

REVIEW ARTICLE

THE BASICS OF GOOD FAITH AND GOOD INTENTION IN LAND PURCHASE SYSTEM IN INDONESIA

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ABSTRACT

Double certificate is one of the problems in land law in Indonesia. The existence of this double certificate is closely related to legal protection in the land sale and purchase system in Indonesia. The paper is intended to analyze and describe the issuance of a double certificate for the same land field, the buyer of the land field loses the ownership certificate that is purchased by another party as a buyer with good intentions, because it has been carried out in accordance with the correct legal procedure, which means that the purchaser's certificate is guaranteed legal certainty. Legal protection for the purchaser of good land rights, that the buyer as a buyer has good intentions, with the issuance of the HGB certificate Number 181 Village/Cicau Village covering an area of 26,700 m² in the name of the Defendant, is impaired, so that legal protection provided to the Plaintiff is filing an objection to the issuance HGB certificate to the Land Office as a preventive legal protection. The fact is that it does not bring results, the repressive legal protection measures that are submitting an application for cancellation of a certificate to the Court with the defendant Head of the District Land Office accompanied by an application to cancel the certificate, can also sue for compensation on the basis of the Seller and Defendant and the Head of the Bekasi District Land Office on the basis of having done unlawful acts as referred to in Article 1365 of the Civil Code.

Keywords: *Legal Protection; Land Rights; Good Intention*

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INTRODUCTION

Plots of land with certificates of ownership, the owner of which has never acted to transfer the said plot of land, appeared to be issued along with landowners with the status of the building use rights which were represented by a legal entity. This means that the two parcels of land are certificate of ownership, namely certificate of ownership and certificate of building use rights. This is consistent with the case discussed, namely:

In 1991 Tamami bought customary land with proof of ownership in the form of Girik C 658 / P.66 in the name of Naer bin Saidand with an area of land ± 2.3 hectares are (hereinafter abbreviated as ha) located in the Village of Serang District, Cikau, Cikarang, Central Bekasi. Tamami has never sold to other parties, in June 2012, Tamami received information that people from Lippo Cikarang made a backfill on Tamami's land, because they felt they had never sold, Tamami stopped the activities of Lippo Cikarang's people.

On July 12, 2012, Tamami and Lippo Cikarang were invited by the Secretary of Cicau Village to discuss the issue of family disputes as a family. During the meeting, Lippo Cikarang explained that it had already purchased the land from Rohim, by showing a copy of the Right to Use Certificate (hereinafter abbreviated as HGB) Number 181 Village / Village of Cicau covering an area of 26,700 m² in the name of Lippo Cikarang. Lippo Cikarang also showed a copy of Certificate of Ownership Number 5 of Cicau Village on behalf of Near bin Saidan as the initial owner of the land, then switched to Rohim based on the minutes of the Bekasi class II auction dated February 27, 1995.

Tamami asked for an explanation from the Head of the Bekasi Regency Land Office regarding the existence of the 26,700 m² Village / Kelurahan Certificate in the Area of Cicau covering an area of 26,700 m² in the name of Lippo Cikarang. The Head of the Bekasi Regency Land Office explained that based on the land book, that the certificate of HGB No. 181 Desa / Kelurahan Cicau, published on August 15, 2002 was first registered in the name of Rohim. This makes Tamami the process of issuing certificates of land belonging to him is the result of engineering from the Head of the Bekasi District Land Office.

Rohim's actions in possession of the disputed land on the basis of HGB Certificate Number 181 / Cicau without checking the local village head to find out who the owner of the disputed land and the truth of the documents issued by the Village Head which are the basis for the issuance of the certificate are unlawful.

The problem was resolved through legal channels, and sued the Bekasi District Court in its decision No. 78 / PDT.G / 2013 / PN.Bks, the amar stated that it granted the Plaintiff's claim in part; Stating that the Plaintiff was the legal owner of the disputed land based on the 22nd sale and purchase letter. April 1991, Declaring Certificate of Ownership Number 5 in the name of Near bin Saidan issued on disputed land is legally flawed and does not have binding legal force; Declaring Certificate of HGB Number 181 which was originally in the name of Defendant II then turned into the name of Defendant I is flawed the law and does not have binding legal force.

Based on the description as mentioned above, it can be explained that on the same parcel of land two certificates were issued namely the Title Certificate (hereinafter abbreviated as SHM) Number 5 in the name of Near bin Saidan and Certificate of HGB Number 181 Village / Village of Cicau covering 26,700 m² in the name of Lippo Cikarang. Both certificates were stated by the Bekasi District Court in their decision to be equally null and void due to legal defects. Based on the description as above, the issue at issue is:

- a. What are the legal consequences of the issuance of a certificate of land rights for which an application is made by a party who is not a right holder / owner?
- b. What is the legal protection for buyers of land rights that are in good standing?

METHOD

Research methods according to C.F.G. Sunaryati Hartono (1997, p. 105) is a way or a process or process of examination or investigation that uses logical-analytical reasoning or thinking (logic), based on the postulates, formulas and theories of a

science (or several branches science), to test the truth (or verify) a hypothetical or theory of certain scientific symptoms, events, social events or legal events.

CERTIFICATE OF LAND WHICH THE APPLICATION IS CONDUCTED BY A PARTY THAT IS NOT A RIGHT HOLDER OR LAND-OWNER

The issuance of a HGB certificate on behalf of PT Lippo Cikarang is not based on a request for rights but a certificate of extension of rights, which means there is no connection with administrative defects related to procedural errors in the process of registering the transfer of rights and / or a replacement certificate; procedural errors in the process of registering affirmations and / or recognition of rights to former customary land; procedural errors in the process of measuring, mapping and / or extensive calculations; overlapping rights or certificates of land rights; error of subject and / or object rights; and other errors in the application of laws and regulations. PT Lippo Cikarang can file an objection related to the court's decision with the status of the land and / or the status of ownership of the land to which an administrative law will be requested. Postponement or rejection of the implementation of the legal action of land due to administrative legal defects must be reported by the Office or Regional Office to the Head of the Land Office no later than 3 (three) months after the administrative legal defect is discovered, accompanied by an explanation of the reasons for cancellation due to administrative legal defects.

The authority of the body or official in this case the Land Office is related to the issuance of a decision to issue HGB certificates on behalf of PT Lippo Cikarang, taken from the approach in administrative law. According to Philipus M. Hadjon (2010, p. 17) there are 3 (three) main approaches in administrative law, namely:

- 1) The approach to power, known as the *ultra vires* approach, illustrates the (government) power in this case the Central Cikarang-Bekasi Land Office as the focus of administrative law.
- 2) The rights based approach is a new approach in administrative law, the main focus of the approach is the protection of human rights in this case, the rights of land holders with HGB status, namely PT Lippo Cikarang, and the principles of good governance.
- 3) The functionalist approach complements the previous approach with a starting point that those who exercise governmental authority are officials (people) in this case the Central Cikarang-Bekasi National Land Agency.

The human rights approach referred to is as regulated in Law Number 39 of 1999 concerning Human Rights. Specifically, the human rights approach, especially the general principle of good governance of the UUPB). According to Philipus M. Hadjon (2004, p. 19) the AUPB was applied to the decision of the Supreme Court and concluded two elements that hold the key key in the decision, namely the principle of carefulness and the principle of equality. However, in addition to the two principles, the administration of AUPB applies, among others, involving two things, namely: no abuse of authority and no arbitrary action.

Based on the opinion of Philipus M. Hadjon (2003), the principle of "*ooroorlijk*" which is widely applied in State Administrative Court practices includes:

- 1) Principle of Accuracy
- 2) Principle of Equation
- 3) Principle of Prohibition of Abuse of Authority
- 4) Principle of Arbitrary Prohibition

General Government Principles Both in positive Indonesian law can be found in Article 53 paragraph (2) of Law Number 5 of 1986 concerning State Administrative Court as amended by Law Number 9 of 2004 concerning Amendment to Law Number 5 1986 concerning State Administrative Court (State Gazette of the Republic of Indonesia Year 2004 Number 35, and finally Law of the Republic of Indonesia Number 51 Year 2009 concerning Second Amendment to Law Number 5 of 1986 concerning State Administrative Court (PTUN Law) which includes :

- 1) Contradicting Laws and Regulations
- 2) Contrary to General Principles of Good Government.

Amendment to Article 53 paragraph (2) of the Law on State Administrative Court, General Principles of Good Government has normatively been the reason for filing a lawsuit regarding the validity of a state administrative decision. But the problem is that the Elucidation of Article 53 paragraph (2) applies the General Principles of the Good Government as stated in Article 3 of Law Number 28 of 1999 to the state administrators as a whole. This is different from the *algemene beginselen behoorlijk van bestuur* is a *levende beginselen*, developed in government practices. In Wet AROB 1975 Article 8 is stated in government practice. In AROB 1975 Article 8 states: "in the methode in het algemeen rechtsbewustzijn levend *Beginselen van behoorlijk bestuur*" (contrary to what in general legal awareness is the principles that apply / live about good governance).

Elucidation of Article 53 paragraph (2) of the Law on State Administrative Court intended by the general principles of good governance as referred to in Article 3

of Law Number 28 of 1999 concerning State Administration that is Clean and Free of Corruption, Collusion and Nipotism, is includes the principle:

- 1) Legal Certainty
- 2) Orderly State Administration
- 3) Openness
- 4) Proportionality
- 5) Professionalism
- 6) Accountability.

Associated with the power approach, the government will run the government given power, which with this power the government carries out development, regulation, and services. With regard to the function of the instruments that determine the instruments used by the government to use its power and governance norms as well as the instruments used must guarantee legal protection for the people. This means that the government in exercising its power is implemented to guarantee legal protection for the people, which means that if the approach to power violates the rights of the people it can be said that it does not guarantee legal protection for the people.

The approach of using Government General Principles in Law No. 28/1999 is recognized and applied in the administration of government and in the judicial process in State Administrative Courts.

As for the application of Good Government General Principles into judicial practice in the State Administrative Court, it can be seen in Article 53 paragraph (2) letter a that the State Administrative Court Law states "*The state administration decision sued contradicts the general principles of government good*", and in the explanation stated: "*The meaning of general principles of good governance is as referred to in Law Number 28 of 1999 concerning State Administration that is Clean and Free of Corruption, Collusion, and Nepotism*".

That explanation, according to Philipus M. Hadjon, is very misleading and wrong because it does not distinguish between the administration of state and government. Based on these reasons Philipus M. Hadjon (2003) continues:

- 1) Judges in evaluating the legitimacy should not mention Law Number 28 Year 1999 as the basis for the assessment in relation to the application of general principles of good governance, because the general principles of good governance are basically unwritten laws
- 2) Most of these principles are the principle of state administration, and not the principle of governance. The principle of state administration is included in the State Administration Law which includes legislative, executive and judicial

powers while the principle of state administration is included in Administrative Law which only covers executive power

- 3) The general principles of good governance today have been linked to the general principle of good governance. His continuity as an illustration is Philipus M. Hadjon quoting G.H's view. Addinks about general principles of good governance are related to the Dutch Public Administration Law (AWB: Algemene Wet Bestuursrecht; GALA: General Rules of Administrative law).

The procedure for granting HGB, that the HGB application is submitted to the minister through the head of the regional office, with a copy to the head of the Land Office whose working area covers the location of the land in question. If the requested land is located in more than one regency / city, then a copy of the application shall be submitted to each head of the relevant Land Office as referred to in Article 20 of the Minister of Agrarian Regulation / Head of the National Land Agency No. 9 of 1999.

After the HGB application file as referred to in Article 20 paragraph (1) is received, the head of the regional office checks and examines the completeness of juridical and physical data. record on the form according to the example in Appendix 14. notify the applicant to pay the costs required to complete the application with the details in accordance with the provisions of the applicable laws and regulations, instructing the Heads of Related Fields to complete the required materials as Article 21 Minister of Agrarian Regulation / Head of National Land Agency No. 9 of 1999.

If in fact the Bekasi District Court in its decision No. 78 / PDT.G / 2013 / PN.Bks, the amar stated that it granted the Plaintiff's claim in part; Number 5 on behalf of Near bin Saidan which is issued on disputed land is legally flawed and does not have binding legal force; Stating the HGB Certificate Number 181 which was originally in the name of Defendant II and then turned into the name of Defendant I is legally flawed and has no binding legal force. The Court's decision was inaccurate, because the District Court did not have the authority to assess the Certificate of Ownership Number 5 on behalf of Near bin Saidan which was issued on the disputed land was legally flawed and did not have binding legal force, because the one who had the authority was the State Administrative Court.

LEGAL PROTECTION OF BUYERS RIGHT TO GOOD LANDS

Regarding accountability as referred to in Article 1367 of the Civil Code above, Soetojo Prawirohamidjojo (1979: 16) divides it into two parts, namely based on Article 1367

paragraph (1) of the Civil Code and Article 1367 paragraph (2) up to paragraph (5) Civil Code. The liability as referred to in Article 1367 paragraph (1) of the Civil Code, does not determine its own responsibilities, but rather includes the responsibility for other people under their responsibility and for the objects under their supervision if they occur error. So there must be an error, according to what was stated by Soetojo Prawirohamidjojo (1979: 54-56), that "*with accountability for objects, for him, who is determined to be accountable for objects, there must be an error (the principle of responsibility sue error)*". The purpose of Soetojo Prawirohamidjojo's opinion (1979: 55) as above is if the person who is supposed to be accountable for the people who are his dependents or the items under his supervision, because his negligence causes others to suffer losses, then the person responsible a claim to provide supervision including items which are under its supervision because of its negligence must be held accountable for any losses incurred (Anatami, 2017; Chandra, 2020).

In connection with this accountability, according to Moegni Djodiredjo (1982) includes losses due to unlawful acts by others, which means that it is not always the perpetrators of acts that can be sued for accountability, but can also be other people, even though people it is not a party that actually commits an illegal act. His actions resulted in other parties suffering losses, so they have the right to request compensation from the perpetrators because their actions harm other parties (Yubaidi, 2020; Yulianti & Indiana, 2019; Anwar, 2020).

The application for land rights submitted by Lippo Cikarang is the authority of the Head of the Bekasi Regency Land Office, which is responsible for the losses suffered due to people under his responsibility. This means that the Head of the Bekasi District Land Office, is liable for damages suffered by Tamami on the basis of having committed an illegal act (Permadi, 2016).

Based on the description and discussion as mentioned above relating to the legal protection of the holders of land rights on the issuance of a certificate on behalf of Lippo Cikarang, it can be explained that Tamami as the holder of land rights get legal protection both Preventive and Repressive legal protection. Legal protection was given to Tamami as a purchaser of plots of land in good faith, so that the issuance of the HGB certificate on behalf of Lippo Cikarang did not affect Tamami's right to control the disputed parcels of land. Legal protection by submitting the revocation of the HGB certificate and filing a lawsuit on the basis of the Head of the Bekasi Regency Land Office has committed an unlawful act in the form of compensation, loss and interest as stipulated in article 1365 in conjunction with article 1246 of the Civil Code.

Lippo Cikarang argued that the plot of land was obtained as the winner of the auction. As the winner of the auction, it is not necessary to appear before the Land

Deed Making Official to make the deed of transfer of rights as Article 37 paragraph (1) of Government Regulation Number 24 of 1997, but based on article 41 of Government Regulation No. 24 of 1997, that the transfer of rights through the transfer of rights by auction can only be registered if it is proven by quotation of the minutes of auction made by the Bidding Officer. No later than 7 (seven) working days before a plot of land or unit of flats is auctioned both in the context of an execution auction and non-execution auction, the Head of the Auction Office must request information from the Land Office regarding the parcels of land or apartment units to be auctioned. The Head of the Land Office issues information no later than 5 (five) working days after the receipt of a request from the Head of the Auction Office.

The Head of the Auction Office refuses to carry out the auction, if the registered land rights or ownership rights to the unit of flats to him are not submitted the original certificate of the relevant rights, except in the case of auction execution which can still be carried out even though the original certificate of the right is not obtained by the Bidding Officer from the holder his rights; or certificates submitted are not in accordance with the registers in the Land Office; or regarding parcels of land that have not been registered, a proof of rights is not conveyed, or a statement from the Head of the Village / Kelurahan stating that the person concerned controls the parcels of land; and a statement stating that the relevant plot of land has not been certified from the Land Office, or for land located in an area far from the position of the Land Office, from the relevant right holder and is strengthened by the Village / Kelurahan Head; or there is an order from the District Court not to carry out an auction related to a dispute concerning the relevant land (Arwana & Arifin, 2019; Arifin, 2015). For registration of the transfer of rights obtained through an auction, it is submitted to the Head of the Land Office: quote of the concerned minutes of auction; certificate of ownership of a unit of flats or land rights that are auctioned off if the relevant parcels have been registered; or in the event that the certificate is not submitted to the buyer of the execution auction, a statement from the Head of the Auction Office regarding the reasons for not submitting the certificate; or if the relevant parcels have not been registered, documents; proof of identity of the auction buyer; proof of purchase payment (Nurjannah, 2016; Ali, Deininger, & Duponcel, 2017; Feder & Nishio, 1998).

Based on the description and discussion of legal protection for auction winners who cannot control the object of the auction, that the auction winners who carry out the auction are based on the correct procedures, then get legal protection according to Satjipto Rahardjo (2000), namely providing protection to human rights harmed by others and such protection is given to the community so that they can enjoy all the

rights that various legal remedies must be given by law enforcement officials to provide a sense of security, both mind and physical from interference and various threats from any party. Legal protection is the protection of dignity and the recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that can protect one thing from another. With regard to consumers, according to Philipus M. Hadjon (1987, p. 3) means the law provides protection for the rights of customers from something that results in the fulfillment of these rights. Legal protection is the narrowing of the meaning of protection, in this case only protection by law only. Protection according to Setiono (2004) and Ginting (2019) given by law, is also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with fellow humans and their environment. As subjects of human law have rights and the obligation to take legal actions. Furthermore Setiono (2004), legal protection is an act or effort to protect the public from arbitrary acts by the authorities that are not in accordance with the rule of law, to realize order and order so that it allows humans to enjoy their dignity as human beings (Leaf, 1994; Utrecht 1969; Richard, Santiago, Bathos, & Saptomo, 2018).

CONCLUSION

This paper highlighted and concluded that the legal consequences of the issuance of a certificate of land rights for which an application is made by a party who is not a right holder / owner is legally flawed, so the certificate has no binding power and can be cancelled by the court. Legal actions against certificates that are legally flawed, also do not have binding power. Likewise, the auction sale of legal defective certificates also does not have binding power. Legal protection for buyers of land rights in good faith, that buyers as parties in good faith, get legal protection. The form of legal protection can be preventive legal protection and repressive legal protection. Preventive legal protection is legal protection for parties whose rights are violated in this case the buyer is given the opportunity to submit an objection (*inspraak*) or opinion before a government decision gets a definitive form. The right to file an objection includes non-judicial legal protection because the submission of an objection is not carried out through the courts. This means preventive legal protection aims to prevent disputes in this case the occurrence of violations by the parties that befall the buyer. Repressive legal protection is repressive legal protection aimed at resolving disputes over violations in court or juridical legal protection. Preventive legal protection is very meaningful for a government based on freedom of action because with the existence of

preventive legal protection the government is encouraged to be careful in making decisions.

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QUOTE

Nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced.

Albert Einstein