



## Juridical Review of Sporadic Problem Land Registration on Village Governments in Cilacap Regency

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### Abstract

For the first time, sporadic land registration at BPN must meet the applicable requirements, one of which is a dispute-free certificate. One village in Cilacap Regency refused to make a Certificate because it was an asset dispute land that an individual won based on a court decision with permanent legal force. This research is normative juridical research conducted through a literature study that examines secondary data. Based on the Regulation of the Minister of Home Affairs Number 1 of 2016 concerning Village Asset Management Article 21 Number 3, village assets can transfer ownership because of a court decision with permanent legal force. Based on this regulation, the Village Government must release these assets from the inventory list by reporting that the Regent will sign.

Keywords: Land Registration, Sporadic

Abstrak

Pendaftaran tanah secara sporadik untuk pertama kalinya dilakukan di BPN harus memenuhi persyaratan yang berlaku salah satunya adalah surat keterangan bebas sengketa. Seperti halnya di salah satu desa di Kabupaten Cilacap menolak membuat Surat Keterangan karena tanah tersebut merupakan tanah sengketa aset yang dimenangkan individu berdasarkan keputusan pengadilan yang berkekuatan hukum tetap. Penelitian ini adalah penelitian yuridis normatif dilakukan melalui studi pustaka yang menelaah data sekunder. Berdasarkan Peraturan Menteri Dalam Negeri Nomor 1 Tahun 2016 Tentang Pengelolaan Aset Desa Pasal 21 Nomor 3 bahwa aset desa dapat beralih kepemilikan salah satunya karena adanya keputusan pengadilan yang berkekuatan hukum tetap. Berdasarkan peraturan tersebut maka wajib hukumnya Pemerintah Desa melepaskan aset tersebut dari daftar inventaris dengan membuat berita yang ditanda tangani oleh Bupati.

Kata Kunci: Pendaftaran Tanah, Sporadik

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### I. Introduction

Administration of registration of land rights in modern society is the duty of the State. The government carries out land rights registration in the people's interests to guarantee legal certainty in the land sector. The Land Office carries out the registration of land rights. In carrying out this task, the Land Office is assisted by the Official for Making Land Deeds (*Pejabat Pembuat Akta Tanah*, PPAT) to carry out certain activities according to Government Regulation Number 24 of 1997 concerning Land Registration. Registration of land rights for the first time can be carried out utilizing systematic and sporadic land rights registration. In practice, the community takes care of land rights registration, some take care of themselves, and some ask for services from PPAT.

People who take care of themselves must also be prepared for all risks. Risks that become a constraining factor in registering land rights include the chronological data that must be completed and managed by themselves, proven correct, and facing all procedures or

requirements in registering land rights that are sometimes complicated and convoluted.<sup>1</sup> It is necessary to have a legal rule or the rule of law, namely regulating social life that regulates and forces society's order. The law must be in the form of a clear law to provide legal certainty for certain lands' rightful owners. That way is one way to minimize conflicts between the community and the government motivated by land disputes.<sup>2</sup> As happened in one village in Cilacap District, he refused to sign the land deed made by X because he felt that the land was village land and paid taxes from the beginning of the land. Regarding sitting cases, it began in 1963 where X's father bought three elementary schools in exchange for four *bau* village rice fields for four years, then worked on by husband X and X together, but in 2000 Font Pemuda Desa asked X to return the land to the village.

In October 2000, the village youth worked the land, but in early 2001 the X family sued the village to return the land because they felt they had bought it so that this was sued at the Cilacap District Court, which the Village Party then won with a decision that the land was village prosperity land. The X party then submitted an appeal to the Semarang High Court, which party X won because there was evidence of the sale and purchase deed in the land case. It was not until the village finally submitted an appeal to the Supreme Court where the Supreme Court's decision strengthened the High Court decision because it was correct based on decision Number: 422K/Pdt /2007.

The village head who served in 2016-2021 refused to sign the notary deed because he felt that the land was the land of the village's prosperity and where the taxpayer was the village itself from 1963 until now. Based on the Supreme Court decision results, the person who won over the land ownership was family X. So that X until now can only use the land, but the ownership based on letter C still belongs to the village. Therefore, based on the description above, the researcher is interested in researching sporadic land registration procedures questioned by the village government and how to resolve disputes over land with a permanent legal force based on court decisions but is still disputed by the village government.

## II. Research Problems

1. What is the sporadic land registration procedure questioned by the village government?
2. How to resolve disputes over land that already has legal force is still based on court decisions but is still being questioned by the village government?

## III. Research Methods

This research is normative juridical research. The normative juridical method is carried out through literature studies that examine secondary data in the form of laws and regulations, court decisions, agreements, contracts, or other legal documents, research results, assessment results, and other references.<sup>3</sup> Data collection is carried out by library research to obtain data in documents and writings by tracing laws and regulations, documents, scientific literature, and research by experts.<sup>4</sup> This study uses the primary source of secondary data or library materials. Secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. The data type is secondary data in qualitative data, which is then analyzed by the regulations relating to the problem under study. The data collected and analyzed is then

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<sup>1</sup> Darmiyani, Made and I Gede Surata, (2017), Akibat Hukum Dari Proses Pendaftaran Hak Atas Tanah Untuk Pertama Kali Secara Sporadik Sesuai Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Hak Atas Tanah di Kabupaten Buleleng, *Jurnal Fakultas Hukum UNIPAS*, Vol. 5 No. 1.

<sup>2</sup> Adrian Sutedi, *Peralihan Hak atas Tanah dan Pendaftarannya* (Jakarta: Sinar Grafika, 2007)

<sup>3</sup> Badriyah Khaleed, *Legislative Drafting Teori dan Praktik Penyusunan Peraturan Perundang-undangan*, Yogyakarta: Medpress Digital, (2014).

<sup>4</sup> Miles Mathew dan Michel Huberman, *Analisis Data Kualitatif: Buku Sumber tentang Metode-metode Baru*, Jakarta: UI Pres, (2009)

reviewed with a triangulation approach that aims to verify the correctness of the data obtained by researchers from different points of view.<sup>5</sup>

## **IV. Research Results And Discussion**

### **1. Sporadic Land Registration.**

Government Regulation Number 24 of 1997 concerning Land Registration replaces the previous regulations. Legal certainty of land ownership data will be achieved if Land Registration has been carried out. Because the purpose of land registration is to provide legal certainty and legal protection to the holders of land rights, reasonable certainty regarding the subject (i.e., what is the right, who owns it, there / no burden on it) and certainty regarding the object, namely its location, its boundaries and size, and the presence/absence of buildings/plant on it. Government Regulation Number 24 of 1997 retains the objectives and system used in Article 19 of the UUPA in conjunction with Government Regulation Number 10 of 1961.<sup>6</sup> The procedure for sporadic land registration according to Government Regulation Number 24 of 1997 is as follows:<sup>7</sup>

- a. Sporadic land registration is carried out at the request of the interested party. What interested parties mean are the parties entitled to the land parcel concerned under their power.
- b. Preparation of Registration Base Map to make a registration base map, the National Land Agency organizes the installation, measurement, mapping, and maintenance of national technical base points in each Regency / City.
- c. Determination of land parcels' boundaries To obtain the physical data required for land registration, the land parcels to be mapped will be measured. After determining their location, boundaries, and according to their need, boundary marks will be placed in every corner of the land parcels concerned.
- d. Measurement and Mapping of Land Plots and Making Registration Maps. Land parcels that have been demarcated are measured and then mapped in the registration base map.
- e. Land Register Plots or parcels of land that have been mapped or whose registration number is attached to the registration map are recorded in the land register.
- f. Making Measurement Letter. For land parcels that have been measured and mapped on the registration map, a letter is made to register their rights.
- g. Proof of New Rights. For rights registration purposes:  
New land rights are proven by:
  - Determination of the granting of rights from the competent authority to give the rights concerned according to the applicable provisions if granting rights originates from State land or land with management rights.
  - The original PPAT deed contains the granting of these rights by the Property Rights owner to the recipient of the rights concerned if it regards Building Use Rights and Use Rights on Freehold land.
- h. Announcement of Judicial Data Research Results and Measurement Results. From the collection and research of juridical data and maps of the midwife or land parcels concerned, measurement results are announced for 60 (sixty) days opportunity for interested parties to file objections.
- i. Ratification of the Announcement of Research on Physical Data and Juridical Data After the announcement period ends, the physical data and juridical data announced by the Head of the local Regency/ City Land Office are legalized with an official report.
- j. Bookkeeping of land rights, management rights, *waqf* land, and ownership rights to apartment units are registered by recording them in a land book containing juridical data

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<sup>5</sup> Sugiyono, *Metodologi Penelitian Pendidikan*, Bandung: Alfabeta, (2007)

<sup>6</sup> *Ibid.*

<sup>7</sup> Umar Said, *Hukum Pengadaan Tanah*, Setara Press, (2015)

and physical data on the land area concerned, and as long as there is a measurement letter, it is also recorded on the measurement letter.

- k. Issuance of Certificates, Certificates issued for the benefit of the right holder concerned following the physical data and juridical data that has been registered in the land book.<sup>8</sup>

Several things need to be known to obtain a certificate for land through the Village Head, one of which is a Not Dispute Certificate. In this case, it is necessary to ensure that the land being managed is not disputed land. This refers to the applicant as the legal owner. As proof, a statement letter that is not a dispute needs to include a trusted witness's signature. The witnesses were the local Rukun Tetangga and Rukun Warga officials. These officials were chosen to be witnesses because they were community leaders who knew the history of control of the land being requested. However, if a place does not have Rukun Tetangga and Rukun Warga, the witnesses are local community leaders.<sup>9</sup>

Based on the elucidation provisions of Article 7 paragraph (2), it is explained that in order to facilitate the people in remote areas where there is no PPAT to carry out legal actions regarding land, those appointed as Temporary PPAT are Government Officials who control the conditions of the area concerned, namely the Village / Kelurahan Head.

The authority of the Village / Kelurahan Head is also regulated in the provisions of Article 39 paragraph (1) letter b number (1) and number (2), which states that: Regarding land parcels that have not been registered, they are not submitted: proof of rights as referred to in Article 24 paragraph (1) or a certificate from the Village/ Kelurahan Head stating that the person concerned controls the land parcel as referred to in Article 24 paragraph (2); and a certificate stating that the land parcel concerned has not been certified by the Land Office, or for land located in an area far from the position of the Land Office, from the right holder concerned with confirmation by the Village / Kelurahan Head.

Based on the sound of Article 39 paragraph (1) letter b numbers (1) and number (2), it can be understood that the Village Head is authorized to make a certificate confirming the right to the person concerned who controls the land parcel. For sub-districts outside the city where the Land Office is located, a certificate from the head of the land registration office can be strengthened by a village head statement. Based on the evidence of land ownership owned by the community in the form of a land certificate issued by the Village Head which the local District legalizes based on Article 7 paragraph (2), and Article 39 of Government Regulation Number 24 of 1997 concerning Land Registration, it can be categorized as the basis of rights filed as the completeness of the requirements for the application for land rights, therefore if an error occurs or there is a legal flaw in the issuance of the base of the right it will result in the invalidation of the certificate issued due to an error in the procedure for issuing the certificate.<sup>10</sup>

Based on the Circular of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency No 1756 / 15. I / IV / 2016, the circular's contents simplify the land registration process to ensure community land rights' legal certainty and improve community welfare through land registration. Its acceleration is necessary by providing facilities for people who will register their land, considering that there are still people who control the land but do not have proof of land ownership (base of rights) ultimately and even wholly do not have proof of ownership so that it is constrained in the application for registration of land rights. Based on this circular, it can be concluded that a certificate is not the main requirement for making land title certificates for the sake of creating land acceleration and for the convenience of the community who will register their land.

## 2. Land Dispute Resolution Process

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<sup>8</sup> Tiarawati Poniskori, "Pendaftaran Tanah Secara Sporadik Menurut PP Nomor 24 Tahun 2007 Tentang Pendaftaran Tanah," *Jurnal Lex Privatum*, (2017), Vol. V

<sup>9</sup> Adrian Sutedi, *Sertifikat Hak Atas Tanah*, Jakarta: Sinar Grafika, (2011).

<sup>10</sup> Dono Doto Wasono, (2017), *Kekuatan Hukum Surat Penguasaan Tanah (SKPT) Sebagai Bukti Hukum Penguasaan Atas Sebidang Tanah*, Diakses pada 5 November, 2020, dari <https://media.neliti.com/media/publications/209799-kekuatan-hukum-surat-keterangan-penguasa.pdf>

Village Asset Management is regulated in Permendagri No.1 of 2016. According to Permendagri No.1 / 2016, Village Assets are village property that comes from the original assets belonging to the village, purchased or obtained from the Village Revenue and Expenditure Budget (APBDesa) or other legal rights acquisition. According to Permendagri / 1/2016, management of village assets is a series of activities ranging from planning, procurement, use, utilization, security, maintenance, deletion, transfer, administration, reporting, assessment, guidance, supervision, and control of village assets. They were intended to be in the form of village treasury land, village market, animal market, boat mooring, village buildings, fish auctions managed by the village, agricultural product auctions, village-owned forests, village springs, public baths, and other original village assets. According to Permendagri/ 1/2016, village assets' management is carried out based on functional principles, legal certainty, transparency and openness, efficiency, accountability, and value certainty.<sup>11</sup> Village assets can be written off or transferred, a court decision with permanent legal force. Based on the Regulation of the Minister of Home Affairs Number 1 of 2016 concerning Village Asset Management Article 21 Number 3, namely: Elimination of village assets that have transferred ownership as referred to in paragraph (2) letter a, among others:

- a. Transfer of village assets to other parties;
- b. A court decision that has permanent legal force.
- c. Villages that have lost their rights due to the court decision, referred to in letter b, are required to delete from the inventory list of village assets.

In the process of eliminating strategic village assets from the village inventory list, an official report must be made by stipulating it with a Village Head decree and obtaining approval from the Regent or Mayor. After signing the official report regarding removing the village assets by the Regent or Mayor, the land has been removed from the village inventory list. Then the land ownership has been transferred. The party who owns the land after the transfer can convert the land sporadically by observing the requirements and procedures according to the applicable regulations.

In statutory regulations, some provisions regulate the meaning of decisions having permanent legal force (*inkracht van gewijsde*), namely in the explanation of Article 2 paragraph (1) of Law no. 2 of 2002 concerning clemency, which reads:

What is meant by "a court decision that has obtained permanent legal force" is as follows:

1. the court's decision of the first instance which is not filed for appeal or cassation within the time specified by the Law on Criminal Procedure;
2. An appeal court decision that is not filed for cassation within the time specified by the Law on Criminal Procedure; or
3. Cassation verdict.<sup>12</sup>

So, based on the previous explanation, a decision that can be said to be a decision that has permanent legal force is as follows:

- a. The first instance's court was not appealed after seven days after the verdict was passed or after the decision was notified to the absent defendant, as provided in Article 233 paragraph (2) jo. Article 234 paragraph (1) of Law no. 8 of 1981 concerning Criminal Procedure Law ("KUHAP"), except for acquittal decisions (*vrijspraak*), decisions free from all lawsuits (*onslag van rechts vervolging*), and decisions on rapid procedural examinations because these decisions cannot be appealed (see Article 67 KUHAP).
- b. The decision of the appellate court, which is not filed for cassation within fourteen days after the court decision which is requested for cassation, is notified to the defendant (Article 245 paragraph [1] in conjunction with Article 246 paragraph [1] KUHAP).

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<sup>11</sup> Sutaryo, "Praktik Pengelolaan Aset Desa di Pemerintahan Desa Provinsi Jawa Tengah", *Jurnal Akuntansi Unesa*, (2016), Vol. 2.

<sup>12</sup> Article 2 paragraph (1) Law No. 2 of 2002 concerning Clemency

c. Cassation verdict.<sup>13</sup>

The ultimate goal and law enforcement process, namely the law, guarantees the implementation of equal justice and protection for human dignity, order, peace, and legal certainty following the law's provisions. Therefore, law enforcement must run adequately so that the goals and awareness, and legal objectives can be realized, namely, the existence of a balance or harmony between the applicable law and the values that live in society.<sup>14</sup>

Based on the Regulation of the Minister of Home Affairs Number 1 of 2016 concerning Village Asset Management Article 21 Number 3, the village is obliged to release to the party that wins the dispute based on a court decision that has permanent legal force and deletes it from the inventory list by making an official report that must have the approval of the Regent or Mayor which then party X can register the land sporadically to BPN by bringing the requirements and bringing an official report containing the release of the village asset land signed by the Regent or Mayor.

## V. Conclusion

A court decision can be said to have permanent legal force if at the first level it does not file an appeal or the second-level court does not file an appeal or a case of cassation and is binding on the parties in the case. The parties are obliged to carry out what has been decided in the court, such as land disputes that result in the release of village land assets from the village inventory list. Based on the Regulation of the Minister of Home Affairs Number 1 of 2016 concerning Village Asset Management Article 21 Number 3, namely the village is obliged to release the village asset land and results in the transfer of ownership of the land to the winning party in the case after an official report is approved by the Village Head and signed by Regent or Mayor. The winning party can register the land with the BPN after an official report is issued by the village head and signed by the Regent.

## VI. Suggestions

The party who wins the case regarding land disputes with the government is expected to register their land directly with BPN as soon as the court decision has permanent legal force because in this case, if it is allowed for years with the change of government power, it will result in difficulties in managing the disputed land.

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<sup>13</sup> Ilham Adi, (2012), "Kapan Putusan Pengadilan Dinyatakan Berkekuatan Hukum Tetap", Accessed October 30, 2020, from <https://www.hukumonline.com/klinik/detail/ulasan/lt50b2e5da8aa7c/putusan-yang-inkracht/>

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