

## JURIDICAL ANALYSIS FOR LEGAL HOLDERS OF PROPERTY RIGHTS CERTIFICATES IN CASES OF OVERLAPPING OF LAND

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**Abstract:** In living in society in modern times which are increasingly developing without limits, various kinds of inventions and innovations have touched everyday life, giving rise to various problems such as the right to own land. In regulating land ownership, the state must be present to overcome concerns about injustice in the acquisition and use of natural resources by the community. The state's actions in supervising the use of natural resources are carried out by issuing a number of statutory regulations, namely Law Number 6 of 1960 concerning the Principles of Agrarian Affairs. The aim of the research is to find out how to prevent land overlapping cases that occur in people's lives. The method used in this research is to use normative juridical research which is carried out by examining library materials or secondary materials. The conclusion of this study is that preventing land overlap is by improving the performance of good land administration, especially on land registration maps.

**Keywords:** Overlapping ground, prevent, ground

## I. INTRODUCTION

In living in society in modern times which are growing day by day without limits, various kinds of inventions and innovations have touched everyday life. Of course this will make people's lives more complex and cause several gaps in their activities. The complex in question is a problem that arises more and more and is not easy to solve if society does not keep up with the times. These things will then have a negative impact on people's lives, one of which is the "right" to own an object, namely land.

Based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, that natural resources in the form of water and other natural resources are controlled by the state and used by the people as prosperous as possible. The natural wealth in question is in the form of land, where land is a primary need in carrying out daily life. In regulating land ownership, the state must be present to overcome concerns about injustice in the acquisition and use of natural resources by the community. The state's actions in supervising the use of natural resources are carried out by issuing a number of statutory regulations, namely Law Number 6 of 1960 concerning the Principles of Agrarian Affairs. Article 19 paragraph (1) of the Basic Agrarian Law reads:

In this case the government through the Act seeks to create a legal umbrella to provide protection for the legal holder of the land with a note that the land they own has been registered with the State which will later make the certificate as proof of ownership of the land. However, due to one reason or another, which may be caused by the lack of functioning of the National Land Agency (BPN) or negligence and disorder in the filing process, there are many cases where there are 2 (two) certificates in one land or what is referred to in the term the law of "overlapping land (overlapping)".

Researchers are interested in conducting this research because land registration is a very important issue in the UUPA and land registration is the beginning of the process of producing a proof of ownership of land rights, about what if a person's rights to land in this case the law also requires that holder of the legal right to register each of his lands. In addition, this research will be very useful for people who especially want to transact regarding land.

## II. RESEARCH METHODS

This research uses a type of normative juridical research which is carried out by examining library materials or secondary materials. According to Peter Mahmud Murzaki, normative juridical research is a process to find a rule of law, legal principles, or doctrines to answer the legal problems faced.

The collection of data and information was obtained through a literature study using secondary data in the form of primary, secondary and non-legal legal materials. According to M. Nazir, literature study is a data collection technique by conducting a review study of books, literature, records, and reports related to the problem to be solved.

## III. RESULTS AND DISCUSSION

### **Legal Protection for Owners of Legal Land Certificates in the Event of Land Overlapping**

The purpose of legal protection for owners of valid land certificates in the event of overlapping land is to achieve legal certainty, requiring a piece of evidence called a "certificate". Certificate is a device that must be owned by everyone who will then control a plot of land. The land certificate referred to in this case according to Article 19 of the Basic Agrarian Law (UUPA), in order to guarantee legal certainty, land registration is held throughout the territory of the Republic of Indonesia. In this case, the purpose of Article 19 of the Basic Agrarian Law (UUPA) is to provide legal certainty to people who have registered their land so that they have a certificate.

Legal protection for land disputes requires a complete and clear written legal instrument which is then implemented consistently according to its contents. As explained in the previous paragraph, the legal device in question is a "certificate". Based on article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which reads: "a certificate is a letter of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and data The juridical data is in accordance with the data contained in the measurement letter and the land title book concerned.

However, problems often occur where there are overlapping land titles or multiple ownership certificates. This is something that must be considered by every holder of a land title certificate. To be able to ensure that a person's land title certificate is genuine, you can access it via the ATR BPN page. In addition, various solutions can be taken to resolve land overlapping disputes, namely as follows:

1. Mediation between the two parties to the dispute through the National Land Agency;
2. If a mediation is not reached, then the aggrieved party can file a lawsuit through litigation;

This mediation stage is often used to resolve disputes outside the litigation channel. This effort was carried out with assistance from the National Land Agency which was carried out by collecting a number of information and data regarding disputed lands. If a mediation has been carried out but has not found a settlement path, then the dispute is resolved through litigation. The litigation route referred to is the settlement of disputes through the court in the form of filing a lawsuit.

It should be a note for parties who will settle their land disputes before the court that in order to prove that someone legally owns or controls a plot of land, they must bring a number of strong evidences. It has been explained in the previous paragraph that a certificate is one of the tools in proving ownership of a plot of land. In some cases, the certificate submitted to the court may be canceled by law because the other party can prove that the certificate submitted is fake or does not match the facts. Therefore, parties who feel that their land is legally owned must bring a number of other evidence such as witnesses, proof of payment in the form of receipts,

In accordance with Government Regulation Number 10 of 1961, what is meant by "Certificate" is a Land Certificate with Evidence of Rights consisting of a copy of the Land Book into one, the form of which is determined by the State Minister for Agrarian Affairs/Head of the National Land Agency.

Article 19 paragraph (2) letter of the Basic Agrarian Law states that land registration activities carried out by the government are the issuance of a certificate of proof of title, in which this letter is valid as a strong means of proving ownership. In general, this land certificate has a useful function as a strong means of proving that the right holder is the person whose name is stated in the land certificate and he has the right to the land.

In terms of proof, it can be seen in Article 23 PP Number 24 of 1997 which regulates proof of ownership of land rights which states that in order to obtain the correctness of juridical data for new rights for the purpose of registering legal rights, proof can be done in 2 ways. , among others:

1. By way of determining the granting of rights from the competent and concerned official according to the authority determined by law, the determination of the authorized official regarding the granting of rights to state land.
2. The original PPAT deed containing the granting of the right must be held by the holder of the right of ownership to the recipient of the right regarding the building use right or the right to use the land with the right of ownership besides being stipulated in PP No.40 of 1996.

Article 32 paragraph (1) Government Regulation Number 24 of 1997 Concerning Land Registration has weaknesses, namely the state does not guarantee the correctness of the physical data and juridical data presented and there is no guarantee for the owner of the certificate because at any time a lawsuit will be filed by another party who feels aggrieved upon the issuance of the certificate. Generally, these weaknesses are overcome by using acquisitive verjaring or adverse possession institutions. However, in the Land Law that our country adheres to, we cannot use these two institutions because customary law does not recognize the existence of these institutions. Customary Law actually already has an institution to resolve the problem of the negative publication system in land registration, namely the *rechtsverwerking* institution.

The end of what can be withdrawn in the protection that the state can provide to owners of legal land rights is land certificates. Because the land certificate is the only concrete proof of ownership of someone's ownership of the land. The state has provided legal protection which will create a legal umbrella for legal land owners.

This certificate is a protection in the event of overlapping or overlapping land disputes, which are caused by land mafia or negligence from the National Land Agency. Then the legal owner of the land can file a lawsuit with the Court by showing proof of ownership of the land to the Panel of Judges which will then be considered in order to obtain justice in the realm of his own land rights.

This ownership must be proven in court in order to obtain justice and legal certainty in cases of overlapping land, not a few of these cases involve people who are law savvy. The government must also contribute in the form of legal knowledge about this overlapping case to reduce the losses that occur in society.

### **Efforts to Prevent Overlap**

Land overlap is an event where there are 2 certificates in one land object, there are several factors for this land overlap, including; the less than optimal work of the National Land Agency (BPN), the occurrence of errors in the filing carried out by the National Land Agency (BPN), and the negligence committed so that there will be overlapping of the land. The case of overlapping land has a loss experienced by the owner of the legal certificate because in the case of overlapping land this will give rise to 2 (two) rights or what is often called "land rights" in the same land. Besides the many factors that can influence or trigger land overlap, There are also a number of precautions that can be taken by owners of "legitimate" land certificates, one of which is from juridical/legal factors. In terms of juridical factors, the owner of a valid land certificate can prevent it from a legal perspective, of course this is one of the most important factors in discussing a "land" where the law will carry out its function to regulate rights in that object. Where every legitimate owner of a land certificate should have legal awareness in protecting the land objects they own, this legal awareness needs to be owned because if something undesirable happens, one of which is overlapping land, the owner of the certificate understands how to go through the procedures determined by the National Land Agency. (BPN) in order to solve this problem.

Legal awareness by the community is one of the important things to uphold. The importance of legal awareness certainly brings a number of effectiveness and influences to people's lives in the problem of overlapping land certificates that are not uncommon today. In addition to legal awareness, there are important things that must be considered in order to avoid problems overlapping land certificates, including:

1. Improving and changing the administrative system for receiving and applying for submitted registration files as well as optimizing the processing of land data such as the storage of land certificates, measurement papers, and warkah so as to provide accurate information in order to create legal certainty.
2. Create an administrative system for mapping and data collection in an orderly and

- systematic manner so that there is a minimum of mistakes in making land certificates.
3. Officials in the land affairs office should be more careful, thorough and accurate in checking, processing and registering land certificate data, especially during the land surveying and mapping process.
  4. Information dissemination and legal counseling to employees and/or officials working in the land office in order to know and understand more about the importance of land certificates and the risks that occur if there are overlapping issues due to negligence on the part of workers.

#### IV. CONCLUSION

Overlapping certificates of land rights are certificates in which more than one certificate is issued for a plot of land where the location of the land overlaps in whole or in part. Overlap occurs because the certificate is not mapped on the land registration map or the situation map of the area. If a land registration map or situation map at each land office is made on the map, the possibility of overlapping land certificates will be very small. Overlapping land certificates generally occur on land that is still vacant or not yet developed. Prevention is none other than improving the performance of good land administration, especially on land registration maps.

After the application has been received by the Land Office, the Land Office will look at or check the existing data related to the disputed if necessary the Land Office goes to the field to see the object directly, after going to the field it will usually be known that the land is correct if it overlaps then the parties The Land Office summons the parties to appear, the parties will be given an overview of the object in dispute and the Land Office will provide suggestions for resolving it amicably. The Land Office will explain the pros and cons in resolving disputes through mediation, all decisions are returned to the parties through the agreement of the parties because the Land Office is only a facilitator in settlements and cannot decide unilaterally.

#### REFERENCES

- Ayuningtyas, A. S., Candrakirana, R., & Najicha, F. U. (2020). Perlindungan Hukum Bagi Pemegang Sertifikat Hak Atas Tanah Dalam Kasus Sertifikat Ganda. *Jurnal Discretie*, 1(1), 69-77.
- Anatami, D. (2017). Tanggung jawab siapa, bila terjadi sertifikat ganda atas sebidang tanah. *Jurnal Hukum Samudra Keadilan*, 12(1), 1-17.
- Belladina, B., Pujiwati, Y., & Rubiati, B. (2021). Kepastian Hukum Produk Pendaftaran Tanah Sistematis Lengkap (PTSL) Terkait Tumpang Tindih Sertifikat (*Overlapping*) Serta Penerapan Asas Itikad Baik Dalam Penguasaan dan Pemanfaatan Lahan *Overlap*. *Juris and Society: Jurnal Ilmiah Sosial dan Humaniora*, 1(1), 119-130.
- Chandra, R. F. (2020). Penyelesaian sengketa sertifikat ganda hak atas tanah menurut PP No. 24/1997 tentang Pendaftaran Tanah. *Dinamika: Jurnal Ilmiah Ilmu Hukum*, 26(3), 358-371.
- Choir, R. V. (2021). *ANALISIS YURIDIS NORMATIF PUTUSAN PENGADILAN TATA USAHA NEGARA SURABAYA NO. 63/G/2020/PTUN. SBY TENTANG TUMPANG TINDIH (OVERLAPPING) SERTIFIKAT HAK MILIK DITINJAU DARI ASAS UMUM PEMERINTAHAN YANG BAIK (AUPB)* (Doctoral dissertation, Universitas Muhammadiyah Malang).
- 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.
- Gayatri, N. M. S., Seputra, I. P. G., & Suryani, L. P. (2021). Pembatalan Sertifikat Hak Milik Atas Tanah Akibat Cacat Administrasi. *Jurnal Analogi Hukum*, 3(1), 79-83.

- Harris Yonathan Parmahan Sibuea, *Arti Penting Pendaftaran Tanah Untuk Pertama Kali*, Jurnal Negara Hukum, Volume 2, Nomor 2 (November 2011): 288, diakses tanggal 30 Agustus 2022.
- Ikhwanudin, R. M. (2020). ANALISIS KEWENANGAN BADAN PERTANAHAN NASIONAL DALAM MELAKUKAN PEMBATALAN SERTIFIKAT HAK MILIK BERDASARKAN AKTA PERDAMAIAN (STUDI KASUS PERKARA NO. 177/PDT. G//2017/PN. CBD). *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum*, 1.
- Nurahmin, M. F., & Syafaat, M. R. (2021). Penyelesaian Sengketa Tanah Hak Milik Bersertifikat melalui Mediasi oleh Badan Pertanahan Nasional Kota Palu. *Jurnal Kolaboratif Sains*, 4(6), 330-336.
- Peter Mahmud Marzuki, 2021, *Metode Penelitian Hukum*, Jakarta: Kencana.
- Sari, Lia Malini, and Lathifah Hanim. "Kepastian Hukum Dalam Penyelesaian Sengketa Timbulnya Tumpang Tindih Sertifikat Hak Milik (SHM) Atas Tanah (Studi Kasus Di Kantor Pertanahan/Agraria Dan Tata Ruang Kota Pontianak)." *Jurnal Akta*, Volume 4, Nomor 1 (Maret 2017): 35, diakses tanggal 26 Agustus 2022.
- Kuswanto, *Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Dalam Kasus Tumpang Tindih Kepemilikan Atas Sebidang Tanah Di Badan Pertanahan Nasional/ATR Kabupaten Kudus*, Jurnal Akta, Volume 4, Nomor 1 (Maret 2017): 73, diakses tanggal 26 Agustus 2022.
- LASSA, H. R. Kepastian Hukum dalam Penyelesaian Sengketa Atas Timbulnya Tumpang Tindih Sertifikat Hak Milik Atas Tanah (Studi Kasus di Kantor Pertanahan Kabupaten Kubu Raya). *Jurnal NESTOR Magister Hukum*, 1(1), 209992.
- Lumenta, A. I. (2018). TANGGUNGJAWAB BADAN PERTANAHAN NASIONAL MENURUT PERATURAN PEMERINTAH NOMOR 24 TAHUN 1997 TERHADAP TUMPANG TINDIH KEPEMILIKAN TANAH. *LEX ET SOCIETATIS*, 6(7).
- Rahmawati, A. (2021). Penyelesaian Permasalahan Tumpang Tindih Sertifikat Hak Milik Atas Tanah. *JOURNAL SCIENTIFIC OF MANDALIKA (JSM) e-ISSN 2745-5955*, 3(4), 317-322.
- Salim, A. (2019). Penyelesaian Sengketa Hukum Terhadap Pemegang Sertifikat Hak Milik Dengan Adanya Penerbitan Sertifikat Ganda. *Jurnal USM Law Review*, 2(2), 174-187.
- Slamet, R. (2020). *Kepastian Hukum Terhadap Sertifikat Hak Milik Atas Tanah Yang Tumpang Tindih* (Doctoral dissertation, Universitas Pancasakti Tegal).
- Syarifah Lia Malini Sari dan Lathifah Hanim, *Kepastian Hukum Dalam Penyelesaian Sengketa Timbulnya Tumpang Tindih Sertifikat Hak Milik (SHM) Atas Tanah (Studi Kasus Di Kantor Pertanahan/Agraria Dan Tata Ruang Kota Pontianak)*, Jurnal Akta, Volume 4, Nomor 1 (Maret 2017): 35, diakses tanggal 26 Agustus 2022.
- Saifuddin, S. S., & Qamariyanti, Y. (2022). Kepastian Hukum Sertifikat Hak Milik Atas Tanah atas Terbitnya Surat Keterangan Tanah pada Objek Tanah yang sama. *Notary Law Journal*, 1(1), 31-48.
- Tsaqif, D. T. M., & Indiraharti, N. S. (2019). ANALISIS YURIDIS PERLINDUNGAN HUKUM DAN KEPASTIAN HUKUM PEMEGANG SERTIFIKAT HAK MILIK MENGENAI TUMPANG TINDIH KEPEMILIKAN TANAH (STUDI KASUS PUTUSAN NO. 18/G/2014/PTUN. BJM). *Reformasi Hukum Trisakti*, 1(1).
- Advent Kristanto Nababan, "Cara Cek Sertifikat Tanah Ganda dan Langkah Hukumnya", <https://www.hukumonline.com/klinik/a/cara-cek-sertifikat-tanah-ganda-dan-langkah-hukumnya-lt5f48af9a5cd49> , diakses tanggal 26 Agustus 2022.
- Henni Muchtar, *Analisis Yuridis Normatif Sinkronisasi Peraturan Daerah dengan Hak Asasi Manusia*, Analisis Yuridis Normatif, Vol. 14, No. 1, 2015.
- I Gusti Agung Dwi Satya Permana and I Ketut Sandi Sudarsana, "Kepastian Hukum Sertifikat Hak Milik Atas Tanah Sebagai Bukti Kepemilikan Bidang Tanah," Kertha Semaya:

Journal Ilmu Hukum, accessed October 3, 2022,  
<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/10498>.

**Legislation:**

Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.

Indonesia, *Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (Lembaran Negara Republik Indonesia Tahun 1960 Nomor 104, Tambahan Lembaran Negara Republik Indonesia Nomor 2043)*.

Indonesia, *Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah (Lembaran Negara Republik Indonesia Tahun 1997 Nomor 59)*.

**Website:**

Winiarti Prastiwi dan Yessi Frecilia,

[https://widuri.raharja.info/index.php?title=Metode\\_Studi\\_Pustaka](https://widuri.raharja.info/index.php?title=Metode_Studi_Pustaka), diakses pada tanggal 1 Oktober 2022.