

Double Certificates and Its Resolution in (Study of Supreme Court Decision Number 976 K/PDT/2015)

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ARTICLE INFO

Article history:

DOI:

[10.30595/pssh.v14i.910](https://doi.org/10.30595/pssh.v14i.910)

Submitted:

June 08, 2023

Accepted:

September 29, 2023

Published:

November 16, 2023

Keywords:

Double Certificates, PTSL,
Blockchain

ABSTRACT

One of the goals of the Basic Agrarian Law (Undang-Undang Pokok Agraria, UUPA) is to provide legal certainty for all individuals and to facilitate the functioning of the earth, water, and space, as well as natural resources. In reality, however, the law has not yet provided legal certainty over land in the case of double certificates, as stated in Supreme Court Decision No. 976 K/PDT of 2015. The problem posed by this study is how and what the obstacles are for prevent the development of duplicate certificates. This is normative legal research employing secondary data, the statute approach, and the conceptual approach. To prevent the occurrence of double certificates, it is necessary to implement a computerization/digitization program for land registration maps to reduce error by humans, acquire data on land parcels that have certificates, make plotting efforts utilizing GPS (Global Positioning System) technology, restrict the land registration process and administration pertaining to village land, and implement blockchain technology in land administration. Meanwhile, the public's lack of interest in registering their land through the Comprehensive Systematic Land Registration (Pendaftaran Tanah Sistematis Lengkap, PTSL) scheme, procedural errors in the land assessment procedure, a negative land publication system in which the data presented is not necessarily valid, and the state's inability to guarantee the accuracy of the data presented are impediments to these efforts. Moreover, the present agrarian law is a colonialist relic that is not in the community's best interests.

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I. INTRODUCTION

Land serves as one of the major sources of income for humans and society; consequently, it is regarded as the most fundamental human need due to the belief that land is so essential to human existence that it is inseparable. On the land, humans exist, develop, and engage in activities, so they are in constant contact with it.¹

¹ Diana Lubis, "Peralihan Hak Atas Tanah Yang Tidak Diketahui Keberadaan Pemilikinya," *Recital Review* 3, no. 1 (2021): 106.

In the affirmative law, land law needs to be consistent with the Indonesian constitution, which is the Republic of Indonesia Constitution of 1945. Article 33, paragraph 3 of the Constitution of 1945 states: "The earth, water, and other natural assets contained therein, whose management is delegated to the Republic of Indonesia, must be utilized for the maximum benefit of the people."²

The Basic Agrarian Law (Undang-Undang Pokok Agraria, UUPA) is a substitute term for the Basic Regulation of Agrarian Principles Law No. 5/1960. Jakarta passed and published this ordinance on September 24, 1960. With the passage of the UUPA, a nationwide agrarian law was enacted that would provide certainty of law to all citizens and enable the realization of the envisioned functions associated with the earth, water, and space, as well as natural resources.³

It is stated in the UUPA that the objectives of the UUPA itself, as stated in its General Elucidation, are:

1. To set the groundwork for the formulation of a national agrarian law, which will serve as a tool for delivering prosperity, happiness, and equity to the government as well as the peasantry within the context of a prosperous and just society;
2. To establish the basis for uniformity and simplicity in the law of land;
3. To implement the principles responsible that guarantee legal certainty regarding people's land rights..

Therefore, the state is obligated to provide legal certainty in the land sector through the process of land registration, as required by UUPA Article 19 paragraph (1), which states: "In order to guarantee legal certainty, the Government shall carry out land registration on the entire territory of the Republic of Indonesia in accordance with the provisions outlined in Government Regulation." As a follow-up, the government issued Government Regulation No. 24 of 1997 on Land Registration. According to Article 4, Paragraph 1 of the Government Regulation, registering a land results in the issuance of a land certificate.⁴

Double certificates of land can be briefly defined as certificates describing the same parcel of land or, more broadly, double certificates are dual ownership certificates (documents) issued by a legal entity that results in the occupation of overlapping rights between one part and another, resulting in the issuance of multiple certificates that have the effect of occupying land in whole or in territory belonging to others.⁵

Authors conduct an initial review of Supreme Court Decision Number: 976 K/PDT/2015 concerning a double certificate dispute sued by the Cassation Petitioner formerly Plaintiff/Appellant (Liem Teddy), Defendant I (Department of Defense and Security), Defendant II (BPN), Co-Defendant I (PT.Propelat), Co-Defendant II (Government of Indonesia) as follows, in 2006 the Plaintiff purchased a plot of land from Co-Defendant I located on Jl. Cicendo No. 16 (formerly No. 20), Babakan Ciamis Village, Sumur Bandung Sub-district, Bandung City, which land was titled Building Rights Title No. 46, Babakan Ciamis Village, situation drawing No. 835/1993 dated February 11, 1993, with an area of 484 m² in the name of the 1st Defendant and was renamed in the name of the Plaintiff on August 07, 1993 based on Sale and Purchase Deed No. 158/2006 made before a Land Deed Official (*Pejabat Pembuat Akta Tanah*, PPAT).

The land and building were empty, controlled, and maintained by Plaintiff; however, in 2008, Plaintiff renovated the building by obtaining a building permit (*Izin Mendirikan Bangunan*, IMB) Number 503.648.1/1314/DISTARCIP in the name of Plaintiff and licenses from relevant agencies to lease the building to a Government Sharia Bank, Defendant visited Plaintiff I with letter No. B/831/XI/2008 dated November 6, 2008, stating that the status of the land and building was an asset belonging to Defendant I as per Right to Use Certificate No. 18 dated August 28, 1998, and ordered that Plaintiff immediately vacate the land and building. In 2011, the Plaintiff applied to the Bandung National Land Agency (*Badan Pertanahan Nasional*, BPN) to change the Building Use Right into a Property Right. However, it could not be processed because the land had been issued with a Use Right Certificate Number 18, Babakan Ciamis Village, under the name of Defendant I. Therefore, Plaintiff filed a lawsuit at the Bandung City Court. Therefore, Plaintiff filed a suit at the Bandung District Court, which has given Decision Number 336/Pdt.G/2013/PN. Bdg dated May 19, 2014, which in its verdict granted the Plaintiff's claim in part, stating that Defendant I and Defendant II had committed an unlawful act (*Onrecht Matigedaad*), declaring valid and binding Sale and Purchase Deed Number 158/2006, Building Rights Title Certificate Number 46, Babakan Ciamis Village, situation drawing Number 835/1993 with an area of 484 m² in the name of Liem Teddy, declaring the Plaintiff the rightful owner of a plot of land and building located on Jl.

² Anshari Utama, "Penyelesaian Sengketa Sertifikat Ganda Hak Atas Tanah Oleh Badan Pertanahan Nasional Tapanuli Tengah," *Jurnal Civil Law USU* 1, no. 6 (2019): 1.

³ Natasha Camilla Hufadzah, Iga Gangga Santi, and F.C Susila Adiyanta, "Perlindungan Hukum Pemegang Sertipikat Hak Atas Tanah Terhadap Sertipikat Ganda (Studi Putusan Nomor: 062/G/2014/PTUN.SMG)," *Dipenogoro Law Journal* 6, no. 2 (2017): 2.

⁴ Zuman Malaka and Habib Adjie, "Tanggung Jawab Kantor Pertanahan terhadap Terbitnya Sertifikat Ganda (Studi Kasus Putusan Kasasi MA No. 162 K/TUN/2012)," *Al-Qanun* 20, no. 2 (2017): 3.

⁵ Ferdian Setyo Wibowo, Novita Listyaningrum, and Hery Zarkasyih, "Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Dalam Hal Terdapat Sertipikat Ganda Di Kantor Pertanahan Kabupaten Lombok Timur," *Media Bina Ilmiah* 14, no. 6 (2020): 2712-2713.

Cicendo Number 16 (formerly number 20), Bandung City, based on Building Rights Title Certificate Number 46 Babakan Ciamis Village, situation drawing number 835/1993 with an area of 484 m² under the name of Liem Teddy, punishing the 1st and 2nd Defendants to comply with the decision mentioned above.

Subsequently, Defendant II filed an appeal against the Court Decision, which the Bandung High Court overturned in Decision Number 399/PDT/2014/PT.Bdg, dated November 11, 2011, stated that it accepted the appeal and overturned the District Court Decision Number 336/Pdt.G/2013/PN in its decision. Bdg dated May 19, 2014, stating that Sale and Purchase Deed Number 54 is valid according to the law and that the Certificate of Right to Use Number 18 dated November 11, 1998, measurement letter Number 13 Babakan Ciamis with an area of 484 m² in the name of the Indonesian Army Land and Security Department is valid according to the law. That after the final decision was notified, the Plaintiff/Appellant filed a cassation on December 30, 2014, in which, in Decision Number: 976 K/PDT/2015, the Panel of Judges granted the Cassation Request from the Plaintiff (Liem Teddy) canceling the Bandung High Court Decision Number 399/Pdt/2014/PT.Bdg, which canceled the Bandung District Court Decision Number 336/Pdt.G/2013PN.Bdg, and granted the Plaintiff's claim in part. Based on this background, the author is interested in conducting "Double Certificates and Its Resolution " research (Study of Supreme Court Decision Number 976 K/PDT/2015)."

II. RESEARCH PROBLEMS

The formulation of the problems in this study are:

1. What are the efforts to prevent the double certificates?
2. What are the obstacles to avoiding double certificates?

III. RESEARCH METHODS

This is a normative legal study using a statutory and conceptual approach.⁶ Literature review and identification and elucidation of legal facts are used to collect data, while the literature review consists of secondary data, namely legal materials that are both primary and secondary. Literature studies or regulatory documents pertaining to the problem under investigation provide secondary data, such as Law No. 5 of 1960 on Agrarian Affairs, Government Regulation No. 3 of 1997 on the Implementation of Government Regulation No. 27 of 1997 on Land Registration, and Supreme Court Decision No. 976K/PDT of 2015. After obtaining all secondary and primary legal materials, they are analyzed qualitatively.

IV. RESULT AND DISCUSSION

1. Efforts to Prevent the Double Certificates

Land registration is a series of activities carried out continuously and systematically by the state or government, in the manner of acquiring certain details or information in specific regions, analyzing, conserving, and displaying for the advantage of the people in providing legal certainty in the field of defense, including evidence and maintenance.⁷

Land certificates are typically issued as evidence of land tenure. Land rights certificates are also a reliable means of proving land rights ownership. This is implicitly determined by Article 19, paragraph 2, letter c of the UUPA. It is stated implicitly due to the provision only governing that as the ultimate step of land registration, namely the issuance of letters of evidence of rights, which serve as persuasive evidence. Therefore, the stipulation doesn't explicitly reference land certificates as evidence of rights. Article 13 paragraph 3 of Government Regulation No. 10/1961 concerning Land Registration, which was subsequently superseded by Government Regulation No. 24/1997 concerning Land Registration, stipulates that a registered land title deed is known as a certificate.⁸

Internal and external factors influence the occurrence of double certificates resulting in legal defects such as fake and double certificates. Internal factors include:

- a. Failure to implement the UUPA and its regulations for its implementation effectively and responsibly, as well as the presence of individuals who act for personal gain.
- b. The ineffectiveness of the supervisory apparatus provides opportunities for inferior apparatus to violate their oath of office by failing to carry out their duties and responsibilities.

⁶ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003), 13.

⁷ Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaanya* (Jakarta: Djambatan, 1999), 72.

⁸ Anissa Aulia & I Made Udiana, "Perlindungan Hukum Bagi Pemegang Sah Hak Atas Tanah Dengan Adanya Sertifikat Ganda Hak Atas Tanah.," *Kertha Semaya : Journal Ilmu Hukum* 5, no. 2 (2017): 3 .

- c. The inaccurate information of Land Office officials in issuing land certificates, which is the documents that serve as the basis for issuing certificates, is not scrutinized; it is possible that these documents do not comply with the statutory requirements.

Meanwhile, the external factor as follows:

- a. The public is still unfamiliar with land laws and regulations, particularly the procedures for obtaining land certificates.
- b. The ratio of land supply to the number of land-hungry devotees is unbalanced.
- c. Development increases the demand for land, while the supply of land is insufficient to promote the transfer of land use from agricultural to non-agricultural land, leading to skyrocketing land prices.⁹

The following are some of the reasons why land disputes and double certificates arise¹⁰:

- a. Lack of informational transparency regarding land ownership.
- b. The financial worth of land and the reality that land is used as an indication of social existence by the community, so that everyone employs every effort to preserve it.
- c. Weak regulations despite the complexity of land disputes.
- d. decisions made by government agencies regarding land ownership that overlap.
- e. Misinterpretation within the community regarding which land is customary or has customary rights and which land is neither traditional nor state property.
- f. Unresolved issues pertaining to land reform.
- g. In addition to natural catastrophes that damage proof of land rights ownership and the relocation of land after calamities.
- h. And the most complicated is the lack of use of land registration maps and outdated computerized systems.
- i. Village officials' and the applicant's, in this instance the landowner's, dishonesty in supplying data to the BPN is an important component.

Based on the factors mentioned above, it can be seen that there are four forms of multiple certificates as follows:

- a. Both or all of the certificates are authentic, or one of them is authentic but fraudulent. This signifies that both certificates have copies in the Land Office archives. This can occur when a previously certified parcel of land is re-registered with the Land Office. In this instance, both certificates are original certificates issued by the BPN, but the object's location, position, and area are identical.
- b. Both certificates are forgeries, and no copies of each of the double certificates for the land parcels are retained at the Land Office.
- c. One or more of the certificates are embedded within another certificate. The land parcel should have been registered by means of a division, separation, or merger procedure.
- d. Overlapping signifies that two or more certificates coincide, so the overlapping portion is a double certificate since a portion of the land should be included in another land certificate.¹¹

As the authors have identified and clarified the legal facts with Dr. Sri Wahyu Handayani, S.H., MH. as an Agrarian Law Expert at the Universitas Jenderal Soedirman Purwokerto, some of the factors that contribute to the occurrence of double certificates encourage efforts to prevent the appearance of double certificates:

- a. Implement a program to computerize/digitize land registration maps in order to identify titled and untitled land parcels and to reduce human error;
- b. Collect information on titled land parcels to prevent double certificates.;
- c. Applicants are required to indicate the location of their property on a monitor map based on GPS (Global Positioning System) mapping efforts. If it is determined that there is no plot located on the parcel, the applicant can register the land. If there is a plot on the parcel, ownership will be verified;
- d. Limiting the land registration procedure, specifically when the land measurement is being carried out by the party whose land borders the object of measurement;
- e. Reducing village office land-related administration so that there is no duplication of land ownership.

⁹ Hadi Irawan, Ida Bagus Rai Djaja, and Nyoman A. Martana, "Studi Kasus Tentang Sertifikat Ganda Di Desa Yeh Sumbul, Kecamatan Mendoyo, Kabupaten Jembrana," *Kertha Semaya* 1, no. 2 (2013): 3.

¹⁰ Zahra Zathira, "Penyelesaian Terhadap Kasus Sertipikat Ganda Oleh Badan Pertanahan Nasional (Studi Di Kantor Badan Pertanahan Nasional Kota Malang)," *Jurnal Media Hukum & Peradilan* 5, no. 2 (2019): 232.

¹¹ Iwan Permadi, "Perlindungan Hukum Terhadap Pembeli Tanah Bersertifikat Ganda Dengan Cara Itikad Baik Demi Kepastian Hukum," *Yustisia Jurnal Hukum* 95, no. 2 (2016): 460-461.

Blockchain Technology is another method of addressing double certificates. This technology can aid in preventing and eliminating certificate duplication. Blockchain integrates several existing technologies to create what can be considered a robust and tamper-resistant file database in which individuals can store data transparently. Consequently, the utilization of blockchain to prevent duplicate land certifications at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency might be comprehended in terms of how blockchain operates. First, every action conducted on a blockchain network will be publicized and accessible to all users (decentralized). Second, blockchain is a system that makes it difficult to manipulate network-entered data. Consequently, the blockchain labor system significantly relies on the notion of openness. As a security mechanism for digital land certificates, blockchain has the potential to alter the paradigm of land archive databases. Initial centralized electronic land certificates will be dispersed so that the public can assist in monitoring changes to the certificate and accessing the data information documented on the land certificate.¹²

2. Obstacles in Preventing the Occurrence of Double Certificates

The legal ramifications of being aware of a double certificate that does not provide legal certainty, given that the purpose of land registration is to acquire a certificate that serves as a flawless piece of evidence. However, the emergence of double certificates has increased the legal ambiguity surrounding land registration. It is claimed that it fails to offer legal certainty due to no two different legal statuses exist on the same piece of land. The community's mistrust of the legal certainty of land rights, in this instance mistrust of the certificate, may result from the double certificate. A certificate of title to land should be a strong proof of ownership of land rights, the manner in which can it be said to be powerful if there are two certificates for the same land object which certificate is deemed indispensable to ensure the legal certainty of land rights.¹³

No. 976 K/PDT/2015, the ruling Two certificates for a piece of land were issued by the Bandung City National Land Agency. Multiple certifications are not permitted, despite the government's best efforts. However, there are a number of barriers that must be overcome.

According to Sri Wahyu Handayani, the obstacles faced by the Government in preventing double certificates are as follows:

- a. Lack of public awareness and interest in Complete Systematic Land Registration (PTSL) program registration of their land.
- b. errors made during the land measurement procedure that are not covered by protocols, such as the property owner's absence during the land measurement;
- c. The state does not guarantee the accuracy of the data supplied under the negative land publication system, therefore other parties may still question the validity of the land rights if they can show that they are the rightful owners.;
- d. The existing agricultural legislation is against the interests of the populace and does not provide legal certainty because it is partially based on the objectives and guiding principles of the colonialist.

V. CONCLUSION

1. The National Land Agency does not have a valid database, which explains why the community has been issued doubles certificates. Due to a paucity of input from various data sources, the National Land Agency (BPN) must attempt to prevent this from occurring. Efforts should be made to computerize/digitize land registration maps to reduce human error, collect data on titled land parcels, plot using GPS (Global Positioning System) technology, streamline the land registration process, streamline administration at village offices pertaining to village land, and utilize blockchain technology or a computerized data storage system containing records connected through cryptography in land administration.
2. An absence of interest from the public in signing up their land through the PTSL scheme, procedural shortcomings in the land assessment process, a negative land publication system in which the data offered is not necessarily valid, and the state's inability to guarantee the accuracy of the data presented are some of the challenges to preventing multiple certificates. Moreover, the current agricultural law is a colonialist relic that is not in the community's best interests.

VI. SUGGESTIONS

Some suggestions from the author are as follows:

1. BPN must implement a computerization/digitization scheme for registering land maps in order to reduce human error and improve land administration,

¹² Joshua Paskah Nugraha et al., "Penerapan Blockchain Untuk Pencegahan Sertipikat Tanah Ganda Di Kementerian Agraria Dan Tata Ruang/Badan Pertanahan Nasional," *Widya Bhumi* 2, no. 2 (2022): 129-130.

¹³ Suryani Mursalim, Muhammad Akbal, and Tika Nurjannah "Hak Atas Tanah (Studi Kasus Pada Pengadilan Tata Usaha Negara Makassar)," *Jurnal Supremasi* XI, no. 1 (2016): 58.

2. Creating land registration maps and managing land-related administration at village offices
3. BPN must increase community engagement in relation to the Complete Systematic Land Registration (PTSL) program.
4. To make registering land rights simpler for the populace, the government must educate the populace on IT knowledge and proficiency.

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