

LEGAL CERTIFICITY OF OWNERSHIP CERTIFICATES AS EVIDENCE IN RESOLUTION OF LAND OWNERSHIP DISPUTES (STUDY OF DECISION NUMBER 8/PDT.G/2020/PN LWK AND DECISION OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA NUMBER 3589 K/PDT/2022)

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Abstract

Decision Number 8/Pdt.G/2020/Pn Lwk and Decision of the Supreme Court of the Republic of Indonesia Number 3589 K/Pdt/2022), found legal uncertainty of Land Ownership Certificates that have strong evidence of land ownership but in court were declared invalid. The problems in this study are, namely How is the guarantee of legal certainty in the Laws and Regulations concerning Land Ownership Certificates, what is the Position of Land Ownership Certificates issued by the National Land Agency in proving civil cases, how are the legal considerations and decisions of the panel of judges regarding the evidentiary power of land ownership certificates in Decision Number 8/PDT.G/2020/PN LWK and Decision of the Supreme Court of the Republic of Indonesia number 3589K/PDT/2022. Types of normative legal research (normative juridical) or library legal research., Normative juridical is research that refers to theories, doctrines, norms, principles, principles and legal rules contained in the legislation in Indonesia. The nature of the research used in this study is exploratory research (exploration or exploration), all collected, and conclusions drawn using deductive methods. The results of the study found that the legal certainty of land ownership certificates has an important role in the agrarian legal system in Indonesia. Through land registration and issuance of certificates, rights holders can obtain the legal certainty needed to protect their rights and prevent disputes. Land Ownership Certificates as evidence of letters have an important role in providing legal certainty and protection for rights holders. By meeting the requirements set, the certificate functions as strong evidence in the judicial process, the Decision of the Luwuk District Court and the Supreme Court of the Republic of Indonesia show the importance of legal certainty in land ownership. Land ownership certificates as proof of ownership must be based on accurate data and a legitimate process.

Keywords: Proof, Land, Certificate.

INTRODUCTION

Land is one of the most important basic human needs. Humans live and do activities on land, so it can be said that almost all aspects of human life, both directly and indirectly, always require the existence of land. In addition, in the context of state interests, especially in supporting various activities in various fields, land is also needed as a location for implementing development activities.

Land ownership in Indonesia has undergone significant transformation as stipulated in the 1945 Constitution of the Republic of Indonesia (“UUD NRI 1945”) as the constitution of the Unitary State of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia firmly stipulates that the land, water, and natural resources therein are controlled by the state. Such control is used for the greatest prosperity of the people. The constitutional order in this article contains a fundamental mandate for the implementation of land affairs in Indonesia. To be precise, land regulations that do not bring prosperity to the people are in

principle contrary to the 1945 Constitution of the Republic of Indonesia. These regulations apply to all inches of land. The community's need for land is increasing day by day along with the development of population growth. Realizing the increasingly widespread activities of the community in various fields and increasingly causing the position of land to be very important, especially in its control, use, and ownership.

This study will analyze the Court Decision that has permanent legal force on a dispute over a land object, where the plaintiff argues that the land that has been controlled by the Plaintiff (Yonathan Manusu) as the heir of his father (the late Sibakir Manusu) who has controlled the disputed land object of 20,000 m² since 1932 with evidence of a tax notification letter for land and building tax (SPPT-PBB) and a Land Ownership Certificate number: 593/134/KEL.BLG/2017 dated August 23, 2017 issued by the Head of Bulagi 1 known to the Head of Bulagi District on behalf of the Plaintiff. The Plaintiff was harmed due to the issuance of 3 (three) certificates of ownership (SHM) on April 4, 2016 on part of the 20,000 m² land object which was controlled by:

1. Defendant I with land ownership certificate (SHM) number 377/Bulagi for land measuring 2,804 m² in the name of (Suleman Bilalu) Defendant I;
2. Defendant II with land ownership certificate (SHM) number 375/Bulagi for land measuring 2,181 m² in the name of (Suleman Bilalu) Defendant II and land ownership certificate (SHM) number 376/Bulagi for land measuring 2,114 m² in the name of (Yetchan Bilalu) Defendant II.

So, the total area of the 3 (three) Certificates of Ownership (SHM) is 7,099 m² which is the object of the dispute which has been controlled from part of the Plaintiff's land measuring 20,000 m².

Then, regarding the Plaintiff's lawsuit regarding the above land disputed object against Defendant I and Defendant II, as well as Defendant III, who is the National Land Agency which has issued the 3 (three) certificates of ownership (SHM), at the Luwuk District Court, the Plaintiff's lawsuit was granted by the examining Panel of Judges with decision Number 8/PDT.G/2020/PN Lwk dated October 12, 2020, which in essence stated:

1. That the Plaintiff is the legal owner of the disputed object of land measuring 20,000 m² for which 3 (three) certificates of ownership (SHM) have been issued with a total area of 7,099 m² in the name of Defendant 1 and Defendant 100 m² for part of the land object.
2. That the issuance of the Certificate of Ownership in the name of Defendant 1 and Defendant 2 was obtained based on invalid documents, based on this, the certificate of ownership in the name of Defendant 1 and Defendant 2 at the location of the object of the dispute is declared invalid.

Then the Luwuk District Court Decision was strengthened by Decision Number 61/PDT/2020/PT PAL dated February 1, 2021 at the appeal level by the Palu High Court, but in the legal effort at the cassation level, the Panel of Judges of the Supreme Court of the Republic of Indonesia overturned the first level and appeal level decisions as in Decision Number 3589K/PDT/2022 dated November 2, 2022 by considering the Certificate of Ownership (SHM) which is evidence of letters from Defendant I and Defendant II issued by Defendant III, namely the National Land Agency, is strong evidence of ownership rights that

cannot be weakened by evidence in the form of SPPT-PBB and Land Ownership Certificate from the Plaintiff.

The case of the dispute over the land object that has been explained is interesting because the Certificate of Ownership obtained from the Registration of Land Rights based on the Laws and Regulations governing agrarian law or land law states that in order to guarantee legal certainty, the Government conducts land registration throughout the territory of the Republic of Indonesia. The registration includes the provision of proof of rights, namely certificates, which serve as strong evidence with certificates as proof, serving as strong evidence. The Certificate of Ownership which is evidence from Defendant I and Defendant II by the Panel of Judges at the First Instance Court was defeated by Evidence from the Plaintiff who presented evidence of letters, namely a land certificate from the village head issued after the issuance of the Certificate of Ownership for the object of the dispute and also Witnesses by the Plaintiff.

However, this case was then continued to the cassation level by the Supreme Court of the Republic of Indonesia through its decision to annul the Decision of the District Court and the High Court, so it is important to know the legal certainty of the Land Ownership Certificate, especially if it is said to be a strong means of proof.

Based on the descriptions above, the research on "Legal Certainty of Certificates of Ownership Rights as Evidence in Proving Disputes over Land Ownership Rights (Study of Decision Number 8/Pdt.G/2020/Pn Lwk and Decision of the Supreme Court of the Republic of Indonesia Number 3589 K/Pdt/2022)" is important to be carried out with the following considerations:

1. The difference between the Luwuk District Court decision Number 8/Pdt.G/2020/Pn Lwk and the Palu High Court decision Number 61/PDT/2020/PT PAL with the Supreme Court decision Number 3589 K/Pdt/2022. The Luwuk District Court decision granted the plaintiff's lawsuit partly strengthened by the Palu High Court decision while the Supreme Court decision overturned the district court and high court decisions and did not accept and reject the plaintiff's lawsuit and rejected the Defendants' exceptions;
2. Legal certainty of a Certificate of Ownership of Land which has strong evidence of land ownership but in court is declared invalid with the consideration that when the certificate of ownership was made, the village head who issued the certificate, who was present as a witness presented by the plaintiff, said that the certificate existed due to his negligence.

LITERATURE REVIEW

Theory is a series of assumptions, concepts, definitions and propositions to explain a social phenomenon systematically by formulating relationships between concepts. Theory is to explain or describe why specific symptoms or certain processes occur. Theory is also an explanation that attempts to simplify an understanding of a phenomenon or theory is also a conclusion from a series of various phenomena into a general explanation.

Satjipto Rahardjo said that theory provides a way to summarize and understand the problems discussed better. Theory provides an explanation by organizing and systematizing the problems discussed.

According to Sudikno Mertokusumo, in legal theory, solving problems at the lowest level is asked about what is it? What happened? which expects the answer to be descriptive, to explain or describe the event only. In the legal field, at the next level then there is the question of how should it be?

Theory is a collection of principles that are arranged systematically. The principle tries to explain the relationships between existing phenomena. Each theory will develop concepts that are used as symbols of certain phenomena. Another definition states that theory is a system of abstract concepts that indicate the relationship between these concepts that help us understand a phenomenon. So it can be said that theory is a conceptual framework for organizing knowledge and providing a blueprint for carrying out some further actions.

Theory functions as an analytical tool in research and theory is an explanation that is rational and must be in accordance with the object in question and must be supported by facts about the problem being researched so that its truth can be tested.

Based on the explanation of the importance of theory and theoretical framework in legal research, this research will describe the theories that will be used in this research, namely:

- a. Theory of Legal Certainty
- b. Legal theory of evidence

METHOD

Research is a scientific activity related to analysis and construction, which is carried out methodologically, systematically and consistently. Systematic means carried out based on clear planning and stages. Methodological means using a certain and consistent method, namely there is nothing contradictory in a certain framework. So as to obtain results in the form of scientific findings in the form of products or processes or scientific analysis or new arguments.

This study uses a statute approach and a case approach. The statute approach is used to determine the entire civil law regulations, especially land law regarding certificates of ownership in Indonesia.

The data sources in this study are secondary and primary data. These secondary data are legal literature materials and documents related to the problems raised. Especially from books and literature.

The data collection technique used in this study is through the library research technique, namely a data collection method used to obtain secondary data through library research sourced from laws and regulations, books, literature, journals, papers, research results, newspapers and seminar results from legal circles and so on that are related to the problems in this study.

RESULTS AND DISCUSSION

Legal Considerations of the Judge and the Decision of the Judge's Board Regarding The Evidential Strength of Land Ownership Certificates in Decision Number

8/PDT.G/2020/PN LWK and Decision of the Supreme Court of the Republic of Indonesia Number 3589 K/PDT/2022

Regarding the protection and certainty of the subject matter of the rental agreement, it is regulated in the Civil Code on Leases, so as to better protect the parties in implementing the rental agreement.

a. Position of Case Decision Number 8/Pdt.G/2020/Pn Lwk and Decision of the Supreme Court of the Republic of Indonesia Number 3589 K/Pdt/2022

This case began when the Plaintiff filed a lawsuit with the Luwuk District Court, and after the Luwuk District Court examined and decided the civil case at the first level, and issued a decision Number 8/Pdt.G/2020/PN Lwk which was confirmed by the Palu High Court Decision at the appeal level. Then it was canceled by the Supreme Court Decision at the cassation level by issuing decision number 3589 K/Pdt/2022.

The disputing parties in this case are:

1. Yonathan Manusu, named as the Plaintiff

The plaintiff filed a lawsuit against:

1. Suleman Bilalu, named as Defendant I;
2. Yetchan Bilalu, named as Defendant II;
3. The Head of the National Land Agency CQ BPN Central Sulawesi Province, CQ Banggai Islands Regency Land Office in Salakan, (Trikora Health Complex), Central Sulawesi Province, is named as Defendant III.

The plaintiff filed a lawsuit on January 16, 2020 which was accepted and registered at the Luwuk District Court on January 30, 2020. The chronology of the case is as follows:

Yonathan Manusu (Plaintiff) is one of the heirs of the late Sibakir Manusu who owns a plot of land/land located in the Bulagi I Village Area, Bulagi District, Banggai Islands Regency with an area of $\pm 20,000\text{m}^2$ (twenty thousand square meters) owned since 1932, now controlled by the Plaintiff which was obtained LEGALLY by referring to the Land and Building Tax Payable Tax Notification Letter and Land Ownership Certificate Based on Register Number: 593/134/KEL.BLG/2017 Dated August 23, 2017 issued by the Head of Bulagi I Village on behalf of Yuliana Kelembiro, S.Sos with the knowledge of the Bulagi Sub-district Head on behalf of Norma Liling Padang/Nip.19640929198 9032015;

Regarding the illegal and unlawful control carried out by Defendant I and Defendant II, which is a unit of the 3 (three) Certificates of Ownership, Halmana has controlled part of the Land owned by the Plaintiff, where Defendant II through Defendant III has issued 2 (two) certificates each:

- SHM Number 375/Bulagi, land measuring $2,181\text{ M}^2$ in the name of Yetchan Bilalu (Defendant II);
- SHM Number 376/Bulagi, land measuring $2,114\text{ M}^2$ in the name of Yetchan Bilalu (Defendant II)

And Defendant I through Defendant III (Banggai Islands Regency Land Office) has also issued a certificate with the number:

- SHM Number 377/Bulagi, land measuring $2,804\text{M}^2$ in the name of Suleman Bilalu (Defendant I)

So, the total area of the 3 (three) SHM owned by Defendant I and Defendant II is 7,099 m² (seven thousand ninety-nine square meters), which is the object of the dispute which has been controlled from part of the Plaintiff's land of ± 20,000 m² (twenty thousand square meters).

Control of the disputed object since the issuance of the Certificate by Defendant III on April 4, 2016, the Plaintiff was informed that part of the Plaintiff's land object had been controlled by Defendant I and Defendant II without any clear reason from a portion of the area of ± 20,000 m² (twenty thousand square meters) owned by the Plaintiff, namely an area of 7,099 m² (seven thousand ninety-nine square meters) by Defendant I and Defendant II, regarding the control of the object, a warning was given to be returned to the Plaintiff in an empty condition, however, the warning never received an appropriate response from Defendant I or Defendant II who had controlled land measuring 7,099 m² (seven thousand ninety-nine square meters) from a portion of the area of ± 20,000 m² (twenty thousand square meters) owned by the Plaintiff, and even tended to continue to control the disputed object continuously in an unlawful manner; the disputed object was never transferred or sold by giving Power of Attorney to another party through another heir and/or sold by the Plaintiff himself to anyone, including Defendant I and Defendant II;

Then, regarding the Plaintiff's lawsuit, Defendants I and II have provided a response, which in essence is as follows:

1. That the land in dispute belongs to the parents of Defendant I, namely Bilalu (deceased), where the object of the dispute has also been divided among the Defendant's children, namely Yetchan Bilalu (Defendant II);
2. That Defendant I and Defendant II have proof of ownership rights to the disputed object, Defendant I with proof of ownership of Certificate No. 377 while Defendant II with No. 376 and No. 375 in the name of Yetchan Bilalu. That the evidence is valid proof of ownership;
3. That, as far as Defendant I knows, the land in dispute is not an inheritance from the Plaintiff's parents, namely Sibakir Manusu (deceased), namely the Plaintiff's parents;
4. That the object of the dispute was cultivated by the parents of Defendant I in 1923 and the parents of the Plaintiff did not have plantation land around the object of the dispute, including the Plaintiff himself, there was land but it was not the object of the dispute and the land was only given as a family gift by Defendant I to the parents of Plaintiff Sibakir Manusu;
5. That Defendant I was once the parent of the Plaintiff (Sibakir Manusu) The late biological father Yonatan Manusu/Plaintiff has questioned the land area of 20,000m² to Defendant I and Defendant I has handed over part of the inheritance of Defendant I's parents Suleman (Deceased) with an area of plantation land owned by Defendant I's parents with an area of 5,000m² and is now controlled by Sibakir Manusu's children, namely Daniel Manusu (Deceased) and the handover was in a family manner for the kindness of Suleman Bilalu/Defendant I considering that there is still a very close family relationship between the Plaintiff's biological mother and Defendant I's biological father and this proves that the Plaintiff's biological mother has the same Pam, namely Bilalu;

Analysis of the Judge's Legal Considerations in Decision Number 8/Pdt.G/2020/Pn Lwk and Decision of the Supreme Court of the Republic of Indonesia Number 3589 K/Pdt/2022 in Assessing the Legal Force of Land Ownership Certificates as Proof of Ownership of Land Rights

1. Legal Considerations of the Judge in the Decision of the Luwuk District Court Number 8/Pdt.G/2020/PN Lwk In the Main Case, the Panel of Judges considered:

The Panel of Judges of the Luwuk District Court in the decision of case Number 8/Pdt.G/2020/PN Lwk, considered the Legal Certainty of the 3 (Three) Certificates of Ownership Rights issued for part of the area of the disputed object as follows:

Considering, that to prove the grounds of his lawsuit, the Plaintiff has submitted 7 (seven) pieces of written evidence;

1. P.1 Certificate of Land Ownership dated 23 August 2017, for land measuring $\pm 20,000$ M² in Bulagi I Village, Bulagi District, Banggai Regency in the name of Yonathan Manusu (Plaintiff);
2. According to the panel, this is the main evidence from the Plaintiff which shows his ownership of the disputed object, this is also in accordance with the arguments of his lawsuit, namely that he owns the disputed object based on the Land Ownership Certificate;
3. P.2 in the form of a 2003 PBB Payment Letter dated 2 January 2003 and a 2004 PBB Payment Letter dated 2 January 2004, both in the name of Sibakir Manusu for 20,000 M² of land in Bulagi 1;
4. P.3 in the form of the Bulagi Sub-district Head's Decree dated August 14, 2017, which in essence explains that the Bulagi Sub-district has resolved a land dispute between the Plaintiff and Defendant I, over land in Bulagi I, Bulagi Sub-district, Banggai Islands Regency, measuring 59 M x 95 M. And from the evidence from each party, it was decided that the land owner was Yonathan Manusu (Plaintiff);

The Panel of Judges did not consider the letter evidence P.4 to P.7.

Considering, that on the other hand, Defendants I and II have submitted 6 (six) pieces of written evidence in their evidence;

1. Certificate of Ownership Number 377 in the name of Suleman Bilalu (Defendant I), marked T.1-2;
2. Certificate of Ownership Number 375 in the name of Yetchan Bilalu (Defendant II), marked T.1-3;
3. Certificate of Ownership Number 376 in the name of Yetchan Bilalu (Defendant II), marked T.1-4

Then this is evidence of Defendants I and II's ownership rights to the disputed object as stated in their response;

Considering, that in the evidence of Defendant III, the panel saw that Defendant III submitted several documentary evidences in addition to documentary evidence in the form of Certificates of Ownership in the names of Defendant I and Defendant II which the panel had seen in the evidence of Defendant I and Defendant II. Other documentary evidence from Defendant III is documentary evidence in the form of a Blank Application for Rights from

Defendant I and Defendant II to the National Land Agency along with attachments in the form of a Statement of Ownership of the disputed land in the names of Defendants I and II signed by the Head of Bulagi I, Yuliana Kalembiro, which is marked T.III-1, T.III.6 and T.III.11. Then the Letter of Evidence in the form of a Statement of Land Control in the name of Defendants I and II dated February 8, 2016, signed by the Head of Bulagi I Village, Yuliana Kalembiro, marked T.III-2, T.III-7 and T.III-12, along with their respective attachments in the form of a Statement of Physical Control (Sporadic) in the name of Defendant I and Defendant II for the disputed land object which was also signed by the Head of Bulagi I Village, Yuliana Kalembiro. If we look at the letters, namely letters in the form of a Certificate of Land Ownership in the name of Defendant I and Defendant II, a Statement of Land Ownership in the name of Defendant I and Defendant II, and a Statement of Physical Control of Land Areas (Sporadic) in the name of Defendant I and Defendant II for the disputed land, all of which are dated February 8, 2016, the panel concludes that these letters are the basis for Defendant III in issuing a Certificate of Ownership in the name of Defendant I and Defendant II at the location of the disputed object;

Considering, that the Plaintiff has presented 3 (three) witnesses who have given statements under oath, namely witness Arsyad Yahudu, witness Mujid Luntoan and witness Yuliana Kalembiro.

Considering, that furthermore the evidence of witnesses from the Defendant, the Attorneys of Defendants I and II have also presented witnesses, namely witness Marjin, witness Atu Maso and witness Rasdan. These 3 (three) witnesses have given statements under oath which in essence state that the object of the dispute belongs to Defendant I.

In the above case, the Plaintiff's evidence is in the form of 3 (three) witnesses and the Defendant also submitted 3 (three) witnesses. According to the law of evidence, witness evidence that has met the formal and material requirements and the amount has met the minimum limit of evidence, has independent evidentiary power, in the sense that the assessment of evidence is left to the judge.

Analysis of the above considerations, if we look at the considerations of the Judge who has considered the written evidence and witnesses from both the Plaintiff and Defendant I and Defendant II who were attended by their attorneys, and also written evidence from Defendant III, then the judge has applied the theory of proof adopted by Indonesian civil procedure law, namely the Theory of Proof Based on Positive Law (Positive Wettelijk Bewijstheorie), the truth sought and realized by the judge is sufficient formal truth. From the judge's self and heart, the judge's conviction is not required.

Furthermore, the panel of judges in their considerations:

Considering, the panel of judges only considered the testimony of the witness of the Head of Bulagi I, namely Yuliana Kalembiro, who the panel considered to be the most neutral witness in this case, because she is the Head of the Village where the object of the dispute is located, and she is also the one who signed the land certificates belonging to the Plaintiff and Defendant;

Considering, that based on the Plaintiff's argument, which states that the Defendant's Certificate was issued in an incorrect manner, for that reason the panel needs to look at the

documents belonging to Defendant I and Defendant II which resulted in the issuance of the Certificate of Ownership in the name of Defendants I and II at the location of the disputed object.

Considering, that the letters that became the basis for Defendant III to issue a Certificate of Ownership in the name of Defendants I and II at the location of the disputed object, the panel has seen in the documentary evidence from Defendant III, namely the Statement Letter on ownership of the disputed land in the name of Defendants I and II which was signed by the Head of Bulagi I, Yuliana Kalembiro, then the Land Control Certificate in the name of Defendants I and II which was also signed by the Head of Bulagi I, Yuliana Kalembiro, then the Statement Letter of Physical Control (Sporadic) in the name of Defendant I and Defendant II for the disputed land which was also signed by the Head of Bulagi I, Yuliana Kalembiro.

Considering, that witness Yuliana Kalembiro as the Head of Bulagi I Village who signed the land documents belonging to the Plaintiff and Defendant has explained that she felt that she had been deceived by Defendant I in her request for her signature on the Land Documents belonging to Defendant I at the location of the disputed object. Witness Yuliana Kalembiro said that as far as she knew the disputed land was the Plaintiff's parents' land, and when Defendant I asked for her signature on the land documents, she no longer checked which land Defendant I had requested to make the documents for, which turned out that the land for which she made the documents in the name of Defendant I and Defendant II was land belonging to the Plaintiff;

Considering, that in civil cases, the evidence is more of a search for formal truth, whether related to rights or events. Because what is sought is formal truth, then in civil cases, authentic deeds have perfect and binding evidentiary power. Perfect in the sense that the judge does not need other evidence to decide the case based on the authentic deed evidence, binding in the sense that the Judge is bound by the authentic deed evidence, unless it can be proven otherwise (Article 285 R.Bg). If an authentic deed is paralyzed by opposing evidence, then its evidentiary power falls to initial evidence, and in order to reach the minimum limit of proof, it must be supplemented with at least one other piece of evidence.

Considering, that in the evidence of Defendant III's letter, the panel saw that there were no other letters that were the basis for Defendant III in issuing a Certificate of Ownership in the name of Defendant I and Defendant II other than the letters signed by witness Yuliana Kalembiro as Head of Bulagi I Village, based on this, with the statement of witness Yuliana Kalembiro who stated that she had made a mistake in signing the land certificates belonging to Defendant I and Defendant II at the location of the disputed object, it can be said that the letters signed by witness Yuliana Kalembiro were invalid letters because they were made due to her negligence;

In the case, the panel of judges made an assessment between the authentic deed evidence and the witness evidence. According to the law of evidence, an authentic deed has perfect and binding evidentiary power. Perfect in the sense that the judge does not need other evidence to decide the case based on the authentic deed evidence.

Binding in the sense that the judge is bound by the evidence of an authentic deed, unless it can be proven otherwise (Article 165 HIR/285 R.Bg). If an authentic deed is paralyzed by opposing evidence, then its evidentiary power falls to initial evidence, and in order to reach the minimum limit of proof, it must be supplemented with at least one other piece of evidence.

What evidence can be used to counter an authentic deed? According to Harahap, the evidentiary power of an authentic deed can be paralyzed by any evidence, including witnesses. The issue of the equivalence of opposing evidence is not absolute.

In the explanation of Article 32 of PP No. 24 of 1997, it is explained that a Certificate is a strong proof of rights in the sense that as long as it cannot be proven otherwise, the physical data and legal data listed therein must be accepted as correct data. This is because regarding the land registration system that has been explained in the previous chapter, UUPA does not use a positive publication system, but uses a negative publication system that is not pure. This provision aims, on the one hand, to continue to adhere to negative publication and on the other hand, to provide legal certainty to parties who in good faith control a plot of land.

In assessing the evidence of the certificate of ownership (SHM) as evidence of an authentic deed from Defendant I and Defendant II, the Panel of Judges attempted to explore the background of the origin of the land certificate from the SHM, which the judge obtained from the testimony of the plaintiff's witness Yuliana Kalembiro, namely the head of Bulagi I who signed and issued the Land Ownership Certificate (SKPT) for Defendant I who at that time the head of the Environment also took care of the SKPT when there was a PRONA program from the National Land Agency, Witness Yuliana Kalembiro explained her mistake saying that she was negligent in not checking again which land would be made a SKPT in the name of Defendant I and Defendant II, witness Yuliana Kalembiro immediately signed, on this basis the judge considered that the issuance of SHM from Defendant I and Defendant II was obtained based on invalid letters, based on that the SHM must also be declared invalid.

However, in this case the researcher does not agree with the consideration of the panel of judges, who ignored the written evidence from Defendant III which was the basis for the issuance of the Defendants' land ownership certificates, where the Defendant's land certificate was issued earlier than the Plaintiff's land certificate, namely on August 27, 2017, while the certificate from the Defendants was issued on April 16, 2016, which was one year earlier than the Plaintiff's land certificate.

Analysis of the Judge's Legal Considerations in the Decision of the Supreme Court of the Republic of Indonesia Number 3589 K/Pdt/2022

The panel of judges examining the case at the cassation level has provided the following considerations:

That regarding the cassation memorandum received on March 8, 2021 from the Cassation Applicants (Defendants I and II), the Cassation Respondents (Plaintiffs) have submitted a counter cassation memorandum on March 23, 2021 which in essence rejects the cassation petition from the Cassation Applicants;

That regarding these reasons, the Supreme Court is of the opinion:

That after studying the cassation memorandum and counter cassation memorandum in connection with the *Judex Facti* considerations, the Supreme Court is of the opinion that the *Judex Facti* decision applied the law incorrectly with the following considerations:

- That Defendant I and Defendant II are the rights holders of the disputed objects registered in the Certificate of Ownership Number 375 and Certificate of Ownership Number 376 in the name of Defendant II, as well as Certificate of Ownership Number 377 in the name of Defendant I dated 4 April 2016;
- That the strong evidence of ownership rights in the name of Defendant I and Defendant II cannot be weakened by written evidence in the form of SPPT-PBB and Land Ownership Certificate Number 593/134/KEL.BLG/2017, dated 23 August 2017 submitted by the Plaintiff because these two pieces of evidence are not strong evidence of ownership of the land;
- That in addition, the letters used as the basis for the Plaintiff's rights in this case, the Land Ownership Certificate, were issued after the issuance by Defendant III of proof of ownership in the form of 3 (three) certificates of ownership in the names of Defendant I and Defendant II, so that there is no basis for stating that the three certificates of ownership in the names of Defendant I and Defendant II do not have legal force;
- That based on the above considerations, the *Judex Facti* decision cannot be upheld and must be cancelled and the Supreme Court will then try this case itself, the ruling of which is as stated in the decision below.

That based on the above considerations, the Supreme Court is of the opinion that there are sufficient grounds to grant the cassation request from the Applicants for Cassation Adriani Ida Bilalu, heirs of Suleman Bilalu and friends, and to annul the Decision of the Central Sulawesi High Court in Palu Number 61/PDT/2020/PT PAL., dated February 1, 2021 which upheld the Decision of the Luwuk District Court Number 8/Pdt.G/2020/PN Lwk., dated October 14, 2020 and the Supreme Court adjudicated this case itself with the decision as will be stated below;

So based on the above considerations, the researcher agrees with the legal considerations of the panel of judges at the Supreme Court because:

1. In accordance with Supreme Court jurisprudence No. 34 K/Sip/1960, dated February 3, 1960. Legal principle: the letter of "land tax certificate" is not an "absolute proof" that the disputed rice field belongs to the person whose name is listed in the "land tax certificate", it is only a sign; who should pay the tax on the rice field in question; and Supreme Court Jurisprudence No. 767 K/Sip/1970. Legal principle: the tax certificate is not proof of ownership, because it often happens that the tax certificate still lists the name of the old land owner even though the land has become the property of someone else. That the Plaintiff showed evidence of the 2003 PBB Payment Letter, the 2004 payment letter which is not proof of ownership of land rights, which is only proof that the obligation to pay taxes has been fulfilled.
2. The panel of judges in their considerations stated that the Certificate of Ownership cannot be weakened by evidence of SPPT-PBB and the Certificate of Ownership is

appropriate because the Certificate of Land Rights is included in the type of authentic deed, because it is made in accordance with the provisions by the official for that, namely the Head of the Land Office. An authentic deed is evidence that is sufficiently binding and perfect. Sufficiently binding in the sense that what is stated in the deed must be believed by the judge as something true, as long as it is not proven otherwise. Perfect in the sense that it is sufficient to prove an event or right without the need for additional evidence.

CONCLUSION

1. As for the issuance of a Certificate of Ownership, it becomes a guarantee of certainty for the interests of the relevant rights holder as a proof of rights. However, the guarantee of legal certainty of the certificate of ownership begins with land registration, in order to guarantee legal certainty of land rights, Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA) requires the government to conduct land registration throughout the territory of the Republic of Indonesia, so land registration becomes the obligation of the Government and rights holders, as in Article 19 paragraph (1) and (2) of Law No. 5 of 1960 concerning Basic Agrarian Principles, explained:

"To ensure legal certainty, the Government shall conduct land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation. The registration in paragraph 1 of this article includes: land measurement, mapping and bookkeeping; registration of land rights and the transfer of such rights; granting of certificates of proof of rights, which serve as strong evidence.

As per Article 3 of PP 24 of 1997 concerning land registration, land registration aims to: "provide legal certainty and protection to rights holders of a plot of land", then rights holders are given rights to land (Article 4 of PP 24 of 1997) and Article 32 which explains: A certificate is a valid proof of rights as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the measurement letter and the land book of the relevant rights. A Certificate of Land Ownership Rights as a means of proof of a letter has an important role in providing legal certainty and protection for rights holders. By fulfilling the stipulated requirements, the certificate functions as strong evidence in the judicial process.

2. The position of the certificate of ownership is as a strong means of proof as in Article 19 paragraph 2 letter c UUPA. SHM as a valid proof of rights as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the measurement letter and the relevant land book (Article 32 paragraph (1) PP 24 of 1997). Then if it is drawn in a civil case in Article 164 HIR/284RBg, namely written evidence, witnesses, allegations, confessions, oaths. So the certificate of ownership as a strong proof of rights is written evidence which is an Authentic Deed. Authentic deeds are regulated in Article 1868 of the Civil Code which reads: "an authentic deed is a deed made in the form determined by law by or before an authorized public official for that purpose at the place where the deed is made",

the Certificate of Ownership meets the requirements for authenticity with the following elements: 1. made in the form determined by law as in PP 24/1997 in conjunction with UUPA, 2. made by an authorized official, namely the Head of the Land Office, 3. at the place of domicile of the official, the Head of the Land Office is authorized according to the jurisdiction of the Land Office.

3. In providing considerations regarding the evidentiary power of the land title certificate, there is a difference in legal considerations between the Luwuk District Court Decision Number 8/Pdt.G/2020/PN Lwk and the Supreme Court Decision of the Republic of Indonesia Number 3589 K/PDT/2022, in the Luwuk District Court Decision due to procedural defects obtained from the testimony of the Lurah witness who explained that there was negligence in making the land certificate which was the basis for the rights of Defendant I and Defendant II, the letters were invalid, so because the issuance of the Land Title Certificate in the name of Defendant I and Defendant II was based on invalid letters, based on this, the Land Title Certificate in the name of Defendant I and Defendant II at the location of the disputed object must also be declared invalid. However, in the Decision of the Supreme Court of the Republic of Indonesia Number 3589 K/PDT/2022, it was considered that Defendant I and Defendant II are the rights holders of the disputed object based on 3 (three) Certificates of Ownership issued on April 4, 2016, that evidence of ownership rights based on the Certificates of Ownership in the names of Defendant I and Defendant II cannot be weakened by evidence of the SPPT-PBB letter and the land ownership certificate dated August 23, 2017 submitted by the Plaintiff because both are not strong evidence of ownership of the land; then the evidence of the letter from the plaintiff was issued after the issuance of the Certificates of Ownership in the names of the defendants issued by the BPN.

REFERENCES

- Abdurrahman, 1985, Tebaran pikiran mengenai hukum agrarian, Bandung: Alumni.
- Abdurrahman, Muslan. 2019. Sosiologi dan Metode Penelitian Hukum, Malang: Umm Press
- Ashshofa, Burhan. 2008. Metode Penelitian Hukum, Jakarta: Rineka Cipta.
- Ali, Zainuddin. 2016. Metode Penelitian Hukum, Jakarta: Sinar Grafika.
- Amiruddin dan Zainal Asikin, 2006. Pengantar Metode Penelitian Hukum, Jakarta: Raja Grafindo Persada.
- Apeldoorn, L.J. van. 2015. Pengantar Ilmu Hukum (In Leiding Tot De Studie Van Het Nederlandse Recht), diterjemahkan Oetarid Sadino, Jakarta: Balai Pustaka.
- Darmodiharjo. Darji dan Shidarta, 1995. Pokok-Pokok Filsafat Hukum; Apa dan Bagaimana Filsafat Hukum Indonesia, Jakarta: Gramedia Pustaka Utama.
- Ediwarman, 2016. Monograf Metodologi Penelitian Hukum, Pandangan Penulisan Skripsi, Tesis, dan Disertasi, Yogyakarta Genta Publishing.
- HS, H. Salim. 2016. Peneraoan Teori Hukum Pada Penelitian Disertasi dan Tesis, Jakarta: Rajawali Pers, Jakarta
- Harsono, Boedi, 2008 Hukum Agraria Indonesia Sejarah Pembentukan UUPA Isi dan Pelaksanaannya, Djambatan, Jakarta
- Isharyanto, 2016. Teori Hukum-Suatu Pengantar dengan Pendekatan Tematik, Jakarta: WR Penerbit.

- Kusumaatmadja, Mochtar dan Arief B. Shidarta, 2000. Pengantar Ilmu Hukum Suatu Pengenalan Pertama Ruang Lingkup Hidup Berlakunya Ilmu Hukum, Bandung: Alumni.
- Usman, Ramli. 2016. Kekuatan Pembuktian Sertifikat Dalam Sengketa Hak Atas Tanah, *Jurnal Ilmu Hukum Pascasarjana Universitas Syiah Kuala*. Vol. 4 No. 3
- Gangga Santi Dewi, Iga. 2019. Rekonstruksi Kebijakan Tanah Eks Kerajaan Di Indonesia Berbasis Nilai Keadilan Sosial (Studi Kasus Tanah Eks Kerajaan Di Bali), *BHUMI: Jurnal Agraria Dan Pertanahan* Vol. 5, No. 2
- Gideon Vicenco Ngongoloy, Marcho. & Dani Robert Pinasang, & Nixon S.Lowing, 2022. Kekuatan Hukum Sertifikat Tanah Sebagai Bukti Kepemilikan Berdasarkan PP Nomor 18 Tahun 2021, *Lex Privatum*, Vol. 10 No.5
- Rezeki, Tuti. 2019. Tinjauan Umum Tentang Sertifikat Hak Milik Atas Tanah, *Varia Hukum*, Vol.30 No. 39
- Ilkam Hulu, Kladius. 2021. Kekuatan Alat Bukti Sertifikat Hak Milik Atas Tanah Dalam Bukti Kepemilikan Hak. *Sekolah Tinggi Ilmu Hukum Nias Selatan: Jurnal Panah Keadilan*, Vol. 1 No. 1
- Fahluka Erizal, Giandiva, 2023, Penerapan Sistem Pendaftaran Tanah Yang Menggunakan Stelsel Negatif Bersendikan Positif Pada Objek Tanah Yang Telah Terdaftar Di Kantor Pertanahan, *Jurnal Notarius*, Vol 2 No 1
- J. K. Matuankotta, & Lakburlawal, M. A. 2022. Penyuluhan Hukum Tentang Upaya Penyelesaian Sengketa Hak Milik Atas Tanah. *AIWADTHU: Jurnal Pengabdian Hukum*, Vol 2 No. 1.
- Gunardi, 2010 *Kerangka Konsep dan Kerangka Teori Dalam Penelitian Ilmu Hukum, Era Hukum* Vol. 1 No.1
- Prayogo, R. Tony. 2016. Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil Dan Dalam Peraturan Mahkamah Konstitusi Nomor 06/Pmk/2005 Tentang Pedoman Beracara Dalam Pengujian Undang-Undang, *Jurnal Legislasi Indonesia*, Vol. 13 NO. 02
- Muchamad Ali Safa'at, *Pemikiran Keadilan (Plato, Aristoteles, Dan John Rawls)*, h. 5 <http://safaat.lecture.ub.ac.id/files/2011/12/keadilan.pdf> diakses pada 12 Oktober 2024
- Departemen Pendidikan dan Kebudayaan, 1997. *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka.
- Lawrence M. Friedman. 2011. dikutip dari Fauzie Kamal Ismail, Tesis berjudul *Kepastian Hukum Atas Akta notaris Yang Berkaitan Dengan Pertanahan*, Fakultas Hukum, Universitas Indonesia, Depok.
- <https://www.hukumonline.com/berita/a/simak-kiat-melakukan-ri-set-dan-analisis-hukum-1t6321e7cee9c96/>, diakses tanggal 31 Oktober 2024, Pukul 15:00 Wib
- Boboy, Juwita Tarochi, Dkk, 2020. Penyelesaian Sengketa Pertanahan Melalui Mediasi Berdasarkan Teori Dean G. Pruitt Dan Jeffrey Z. Rubin, *Notarius*, Vol. 13 No. 2
- Mujiburohman, Dian Aries. "Potensi permasalahan pendaftaran tanah sistematis lengkap (PTSL)." *BHUMI: Jurnal Agraria dan Pertanahan* 4.1 (2018): 89.
- Harris Yonatan Parmahan Sibuea, Arti Penting Pendaftaran Tanah Untuk Pertama Kali, *Jurnal Negara Hukum*, Vol. 2, No. 2, November 2011, hal. 289.
- Arhis Setiawa, Ari Wibowo, Kepastian Hukum Sertifikat Dalam Pembuktian Sengketa Agraria Terkait Dengan Kepemilikan Atas Tanah, *Artikel*, Vol. 1 No. 1 Isu-isu krusial dalam Hukum Keluarga, hlm. 853