned effort to adapt agrarian resource management into the development process is still necessary (the two principles are only part of) to ensure capacity and welfare.

2. The Principle of Integration and Coordination

The presence of the integration principle originates from the fact that agrarian resources are one aspect of the ecosystem that works in complete and comprehensive harmony with other ecosystem elements to establish and sustain the environment's balance, stability, and production. The principle of integration states that in the control and administration of agrarian resources, the authority of the authorized government agency or agency must be unified in order to retain and maintain the environment's balance, stability, and productivity. The application of authority related to the control and management of agrarian resources requires cooperation (coordination) in addition to the principle of integration, because the two authorities are interconnected and have the same purpose.

3. Principles of the State of Law

The rule of law notion is founded on the premise that the relationship between the state and society must be governed by a set of rules known as law. Even while legal certainty over land tenure is mentioned in the LoGA, it is preferable if legal certainty over control in other agrarian domains is also included, because legal certainty is one of the reasons why the State carries out its tasks by law. As a result, the principles of customary law as a source of agricultural law and legal certainty are both included in the set of rule of law principles.

4. Principles of Community Participation

Agrarian control is not merely a monopoly of the state (government), because the ultimate goal of agrarian control is to increase the community's welfare, which is linked to the community's feelings or those who perceive the existence or absence of welfare as a result of agrarian control.

5. Principles of Justice

In general, the term "justice" refers to "distributive justice," which means that each person is assigned a share or set of rights based on their unique needs and talents. There are several reasons why the principle of autonomy was chosen as the main basis for implementing the relationship between the Center and the Regions, including the fact that handing over trust to the regions entails restoring justice in the last sense, which is actually included in the UUPA, namely as the principle of protection for the poor economic group.

6. Unitary Principle

The Republic of Indonesia is a unitary state, according to Article 1 paragraph 1 of the 1945 Constitution. A unitary state is one that has a single structure, meaning it is not made up of multiple countries, each of which has its own constitution, but rather there is only one state and one constitution that applies throughout the territory. There is no such thing as a state within a state in a unitary state. To put it another way, a unitary state is a type of state in which the highest legislative authority is concentrated in a single national legislature.

7. Autonomy Principle

The principle of autonomy has been established in the framework of agricultural reform, meaning the delegation of government authority over the distribution and management of agrarian resources from the center to the regions.

8. Principle of Recognition Against

The principle of community and customary law recognition, as stated in Article 4 letter j of MPR Decree No. IX/MPR/2001, is a renewal of Article 3 of the LoGA, which states that: Taking into account the provisions of Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as they still exist, must be in accordance with the provisions of Articles 1 and 2.

According to Phillipus M Hadjon, the principle of recognition and protection of human degrees and dignity, which is based on Pancasila and the principles of Pancasila state law, is the principle of legal protection for the people in Indonesia. According to Phillipus M. Hadjon, legal protection can be examined and described as legal protection separated into two categories: preventative legal protection and repressive legal protection. (Ayu, Adi, Gusti, Ketut, & Handayani, 2020)

Evidence that land conflicts, namely connected to multiple certificates, continue to occur as a result of Indonesian society's negative publicity system, and that legal protection for land rights is not guaranteed. There are still several land-related problems in Bandar Lampung City, notably in the 2019-2021 timeframe as follows:

Table 1
Dispute data and case data in Bandar Lampung City are:

No.	Reporter Name	Reported Name	Root of the problem	Main problem	Surface area	Typology	Case Resolution
1.	Herdini Alistya, SH.	Heri Sudarto aka Herry Sudarta Bin Slamet	There is a measurement on the plot of land on the grounds that it will apply for a replacement certificate because it is lost	Recognition of the object of land ownership	143 M ²	Transfer of Rights Registration	Recommendation for taking legal action
2.	Farizal Indra	Lita Yunarti	Allegations of theft and embezzlement	Theft and certificate embezzlement	99 M ²	Transfer of Rights Registration	Recommendation for taking legal action

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			of the Certificate of Ownership by Ms. Revta Sa Fallas (in-law of the reporting party) and the transfer of rights to the name of the reported party has been recorded				
3.	Patar Sidauruk	Sufi Imam Bunari	Objection to the issuance of certificate of title	Recognition of the object of land ownership	600 M ²	Transfer of Rights Registration	Recommendations for taking legal action
4.	Syamsurizal Bakri	Sujiono	Misplaced in the mapping process	Overlapping	300 M ²	Procedure for Location of Boundaries and Area	Recommended Cancellation Decree
5.	Sunawati	Elva Zahara	There is an application for the measurement of land parcels above land that has been issued with a certificate	Overlapping	114 M ²	Procedure for Location of Boundaries and Area	Recommendation for request for limit return from the parties

According to table 1, the reasons of multiple certifications or overlapping certificates are caused by a variety of factors;

1. The reporter named Syamsurizal Bakri and the reporter named Sujiono with a land area of 300M² (three hundred square meters) related to the root of the problems, which was caused by an error in the mapping process location where the section of mapping, measurement, and mapping was in the field, resulting in overlapping certificates on the same land and the land offi The matter was settled out of court through mediation between the parties, based on the suggestion of the Certificate of Cancellation.
2. 2. Surnawati and Elva Zahara, both with a land area of 114M² (one hundred and fourteen square meters), reported on the root of the problems, which were caused by a request for measurement on a plot of land that had already been certified, resulting in overlapping certificates on the same land due to errors made by the Survey, Measurement, and Mappin departments. The dispute case was settled through each party's recommendation for a request for the restoration of the border, and the disputed matter was handled outside of court through mediation between both sides.

The creation of land conflicts in this study arises from society members who believe they are entitled, as well as those who hypothesize that they requested the land of others that they wanted to control since they knew "the owner" had no sufficient proof against his land. Land conflicts also arose as a result of the lack of legal certainty provided by the evidences held by the land/property owner, one of

which is the certificates issued by the National Land Agency (BPN) in the form of certificates. In fact, the other party already had a certificate. (Jaelani, Rachmi Handayani, & Karjoko, 2019)

The positive tendencies of the negative publicity system result in problems between rights holders, one of which is a double certificate or a dispute over land rights ownership. This is due to the legal force guarantee on the certificate of land rights that has been given, which states that it has strong legal force as a strong evidence if it cannot be demonstrated otherwise. The Land Office's failure to use the cautious principle (safety principle) while issuing certifications has undesirable consequences, such as overlapping certificates or so-called double certificates. Issuance of a certificate that has been acknowledged as having strong proof power, but which can nevertheless be revoked or has no legal force indefinitely. (Kuncoro, Handayani, Muryanto, & Karjoko, 2019)

Because a certificate of land rights might be sued by other parties who have an interest and believe they have been harmed, the land office's resolution of disputes is not founded on the notion of justice. In the case of a dual certificate of land rights, it will result in a double certificate, as well as legal uncertainty and a lack of fairness as to who is entitled to the land rights holder. As a result, legal protection is required in order to determine who is the true owner or legal holder of a certified land right. (Gunawan, 2020)

CONCLUSION

The lack of legal certainty for the land owner is the rationale for using the negative publication system in land registration in Indonesia, because even though it has been listed as the owner of the land on the certificate, the land owner may still be sued by those who believe they have an interest in the land. The impact of a negative publication system on the issuance of double certificates in Bandar Lampung is that they do not receive legal protection because they are not based on the principle of justice, and also because a certificate of land rights can be sued by other parties who have an interest in the land that has a certificate.

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