

Legal Uncertainty Regarding Dual Certifications in Agrarian Law in Indonesia

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Abstract

Legal uncertainty regarding dual certificates in agrarian law in Indonesia is a significant problem that has the potential to cause prolonged land disputes. Dual certificates can arise due to inconsistencies in the land registration system, officers' negligence, applicants' negative intentions, and invalid administration. It creates uncertainty regarding ownership rights and reduces public trust in the land system. This study aims to analyze the legal uncertainty arising from dual certificates and their implications for legal certainty in agrarian law in Indonesia. In addition, this study also examines efforts that can be made to create legal certainty regarding dual certificates through improvements in the land registration system and the application of stricter legal principles. The research method used is normative juridical with a statutory approach and a conceptual approach. This study is expected to provide a deeper understanding of the problem of legal uncertainty related to dual certificates and solutions that can be applied to overcome this problem in agrarian law in Indonesia.

Keywords: *Legal Uncertainty, Dual Certifications, Agrarian Law, Legal Certainty*

1. INTRODUCTION

The land is a highly valuable asset with unique characteristics, making it essential for every landowner to possess proof of ownership in the form of a certificate. Land certificates serve as legal evidence of ownership, allowing the holder to sell, mortgage, donate, or inherit rights to the land through buying and selling, gifts, or inheritance. These certificates are issued by the National Land Agency (BPN) through a land registration system regulated by Government Regulation No. 24 of 1997 on Land Registration (PP Pendaftaran Tanah). According to Article 33, paragraph (3) of the 1945 Constitution, the purpose of land registration is to provide legal protection and certainty for land right holders while managing land to achieve the welfare of the Indonesian people (Solina et al., 2020).

Land regulations in Indonesia are fundamentally governed by Law No. 5 of 1960. Following Indonesia's independence on August 17, 1945, the agrarian legal conditions were characterized by legal dualism, where colonial Dutch land laws remained in effect alongside customary laws, the original laws of the Indonesian people. This agrarian legal dualism persisted for 15 years post-independence until the government enacted Law No. 5 of 1960 concerning the Basic Agrarian Law (UUPA). The UUPA aims to eliminate agrarian legal dualism and establish a principle of legal unity applicable throughout Indonesia, embodied by the repeal of all Dutch colonial agrarian laws and the adoption of customary law as its material basis. The drafting of the UUPA was grounded in the noble aspiration that this law would serve as an instrument for achieving the prosperity of the Indonesian people (Ismaya, 2013). After being enacted on September 24, 1960, Law No. 5 of 1960 became widely known as the Basic Agrarian Law (UUPA), referred to as "Basic Law" since it serves as the foundation for all agrarian regulations. The objectives of enacting the UUPA, as outlined in the general explanation, are as follows:

- a. To establish a foundation for the formation of national agrarian law functioning as a means to achieve prosperity, happiness, and justice for the state and all its people, especially farmers, within a framework of a fair and prosperous society (principles of statehood).
- b. To set a basis for achieving unity and simplicity in land law (principles of unity and simplicity).
- c. To provide a foundation for legal certainty regarding land rights for all citizens (principle of legal certainty).

From these objectives, it is evident that one of the main targets of the UUPA is to offer legal certainty to the people regarding their land rights. Legal certainty in land ownership is vital for effective governance. In Indonesia, agrarian regulations require land registration to ensure the protection of property rights and instill confidence among rightful landholders. The law stipulates that a "certificate" is a strong proof of ownership, thus providing certainty and legal protection to its holder. With this certificate, the rights of the landholder are guaranteed (Sibuea, 2011). The government, through legal political policies in the field of land, carries out land registration to ensure legal protection and

certainty for land rights holders. Although land registration has been conducted since colonial times, it focused primarily on customary land to determine subjects liable for tax payments (fiscal cadastre). Meanwhile, the primary purpose of land registration today is to provide legal certainty for land right holders (rechts cadastre). A land certificate functions as valid proof of ownership over a piece of land and is a legal product issued by the National Land Agency (BPN). As an official document, the certificate offers legal certainty to its owner by ensuring that land rights are recognized by law.

Moreover, land certificates play a crucial role in preventing ownership disputes, as the status of land rights recorded in the certificate is clear and registered, thus avoiding future disputes or overlapping claims of ownership. The objectives of land registration are to guarantee the clarity of an individual's rights, prevent boundary disputes, and determine tax amounts. Legal certainty means that, with registration, an individual's land rights status becomes clear—whether it involves ownership rights, cultivation rights, building use rights, or other rights. Preventing boundary disputes, with a piece of land registered, potential conflicts regarding land boundaries can be avoided. Tax determination, knowing the size of the land, allows for the assessment of the tax that the owner must pay (Parlindungan, 1990). More broadly, land registration provides information on land usage and utilization, its optimal potential use, as well as information regarding buildings on it, land and building values, and applicable tax rates.

Duplicate certificates represent a serious problem often encountered in Indonesia's agrarian legal system, reflecting a lack of legal certainty in land administration. Duplicate certificate cases arise when two or more certificates are issued for the same piece of land, leading to confusion about who is entitled to that land. This situation typically results from negligence or mistakes in land administration processes, such as data duplication or recording errors at the National Land Agency (BPN), or from illicit practices like document forgery. This leads to uncertainty in land ownership, affecting the rights of legitimate landowners and opening up the potential for conflicts or disputes among parties claiming ownership of the same land. Furthermore, duplicate certificates indicate weaknesses in land data management, which should provide legal certainty for the community (Anatami, 2017). Duplicate certificates have significant economic, social, and

legal impacts. Economically, landowners affected by duplicate certificates cannot fully utilize their land because their rights to it are contested or hindered by other claims of ownership recognized by certificates. This restricts potential development or transfer of rights to the land, ultimately harming the landowners and diminishing the land's economic value. Socially, conflicts arising from duplicate certificates often trigger tensions among individuals, families, or even community groups claiming ownership of the same land. These conflicts can escalate into prolonged disputes, disrupting social harmony and creating uncertainty within the community. Legally, duplicate certificates create legal uncertainty as two or more parties have legally valid rights per the certificates to the same piece of land, which may lead to complex legal disputes that are difficult to resolve and affect public trust in the existing land administration system.

The National Land Agency (BPN) was established by Presidential Decree No. 26 of 1988, which transferred land-related duties and authorities previously held by the Directorate General of Agraria, Ministry of Home Affairs, to the BPN. The activities of the BPN are limited to agrarian matters in the narrow sense, namely land. According to the presidential decree, the tasks and functions of the BPN encompass not only land administration but also policy formulation related to land based on the Basic Agrarian Law and other legislation. Given the complexity of land issues involving various institutions, BPN plays a strategic role in managing and resolving land problems in Indonesia (Maksum, 2020).

As the agency responsible for issuing land certificates, the National Land Agency (BPN) plays a crucial role in ensuring legal certainty and legitimacy of land ownership in Indonesia. Certificates issued by the BPN serve as formal proof of land ownership, providing legal protection for owners and preventing land disputes. However, the emergence of duplicate certificate cases reveals weaknesses in administrative processes and internal coordination within the BPN, such as insufficient data verification or inadequately utilized information systems. These weaknesses lead to the issuance of overlapping certificates, complicating the resolution of ownership disputes and undermining the agency's credibility in maintaining legal certainty in land matters. This research is crucial considering that duplicate certificates represent a real and ongoing

issue in the Indonesian land system, not only harming individual victims but also reflecting instability and uncertainty in the national land law system. Duplicate certificates lead to legal uncertainties that provoke broader social, economic, and legal conflicts. Therefore, this research aims to identify the legal consequences faced by those adversely affected by duplicate certificates and to seek solutions that can better ensure justice, certainty, and legal protection for the community while enhancing the land administration system in Indonesia. Based on this brief overview, the author will discuss the legal uncertainties regarding duplicate certificates in Indonesian agrarian law and their implications, alongside efforts to create legal certainty concerning duplicate certificates in Indonesian agrarian law.

2. METHOD

The normative legal research method is a method used in legal studies that focuses on the study of legal documents and norms. This method aims to analyze the applicable legal rules and how these rules are applied or interpreted in a particular setting. In normative legal research, the main sources used are laws and regulations and other legal literature. This approach is very relevant in researching theoretical and conceptual legal issues, such as legal uncertainty regarding dual certificates in agrarian law in Indonesia the implications for legal uncertainty regarding dual certificates, and efforts to create legal certainty regarding dual certificates. One of the approaches used in this method is the statute approach and the conceptual approach (Marzuki, 2010). The statutory approach is carried out by examining and analyzing various rules that regulate certain problems, such as Law Number 5 of 1960 concerning Basic Agrarian Principles and related regulations. Through this approach, researchers can discuss the legal uncertainty regarding dual certificates in agrarian law in Indonesia as well as the implications for the legal uncertainty regarding dual certificates and efforts to create legal certainty regarding dual certificates in agrarian law in Indonesia.

3. RESULTS AND DISCUSSION

Legal Uncertainty Regarding Dual Certificates in Agrarian Law in Indonesia

Legal certainty refers to the term "certain," which signifies certainty within the law. Budiono Kusumohamidjojo states that legal certainty is one of the objectives of law encompassing the meaning of consistency in law enforcement. Sudikno Mertokusumo further explains that legal principles are generally basic ideas that underlie every concrete regulation and exist within the legal system, both in legislation and judicial decisions included in positive law. In legal theory, there is the principle of legal certainty or *rechtmatigheid*, indicating that this principle serves as the foundation for all policies and actions across various fields within a state governed by law, emphasizing laws and regulations as guidelines (Wijayanta, 2014). Thus, the principle of legal certainty guarantees that the law must be executed accurately and consistently. Essentially, the primary purpose of the law is to create certainty. Without certainty, the law loses its identity and meaning, rendering it ineffective as a guiding principle for individuals.

In land matters, particularly concerning land rights certificates, legal certainty heavily relies on the accuracy and orderliness of the existing land registration system. In the absence of a clear and reliable system, uncertainty regarding land ownership rights, such as duplicate certificates, becomes unavoidable. It underscores the importance of accurate and systematic land data management, where every registration process should be based on valid and verified data. When land registration and data management systems are inadequate, the legal certainty that should be guaranteed by land certificates is disrupted, potentially leading to disputes and losses. To create legal certainty, it is essential to ensure that every certificate issuance is conducted with strict procedures based on valid and sufficient data. Discrepancies between the data on registration maps and negligence in document verification by officials are the main factors leading to duplicate certificates and resulting legal uncertainties.

One underlying factor for the emergence of duplicate certificates is the unavailability of land registration maps for certain areas. Additionally, depicting one parcel of land on multiple registration maps can cause confusion about the location of the registered land. The maps used in land registration, such as Registration Maps, Prona

Result Maps, Mass Certificates, Tax Maps for Land and Buildings, and Village Maps, often lack consistency among each other, making it so that a piece of land recorded on one map may not appear on another. This situation opens opportunities for disputes. Duplicate certificates can also result from errors or negligence by officials in issuing land certificates. Officials' lack of diligence in verifying existing documents that do not meet applicable legal requirements can lead to mistakes in certificate issuance.

Another factor contributing to duplicate certificates is ill intent from applicants to gain personal benefits by claiming boundaries that are not theirs. In this process, the National Land Agency (BPN) usually measures based only on the boundaries indicated by the applicant, with approval from neighbors directly adjacent to the land (*contradictoire delimine*). Inaccurate or dishonest determinations of land boundaries can lead to overlaps and, ultimately, duplicate certificates. Public ignorance regarding types of land certificate registrations often causes duplicate certificates. For instance, an existing certificate should be registered for subdivision but is instead registered as a first-time certificate. This typically occurs when a portion of certified land is sold, necessitating the subdivision of the already sold and unsold land.

Furthermore, duplicate certificates can occur concerning inherited land. This situation arises when, prior to the landowner's death, the land has been sold to another party without the heirs' knowledge, who subsequently receive a certificate in the buyer's name. The heirs then register the same land, resulting in duplicate certificates because the previous certificate was not properly recorded. Another factor contributing to duplicate certificates is improper administration at the village level. When proof or acknowledgment of rights issued by the Village Head contains inaccuracies or falsifications or has expired, it can trigger the issuance of duplicate certificates.

According to Article 1, number 20 of Government Regulation No. 24 of 1997 on Land Registration (PP Pendaftaran Tanah), a certificate is a document signifying rights as referred to in Article 19, paragraph (2), letter c of Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), encompassing land rights, management rights, waqf land, ownership rights to apartment units, and registered mortgages in the relevant land book. The certificate is granted to the land rights holder to provide legal certainty and protection.

Although the UUPA does not explicitly define a certificate as proof of rights, the Land Registration Regulation clarifies that the document evidencing registered land rights is called a certificate, which is a copy of the land book combined with the measurement letter, complete with the cover prescribed by the Minister of Agrarian Affairs.

The certificate as proof of land rights possesses evidential qualities as outlined in Article 32, paragraphs 1 and 2 of the Land Registration Regulation. However, this provision is flawed as the state does not guarantee the accuracy of the physical and juridical data stated in the certificate, nor is there protection for the certificate holder if the certificate is later contested by other parties claiming rights. To rectify this weakness, Article 32, paragraph (2) of the Land Registration Regulation stipulates that a certificate as proof of land rights must possess an absolute nature, meaning to be accepted as valid evidence, the certificate must satisfy several conditions, namely:

- a. it is issued legitimately in the name of an individual or legal entity,
- b. the land is acquired in good faith,
- c. the land is under actual control, and
- d. Within five years from the date the certificate was issued, neither any party has submitted a written objection to the certificate holder or the Head of the local Land Office, nor has any lawsuit been initiated in court concerning the ownership of the land or the issuance of the certificate (Sahnan, 2016).

The issuance of a certificate makes the land bookholder recognized as the rightful holder under the Basic Agrarian Law (UUPA). However, by the principle of the Negative Publication System adopted by the UUPA, even though a certificate or a provisional certificate has strong evidential power, its status can still be contested with other evidence. Therefore, parties listed in the land book are considered legitimate holders of rights according to UUPA regulations. If another party emerges claiming a land book for the same object, legal consequences will arise. Legally, both parties are legitimate rights holders, but to determine who has the right to control it, each party must prove ownership according to the Negative Publication system, which contains positive elements. In this case, Article 1 Number 7 of Law No. 30 of 2014 on Government Administration (UU Administrasi Pemerintah) stipulates that a certificate is a decision of state administration

(KTUN). If the issuance of the certificate results in harm or if parties are disagreeing with that decision, the aggrieved party may sue through the State Administrative Court (PTUN) under the provisions set out in the State Administrative Court Law.

Overlapping ownership, often referred to as duplicate certificates, creates legal uncertainty and eliminates legal protections for the respective landowners. This leads to unavoidable land disputes. The legal consequence of having two land books or certificates for the same land object is overlapping possession, where each party will claim ownership over that land. The physical holder of the land object cannot sell or maximize the utilization of the land due to the existence of another certificate for the same land. Meanwhile, the land bookholder only possesses the certificate as proof of ownership but cannot control the land object.

The existence of duplicate certificates generates legal uncertainty, as the purpose of land registration is to provide a land book or certificate as valid proof. The presence of duplicate certificates results in legal uncertainty because it contradicts the objectives of land registration (Aulia, 2017). The issuance of duplicate certificates is fail to provide legal certainty since both certificates can be considered valid evidence until a court ruling declares one of the certificates invalid. With two certificates for a piece of land, both can be regarded as valid under the law. Duplicate certificates may lower public confidence in land certificates and the performance of the National Land Agency (BPN) because land rights certificates should serve as strong proof. How can it be considered valid evidence if the certificate holder cannot control and manage the land, ultimately causing losses for the certificate holder?

The legal uncertainty regarding duplicate certificates in agrarian law in Indonesia reflects the weaknesses of the land registration system, which can affect the validity of land rights. Duplicate certificates create conflicts between parties claiming ownership over the same piece of land, where each party possesses certificates that are legitimately issued by the National Land Agency (BPN). It leads to legal uncertainty because both certificates can be viewed as valid evidence until a court ruling nullifies one of them. Consequently, the holders of duplicate certificates cannot fully control or manage the land, resulting in losses and distrust in the land registration system in Indonesia. This

uncertainty also indicates that the goal of land registration to provide legal certainty has not been achieved, given the potential for prolonged disputes between parties with rights to the same land.

Implications for Legal Uncertainty Regarding Dual Certificates and Efforts to Create Legal Certainty Regarding Dual Certificates in Indonesian Agrarian Law

The issue of duplicate certificates in agrarian law in Indonesia is a profound and complex matter concerning legal certainty over land ownership. Duplicate certificates are not merely an administrative problem; they also have the potential to create various legal conflicts, social uncertainty, and economic losses for the parties involved. As valid proof of land ownership rights, certificates should provide strong legal protection for their holders. However, when overlapping certificates occur for the same land object, the existing land system fails to provide the expected legal certainty. Various negative implications for the law and society can arise, ranging from ownership disputes to declining public trust in the National Land Agency (BPN) and the land system. Therefore, efforts to create legal certainty regarding duplicate certificates are crucial, focusing on improving the land registration system, enhancing oversight, promptly and efficiently resolving disputes, and guaranteeing legal protection for legitimate certificate holders. This sub-chapter will delve deeper into the implications of legal uncertainty arising from duplicate certificates and the steps needed to establish a fairer, more transparent, and reliable land system for the entire community.

Legal uncertainty stemming from duplicate certificates can lead to land ownership disputes between parties claiming rights over the same land. These conflicts often drag on and involve lengthy legal processes, harming the legitimate landowners in exercising their rights. Such disputes not only result in material losses, but they can also disrupt social and economic stability since the land, which could have been utilized for personal or development purposes, becomes hindered. Furthermore, these conflicts often trigger uncertainty within the community regarding who truly has rights to a piece of land, creating broader social tensions.

Holders of duplicate certificates cannot optimally manage or utilize their land due to overlapping claims. This situation prevents them from being able to sell or transfer rights to the land, hindering business processes or investments that could enhance both individual and related sectors' economies. In many cases, holders of duplicate certificates must spend time and money resolving the legal issues arising from these duplicates, ultimately affecting their financial stability. Due to this uncertainty, landowners also face the risk of losing access or control over land they legally own, impacting their potential income or land development.

The legal uncertainty associated with duplicate certificates diminishes public confidence in the land system managed by the National Land Agency (BPN). If the public believes that the land registration system cannot guarantee the security and legitimacy of certificates, trust in the legality of certificates—supposed to serve as robust proof—will erode. This has the potential to undermine the credibility of the institution responsible for land registration and negatively impact public confidence in land transactions, whether in terms of buying, gifting, or inheritance. The lack of clarity regarding the legal status of land with duplicate certificates can also add to the confusion in the community when making decisions about land ownership since people cannot ascertain whether their certificates are genuinely valid or vulnerable to claims from others. Duplicate certificates open loopholes for irresponsible parties to exploit weaknesses in the land system, leading to land misuse or fraudulent actions.

In some cases, dishonest parties may sell land that has duplicate certificates to buyers unaware of other ownership claims over that land. Such fraudulent actions can result in significant losses for buyers, who believe that the certificates they obtained are valid, even though the legal status of the land remains questionable. Additionally, in certain situations, land with duplicate certificates may be illegally occupied by parties lacking rightful claims, further compounding the uncertainty surrounding the management and use of that land. It exacerbates legal insecurity for legitimate landowners and society in general, as duplicate certificates worsen land issues that could ideally be resolved by a more transparent and accountable system.

To establish legal certainty concerning duplicate certificates, improving the land registration system is imperative. One important step is reinforcing data verification systems and implementing more accurate and integrated land mapping to avoid overlapping data that may lead to the issuance of duplicate certificates. More advanced information technology can be utilized to ensure that every land registration is accurately recorded, minimizing administrative errors, and enabling cross-checks of data from various institutions involved in land registration. Additionally, integrating data between the National Land Agency (BPN), other government agencies, and land information systems will help create a more transparent database and reduce the potential for errors in certificate issuance that may harm legitimate parties.

Enhancing oversight and coordination between BPN, relevant government agencies, and the public is essential for preventing the issuance of duplicate certificates. One effective way is to establish stricter procedures in the land certificate issuance process. This process may involve cross-checking previously registered land data and ensuring that every new certificate application does not conflict with existing rights. Furthermore, authorities must ensure that all parties involved in the land administration process, both government and public, share a common understanding of the applicable land registration procedures. With better oversight and coordination, the potential for duplicate certificate issuance can be minimized, thus increasing public confidence in the existing land system.

Disputes related to duplicate certificates must be resolved swiftly to avoid larger legal impacts for legitimate rights holders. Therefore, it is essential to have a rapid and effective dispute resolution mechanism, whether through mediation or litigation in court. The government must ensure that courts or other dispute resolution institutions have clear and efficient procedures to address cases of duplicate certificates. Legitimate rights holders should be granted the right to file lawsuits or dispute resolution requests through a transparent and equitable process. This way, disputes can be resolved more quickly, reducing potential losses for parties harmed by the uncertainty surrounding the legal status of land certificates.

In ensuring legal certainty for legitimate certificate holders, the government needs to introduce stronger legal protections. One approach could be to document and announce the status of valid land certificates, allowing the public to understand who has rights to the land. Additionally, the government can provide stronger legal rights for legitimate certificate holders to assert legal claims over their land without interference from duplicate claims. Ensuring legal certainty through clearly defined regulations regarding the status of land certificates will provide better protection for rightful holders and strengthen a fairer and more transparent land system.

One equally important step in creating legal certainty regarding duplicate certificates is raising legal awareness among the public. Education about the correct land registration process and the importance of verifying land certificate status before engaging in buying, selling, or changing rights should be widely implemented. Through effective outreach, the public can better understand applicable procedures and avoid duplicate certificates resulting from ignorance or procedural errors. With a better understanding, the public can steer clear of potential land disputes and transaction errors, promoting a more transparent and trustworthy land system.

4. CONCLUSION

Legal certainty in land matters, particularly concerning land rights certificates, is significantly influenced by the accuracy and orderliness of the existing land registration system. Certificates, which should serve as valid proof of land ownership, can instead create legal uncertainty when duplicate certificates arise. Contributing factors include discrepancies between registration maps, negligence in verification by officials, ill intent from applicants, and improper administration at the village level. This uncertainty leads to land disputes that can hinder land control and management while eroding public trust in the land registration system and the National Land Agency (BPN). In this context, while certificates possess strong evidential power, duplicate certifications create ambiguity regarding rightful ownership, a matter that can only be resolved through court decisions. Therefore, to achieve the primary legal objective of legal certainty, improvements in the land registration system are necessary to ensure it is more accurate,

transparent, and reliable, thus providing genuine legal protection to certificate holders and avoiding prolonged disputes.

The issue of duplicate certificates in agrarian law in Indonesia is complex and requires serious attention to strengthen legal certainty within the land system. The uncertainty arising from duplicate certificates not only leads to legal conflicts but also economically and socially harms legitimate landowners. To tackle this issue, it is essential to enhance the land registration system by utilizing updated information and more precise mapping, while also fostering better collaboration among the relevant institutions. Additionally, quick and efficient resolution of disputes should be bolstered through clear and transparent processes, whether they involve mediation or litigation. Additionally, stronger legal protections for legitimate certificate holders and educating the public on the importance of verifying land certificates before engaging in transactions are crucial to prevent the emergence of duplicate certificates in the future. All these efforts aim to create a fairer, more transparent, and trustworthy land system, providing legal certainty for landowners while enhancing public confidence in the National Land Agency (BPN) and the land system overall.

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