

Tumpang Tindih Sertipikat Hak Milik Yang Diterbitkan Badan Pertanahan Nasional Dikaitkan Dengan Kewenangan Pejabat Pembuat Akta Tanah Dalam Membuat Akta Jual Beli (Studi Putusan Mahkamah Agung Republik Indonesia Nomor 2766 K/Pdt/2020) = Overlapping Property Rights Certificates Issued by the National Land Agency Associated with the Authority of land deed-making officials in making deeds of sale and purchase (Study of the Decision of the Supreme Court of the Republic of Indonesia Number 2

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Abstrak

Tujuan penerbitan sertipikat hak milik oleh Badan Pertanahan Nasional seharusnya memberikan pengakuan serta kepastian hukum kepada masyarakat atas kepemilikan tanah. Indonesia menganut sistem publikasi negatif, yang berarti terhadap kedudukan sertipikat dan/atau hak atas tanah masih dapat disangkalkan. Pada praktiknya masih ditemukan permasalahan tanah terkait penerbitan sertipikat, meskipun telah melalui prosedur dan/atau regulasi yang ditetapkan, terhadap proses penerbitan suatu sertipikat tanah juga dapat didasarkan atas akta autentik Pejabat Pembuat Akta Tanah, sebagai penegasan suatu perbuatan hukum terkait peralihan hak atas tanah. Adapun permasalahan yang diangkat dalam penelitian ini adalah mengenai bagaimana terjadinya tumpang tindih sertipikat hak milik yang diterbitkan oleh Badan Pertanahan Nasional, yang dibuat berdasarkan akta jual beli Pejabat Pembuat Akta Tanah; dan Bagaimana kepastian hukum atas diterbitkan sertipikat hak milik yang tumpang tindih oleh Badan Pertanahan Nasional. Untuk menjawab permasalahan tersebut digunakan metode penelitian yuridis normatif dengan tipe penelitian Preskriptif. Hasil analisis adalah belum maksimalnya proses penetapan batas bidang-bidang tanah yang berbatasan oleh Badan Pertanahan Nasional, yang disebabkan karena salah satu pemegang hak atas tanah yang berbatasan tidak menguasai tanah tersebut secara fisik, yang dikemudian hari menyebabkan terjadinya tumpang tindih atas sebagian luas tanah yang dimiliki, dengan tanah yang dimiliki pihak lain, yang juga berlandaskan sertipikat hak milik yang diterbitkan oleh Badan Pertanahan Nasional, sehingga untuk mendapatkan kepastian hukum terhadap sertipikat hak milik yang bertumpang tindih tersebut, ditempuh melalui upaya litigasi, yang kemudian terhadap tanah yang tidak diakui secara hukum, diajukan pembatalan produk hukum melalui Kepala Kantor Pertanahan. Adapun saran yang dapat diberikan yaitu memperkuat peran Badan Pertanahan Nasional dalam penerbitan sertipikat serta dibentuknya bidang atau fungsi khusus dari Badan Pertanahan Nasional yang melakukan pengecekan atau validasi atas proses penerbitan sertipikat hak milik, guna memastikan tanah terbebas dari sengketa.

.....The purpose of issuing a series of property rights by the National Land Agency should be to provide recognition and legal certainty to the community for land ownership. Indonesia adheres to a negative publication system, which means that the position of certificates and/or land rights can still be denied. In practice there are still land problems related to the issuance of certificates, even though they have gone through established procedures and/or regulations, to the process of issuing a certificate land may also be based on the authentic deed of the Land Deed-Making Officer, as an affirmation of a legal action related to the transfer of land rights. The issues raised in this study are about how there is an overlap of property

rights certificates issued by the National Land Agency, which is made based on the deed of sale and purchase of the Land Deed Making Officer; and How is the legal certainty of the issuance of overlapping certificates of property rights by the National Land Agency. To answer these problems, normative juridical research methods with a prescriptive type of research are used. The result of the analysis is that the process of determining the boundaries of adjacent land plots by the National Land Agency has not been maximized, which is caused by one of the rights holders of the adjacent land not physically controlling the land, which in the future causes an overlap of part of the land area owned, with land owned by other parties, which is also based on the certificate of property rights issued by the National Land Agency, so as to obtain legal certainty against the overlapping certificate of property rights, pursued through litigation efforts, which then against land that is not legally recognized, it is proposed that the cancellation of legal products through the Head of the Land Office. The advice that can be given is to strengthen the role of the National Land Agency in issuing certificates and the establishment of a special field or function of the National Land Agency that checks or validates the process of issuing title certificates, in order to ensure that the land is free from disputes.