



## CRIMINAL RESPONSIBILITY FOR LAND CRIME PRACTICES CONCERNING ISSUANCE OF OVERLAPPING LAND CERTIFICATES BY THE NATIONAL LAND AGENCY

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### ABSTRACT

Current land crime practices that need to be understood and straightened out are related to the problem of multiple certificates that occur and are often experienced by people who have multiple certificates, so far the problem of overlapping certificates of ownership of land is being questioned as a civil matter even though every action and individual official The National Land Agency, in carrying out its duties, must reasonably be suspected of an unscrupulous National Land Agency official who deliberately issued a certificate even though the certificate had previously been issued. Even though in the case of the issuance of overlapping certificates, why is it still happening so often, this is because the practice of land crimes is high which has led to the practice of bribery against officials of the National Land Agency who often do not want their positions and positions to be criminally investigated so they use the pretext of overlapping certificates. This was a technical error made by surveyors and officials in collecting physical and juridical data related to the land so that in the future problems arose between the party that previously had a certificate of ownership rights and the party that had just been issued by the National Land Agency.

Keywords: Criminal Liability, Land Crime, Overlapping Certificates, National Land Agency

### INTRODUCTION

Land ownership rights are part of the material rights guaranteed by the constitution. In the 1945 Constitution of the Republic of Indonesia as a result of the second amendment, it is regulated as follows: Article 28 g Everyone has the right to personal, family, honor, self-respect and property protection that is under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a human right. Article 28 h Everyone has the right to own property and that property may not be taken arbitrarily by anyone.

Land rights as rights over the surface of the earth, to be precise, only cover a limited part of the earth's surface, called a piece of land. Land rights do not include the body of the earth, water and natural resources contained therein.<sup>1</sup> The principle which only recognizes that land rights are limited to rights over the earth's surface is called the principle of horizontal separation. The principle of horizontal separation is the principle that separates land ownership from objects or objects that are above the land. The principle of horizontal separation separates the soil and other objects attached to the ground. The principle of horizontal separation is a principle based on customary law, and is a principle adhered to by the Basic Agrarian Law. Property rights are hereditary rights, the strongest and most fulfilling rights that people can have over land, have a social function and can be transferred and transferred. the function of each right. The word "strongest and most complete" is intended to distinguish it from usufructuary rights, usufructuary rights, usufructuary rights and so on, namely to show that among land rights that can be owned by the rightful owner "(Meaning: strongest) and fulfilled. Meanwhile, ownership rights Land, according to Boedi Harsono, is grouped into national rights, state control rights, customary rights, individual rights and mortgage rights.<sup>2</sup>

Land ownership rights contain elements of material rights and personal rights. As a material right, land rights are absolute in nature, have an unlimited period of time, *droit de suite*, and give broad authority to the owner as transferred, guaranteed, leased or used alone. As an individual right, its characteristics are relative, time is limited, the power is the same regardless of the birth of the right, authority is limited to the owner. Furthermore, Article 33 of the 1945 Constitution of the Republic of Indonesia is at the same time a reflection of the efforts of the founding fathers of the Republic of Indonesia at that time to rearrange the existing imbalanced agrarian structure as a result of the system of production patterns of colonialism and feudalism into a structure that more fair.<sup>3</sup>

Sustainable national development requires the support of legal certainty guarantees in the land sector so that Government Regulation Number 24 of 1997 concerning Land Registration is present as a concrete form in order to provide protection to the community. The existence of these legal products is part of the legal needs of society. Where the community in terms of land registration requires legal procedures in registering their land. Based on Government Regulation Number 24 of 1997 concerning Land Registration Article 1 paragraph 1 that land registration is a series of activities carried out by the Government continuously, continuously and regularly, including collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in in the form of maps and lists, regarding land parcels and apartment units, including the issuance of certificates of proof of title for land parcels for which there are already rights and ownership rights to apartment units and certain rights that burden them. Based

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<sup>1</sup> Boedi Harsono, 2007, *Menuju Penyempurnaan Hukum Tanah Nasional*, Jakarta: Penerbit Universitas Trisakti, ed. 3, h. 63

<sup>2</sup> Made Suasthawa Dharmayuda, 1987, *Status dan Fungsi Tanah Adat Bali Setelah Berlakunya UUPA*, Denpasar: CV Kayumas Agung, h. 33.

<sup>3</sup> Ya'kub, A, 2004. "Agenda Neoliberal: Menyusup Melalui Kebijakan Agraria di Indonesia", *Jurnal Analisis Sosial*, 1(1). h. 49-50.

on this article, registration is carried out and carried out by the government, in this case the National Land Agency as the official in charge of chairing the registration of the land.

So far, crimes in the land sector have been increasingly prevalent, in this case, there have been overlapping certificates issued by the National Land Agency, this is no longer an administrative error in exercising the authority to issue certificates, but rather there has been a land crime which has caused certificates to be re-issued, thus impacting conflict disputes. Land disputes that often occur at this time include land disputes related to the presence of overlapping elements. Land with overlapping status is due to the existence of more than one certificate on the land with the same object but with different owners, meaning that there is more than one ownership of the land which causes overlapping certificates for the land object. Because of this, when there is a problem regarding land disputes with overlapping status, it is necessary to take legal action to provide legal certainty over ownership rights to the land.

Based on the problems that occurred as in the case, namely decision number 2174k/pdt/2017 between the Governor of the Province of Bali as the plaintiff and opponents Ari Anjasmoro and Sutikno and the Badung National Land Agency, with a case regarding overlapping land title certificates. In the end the Supreme Court judge gave a verdict in favor of the Governor of the Province of Bali represented by Made Mangku Pastika. With Si Amar, the subject matter of the dispute is not about ownership, but about the overlap between Ari Anjasmoro's certificate of ownership and the certificate of usufructuary rights on behalf of the Provincial Government of Bali.

Logically, it is the National Land Agency that publishes and archives data on land, so this case arose because at the time the management of land surveying and mapping was carried out by the Badung National Land Agency to issue a certificate of Ari Anjasmoro's property with the intention of selling it to Mr. Sutikno, in the process of transferring names, it was found that there were overlapping land areas. It seems that the Badung Regency Land Office at that time did not work using the precautionary principle, this principle has become an aspect of legal immunity for officials of the National Land Agency so far when overlapping certificates occurred, even though it is clear that these certificates are not easy to dispute, but why can there be overlapping of these certificates. In the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency, Government of the Republic of Indonesia, Number 24 of 1997, Concerning Land Registration, so that two certificates are issued on the same land object and already have a visible certificate which was obtained in a legal way according to law.

Based on the background described above, what becomes the main issue is how criminal law accountability by officials of the National Land Agency is related to the occurrence of overlapping land certificates in a plot of land, and what is the responsibility of the Badung Regency National Land Agency for the issuance of property rights certificates. on overlapping land.

## RESEARCH METHOD

The research method is a method used by researchers who have a scientific nature to get the real truth about the research object under study related to criminal responsibility for the practice of land mafia criminals against the existence of multiple certificates carried out by the National Land Agency. the research object uses a type of normative research related to legal principles in order to get answers in answering these problems. the method of collecting legal materials used is a library study technique by focusing on primary legal studies as the main reference in answering research problems.

## DISCUSSIONS

### **Criminal Legal Liability by Officials of the National Land Agency Regarding the Occurrence of Overlapping Land Certificates in a Plot of Land**

Overlapping disputes have actually become a common thing because there are many factors that cause overlapping elements on land which turns out to have double certificates on the land. where the land that is owned by one person is also owned by another party over the same land object so that the overlapping occurs. At present there is no other institution that is given the authority to issue certificates on land except by the National Land Agency.

The problem that occurs regarding the condition of the overlapping of the land must be resolved because this problem is no longer a matter that can be focused on in the aspect of civil law between the litigants but what needs to be investigated is why there was an overlapping certificate, therefore this problem should be suspected to be a criminal offense due to indications of land crime committed by officials of the National Land Agency itself.

National Land Agency officials to avoid the aspect of criminal liability for overlapping certificates is to direct the problem to the aspect of administrative errors committed by National Land Agency officials due to errors in collecting physical data and juridical data, but no investigative efforts have been made by the police to find out it is certain that there are overlapping certificates in the absence of an aspect of corruption to play on the authority of the National Land Agency in issuing certificates so that there are multiple certificates. So far, the factor that has been played is that from the start there was no certainty regarding the land owned by someone, meaning that the land that was registered by that person used a data system from the village government which was often inaccurate in recording and even knowing the objects on the land so that when the land was registered it was often the data owned by the village is dual in nature. Then it could also happen by officials of the National Land Agency who were not careful in recording every land object that was registered. Because land objects that have been registered, officials from the National Land Agency should know that the land being measured and registered for the land already has an owner.<sup>4</sup>

Regarding the case of multiple certificates above, the legal status of which overlaps is actually not easy to happen, the incident of overlapping certificates usually occurs because there is unclearness regarding the procedures applied by officials whose orientation in the future will

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<sup>4</sup> Adami Chazawi , 2001, *Kejahatan terhadap pemalsuan*, Jakarta:PT. Raja Grafindo Persada, h. 27

cause a legal problem so that a dispute arises. overlap, the problem is under the pretext of not implementing legal procedures in land certificates in order to prevent the existence of these double certificates. Criminal acts committed by unscrupulous National Land Agency officials related to multiple certificates can occur because of several alleged criminal acts.<sup>5</sup> first, the criminal act of corruption committed by officials of the National Land Agency accepting bribes to issue certificates for the purpose and interests of other people even though the certificate has already been issued as an object, but due to the practice of bribery, the certificate can be re-issued because of the article to ensnare the Agency. There are no clear criminal rules that can be imposed on elements of the National Land Agency.

Criminal liability regulated in the Criminal Code that the ability to be responsible if it does not fulfill the provisions as stipulated in the provisions of Article 44 of the Criminal Code which reads in paragraph (1) that whoever commits an act that cannot be held responsible for him, is caused by a mental defect in growth (*gebrekkige ontiwikkeling*) or disturbed because of illness, not punished and paragraph (2) If it turns out that the act cannot be held accountable to him because his soul is disabled in development or disturbed due to illness, the judge can order that person to be put in a mental hospital, for a maximum of one year as a probationary period.<sup>6</sup> Based on the accountability based on the Criminal Code, officials of the National Land Agency as a legal subject can be held responsible because in carrying out their authority there is no possibility of error in their psychology, logically it is impossible for officials of the National Land Agency to unconsciously issue multiple certificates without any indication encouraging the issuance of certificates the

Legal issues then emerged that there were no criminal provisions that could ensnare unscrupulous officials of the National Land Agency if they were suspected of having committed the crime of duplicating certificates previously issued by the National Land Agency. The effect of this legal vacuum is that all legal issues related to certificates with dual status are considered civil matters. It is very difficult for investigators to prosecute officials at the National Land Agency, but the pattern of law enforcement must be changed if there is a problem with multiple certificates.

The Land Agency is actually obliged to investigate every report that makes a complaint against this office of the National Land Agency. The issue of multiple certificates is not a matter of who is responsible but the National Land Agency as the Land Case Settlement which has the authority to resolve land disputes.<sup>7</sup> Including a double certificate in which in the context of resolving land boundary disputes by making mediation efforts to the disputing parties by way of deliberation so that an agreement can be reached that is mutually beneficial for all parties.

National Land Agency officials related to overlapping certificate disputes when viewed from the factors can occur because there is an internal error from the officer or official concerned

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<sup>5</sup> Essing, Melky, 2012. "Alasan Hukum Melakukan Penahanan Terhadap Tersangka/Terdakwa Korupsi", *Jurnal Lex Crimen*, I(4), h. 218

<sup>6</sup> Bahiej, Ahmad, 2012. "Arah dan Tujuan Pemidanaan Hukum Pidana Nasional Indonesia", *Jurnal Supremasi Hukum*, 1(2), h. 185

<sup>7</sup> Adam Chazawi, 2002. *kejahatan mengenai pemalsuan*, Jakarta: Raja Grafindo Persada, h. 32



there is no readiness regarding the work plan that is carried out in detail.<sup>8</sup> then later in terms of collecting physical data and original documents which legally must be fulfilled for the land object in question and giving a receipt of documents to the right holder or proxy. Then they did not carry out an investigation properly according to the land object because the land official was also required to know the history of the land who had registered the land in order to avoid unwanted things and the land official was also required to have proof of ownership of the land and its origins.<sup>9</sup> However, often the National Land Agency tries to avoid its mistakes by means of the problem factors that are not necessarily carried out absolutely by National Land Agency officials. until the issuance then has other factors as an excuse from officials of the National Land Agency, it is clear that land if there is no intentional element to be re-registered it is impossible for overlapping certificates to occur, meaning that the problem of overlapping certificates is not really a problem for the owner, but indeed for officials of the National Land Agency who try to take advantage of people's ignorance.

### **The Practice of Land Crimes by the National Land Agency of Badung Regency Against the Issuance of Overlapping Certificates of Ownership of Land**

Based on the description above to provide an example of a case in decision number 2174k/pdt/2017 concerning land crimes which led to overlapping certificates. 1,520 m<sup>2</sup> with Certificate of Use Rights Number 1 on behalf of the Provincial Government of Bali, thus Plaintiffs 1 and 2 agreed that the part that experienced overlapping conditions was separated from the land that did not overlap so that a certificate of ownership rights over land number 676/Kel. The area of Lukluk is 1,520 m<sup>2</sup>.

Whereas judging from its origin, the land owned by Plaintiff 1, SHM number 676/Lukluk Village with an area of 1,520 m<sup>2</sup> was land originally controlled by the State, originating from the relinquishment of ownership rights and customary land from Wayan Rona, Made Koryan, and Ketut Genter alias Pan Lena.

Whereas, overlapping land certificates have been found. In order to obtain clarity regarding this matter, Plaintiff 2 sent a letter of complaint to the Head of the Badung Regency Land Office with a letter dated July 18 2012 regarding the existence of overlapping ownership certificates for land number 676/Kel.Lukluk covering an area of 1,520 m, On behalf of Plaintiff 1 with title certificates using Number 1/Kel.Lukluk on behalf of the certificate located in Badung dated 17 January 2012 Number 233/SP/13-5.03/I/2012 obtained the following explanation:

1. Whereas it is true that after the measurement was carried out, it was found that there were overlapping land certificates;
2. Whereas the certificate of ownership of land No. 676/Kel.Lukluk covering an area of 1,520 m<sup>2</sup> was issued in the name of Ari Anjasmoro issued on May 18, 1998 based on the decree of

<sup>8</sup> P.A.F. Lamintang, 2001, *Delik- delik Khusus Kejahatan Membahayakan Kepercayaan Umum Terhadap Surat, Alat Pembayaran, Alat Bukti, dan Peradilan*, Jakarta: Sinar Grafika, h. 79

<sup>9</sup> Luh Mas Megawati, Edy Sujana, Gede Adi Yuniarta, 2017. "Pungutan Liar (Pungli) Dalam Kepengurusan Sertifikat Proyek Operasi Nasional Agraria (Prona) Terhadap Warga Desa X (Suatu Tinjauan Mengenai Fraud)" *e-jurnal Ak Universitas Pendidikan Ganesha*. 8(2), hal, 2

the head of the regional office of the National Land Agency for the Province of Bali dated March 31, 1998 Number SK.81/HM/BPN/ P/BD/1998, Serial Number 2 while the Certificate of Use Rights Number 1/Kel.Lukluk on behalf of the Provincial Government of Bali covering an area of 1,515 m<sup>2</sup> was issued on 31 January 2005 based on the Decree of the Head of the Badung Regency Land Office dated 10 December 2004. SK Number. 09.530.1-61.03-2004;

3. Whereas the certificate of usufructuary rights number 1/Kel Lukluk on behalf of the Provincial Government of Bali covering an area of 1,515 m<sup>2</sup> was issued on land that already had a certificate, namely a certificate of ownership rights on land number 676/Kel.Lukluk covering an area of 1,520 m<sup>2</sup> issued on behalf of Ari Anjasmoro issued on the 18th May 1998. So the issuance of a certificate of use rights number 1/Kel Lukluk on behalf of the Provincial Government of Bali with an area of 1,515 m<sup>2</sup> indicated that there was a procedural error in the measurement and mapping process;

Based on the case above, if we look at the reply letter from the Head of the Badung Regency Land Office dated January 17 2012 Number 233/SP/13-5.03/I/2012, it is clear there, the certificate in the name of Plaintiff 1 was issued on May 18 1998 then 7 ( seven) years later a usufructuary certificate was issued on behalf of the Provincial Government of Bali, it is clear that the ownership rights certificate on behalf of Plaintiff 1 was issued first. It seems that there was an allegation that was made by the Badung District Land Office by accepting the certificate registration for the second time even though the data and object had clearly been issued. so that as a result of the actions of the NATIONAL LAND AGENCY, two certificates were issued on the same land object and already had a certificate previously obtained in a legal way according to law.

Land crimes that occur within the National Land Agency are related to overlapping certificates in the Supreme Court decision. Number 2174k/pdt/2017 Whereas, the relinquishment of this right was followed by the receipt of rights to the land parcels mentioned in the table by PT Siligitha, a limited liability company domiciled in Denpasar which originally intended to use the land for development and housing but this activity could not be carried out considering that these land parcels are in the green belt area so that PT Siligitha did not obtain a business location jin. Because PT Siligitha was unable to use the land according to the company's plan, the land was transferred to Plaintiff 1 on the basis of the deed of release of land tenure rights made before Wayan Sugitha, SH Notary/PPAT in Denpasar December 27, 1997 deed numbers 234 and 238, PT Siligitha himself was represented by Adhyaksa Sitompul in his position as Director of PT Siligitha, based on deed number 371 dated August 24, 1996. Furthermore, to seek material truth in the case, especially to prove the location of the land object mentioned in the disputed object certificate, an examination/trial was carried out on the spot. at the location of the land mentioned in the disputed object certificate. The local examination/trial which was also attended by measuring officers from the Land Office, in this case the Land Office which carried out the measurement task during the process of applying for a disputed object certificate. In this case it was found that the land object mentioned in the disputed object certificate was the same and or

overlapped with the said land location.

the actions of the Land Office in issuing certificates of disputed objects have also been proven to have violated the General Principles of Good Governance, as stipulated in Article 3 of Law Number 28 of 1999 concerning State Administration that is Clean and Free from KKN, in particular the Principles of Legal Certainty, the Principles of Professionalism and the Principles Accountability, because the actions of the Jepara Regency Land Office in issuing the Disputed Object Certificate have created legal uncertainty regarding the ownership of the land mentioned in the disputed object certificate, in addition to that it has also proven that the Land Office is not professional in carrying out its duties, so that the decisions it issues become not accountable

## CONCLUSION

Criminal law liability for multiple certificates needs to be investigated in every case that is suspected of having overlapping certificates, this can occur due to several alleged criminal acts, first, corruption committed by officials of the National Land Agency accepting bribes to issue certificates for a purpose and the interests of other people even though the certificate is the object that has already been issued but due to the practice of bribery it causes the certificate to be re-issued because the article to ensnare the National Land Agency for duplicating certificates does not have clear criminal rules that can be subject to articles against elements of the National Land Agency. The practice of land crimes that occur in the National Land Agency as an authorized official in the case of overlapping multiple certificates has a legal obligation to resolve the problem in this case because the National Land Agency's intention is only given the authority to issue certificates so that when there is a new certificate the fact has been published previously, it is mandatory to complete it because it has legal responsibility as a phenomenon of criminal practices in land parcels that occur within the National Land Agency agency.

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