

Aspects Of Legal Certainty Of Land Declaration Letters As Guidelines For Land Registration With Negative Stelse

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Abstract.

Indonesia adheres to a negative publication system in land registration activities, where the state does not guarantee the correctness of the data presented in the certificate. This briefly illustrates the condition that legal certainty is not guaranteed in land registration activities. Many people still think that the land statement they own is proof of ownership of land rights. The results of the analysis show that basically the negative publication system adopted by Indonesia is not a publication system that does not guarantee legal certainty. This is because the negative publication system does not apply forever. The negative publication system in Indonesia still adheres to positive elements, where the government will guarantee the correctness of the data presented after 5 years of the land being registered. These restrictions actually aim to provide legal protection for land owners, so that it is possible to file lawsuits by parties who feel entitled. This can be seen in land cases in the judicial process, such as the case of decision Number 160/Pdt.G/2020/PN Plk, where the Judge stated that the Land Declaration Letter was valid and had binding legal force in the name of Mr. Baturung. Land Statement Letter Number: 140,594/300 /KL-MTG/PEM. This research uses normative research methods accompanied by primary legal materials and secondary legal materials. To answer legal issues by describing, examining, studying and explaining accurately and analyzing applicable laws and regulations as well as various legal expert opinions, with the aim of getting answers to the problems raised. The Land Declaration Letter is a letter issued by the sub-district.

Keywords: Legal Certainty, Land Declaration Letter and Land Registration.

I. INTRODUCTION

Land is a blessing and mercy from Almighty God to the entire community. So it is very necessary to manage land as well as possible so that its use can provide prosperity for the Indonesian people, in accordance with the mandate of Article 33 paragraph (3) of the 1945 Constitution. Daily human activities cannot be separated from the functions and benefits of land that can occur now. This (Heru, 2001). To realize the mandate of the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Principles was issued. In Article 16 of Law Number 5 of 1960, ownership of land is realized by the following rights: 1) Ownership Rights, 2) Building Use Rights, 3) Business Use Rights, 4) Use Rights, 5) Rental Rights, 6) The right to clear land, 7) The right to collect forest products, and 8) Other rights that are not included in these rights. People who own land must know that the land they own has a social function as stated in Article 6 of the Basic Agrarian Law (UUPA) Number 5 of 1960. The land must not be neglected, meaning that the land must be worked on effectively so as not to cause problems. However, land disputes still occur a lot in people's lives, because in essence, everyone does not want something they own to fall into the hands of another person, especially since the object has already become someone's property (Sutedi, 2007). Therefore, to maintain ownership rights to land, the land must be registered. Because registering ownership rights to land is something that is absolutely necessary. If someone has registered their land (which then has a certificate of ownership) but someone is still disturbing the land, then what can be done is that the party who feels disadvantaged can resolve the problem through deliberation.

Furthermore, if deliberations do not find a clear point, then the problem or dispute can be brought to court so that it can be processed fairly and can provide legal certainty to both parties. Apart from that, in order to support the effectiveness of Law Number 5 of 1960, the government reissued PP Number 24 of 1997 concerning Land Registration. This is because there are still many Indonesian people, especially in rural areas far from the land office, who still do not have land certificates. Not having a land certificate does not

mean that people do not have legal proof of land ownership. However, the community in general is far from the land office, in this case the community chooses to prove the land using a Land Declaration Letter (SPT) issued by the Village Head/Lurah. The Land Certificate is issued by the local Village Head/Lurah. This is based on Government Regulation Number 24 of 1997 concerning Land Registration, Article 7, Article 8 and Article 39. Government Regulation Number 37 of 1998 concerning the Position of PPAT, Article 5 paragraph (3) Letter a states that: "The Village Head as an official The lowest villages have very strategic tasks in assisting the Head of the Land Office in carrying out land registration in accordance with the provisions of applicable laws and regulations." Declaration Letter includes the basis of rights which is generally used as a condition in the application process for issuing a land certificate by the National Land Agency (BPN).

Land Declaration Letters are not regulated in detail in Indonesian law. Land Declaration Letters (SPT), which can be said to be proof of land ownership at a level below the Certificate, are still often issued by Subdistricts in managing ownership of land in Palangka Raya City, in terms of proof land ownership SPT is sufficient to provide the basis for ownership of land. However, when combined with a Certificate, the Land Declaration Letter must really be checked for correctness. There are many cases of land disputes that occur between the Land Statement and the Certificate (Riza, 2023), then the case is won by the Certificate. On the other hand, there was also a case between the Land Declaration Letter and the Certificate but the Land Declaration Letter won. Basically, in deciding this matter, sufficient consideration is required by the judge to see which data can provide more evidence of the truth. Then the parties to the dispute must be able to explain the origin of the land and must also prove valid and trustworthy documents. From this explanation, this research wants to focus on proving the Land Declaration Letter which was granted by the Panel of Judges stating that it is valid and has binding legal force. The Land Declaration Letter in Dispute Case Number 160/Pdt.G/2020/PN Plk in Palangka Raya City, which case is Land Dispute between Land Declaration Letters issued in 2010 and. Ownership Certificate Number 15089 issued in 2017, and won by Mr. Batarung, owner of the Land Declaration Letter. Because in many cases the disputes that occur are generally won by the owner who has the Ownership Certificate. Based on This explanation means the author is interested in conducting research regarding Land Declaration Letters. Based on the background description above, a problem to be studied can be formulated as follows: (1) What is the position of the Land Declaration Letter as a guide to land registration in the negative publication system? and (2) What are the legal consequences of the title certificate being canceled by the District Court?

II. METHODS

Type The research used in preparing this article is normative research. Where the approach taken is based on primary raw materials which examine theoretical matters relating to legal principles, legal conceptions, legal views and doctrines, regulations and legal systems using secondary data and then reviewing laws and court decisions (Soekanto, 2006). Or use normative case studies in the form of legal behavioral products, for example reviewing laws and court decisions. The research materials used are primary legal materials and secondary legal materials. Primary legal materials, namely Constitution of the Republic of Indonesia of 1945, Civil Code, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Rights Management, Land Rights, Flats, and Land Registration,

Land Statement Letter Number: 140.594/300/KL-MTG/PEM, and Court Decision 160/Pdt.G/2020/PN Plk. The Secondary Legal materials consist of books, journals, scientific papers and interviews at the National Defense Agency Office in the city of Palangka Raya in the Dispute Control and Handling section (Fajar & Achmad, 2010). The data collection technique in this research was carried out using a literature study of legal materials, both primary legal materials and secondary legal materials. The data analysis technique uses descriptive qualitative, which means analyzing by explaining or providing a description of the research subject and object based on the results of the research that has been carried out and finally formulating a conclusion from the existing problem.

III. RESULT AND DISCUSSION

A. Position Case

The plaintiff Mr. Batarung, SE owns a plot of land located on Jalan RTA. Milono Km. 5.5 Gg. MD Awan, Menteng Village, Jekan Raya District, Palangka Raya City. In 2010 the Plaintiff had a Land Declaration Letter (SPT) in the name of Batarung, SE Number: 140.594/300/KL-MTG/PEM dated 17 March 2010. Then in 2011 Mr. Nael as the Defendant claimed the entire portion of the Plaintiff's land on the basis of Ownership Certificate No. 15089 for a bag in the name of Nael R. Dawit dated 21 February 2017 which is located at RTA. Milono Km.6 Palangka Raya by just showing the letter. In 2015, mediation was carried out at the Palangka Raya City Land Office led by the Head of the Conflict and Case Disputes Section. Still not finding any clarity, finally the Plaintiff filed a lawsuit at the District Court in the hope that the land based on the Land Declaration Letter could be completely owned by the Plaintiff, so that it could be converted into a Certificate of Ownership and then have strong evidentiary power. And in the Lawsuit Decision Number 160/Pdt.G/2020/PN Plk the Panel of Judges granted the Plaintiff's lawsuit in part, declaring it valid and legally binding on the Land Statement Letter (SPT) in the name of Batarung, SE. Number: 140.594/300/KL-MTG/PEM dated 17 March 2010 located on Jalan RTA. Milono Km. 5.5 Gg. MD Awan, Menteng Village, Jekan Raya District, Palangka Raya City with length: 50 meters , width: 45 meters, area: 2,250 m² .

B. Legal Certainty of Land Declaration Letter with Negative Stelsel

1.1 Land Declaration Letter

The Land Declaration Letter is a letter issued by the sub-district. Land Declaration Letter is land ownership whose level is below the title certificate. This Land Declaration Letter is needed in order to process other documents relating to land. Its function is as a complementary document or guide in the land registration process. The Land Statement Letter is also used as proof of land ownership history . Land declaration letters are documents that are categorized as rights or juridical data on land which are used as a condition for completing the requirements for land rights applications (Online, 2017). In Article 97 of the Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration states "land certificates, compensation certificates, village certificates, and other similar things are intended as information on Land control and ownership issued by the village head/district head can only be used as a guide in the context of Land Registration." The following are the main things contained in the Land Declaration Letter:

1. The front page contains the KOP of the letter, including the name of the agency that issued the letter (Regency, District, Village), the name of the owner of the Land Declaration Letter, registration number, date of issue and postal code.
2. On the second page, there is the writing "Statement Letter for Handover of Land" which contains the handover of land made by the previous owner and then contains the signatures of both parties (the party receiving and the party handing over) using a stamp.
3. On the third page, there is a "Rough Drawing" or map.
4. On the fourth page, there is a "Declaration of the original owner of the land".
5. On the fifth page, there is a "Statement Letter from the Head of RT".
6. On the sixth page, there is a "Border Witness Statement Letter" which adjusts the right and left boundaries to see if there are other residents or if it borders a road or borders with empty land.
7. On the seventh page there is a "Letter of Statement of No Overlapping/No Disputes with Other Parties".
8. Photocopy of the Identity Cards of the parties concerned.

Land Declaration Letters are privately written evidence whose evidentiary strength is not as strong as authentic deeds, however, because these Land Declaration Letters are documents that are categorized as the basis for rights or juridical data on land which are used as a condition for completing the requirements for applications for land rights as regulated in statutory provisions. -land legislation, in the explanation of Article 6 paragraphs (1) and (2) which reads:

- (1) In the context of carrying out land registration as intended in Article 5, the duties of implementing land registration are carried out by the Head of the Land Office, except for certain activities which by this Government Regulation or the relevant legislation are assigned to other Officials.
- (2) In carrying out land registration, the Head of the Land Office is assisted by PPAT and other officials assigned to carry out certain activities according to this Government Regulation and the relevant laws and regulations.

1.2 *Aspects of Legal Certainty Legal Certainty of Land Declaration Letters*

Normative legal certainty is when a regulation is created and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not give rise to doubt (multiple interpretations) and is logical. It is clear in the sense that it forms a system of norms with other norms so that it does not clash or give rise to norm conflicts. Legal certainty refers to the application of law that is clear, permanent, consistent and consistent, the implementation of which cannot be influenced by subjective circumstances. Certainty and justice are not just moral demands, but factually characterize the law. A law that is uncertain and unwilling to be fair is not just a bad law. Legal certainty is a guarantee regarding the law containing justice. Norms that promote justice must truly function as rules that are obeyed. According to Gustav Radbruch, justice and legal certainty are permanent parts of the law. He believes that justice and legal certainty must be taken into account, legal certainty must be maintained for the sake of security and order in a country. Finally, positive law must always be obeyed. Based on the theory of legal certainty and the values to be achieved, namely the values of justice and happiness (Ali, 2002). Conceptually, relations in the agrarian/land sector consist of: on two aspects The main aspect is the aspect of "control and ownership", relating to what is the legal relationship between humans and land and aspects of "use and utilization" discusses how land is used and exploited. This relationship is determined by the system of control, utilization and management of land and other natural resources, both recognized and not/not yet recognized by applicable State law, which is often called the tenure system. In the tenure system, it is seen as a collection or series of rights (*tenure system is a bundle of rights*) which also contains the meaning of obligations (*obligations*).

This is based on the reality on the ground which is often found, that land rights are multidimensional and multi-layered. It is not uncommon for different people or groups of people to have rights to the same piece of land. For example, in some customary land "ownership" systems, although there is an individual's right to "own" a plot of land, the individual does not have the right to transfer the land to another person freely without interference from the family and/or community where the land is located. Certain long-lived trees, for example, have certain ownership and use system rules which are sometimes not related to the ownership of the land where the tree is found. Providing guarantees of legal certainty regarding land rights for the people as a whole is one of the main objectives of the UUPA which is no longer negotiable, so the law instructs the Government to carry out land registration throughout Indonesia which is *rechtskadaster*, meaning that it aims to guarantee legal certainty. and certainty of their rights. Article 19 of the UUPA has firmly mandated the Government that land registration be carried out in all regions of Indonesia, with the aim of achieving legal certainty. By registering land rights or granting land rights, all rights subjects are also given the authority to utilize the land according to its intended purpose. In this way, a guarantee of legal certainty will be created for the subject of the right regarding the ownership and use of the land in question (CST Kansil, 2010). Guaranteeing legal certainty in the agrarian sector, especially in the land sector, requires certainty regarding: land rights, the subject of the rights, the land, and the law (Boedi Harsono; 1968). Certainty regarding the type of land rights or the status of the land is necessary, because for example, the price of land owned with freehold rights, which has an unlimited term, will be higher than land with lease rights; Certainty about who owns the land regarding the subject of their rights.

Certainty regarding this matter is necessary because actions regarding land will basically only give rise to the desired legal consequences, if carried out by those who have the rights or subjects of land rights. Certainty regarding the land being held in possession or regarding the object of the right, which is related to certainty about where the land is located, how large it is and what its boundaries are. It is easy to understand that people also want certainty regarding these matters, because not having certainty about their

land will easily lead to disputes in the land sector. Finally, legal certainty, namely regarding the rules for knowing the authorities and obligations of those who own or control the land in question. Included in this understanding is the continuity of policy in implementing the rules themselves (Apriani, 2021). In order to guarantee legal certainty over land in Indonesia, the Government has been instructed to carry out land registration throughout Indonesia. This is stated in the provisions of article 19 of the Basic Agrarian Law, namely Law Number 5 of 1960. Based on the regulation in question, the method or system for land registration in Indonesia is determined as far as possible, which must be adapted to customary law that is still in force, simple and understandable to the public. (Rahardjo, 2012). Even though the Land Declaration Letter is not regulated in PP 24/1997 and is no longer required as one of the conditions for land registration, it is contained in Article 76A of the Minister of Agrarian and Land Regulation Number 16 of 2021 explaining that written evidence of former customary land is no longer valid after 5 (five) years for the enactment of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration.

If this time period expires, written evidence of customary land ownership cannot be used as evidence to prove rights. However, in reality there are still many people who use Land Declaration Letters as written proof of land ownership. In fact, it is not uncommon to find buying and selling land transactions with proof of ownership only in the form of a Land Statement. Obtaining a Land Declaration Letter is not difficult because it only requires the testimony of several witnesses, the RT and the local village head knowing where the land object is located in order to issue a Land Declaration Letter (Atikah, 2021). The Land Declaration Letter is the basis of rights which is the initial process for registering land at the National Land Agency for the issuance of a certificate. The Land Declaration Letter is a very important document. The Land Declaration Letter functions as proof of physical control if errors or incomplete proof of control are found. One of the physical evidence that is the basis for land ownership rights is a land statement. A land statement is a statement that confirms the history of land ownership. A Land Declaration Letter is a piece of written evidence that shows information about land ownership, made at the request or application of the community to the Subdistrict or Village Office where the land object is located and upon such request it is issued by the Subdistrict or Village as a requirement for the administration of the land registration process at the Land Agency National. The Land Declaration Letter is also recognized in the rights ownership system by the Palangkaraya District Court where in the Case Decision Number the Judge decided to declare it valid and has binding legal force. The Land Declaration Letter (SPT) in the name of BATARUNG, SE Number 140.594/300/KL-MTG/PEM dated March 17, 2010 Located on Jalan RTA. Milono Km. 5.5 Gg. MD Awan, Menteng Village, Jekan Raya District, Palangka Raya City with length: 50 meters, width: 45 meters, area: 2,250 m². It is legally owned by the Plaintiff.

1.3 Negative Publication System

In a negative publication system, the State does not guarantee regarding the correctness of the data presented. Therefore in this system, for The transfer of land rights applies a principle known as *memo plus juris*, or in full it is called *Memo plus juris in alium transferre potest quam ipse habet*, namely protecting the holder of land rights actually from the actions of other people who transfer their rights without known to the actual holder. In this system, rights are transferred to the buyer is not determined by the registration carried out, rather, it is determined by the legality of the legal act carried out. So, without registration, a transfer of rights is considered valid if the material conditions have been fulfilled (Safitri, 2020). In land registration in Indonesia, the positive publication system and the negative publication system are not used purely. Based on existing laws and regulations, the applicable publication system is negative which contains positive elements, this can be seen from the provisions of Article 19 paragraph (2) letter c UUPA, which states that registration includes "the provision of documents proving rights, which acts as a strong means of proof". Such a statement would not be contained in the registration regulations under a pure Negative Publication system (Parlindungan, 1999).

1.4 *Legal Consequences of an Ownership Certificate Canceled by the District Court*

In court decision number 160/Pdt.G/2020/PN Plk with its decision there is cancellation of a right, in this case a land title certificate, so there are legal consequences that occur as a result of the decision, which can change a legal relationship between legal subjects in this case. are the plaintiff and defendant with a certificate of ownership of land and a land statement previously owned by the plaintiff and defendant. Even though the certificate has been issued and is a strong proof of ownership of a plot of land, based on Article 32 paragraph (1) of Government Regulation Number 24 of 1997 there is no guarantee for the holder of land rights not to receive a lawsuit from another party who feels disadvantaged by the issuance of the certificate. . In the explanation of Article 32 paragraph (2) of Government Regulation Number 24 of 1997, it is stated that "this provision aims, on the one hand, to adhere to the negative publication system and on the other hand to provide balanced legal certainty to parties who in good faith control a plot of land. and registered as the right holder in the land book, with a certificate as proof, which according to the Basic Agrarian Law applies as a strong means of proof (Santoso, 2010).

" With the cancellation of the Certificate of Ownership No. 2201 and Certificate of Ownership Number 15089, the legal consequence of the cancellation is that the Plaintiff in this case as the winner of the case has the right to submit an application to the National Land Agency to have the certificate declared invalid/cancelled and issue new certificate in his name. In the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases as amended by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases Article 57 paragraph (1) regulates that the implementation of court decisions that have legal force must be implemented unless there is a valid reason for not implementing them. The decision to cancel land rights due to implementing a court decision that has obtained permanent legal force is issued at the request of an interested party. So in this case, the parties themselves must submit a request for cancellation. A court decision that has acquired permanent legal force includes being declared null and void or having no legal force or which is essentially the same. A request for cancellation of land rights due to implementing a court decision can be submitted directly to the Minister or Head of the Regional Office or through the Head of the Land Office (Santoso, 2010).

In connection with the implementation of court decisions which have permanent legal force, in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 it is emphasized that:

1. The implementation of a court decision is a follow-up to a judicial institution's decision which already has legal force still. A court decision that already has force permanent law, relating to the issuance, transfer, cancellation of land rights and/or cancellation of land designation abandoned include:
 - a. order to cancel land rights;
 - b. declared void/invalid/having no force land rights law;
 - c. declare proof of rights invalid/invalid law;
 - d. order to carry out recording or scribbling in Land Book;
 - e. order to issue land rights;
 - f. order to cancel the designation of abandoned land; And
 - g. a warning which means it gives rise to the legal consequences of its issuance transfer of rights or cancellation of the transfer of rights.
2. Court decisions that have permanent legal force, relating to the issuance, transfer, cancellation of rights to land and/or cancellation of the determination of abandoned land is carried out based on requests from interested parties via local Land Office. In the event of a cancellation request determination of abandoned land, immediately submitted to the Ministry. The interested parties are the plaintiffs as well as the defendant or other parties involved in the case. Letter _ The application in question must be accompanied by:

- a. photocopy of the applicant's identity or photocopy of identity recipient of power of attorney and power of attorney if authorized;
- b. an official copy of the court decision that has been obtained permanent legal powers legalized by authorized officials;
- c. a certificate from an authorized official in the environment the court explaining the decision in question has permanent legal force;
- d. Minutes of the Execution, in terms of the decision Cases requiring execution; and/or
- e. other letters related to the application Cancellation, if necessary, may be required by Head of Division or Director who is responsible for handling Cases with the Directorate General.

IV. CONCLUSION

The position of a Land Declaration Letter in the land law system in Indonesia is as a private deed which serves as a guide in the land registration process. Even though the UUPA only recognizes valid proof of land rights as a certificate, if the Land Declaration Letter can be proven to prove physical rights to the land and its juridical data then the Certificate is valid proof of ownership according to the Basic Agrarian Law and the final output issued by the Land Agency Nationally, after the land registration process is carried out to ensure legal certainty and legal protection for owners of land rights, it has the potential to be canceled by the Court. This is because Indonesia adheres to a negative publication system with a positive tendency. Although the Land Declaration Letter is a guide to the Land Registration Process in the process of proving ownership of land rights, it is issued by the Subdistrict Office and signed by the Village Head who is given authority by the Government regarding the Land Certificate. So it can be concluded that the Land Declaration Letter provides strong legal certainty in a legal state and has a strong legal standing as long as it meets the legal criteria.

According to the author, the decision of the Panel of Judges in Decision Number 160/Pdt.G/2020/PN Plk is in accordance with the provisions of the Law and the Civil Code by stating that the actions carried out by the Defendant are Unlawful and stating that the Land Ownership Certificate does not have permanent legal force. , with the consideration that the Defendant has no right to the land based on Article 1365 of the Criminal Code, Unlawful Acts are: Every act that violates the law and causes loss to another person, requires the person who caused the loss through his fault to compensate for the loss. That the defendant could not prove ownership of the previous certificate where he had obtained it from, and could not provide further testimony, so the Panel of Judges granted the Plaintiff's lawsuit in part, declaring the Land Declaration Letter (SPT) valid and legally binding in the name of Batarung, SE. Number: 140.594/300/KL-MTG/PEM dated 17 March 2010 located on Jalan RTA. Milono Km. 5.5 Gg. MD Awan, Menteng Village, Jekan Raya District, Palangka Raya City with length: 50 meters , width: 45 meters, area: 2,250 m².

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