



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 20, 2021

**A new decade
for social changes**

www.techniumscience.com

ISSN 2668-7798



9 772668 779000

Legal protection of legal document holders of land rights

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Abstract. This type of research is normative legal research. Land has a very important meaning for humans, because it's the place where humans depend on their life and death. Land is a need that continues to increase from time to time for various purposes. The importance of land is not only for humans or society, but also for private and public legal entities. The increasing need for land causes the availability of land to decrease, which causes the economic value of land to continue to increase. The limited availability of land for various purposes has resulted in frequent disputes over land rights, the resolution of which often involves the court, with a decision in favor of one of the parties. The legal document of the right to rights has not been able to guarantee legal protection for the holder. This is due to many factors, including the land registration system which adheres to a negative system which tends to be positive, which allows the emergence of claims from third parties, which can prove otherwise

Keywords. protection; land rights

Introduction

Land has a very important meaning for humans, because it's the place where humans depend on their life and death. Land is a need that continues to increase from time to time for various purposes. The importance of land is not only for humans or society, but also for private and public legal entities. (Aswandi & Roisah, 2019) The increasing need for land causes the availability of land to decrease, which causes the economic value of land to continue to increase. The limited availability of land for various purposes has resulted in frequent disputes over land rights, the resolution of which often involves the court, with a decision in favor of one of the parties. (Rukmana Aji & Rosando, 2019)

The losing party is generally caused by the weakness of the evidence that is owned, namely the legal document of land rights. These legal documents are obtained through land registration, and issued by the National Land Agency. Land registration is stated in Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations, which is formulated: "To ensure legal certainty, the government holds land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by the Government Regulation ". The provisions of this article were first regulated by Government Regulation Number 10 of 1961, which was later replaced by Government Regulation Number 24 of 1997 concerning Land Registration. The purpose of land registration is to ensure legal certainty of land rights. Legal certainty is needed to support the improvement of sustainable national development. (Hidayat et al., 2020) This objective is emphasized in Article 3 letter of the Basic

Agrarian Principles, which is formulated: “to provide legal certainty and legal protection to holders of rights over a plot of land, apartment units and other registered rights so that they can easily prove themselves as holders of land rights concerned.” It’s said to guarantee legal certainty, because land registration results in legal documents containing physical data and juridical data on land rights owned by legal document holders of land rights.

Legal documents of land rights are authentic, because they are issued by an authorized official based on the prevailing laws and regulations. In the perspective of evidentiary law, the legal document of the right to constitute strong evidence to protect the interests of the legal document holder as the owner of the land parcel. However, the facts show that in disputes over land rights in courts, holders of legal land rights documents are often defeated by third parties who make claims by showing evidence to the contrary. So that for this defeat, the legal document holder lost his land rights. Based on the above background, there is a research questions, namely why legal documents on land rights cannot provide strong legal protection for the holder?

Research Method

This type of research is normative legal research.(Bastian & Michael, 2018)

Research Results and Discussion

Legal Documents of Land Rights as Guarantee of Legal Protection

Legal document on land rights are the product of government decision based on the procedures and requirements that have been determined in the statutory regulations. Legal documents of land rights, normatively, can provide legal protection for the holders. However, in reality, legal documents on land rights haven’t guaranteed strong legal protection, because the nature of land registration using a negative system tends to be positive. According to Muchtar Whid, the legal document of land rights as a product of land registration only meets normative legal rules, as a statutory order and doesn’t guarantee legal certainty.(Sari & Hanim, 2017)

Weak of legal protection for holders of legal land rights documents is inconsistent with the character of the certificate as strong evidence. Weak of legal documents of land rights as evidence show the weakness of legal documents in providing legal protection guarantees for legal document holders, of course not in accordance with the objectives of land registration as stated in the provisions of Article 3 of Government Regulation Number 24 of 1997 concerning Land Registration, namely to guarantee the **crisis law**. This is of course very detrimental to the holder. Because the obtain legal documents requires complicated requirements with a long process, a long time, costs aren’t small, but in the end you have to suffer defeat in evidence at trial.

Weak guarantees of legal protection are also not in accordance with the theory of proof, which teaches that the presentation of legal evidence by the litigants in a trial, with the aim of strengthening the truth of the arguments about the legal facts that are the subject of the dispute, so that the judge obtain a certain basis for making decisions. However, the reality is that in court judges of the don’t recognize legal documents of land rights as valid evidence.(Kusuma et al., 2017)

Factors Causing Weak Land Legal Documents in Providing Guarantee of Legal Protection for Holders

Normatively, legal documents on land rights should be strong evidence, which can guarantee repressive legal protection for legal document holders, aiming at resolving disputes

over a parcel of land against those who sue them. This is in line with the theory of repressive legal protection which is expected to provide certainty in the settlement of ownership disputes over a land parcel because legal documents are strong tools of evidence. (Glasius et al., 2020)

In relation to this repressive legal protection (Nonet & Selznick, 2017), during the trial, judges in examining, hearing, and deciding cases on legal documents of land rights, should put forward the holders of legal documents that are owned by the holders of legal documents. The weakness of legal documents of land rights in providing legal protection guarantees to their holders is caused by several factors, including the following: First, legal documents don't meet the requirements for physical data and juridical data, in this case what is stated in the legal document doesn't match the facts on the ground, for example regarding the location of the land, size of the land, land area, and so on. Second, the principle of publicity in land registration is ineffective, in this case the principle of publicity in land registration aims to provide opportunities for people who have objections to the issuance of land parcels that are being applied for legal documents, to submit objections. The realization of the principle of publicity is carried out by announcing/notifying the land location and the village office where the land is located, within a period of 2 (two) months. If within that period of time there are no complaints or objections from other parties, the National Land Agency may issue legal documents for the requested land. If this process has been carried out, the legal documents shouldn't be contested. Third, the expiration of land tenure has passed. The expiration period or *rechtsverweking* refers to a past period, meaning that if someone has controlled his plot of land for at least a certain period of time, then the legal document is for applied, then the legal document should have permanent legal force. However, the fact is that if there is a lawsuit against the legal document, the judge still accepts the lawsuit, and even the certificate holder is defeated. Fourth, the land registration system adheres to a negative system that tends to be positive. This system opens the opportunity for a lawsuit against the certificate holder of land rights, which will result in the cancellation of the land title certificate, as long as it can be proven otherwise. This fact shows that a legal document as proof of ownership of land rights hasn't been able to guarantee a strong legal protection for the holder. Because if there is a third party who can prove otherwise, then the legal document may be canceled. Fifth, irregular land administration at the Village/sub-district level. The main cause of disorderly land administration at the village/sub-district level is due to the absence of recording of any acquisition, transfer, and change of ownership of land rights in the land book in the village/sub-district. Land administration order at the village/sub-district level has a profound impact on the strength of the legal document as proof of ownership of land rights. Orderly land administration of the village/sub-district level is very important, because it's the first source of juridical and physical data on a plot of land for which a legal document is being applied. If the land administration at the village/sub-district level isn't orderly, it's very possible that disorderly land data will also occur. The fact that the issuance of a double legal document for a plot of land, the location of the land which is different from what is written in the legal document, the legal document without land parcels, etc. Is the result of disorderly administration at the village/sub-district level. Sixth the principle of safety isn't properly implementen in land registration. This principle that requires that land registration be carried out carefully, so that the result can provide a guarantee of legal certainty in accordance with the purpose of land registration. The government, in this case the land registration apparatus, should be careful in examining the physical data requirements as well as a juridical data on land rights to be registered. The land registration officer shouldn't only record proof of land rights submitted by the applicant, without carrying out careful checks or verification regarding the land parcel to be registered.

The Land Registration Office, as the party authorized to conduct registration, shouldn't only rely on the registration system with a negative system tending to be positive. (Sartika, 2020) Because this system provides an opportunity for third parties to sue the holders of previous land title legal document, as long as they can prove otherwise. The government should be held responsible if the legal document issued is canceled by the court. The government must be held responsible for mistake made in land registration.

In connection with this weakness, the negative system which tends to be positive should no longer be used, and in the future the government should replace the land registration system which is truly capable of providing legal certainty guarantees of legal document holders. For example, replacing it with the Torrens system or the Torrens system, as is done in Australia, Singapore, and Malaysia, which can ensure legal certainty. The Torrens system adopts a positive publication system, with the implementation of a positive publication system will reinforce and clarify legal protection for every citizens as the holder of land rights. (Putra, 2019)

The government should immediately issue regulations relating to orderly land administration at the village/sub-district level, particularly regarding the maintenance of physical data and juridical data on land rights. This arrangement must also be followed by adequate technology and human resource. Raising public awareness to support an orderly administration is also an effort that must be made, because legal awareness is an important part of enforcing the law, especially in relation to deleting and recording the acquisition and transfer of land rights at the village/sub-district office. (Wardhani, 2018)

The concept of legal protection for land rights holders in the future must be preceded by changes in the regulation of the land registration system, which initially used a negative publication system to become a positive publication system. The goal is to create just, certain and efficient legal protection for land rights holders. Therefore, it's hoped that the existing laws and regulations in Indonesia, especially those related to the land sector, especially those related to the land registration system, must be amended. Likewise, the National Land Agency must be more active and through in checking land administration, so as to minimize land rights disputes related to the issuance of the legal document. (Rendrajaya, 2018)

Thus, the land registration system in Indonesia must be changed from a negative publication system to a positive publication system. The State guarantees the correctness of the data presented in the certificate, which has absolute evidentiary power, and the State also guarantees the absolute interests of the holders of land rights, with the hope that the objectives of justice, certainty and benefit law can be created. In addition, reform of land administration at the village/sub-district level must also be addressed. (Ramelan, 2017)

If it turns out that the legal document is canceled by a judge, then the government must be responsible for the issuance of the legal document. Responsible means being obliged to provide an answer which is a calculation of all the things that have happened and an obligation to provide recovery for the losses that may be caused. The state's responsibility is "*the obligation of a state to make reparation arising from a failure to comply with a legal obligation under international law*". (d'Aspremont et al., 2015)

In this connection, if there is a cancellation of a land legal document, the government must be responsible by providing compensation to the legal document holder who was canceled, or to the owner of the land title whose legal document was issued on behalf of someone else. This not only provides lessons for officials such as land registration, but also means the realization of a form of responsibility for mistakes by the government in issuing legal document. As an institution that issues legal document, the government should also be responsible for issuing legal document.

Conclusion

The legal document of the right to rights has not been able to guarantee legal protection for the holder. This is due to many factors, including the land registration system which adheres to a negative system which tends to be positive, which allows the emergence of claims from third parties, which can prove otherwise. The weakness of a legal document as evidence of land rights is also due to poor land administration at the village/sub-district level as a source of physical data and juridical data on land. Lack of/inaccuracy of land registration officials in examining the required documents and/or land registration documents is another factor in the weak land title legal document as evidence of ownership of land rights, which results in weak legal protection for the holder.

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