

The Accountability Of The National Land Agency For The Issuance Of Double Land Certificates

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Abstract : A certificate is a valid proof of ownership what if there are multiple certificates, who is responsible for this is what the author raises with the formulation of the problem, including, 1) Legal Consequences of Multiple Land Certificates issued by the National Land Agency, 2) Forms of Accountability of the National Land Agency For Double Land Certificates that have been issued, 3) Settlement by the National Land Agency for Double Land Certificates that have been issued. The method used in this study is to use normative juridical research methods. Legal Approach.

The results of the research on the Legal Consequences of Multiple Land Certificates issued by the National Land Agency are Causing legal uncertainty, public distrust of government agencies or the Ministry of Agrarian Affairs, Losses for both parties to the dispute, especially for those who are declared defeated in court, Cancellation or revocation of certificates based on Decisions State Administrative Court which has permanent legal force.

Forms of Accountability of the National Land Agency for Multiple Land Certificates What has been issued is that the National Land Agency is directly responsible for all land issues related to the granting of rights and the issuance of multiple land certificates for the inaccuracy of the BPN in issuing the certificates, Among others 1) Principle of Responsibility Based on Elements of Error 2) Responsibility in Civil Law 3) Responsibility in Criminal Law 4) Responsibility in Administrative Law

Settlement by the National Land Agency for Double Issued Land Certificates is a direct settlement by the party in consultation with the BPN mediator, this is in accordance with 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 other than that Through arbitration and alternative dispute resolution.

Keywords: Accountability, BPN, Double Certificate,

1. Introduction

Land issues have long been a complicated and complex legal issue with broad dimensions in both developed and developing countries, so it is not easy to solve quickly. Land is a basic need in the implementation of human productive activities, both as a container and as a factor of production¹. Indonesia as a developing country where most of its people depend on the agricultural sector also experiences the same problem. Land as one of the agricultural sectors is an important factor for Indonesian society².

¹ Irawan Soerodjo, Legal Certainty of Land Rights in Indonesia, Arloka, Surabaya, 2002, p. 25.

² Ibid.

Such is the importance of land for human life, therefore it is not surprising that every human being wants to own and control it. This desire to control often results in the emergence of land problems and disputes in social life.

There is no separation between the spirit of the people and their land in Indonesia. That is, state law needs to be changed in order to change the soul of the people, either as a result of long growth or as a revolutionary eruption. In the period before the enactment of the Basic Agrarian Law, land law contained a dualism style, in which regulations were based on western law and customary law.

Land according to Article 4 paragraph (1) of the Basic Agrarian Law is "the surface of the earth that can be given to and owned by people either alone or together with other people and legal entities". Article 4 paragraph (2) of the Basic Agrarian Law emphasizes that the lands referred to in paragraph (1) give the authority to use the land in question only as needed for direct interests related to land use within the limits according to the Basic Agrarian Law and regulations higher.³

In accordance with Government Regulation Number 10 of 1961, what is meant by "Certificate" is a Land Certificate with Proof of Title consisting of a copy of the Land Book into one, the form of which is determined by the State Minister for Agrarian Affairs/Head of the National Land Agency. With this certificate, it can be used as evidence for proving in a land dispute so that it is not only evidence but also legal certainty that the land has rights over the land.

The National Defense Agency (BPN) was established based on Presidential Decree No. 26 of 1988. Since the issuance of this regulation, the duties and authorities in the land sector, which were originally under the Ministry of Home Affairs, namely the Directorate General of Agrarian Affairs, have shifted to BPN. The scope of BPN's activities only includes Agrarian in a narrow sense, namely land.

The duties and functions of the National Land Agency (BPN) as stipulated in the Presidential Decree do not only cover administrative functions, but also include the function of land formulation, both based on the Basic Agrarian Law and other laws and regulations. Because land issues are complex issues and involve the interests of many agencies.

Issuance of certificates of land rights issued by the Ministry Agrarian Affairs and Spatial Planning/National Land Agency in the form of title land certificates ownership which involves the applicant, the role of the land owner, village officials and related agencies to obtain an explanation regarding the letters as the basis for rights related to the application for a certificate, so that explanations from related parties have the opportunity not to arise certificates that legal defects.⁴

Based on the description of the background that has been stated above, the problems that will be raised in writing this thesis are as follows:

- A. What are the legal consequences for multiple land certificates issued by the National Land Agency?

³ Ali Achmad Chomzah, Land Law, Achievements Pustaka Jakarta, 2002, p. 111.

⁴ Ali Achmad Chomzah, Land Law Series III Land Law-Settlement of Disputes over Land Rights and Land Law Series IV-Land Acquisition of Government Agencies, Jakarta, Pretasi Pusaka, 2003, p. 18

- B. What is the form of accountability of the National Land Agency for multiple land certificates that have been issued?
- C. What is the resolution of the National Land Agency for multiple land certificates that have been issued?

2. Metode

This research method is normative with a statutory and conceptual approach, the legal materials used are:

- A. Primary legal materials, namely materials or legal rules that are binding and arranged hierarchically. Primary legal material consists of legislation⁵, official records or treatises in making laws and judges' decisions. As for the primary legal material of this research, namely:
 - a. Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Basic Regulations;
 - b. Law Number 5 of 1986 concerning State Administrative Court jo. Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 in conjunction with Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts.
 - c. Republic of Indonesia Government Regulation Number 24 of 1997 concerning Land Registration;
 - d. Regulation of the President of the Republic of Indonesia No. 63 of 2013 concerning the National Land Agency of the Republic of Indonesia
 - e. Presidential Regulation Number 20 of 2015 concerning the National Land Agency;
 - f. Presidential Regulation Number 17 of 2015 concerning the Ministry of Agrarian Affairs and Spatial Planning;
 - g. Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials
 - h. Regulation of the President of the Republic of Indonesia Number 20 of 2015 concerning the National Land Agency
 - i. Regulation of the Head of the National Land Agency No. 3 of 2011 concerning Management of the Study and Handling of Land Cases;
 - j. 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
- B. Secondary legal material is additional legal material obtained from the literature related to the problem being studied which originates from the elucidation of the law⁶. All legal publications that are not official documents that provide an explanation of primary legal materials as contained in a collection of libraries that are supporting primary legal materials, for example books, journals, bulletins and the internet.
- C. Tertiary legal materials include legal dictionaries.

⁵ Suratman and Philips Dillah, Legal Research Methods, Bandung, Alfabeta, 2014, p. 67

⁶ Suratman and Philips Dillah, Legal Research Methods, Bandung, Alfabeta, 2014, p. 67

- D. This analysis using legal interpretation or interpretation is only one method of finding law (*rechtsvinding*) and apart from that there are still several methods of finding law that can be used by jurists.

3. Discussion

A. Legal Consequences for Multiple Land Certificates Issued by the National Land Agency

According to the Regulation of the President of the Republic of Indonesia No. 63 of 2013 concerning the National Land Agency of the Republic of Indonesia, in Article 1, that: "The National Land Agency of the Republic of Indonesia, hereinafter referred to as BPN RI, is a non-ministerial government agency that is under and responsible to the President". Whereas in Article 2 it is stated that: "BPN RI has the task of carrying out government duties in the land sector nationally, regionally and sectorally in accordance with statutory provisions".

Furthermore, in Article 37 it is stated that:

- 1) In order to carry out the tasks and functions of BPN RI in the regions, Regional Offices of the National Land Agency are established in the provinces and Land Offices in the districts/cities.
- 2) The Land Office as referred to in paragraph (1) may be established by more than 1 (one) Land Office in each district/city. By paying attention to these two articles, it can be said that the Land Office is a TUN Officer.

This is because, regulated in Law no. 5 of 1985 concerning the State Administrative Court in Article 1 No. 2, that: "State Administrative Agencies or Officials are Agencies or Officials who carry out government affairs based on applicable laws and regulations" In Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Registration Land in Article 1 states that: "A certificate is a proof of title as referred to in Article 19 paragraph (2) letter c of the UUPA for land rights, management rights, waqf land, ownership rights to flats units and mortgage rights, each of which has been recorded in the relevant land book.

Furthermore, in the Regulation of the Minister of Agrarian Affairs/Head of BPN No. 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights in Article 3 paragraphs (1) and (2).

Land certificates according to the provisions above are government actions that have legal consequences, in the form of granting land rights, and are issued by TUN officials. Thus, the land certificate is a TUN Decision which is the object of the TUN Judiciary dispute. This is because in Law no. 5 of 1985 concerning the State Administrative Court in Article 1 no. 3 states that: "State Administrative Decisions are a written determination issued by a State Administrative Agency or Official which contains State Administrative legal actions based on applicable laws and regulations, which are concrete, individual and final in nature, which give rise to consequences law for a person or civil law entity.

Thus, according to the author's analysis, the presence of multiple certificates has legal consequences, namely:

1. Does not provide legal certainty, because the purpose of a person doing land registration is to obtain a certificate as a perfect means of proof. But with the emergence of multiple certificates, it creates legal uncertainty in terms of land registration. It is said that it does not provide legal certainty because there are no two legal statuses on the same land.
2. Having multiple certificates can cause people to distrust the legal certainty of land rights, in this case the distrust of certificates. Because a certificate of land rights should be a strong proof of ownership of land rights, but how can it be said to be strong if there are two certificates with the same land object, which one is considered strong which can guarantee legal certainty of land rights.
3. Loss means that a person expects to obtain legal status for his land but due to multiple certificates and then being declared defeated in court with the consequence of having the certificate declared null and void, the person automatically suffers a loss because how can the land registration process incur costs, especially if the land is wide and most likely on the land will be built a business or a place to make a living. Not to mention the court fees that must be paid by the Defendant as the losing party in the trial. Besides that, it is said to cause losses because the land in dispute will be very difficult to sell and even if it were possible the selling price of the land would be low, especially considering that in this case the Plaintiff had previously intended to sell the land but from the results of re-measurement of the location, the Plaintiff was surprised that based on the news the event is known if on the plaintiff's land there are other people's certificates. So with the dual certificate, the Plaintiff feels disadvantaged because he cannot make a sale and purchase or transfer the land because the status of the land is currently in dispute.
- 2) The loss of both parties to the dispute, especially for those who were declared lost in the trial.
- 3) Cancellation or revocation of a certificate based on a Decision of the State Administrative Court which has permanent legal force. So, with the existence of the Court Decision which has permanent legal force (*inkracht van gewijsde*), the National Land Agency, in this case the Defendant as the Agency responsible for the issuance of multiple certificates due to mistakes or negligence committed by him, must revoke or cancel the certificate which was declared null and void by the Court. State Administration.

Land disputes occur between two parties and can be resolved amicably with the intermediary of the National Land Agency as a mediator and as the party responsible for land issues that occur in Indonesia. In this settlement it is expected to reach a consensus and not harm either party. If the settlement must be carried out through legal channels, it is certain that it will require more energy, time and materials. After the decision of the Panel of Judges which decided to cancel one of the certificates, which must be carried out by the National Land Agency. Because the decision cannot satisfy both parties, if there are parties who feel disadvantaged, they can submit other legal remedies. If the

loss that arises is the result of negligence, negligence or intentional action from the National Land Agency, then the agency can be morally and materially responsible. Victims or parties who feel aggrieved can submit a request for compensation by suing through the local District Court.

B. Forms of Accountability of the National Land Agency for Multiple Land Certificates That Have Been Issued

Land rights certificates are in the form of State Administrative Decisions (hereinafter referred to as TUN Decisions) if taking into account the provisions of Article 1 number 3 Law Number 5 of 1986 concerning State Administrative Court jo. Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 in conjunction with Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. In Article 1 point 9 (Article 1 point 3 becomes Article 1 point 9 in Law No. 51 of 2009) it is emphasized that the elements of a State Administrative Decision (*beschikking*) are:

- 1) A written determination
- 2) Issued by a state administration agency or official
- 3) Contains acts of state administrative law
- 4) Based on the applicable laws and regulations
- 5) Be concrete, individual, and final
- 6) Cause legal consequences for a person or civil legal entity.

Thus the certificate of land rights is:⁷

- 1) Decisions of State Administrative Agencies or Officials, namely Decisions of the Head of the Land Office.
- 2) The intent of the written contents of the certificate is that it contains the type of right (eg property rights or building use rights), land location/address, land area, land boundary, certificate number, measurement letter, and measurement letter number and so on.
- 3) The writing is addressed to a person, group of people or legal entity as the holder of land rights.

Responsibility in the Big Indonesian Dictionary means the condition of being obliged to bear everything (if something happens you can be sued, blamed, estimated, and so on)⁸. In the legal dictionary, responsibility is a necessity for someone to carry out what has been obligated to him.

Meanwhile, according to the law, responsibility is a result of the consequences of a person's freedom regarding his actions related to ethics or morals in carrying out an action⁹. Legal responsibility occurs because of obligations that are not fulfilled by one of the parties to the agreement, this also causes the other party to suffer losses due to the fact that one of the parties does not fulfill their rights¹⁰. According to the Triwulan Tutik point, that

⁷ Adrian Sutedi, *Land Rights Certificate*, SINAR GRAFIKA, Jakarta, 2012, page 33.

⁸ Admin, "protect", in <http://kbbi.web.id/account%20responsibility>, accessed on January 2, 2023 at 21.16 WIB

⁹ Andi Hamzah, *Legal Dictionary*, Jakarta, Ghalia Indonesia, 2005, p. 42.

¹⁰ Soekidjo Notoatmojo, *Health Ethics and Law*, Jakarta, Rineka Cipta, 2010, p. 39

accountability must have a basis, namely things that give rise to legal rights for a person to sue another person as well as things that give birth to other people's legal obligations to provide accountability¹¹.

In the legal dictionary there are two terms that refer to accountability, namely liability and responsibility.

- 1) Liability is a broad legal term (a board legal term), in which it refers to the most comprehensive meaning, covering almost every character of risk or responsibility, certain, dependent, or possible. Liability is defined to designate all rights and obligations. In addition, liability can also be interpreted as a condition of being subject to actual or potential obligations, a condition of being responsible for actual or possible things such as losses, threats, crimes, costs or expenses; conditions that create the duty to implement the Act immediately or in the future.¹²
- 2) Responsibility means things that can be accounted for for an obligation, and includes decisions, skills, abilities, and prowess. Besides that, it can also mean the obligation to be responsible for the law that was implemented, and repair or otherwise, provide compensation for any damage that has been caused¹³.

In terms of understanding and practical use, the term liability refers to legal responsibility, namely accountability due to mistakes committed by legal subjects, while the term responsibility refers to political responsibility. In general, the principles of responsibility in law can be distinguished as follows:¹⁴

- 1) Principle of Responsibility Based on Elements of Error

The principle of responsibility based on fault (fault liability or liability based on fault) is a fairly common principle applicable in criminal and civil law. In the Civil Code, especially Articles 1365, 1366 and 1367, this principle is firmly adhered to. This principle states that a person can only be legally held accountable if there is an element of error that he has committed.

Article 1365 of the Civil Code, commonly known as the Article on unlawful acts, requires the fulfillment of four main elements, namely:

- a) There is an act;
- b) There is an element of error;
- c) There is a loss suffered;
- d) There is a causal relationship between errors and losses.

What is meant by error is an element that is contrary to law. The definition of law is not only against the law but also decency and decency in society¹⁵.

- a) The Presumption Principle of Always Being Responsible
- b) The Presumption Principle of Not Always Being Responsible
- c) Absolute Responsibility Principle

¹¹ Quarter Point Tutik and Shinta Febrian, Legal Protection for Patients, Jakarta, Achievement Library, 2010, p. 48

¹² SF Marbun, State Administrative Law, Yogyakarta, UII Press Yogyakarta, 2003, p. 249

¹³ SF Marbun, *ibid*

¹⁴ Shidarta, Indonesian Consumer Protection Law, Revised Edition, Jakarta, Gramedia Widiasarana Indonesia, 2006, p. 73-79

¹⁵ Shidarta, Consumer Protection Law in Indonesia, PT. Grasindo, Jakarta, 2006, p. 74

d) Principle of Liability With Limitation

If the author is an analyst with the forms and responsibilities of the national land agency for the certificates that have been issued, then the national land agency must be absolutely responsible for the products that have been issued by examining the files or documents that have been submitted by the parties whether there were errors in issuing and analyzing from a document so that a product can be accounted for according to applicable laws and regulations.

2) Responsibilities in Civil Law

Legal responsibility in civil law is in the form of a person's responsibility for actions that violate the law. Unlawful acts do not only include acts that are contrary to criminal law, but if the act is contrary to other laws and even with unwritten legal provisions. The statutory provisions for unlawful acts aim to protect and provide compensation to the aggrieved party.¹⁶

Liability for unlawful acts exists to protect one's rights. The law in unlawful acts outlines rights and obligations when a person commits a wrongful act or negligence or injures another person and the act causes harm to another person.¹⁷

Acts against the law (*onrechtmatige daad*) are regulated in Article 1365 to Article 1380 of the Civil Code. The lawsuit for unlawful acts is based on Article 1365 of the Civil Code which reads: "any unlawful act, which brings harm to another person, obliges the person who because of the mistake of issuing the loss, compensates for the loss"

Based on Article 1365 of the Civil Code, an act is said to be an unlawful act if it fulfills the following elements:

1. Actions, whether intentional (performed actively) or negligence (passive or not intending to do so).
2. Against the law, namely if it fulfills the following conditions:
 - a) Contrary to the subjective rights of others;
 - b) Contrary to the legal obligations of the perpetrator;
 - c) Contrary to decency;
 - d) Contrary to propriety, thoroughness and prudence.
3. Error, namely intentional or negligent conditions that fulfill elements against the law.
4. Loss, namely in relation to Article 1365 of the Civil Code that determines the obligation of the perpetrator of an unlawful act to pay compensation.

There is a causal relationship between the act and the loss, that the loss suffered by the victim must really be as a result of the actions committed by the perpetrator.

If the author of the analysis from the theory of civil liability means that with the form and responsibility in a civil manner towards the national land

¹⁶ Komariah, Civil Law (Revised Edition), Malang, University of Muhammadiyah Malang, 2001, page 12.

¹⁷ Rosa Agustina (et.al.), Law of Obligations, Denpasar, Larasan Library, 2012, page 6

agency for the certificates that have been issued, the national land agency must be absolutely responsible for the products that have been issued which have caused losses to the parties by the method of documents or documents that have been submitted by the parties whether there was an error in issuing and analyzing a document so that a product that can be civilly accounted for is released, if a loss occurs, the national land agency must compensate for the loss in a manner that has been stipulated by law. invitation. This is in accordance with Article 1365 of the Civil Code.

3) Responsibilities in Criminal Law

Criminal liability (toereken-baarheid, criminal responsibility, and criminal liability), is an obligation to pay retaliation that will be received by the perpetrator from someone who has been harmed.¹⁸ A person gets a sentence depending on two things, namely there must be an act that is contrary to the law, or in other words, there must be an element against the law so there must be an objective element, and against the perpetrator there is an element of error in the form of intentional and or negligence, so that the action against the law can be accounted for to him so there is a subjective element. The occurrence of criminal liability because there has been a criminal act/action committed by someone.

Thus, criminally accountable actions contain two things, namely: (1) mistakes and (2) the ability to be responsible. These errors are of two types, namely:

- a) Intentional (opzet), which includes three things as follows:
 - i. Purposeful intention.
 - ii. Intentional certainty.
 - iii. Deliberately aware of the possibility.
- b) Negligence (culpa) lies between intentional and accidental. The offense of culpa contains two kinds, namely the offense of negligence which causes consequences and which does not cause consequences, but what is punishable by crime is the act of imprudence itself, the difference between the two is very easy to understand, namely negligence which causes consequences. negligence, for those who do not need to cause consequences by the negligence itself is already threatened with criminal penalties.

This means according to the author that with the criminal form and responsibility towards the national land agency for the certificates that have been issued, the national land agency must be absolutely responsible for the product that has been issued which has caused intentional mistakes and there is a game with the land mafia which intentionally publishes to control illegally, then the agency or individual of the national defense agency must be personally responsible. And must be held accountable before the law.

4) Responsibilities in Administrative Law

State administrative law is part of public law, namely the law that regulates government actions and regulates the relationship between the

¹⁸ Romli Atmasasmita, Comparative Criminal Law, Bandung, Mandar Maju, 2000, p. 65.

government and citizens or the relationship between organs of government. State administrative law contains all the regulations relating to how the organs of government carry out their duties¹⁹.

Government is related to systems, functions, methods of action, activities, affairs or acts of governing that are carried out or organized or carried out by the government in a broad sense (all State Institutions) and in a narrow sense (the president and his staff or officials). In a rule of law state, every act or action of the government must be based on law, because of the principle of legality. This principle determines that without the basis of authority granted by an applicable law, all kinds of government officials will not represent authority that can influence or change the condition or legal position of its citizens.

Accountability for government actions arises as a result of two things, namely the existence of authority and the existence of rights and obligations. Therefore, government accountability is an obligation to organize law from the state or government or other officials who carry out government functions as a result of an objection, lawsuit, judicial review, filed by a person, community, civil legal entity.

In relation to the accountability of the Land Office can also be concluded as follows²⁰:

- a) As TUN officials, the Land Office has two forms of accountability.
- b) Personal responsibility at the Land Office occurs if there is a claim for a dispute over a land certificate declared accepted in the TUN Court, and maladministration is found. It can take the form of criminal liability if a criminal element is found, or civil liability if an unlawful act is found.
- c) Institutional responsibility at the Land Office occurs if there is a claim for a dispute over land certificates declared accepted by the State Administrative Court, and cannot be found through the administration. It can take the form of administrative responsibility in the form of encumbrance (condemnatoir) or creation or it can also be civil liability if elements of unlawful acts are found.

The National Land Agency always strives for solutions to settle land disputes based on applicable laws and regulations by taking into account the sense of justice and respecting the rights and obligations of each party. In disputes over multiple certificates, the National Land Agency has the authority to negotiate, mediate and facilitate the disputing parties and initiate an agreement between the parties.

BPN regional offices, ²¹namely in Provinces and Regencies/Municipalities, can only arrive at a decision on solving the problem, while follow-up actions on land administration are still carried out

¹⁹ SF Marbun, *State Administrative Law*, Yogyakarta, UII Press Yogyakarta, 2003, p. 23

²⁰ Sufriadi, "Occupational Responsibilities and Personal Responsibilities in Administration in Indonesia," *Yuridis Journal*, Vol. 1, No.1, June 2014, p. 79

²¹ Elza Syarif, *Resolving Land Disputes Through the Special Land Court*, Gramedia Popular Library, Jakarta, 2012, p. 276

by the National Land Agency. In order to minimize land disputes in this case multiple certificates, in this case the role played by BPN as a public servant includes:²²

- a) Reviewing and managing data to resolve cases in the land sector;
- b) Accommodate lawsuits, prepare response memory materials, prepare appeal memorandum, cassation memory/counter memory, cassation review memory/counter memory on cases filed through the judiciary against individuals and legal entities that harm the state;
- c) Collect data on land issues and disputes;
- d) Review and prepare a draft decision regarding the settlement of land disputes;
- e) Examine and prepare a draft decision on the cancellation of administratively flawed land rights and based on the strength of a court decision;
- f) Documenting.

From the explanation above, the authors conclude that the Administrative Forms of Accountability of the National Land Agency for Multiple Land Certificates that have been Issued are divided into 3, including the following:

- a) BPN is responsible for the certificates it issues. Based on the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2011 concerning Management of the Assessment and Handling of Land Cases, Article 54 explains that: Article 54
 - 1. BPN RI is obligated to implement court decisions that have obtained permanent legal force, unless there is a valid reason not to carry them out.
 - 2. The valid reasons as meant in paragraph (1) include among others:
 - i. Against the object of the decision against other conflicting decisions;
 - ii. Collateral confiscation is being placed against the object of the decision;
 - iii. Against the object of the decision being the object of a lawsuit in another case;
 - iv. Other reasons that are regulated in the laws and regulations.
- b) Regarding BPN's responsibility for implementing the decision to cancel certificates by PTUN as stated in Regulation of the Head of BPN RI No. 3 of 2011 are as follows: Article 55, Article 56, Article 57, Article 58, Article 59
- c) Forms of responsibility that can be carried out by the National Land Agency for Legal Responsibilities Related to Court Lawsuits and Administrative Responsibilities:²³

²² Satino Mulyadi, "Settlement of Dual Certified Land Ownership Disputes" Juridical Journal Vol. 6 No. 1, June 2019 : 147 – 173, p.164

1. Legal Responsibilities Related to Lawsuits in Court The party that files a lawsuit in court regarding the same plot of land, namely there are 2 (two) land certificates that overlap (overlapping) certificates so as to bring legal uncertainty to the holders of land rights experience defects in administrative law in their issuance . Thus, in order to create legal certainty, will land registration guarantee legal certainty?
2. Responsibilities for Administration of Payment of Certificates The decision of the National Land Agency in granting certificates or land rights is an administrative action directly related to the State Administrative Court to adjudicate it. The legal principle of State Administration is that the person concerned must be given the opportunity to file a lawsuit in court. The emergence of a dispute issued by a State Administrative Decree is a State Administrative dispute with the issuance of a State Administrative Decree there must always be a causal relationship, without a State Administrative Decree being issued, it is impossible until there is a State Administrative dispute. Landowners or people related to a land ownership can apply for annulment and revocation of land certificates. Cancellation of land rights due to defects in administrative law issued by an authorized official. The National Land Agency (BPN) is absolutely responsible for overlapping land ownership as a result of an inaccurate land registration system. The Head of the National Land Agency is responsible for the certificates issued related to the authority to issue certificates lies with the Head of the National Land Agency. This system of absolute liability requires that the National Land Agency be responsible both in and out of court if there is a lawsuit regarding land rights. The occurrence of overlapping land ownership as a cause of land disputes is absolutely the responsibility of the Head of the National Land Agency.

C. Settlement by the National Land Agency for Multiple Land Certificates That Have Been Issued

BPN also has a certain mechanism for handling and resolving land cases or disputes which is regulated 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 concerning Handling and Settlement of Land Cases, including multiple certificate disputes, namely²⁴:

1. Land disputes are usually known by the National Land Agency from complaints; Article 3 (2) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of

²³ Angelia Ingrid Lumenta, Responsibility of the National Land Agency According to Government Regulation Number 24 of 1997 Against Overlapping Land Ownership, *Lex Et Societatis* Vol. VI/No. 7/Sept/2018, Manado, p. 65

²⁴ Elza Syarief, Op, Cid, p. 167

Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases.

Complaints/Objections from the Community A dispute over land rights that arises is because of complaints/objections from people/legal entities which contain the truth and demands for a State Administrative decision in the land sector that has been determined by the TUN Officer within the BPN environment, where the decision of the Official it is felt to be detrimental to their rights to a particular plot of land. With this complaint, they want to get an administrative settlement with what is called an immediate correction from the authorized official for that matter. The dispute over land rights includes several types, including regarding the status of the land, who is entitled, objections to evidence of acquisition which is the basis for granting rights or registration of land books and so on.

2. Complaints are followed up by identifying problems. It is ascertained whether the elements of the problem are the authority of the National Land Agency or not; Article 4 (3) 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

After receiving the complaint file from the community mentioned above, the official authorized to resolve this problem will conduct an examination of the file in question. From the results of this study it can be concluded temporarily whether this complaint can be processed further or not. Furthermore, after the required data is complete, a reassessment of the proposed problem is carried out which includes aspects of the process of authority and application of the law.

3. If it is indeed its authority, the National Land Agency will examine the problem to prove the truth of the complaint and determine whether the complaint has grounds for further processing;
4. If the research results need to be followed up by examining administrative and juridical physical data, then the head of the office can take steps in the form of preventing mutations (status quo);
5. In order for the interests of the person or Legal Entity entitled to the disputed land to receive legal protection, if it is deemed necessary after the Head of the local Land Office conducts research and if from his conviction it must be a status quokan, the disputed land can be blocked.
6. If the problem is strategic, it is necessary to establish several work units. If it is political, social, and economic then the team involves institutions in the form of the DPR or DPRD, the department of home affairs, the relevant regional government;
7. The team will compile a report on the results of the research to become material for recommendations for problem solving.
8. Deliberative service

Regarding land rights disputes that are submitted to BPN for settlement, if the parties to the dispute can be brought together, it is very good if they are resolved through deliberation. disputing parties. In the case

of reaching a settlement by deliberation like this, it must also be accompanied by written evidence from the beginning, namely from the Notification Letter for the parties, the Minutes of Meeting and then as proof of the existence of reconciliation set forth in the Deed of Declaration of Peace which, if necessary, is before a Notary so that it has strong evidentiary power. perfect.

9. Revocation / Cancellation of Letters

Decisions on State Administration in the field of Land by the Head of BPN based on legal/administrative defects in the issuance. In practice so far, many people/legal entities who feel their interests have been harmed filed these objections directly to the Head of BPN. The same applies to requests for cancellation of land certificates based on a court decision with permanent legal force.

10. Settlement of Disputes Over Land

Through the Court If the settlement through deliberation between the disputing parties is not reached, likewise if the unilateral settlement of the Head of BPN for holding immediately (review) on the TUN Decision that has been issued, cannot be accepted by the parties to the dispute, then the settlement is have to go through court. While waiting for the Court's Decision, until there is a Decision with permanent legal force, it is prohibited for the relevant TUN Officials to make transfers of the land in question (*status quo*).²⁵ This is intended to avoid problems occurring in the future which will cause harm to litigants, as well as third parties, for this reason the TUN Officer in the related Land Affairs field must apply the general principles of good governance, namely to protect all interested parties while waiting there is a decision that has permanent legal force (In Kracth Van Gewijsde).

Then, if there is already a judge's decision that has definite legal force, then the Head of the local Regency/Municipal Land Office through the Head of the Provincial BPN Office concerned proposes an application for cancellation/revocation of a TUN Decree in the field of land that has been decided above. For multiple certificates, the National Land Agency will conduct research on the history of the land and its designation, and with a court decision, the National Land Agency will cancel one of the certificates. Many court decisions, especially the State Administrative Courts, which already have permanent legal force (*inkrah*) have not received follow-up from the BPN (execution) because the BPN is neither negligent nor even firm in carrying out its duties and responsibilities in order to guarantee legal certainty and defend the interests of shareholders. or owners of land rights.

In this subject matter, BPN is the body responsible for the issuance of multiple certificates due to an error or negligence by revoking/cancelling one of the certificates declared null and void by the State Administrative Court which has permanent legal force.

In Article 5 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of

²⁵ Ali Achmad Chomzah, *Land Law, Library Achievements*, Jakarta, 2002. p. 29-33.

Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases which are classified into 3 (three) classifications:

- a) Serious Cases are Cases that involve many parties, have complex legal dimensions, and/or have the potential to cause social, economic, political and security upheavals;
- b) Moderate Cases are cases between parties whose legal and/or administrative dimensions are quite clear, if the settlement is determined through a legal and administrative approach, they will not cause social, economic, political and security upheavals;
- c) Minor Cases are Complaint Cases or requests for instructions that are technically administrative in nature and their settlement is sufficient with a letter of Settlement instructions to the complainant or applicant.

Article 17 of 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 the Handling and Settlement of Land Cases explains that land cases in the handling of the BPN RI are declared completed with the following Settlement Criteria:

- a) Criterion One (K1) in the form of issuance of Notification Letter of Settlement of Land Cases and notification to all parties to the dispute;
- b) Criterion Two (K2) in the form of Issuance of a Decision Letter regarding the granting of land rights, cancellation of land title certificates, recording in a land book, or other legal actions in accordance with the Notification Letter of Settlement of Land Cases;
- c) Criterion Three (K3) in the form of a Letter of Notification of Settlement of a Land Case which is followed up by mediation by BPN to a settlement agreement or other agreement agreed upon by the parties;
- d) Criterion Four (K4) in the form of a Notice of Settlement of Land Cases which essentially states that the settlement of land cases will go through a case process in court, because there is no agreement to settle;
- e) Criterion Five (K5) in the form of a Notice of Settlement of Land Cases stating that the settlement of land cases that have been handled is not within the authority of BPN and is welcome to be resolved through other agencies.

Currently, most land disputes, in this case multiple certificates, are resolved in 3 (three) ways, namely:²⁶

- a) Settlement directly by the parties by deliberation. The basis of deliberation for consensus is implied in Pancasila as the basis of Indonesian social life and in the 1945 Constitution. Deliberations are held outside the court with or without a mediator. Mediators are usually from parties who have influence, for example the village head/lurah, traditional leaders and of course the National Land Agency. In settling land disputes through deliberation, one condition is that the dispute is not in the form of a determination of land ownership which can give rights or eliminate

²⁶ Elza Syarief, Op, Cid, p. 375

someone's rights to the disputed land, and that the disputing parties have a fairly close kinship and still adhere to local customary law.

- b) Through arbitration and alternative dispute resolution Arbitration is the settlement of cases by one or several arbitrators (judges) who are appointed based on the agreement/agreement of the parties and it is agreed that the decision taken is binding and final. The main requirement that must be met in order to use arbitration as a dispute resolution is the existence of an agreement made in written form and approved by the parties²⁷. If an arbitration clause has been written in a contract or an arbitration agreement, and the other party wishes to resolve his legal issue in court, then the court process must be postponed until the arbitration process is resolved in an arbitration institution. Thus the court must and must acknowledge and respect the authority and function of the arbitrator.
- c) Settlement of disputes through the judiciary. In accordance with regulations in force in Indonesia, in general land dispute resolution related to ownership disputes is submitted to the general court, disputes over decisions of the National Land Agency through the State Administrative Court and disputes concerning waqf land are submitted to the Religious Court.

Based on the explanation, the author concludes that the specifications of dispute resolution institutions, both litigation institutions and non-litigation institutions, until now it is clear that all of these methods cannot resolve land dispute issues completely in a short time, instead they tend to drag on. In fact, the mediation process carried out by the National Land Agency is unable to resolve existing land disputes. National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases. In addition, the National Land Agency is experiencing problems in resolving land disputes, especially the problem of multiple certificates due to overlapping issues and a lack of accuracy in analyzing a document that has been submitted by the parties.

4. Conclusion

- A. Legal Consequences of Multiple Land Certificates Issued by the National Land Agency.
 - 1) Causing legal uncertainty
 - 2) public distrust of government institutions or the Ministry of Agrarian Affairs.
 - 3) The loss of both parties to the dispute, especially for those who are declared lost in the trial.
 - 4) Cancellation or revocation of a certificate based on a Decision of the State Administrative Court which has permanent legal force.

²⁷ Jimmy Joses Sembiring, *How to Resolve Disputes Out of Court*, Visimedia, Jakarta, 2011, page

B. Forms of accountability of the National Land Agency for Multiple Land Certificates that have been issued are:

- 1) Principle of Responsibility Based on Elements of Error
- 2) Responsibilities in Civil Law
- 3) Responsibilities in Criminal Law
- 4) Responsibilities in Administrative Law
- 5) BPN is responsible for the certificates it issues.
- 6) The form of BPN's responsibility for the implementation of the decision to cancel the certificate by PTUN
- 7) Forms of responsibility that can be carried out by the National Land Agency for Legal Responsibilities Related to Court Lawsuits and Administrative Responsibilities.

Thus the National Land Agency is directly responsible for all land issues related to the granting of rights and the granting of multiple land certificates for the inaccuracy of the BPN in issuing the certificates.

C. Settlement by the National Land Agency for Dual Land Certificates that have been Issued.

BPN also has a certain mechanism for handling and resolving land cases or disputes, this is stated in Article 3 to Article 9 of 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, in this case including also a dual certificate dispute namely:

- 1) Land disputes are usually known to the National Land Agency from complaints;
- 2) Complaints are followed up by identifying problems. It is ascertained whether the elements of the problem are the authority of the National Land Agency or not;
- 3) If the problem is strategic, it is necessary to establish several work units. If it is political, social, and economic then the team involves institutions in the form of the DPR or DPRD, the department of home affairs, the relevant regional government;
- 4) The team will compile a report on the results of the research to become material for recommendations for problem solving.
- 5) Deliberative service
- 6) Letter Revocation / Cancellation
- 7) Settlement of Disputes Over Land

Currently, most land disputes, in this case multiple certificates, are resolved in 3 (three) ways, namely:

- a) Settlement directly by the party by deliberation with the BPN mediator.
- b) Through arbitration and alternative dispute resolution Arbitration is the settlement of cases by one or several arbitrators (judges) who are appointed based on the agreement/agreement of the parties and it is agreed that the decision taken is binding and final.

- c) Settlement of disputes through the judiciary. regarding disputes over the decisions of the National Land Agency through the State Administrative Court and disputes concerning waqf land submitted to the Religious Courts.

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