

# Resolution of the Dual Certificate Issue in Makassar City through the State Administrative Court to Realize Legal Certainty (Case Study Decision No. 31 PK/TUN/2018)

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## Abstract

The purpose of this study is to analyze the problem of dual certificates in the city of Makassar through the State Administrative Court to realize legal certainty. The research method used is normative juridical research, namely research on the application of law in society. The research was carried out in a juridical manner, meaning research that refers to existing literature studies or to secondary and normative data. The data obtained by the author from this literature review will be analyzed descriptively. Based on these considerations, in the opinion of the Supreme Court, there are sufficient reasons to grant the Cassation Petitioner from the Head of the Makassar City Land Office. Based on this, the Decision of the Makassar State Administrative High Court Number 93/B/2016/PT.TUN.MKS, dated 27 September 2016 which affirms the Makassar State Administrative Court Decision Number 68/G/2015/P.TUN.Mks. April 25, 2016 cannot be maintained and must be cancelled.

**Keywords:** *Dual Certificate, Administrative Court, Land.*

## A. INTRODUCTION

Humans were created by the Almighty from the ground, so that humans in their lives cannot be separated from the soil. Land and humans cannot be separated from the moment humans are born until humans die. Humans live and reproduce and carry out activities on the ground, so that every human being is in contact with the land (Resmiyanti et al., 2019; Mucharoroh, 2021; Ayuningtyas et al., 2020). Therefore, land issues need to be arranged and planned carefully and full of wisdom.

Soil is an important factor for human needs. In fact, almost all human needs are entirely available in the soil. Indonesia as an agrarian country, its people still depend on land (Sumanto, 2020). In the national legal system, as is the case with land law, it must be in line with the constitution in force in our country, namely the 1945 Constitution of the Republic of Indonesia. Article 33 paragraph (3) of the 1945 Constitution, which affirms that: "Earth, water and natural resources contained therein, whose control is assigned to the Republic of Indonesia, must be used for the greatest prosperity of the people.

Constitutionally, the 1945 Constitution in Article 33 paragraph (3) has provided the basis that the earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. From these basic provisions, we can see that the prosperity of the community is the main goal in

the utilization of the functions of the earth, water and space as well as the natural resources contained therein (Febriyanti, 2021; Christanto & Mashdurohatun, 2020).

This basic provision is further stipulated by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA) which aims to realize what is outlined in Article 33 paragraph 3 of the 1945 Constitution as the legal basis for national land politics with one goal, namely: for the greatest prosperity of the people with the mechanism of control by the state which is then further elaborated, among others, in Articles 1, 2, 3 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). So, control, regulation in the use and control of land should not run away from the objectives mandated by our country's constitution.

Land according to Article 4 paragraph (1) of the UUPA is the surface of the earth that can be given to and owned by people either alone or together with other people and legal entities. Article 4 paragraph (2) of the LoGA confirms that the lands referred to in paragraph (1) give the authority to use the land in question only as necessary for direct interests related to the use of land within the boundaries according to the LoGA and higher regulations.

The case of multiple certificates causes legal uncertainty and defects in land administration, this is inversely proportional to the purpose of land registration which is regulated in Government Regulation No. 24 of 1997 concerning Land Registration in Article 3 that the purpose of land registration is to ensure legal certainty and legal protection to rights holders. a plot of land, to provide information to interested parties, including the government, so that they can easily obtain the data needed to carry out legal actions regarding the parcels and units of flats that have been registered, for the orderly implementation of land administration (Amin, 2021).

An example of a problem related to the occurrence of a double certificate case that occurred in decision Number 148 K/TUN/2017. This case started in 2015 at the Makassar City State Administrative Court and ended with the decision of the Supreme Court of the Republic of Indonesia in 2017. This case began with a lawsuit filed by H.M. Amin as Plaintiff I and Ali Imran, S.H. as Plaintiff II and as attorney for Plaintiff I. Against the Head of the Makassar City Land Office.

The object of dispute in this lawsuit is a State Administrative Decree issued by the Defendant/Head of the Makassar City Land Office, in the form of a Certificate of Ownership Number 20996/ Kelurahan Tamamaung, dated October 30, 2001, a letter of measurement dated June 19, 2001 Number 00653/2001, the area: 142 m<sup>2</sup> (one hundred and forty-two square meters) on behalf of Maronta GD. Sarro. That the Certificate of Ownership Number 20996/ Kelurahan Tamamaung dated October 30, 2001 with a measuring letter dated June 19, 2001 Number 00653/2001 Area of 142 m<sup>2</sup>, in the name of Maronta GD. Sarro, suppressed part of the land belonging to Plaintiff I which was purchased from A. Hadjessah Chairan, SH. the part that is crushed by the Certificate of Ownership is ± 71 m<sup>2</sup> in the southern part and land owned by Plaintiff II.

Against this lawsuit, the Makassar State Administrative Court has made a decision, namely the decision Number 68/G/2015/P.TUN.Mks dated April 25, 2016 which basically declared the Defendant's Decision to be Canceled in the form of Certificate of Ownership Number 20996/Kelurahan Tamamaung, dated 30 October 2001, Letter of Measurement dated June 19, 2001 Number 00653, covering an area of 142 m<sup>2</sup> last in the name of Maronta Dg Sarro.

Decision Number 68/G/2015/P.TUN.Mks dated April 25, 2016 was upheld by the Decision of the Makassar State Administrative High Court Number 93/B/2016/PT.TUN.Mks dated September 27, 2016, but was canceled by the Supreme Court. with case no. 148K/TUN/2017. Based on this background the author is interested in conducting research on "Solving the Problem of Dual Certificates in Makassar City through the State Administrative Court (Case Study Decision No. 31 PK/TUN/2018)".

## **B. LITERATURE REVIEW**

### **1. Definition of Land Registration**

The registration of a land must be carried out in accordance with the procedures as stipulated by the legislation. Land registration in Indonesia is regulated in Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration Article 1 paragraph (1) which confirms that: "Land registration is a series of activities carried out by the government continuously, continuously and regularly, including the collection, management, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists of land parcels and housing units, including the provision of certificates as proof of their rights for parcels of land that already have rights and Ownership Rights to Flat Units as well as certain rights that encumber them."

The words "series of activities" indicate the existence of various activities in the implementation of land registration. The words "continuously" refer to the implementation of activities, that once started there will be no end. The word "regular" indicates that all activities must be based on the appropriate laws and regulations. Land registration is a series of activities carried out by the government to collect physical data and juridical data from land parcels to be registered (Putra, 2020; Pakpahan, 2022). So, it is said that, Land registration is an administrative process which is the authority of the land office to produce a certificate as a proof of ownership rights over a plot of land.

Furthermore, according to Suhadi and Rofi Wahanisa, the notion of land registration is a series of activities carried out by the government continuously, continuously and regularly, including the collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding parcels of land and apartment units, including the granting of certificates as proof of rights for parcels of land that already have rights and ownership rights to flat units as well as certain rights that encumber them (Pratiwi et al., 2019).

Certificate as a strong evidence in the proof of ownership, the certificate guarantees legal certainty regarding the person who is the holder of property rights to land, legal certainty regarding the location of the land, the boundaries and area of a plot of land, and legal certainty regarding the rights to his land (Kalyana & Barthos, 2022; Jushendri, 2020). Such legal certainty can be given protection to the person whose name is listed in the certificate against interference from other parties and to avoid disputes with other parties. The guarantee of legal certainty is not only addressed to the person whose name is listed in the certificate as the owner of the land, but is also a government policy in creating an orderly land administration which places an obligation on the government to carry out the registration of existing lands throughout Indonesia (Richard et al., 2018).

## 2. Dual Certificate

As for what is meant by multiple certificates, i.e. a plot of land has more than one certificate, there is an overlap in whole or in part. Double certificates occur because the certificates are not mapped in the land registration map or the situation map of the area. If a land registration map or a situation map at each land office is made, and/or a picture of the situation/ measurement letter is made on the map, then the possibility of duplicate certificates is very small (Saputra et al., 2021; Suharyono, 2019). However, if there is a double certificate, then there must be a cancellation from one of the parties by checking the supporting documents. This can take a long time, if there is a certificate lawsuit to the court, to request annulment for the aggrieved party (Ramadhani & Abduh, 2021; Yubairi, 2020).

Dual certificates generally occur on land that is still vacant or has not been developed. The emergence of multiple certificates is caused by several things, as follows: 1) During measurements or field research, the applicant intentionally or unintentionally shows the wrong location of the land and land boundaries; 2) There is a letter of evidence or acknowledgment of rights which is proven to contain untruth, falsehood or is no longer valid; and 3) For the area concerned, the land registration map is not yet available (Karjoko, 2018; Santyaningsih & Zubaidi, 2020).

The dual certificates clearly result in legal uncertainty for the holders of land rights, which is highly undesirable in the implementation of land registration in Indonesia. Some of the problems that arise due to double certificates are who has the authority to cancel one of the 2 (two) certificates. Therefore, the court must determine, assess, and decide who has the right to own the land in the case based on the evidence and testimonies of witnesses. If the court has decided on a land ownership case that has permanent legal force (in kracht van gewijsde), the winning party must submit an application to the head of the BPN/land office, which cancels the defeated party's land certificate.

## C. METHOD

The research method used is normative juridical research, namely research on the application of law in society. This research was conducted with the legal education that the researchers received while attending lectures at the IBLAM College of Law. The research was carried out in a juridical manner, meaning research that refers to existing literature studies or to secondary and normative data, namely legal research that aims to obtain normative knowledge about the relationship between one regulation and another and its application in practice. The type of data in this study is secondary data. Secondary data is data in the form of documents, legal materials that exist in the research area. This data already exists from agencies related to the author's research. The data obtained by the author from this literature review will be analyzed descriptively using inductive and deductive methods which are guided by how the *ultra petita* decision is in the procedural law provisions contained in the judicial process in Indonesia.

#### **D. RESULT AND DISCUSSION**

##### **1. Legal Efforts That Can Be Taken Against Double Certificate Cases in Makassar City through the State Administrative Court**

As for the case (*posita*) or the things that underlie H. M. Amin and Ali Imran, S.H., they filed a lawsuit to ask the Makassar City Land Office to revoke the certificate in the name of Sarro because it was deemed that there had been overlapping certificates on the same land object (double certificate) can be described as follows. The object of the dispute in this lawsuit is a State Administrative Decree issued by the Defendant/Head of the Makassar City Land Office, in the form of a Certificate of Ownership Number: 20996/ Kelurahan Tamamaung, dated October 30, 2001, a letter of measurement dated June 19, 2001 Number: 00653/2001, area: 142 M<sup>2</sup> (one hundred and forty-two square meters) on behalf of Maronta GD. Sarro.

First, A. Hadjessah Chairan, S.H is the owner of residential land located in Tamamaung Village/Kelurahan, Panakukang District, Ujung Pandang City (now Makassar) as stated in the Certificate of Ownership Number: 49/Tamamaung Village, Situation Picture dated March 22, 1997 Number: 1417, with an area of 329 M<sup>2</sup> (three hundred and twenty-nine square meters), with the boundaries of which are the North side of Solomon's land; To the east, it is bordered by the land owned by Dr. Gunawang; To the south it is bordered by the road; To the west, it borders the land of Tenreng. Then on August 3, 2011 Plaintiff I H.M. Amin, bought some residential land belonging to A. Hadjessah Chairan, S.H, covering an area of approximately 160 M<sup>2</sup> (one hundred and sixty square meters) at a price of IDR. 74.240.000,- (seventy four million two hundred forty thousand rupiah) with boundaries, namely the North side is bordered by Solomon's land; To the east, it is bordered by the land owned by Dr. Gunawang; To the south it is bordered by the road; In the west bordering the land of Ali Imran. The purchase of the land is stated in the Deed of Sale and Purchase No. 172/200 By the Land Deed Officer of the Panakukang Sub-district Andi Evidence. M.SP.MSI.

Second, on 26 April 2013 H. M. Amin submitted a request for separation/dissolution of the Certificate of Ownership Number: 49/ Tamamaung Village on residential land that had been purchased from A. Hadjessah Chairan, S.H. An area of approximately 150 M<sup>2</sup> (one hundred and sixty square meters) at the Makassar City Land Office, but after almost 1 (one) year the application of Plaintiff I H. M. Amin, was not followed up by the Makassar City Land Office, then on 10 February 2014 H. M. Amin submitted a letter to the Makassar City Land Office with the matter of asking for an explanation. What is the reason that the application for split/separation of certificates is not followed up by the Makassar City Land Office.

Third, Certificate of Ownership Number: 20996/Kelurahan Tamamaung dated 300-10-2001 with a measuring letter dated June 19, 2001 Number: 00653/2001 Area of 142 M<sup>2</sup>, in the name of Maronta GD. Sarro, suppressed part of the land owned by H.M. Amin which was purchased from A. Hadjessah Chairan, S.H. The part that is crushed by the Certificate of Ownership is ± 71 M<sup>2</sup> in the southern part. Issuance of Certificate of Ownership Number: 20996/Kelurahan Tamamaung, dated October 30, 2001, letter of measure dated June 19, 2001 Number: 00653/2001 Area of 142 M<sup>2</sup> (one hundred and forty sqm) in the name of Maronta GD. Sarro greatly harmed H.M.Amin, because of H.M.Amin's request for a certificate split/separation of the residential land that Plaintiff I had purchased from A.Hadjessah Chairan S.H. as the legal owner as stated in the Certificate of Ownership Number 49/Tamamaung, Situation Picture Number: 1417/1997 cannot be continued.

Fourth, the Makassar City Land Office which has issued a certificate of Ownership Title Number: 20996/Kelurahan Tamamaung, dated October 30, 2001, Letter of Measurement dated June 19, 2001, number: 00653/2001, area of 142M<sup>2</sup> (one hundred and forty-two square meters) in the name of Maronta GD. Sarro, on land owned by Plaintiff I which was purchased from A. Hadjessah Chairan, SH. As the legal owner, previously there was a Certificate of Ownership Number 49/ Tamamaung Picture of the situation Number 1417/1997 issued. The Makassar City Land Office has violated the applicable laws and regulations in casu Government Regulation Number 24 of 1997 concerning Land Registration Article 31 paragraph 1, which reads "a certificate is issued for the benefit of the right holder concerned in accordance with the physical data and juridical data that have been registered in the book. land as referred to in Article 30 paragraph (1) in conjunction with Regulation of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997 Article 59.

Fifth, the actions of the Makassar City Land Office are contrary to the General Principles of Good Governance, namely the principle of imprecision, namely because the Makassar City Land Office issued Certificate of Ownership Number 20996/ Kelurahan Tamamaung dated October 30, 2001, Measurement Letter dated June 19, 2001 Number 00653/2001 covering an area of 142 M<sup>2</sup> (one hundred and forty-two square meters) in the name of Maronta GD. Sarro. In the case of the above land, the Certificate of Ownership Number: 49/Tamamaung has been issued with a picture of the situation number 1417/1997 on behalf of A. Hadjessah Chairan S.H. Therefore, H. M. Amin filed a lawsuit against the Fourth, Makassar City Land Office based on

Article 53 paragraph 2 letters a and b of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts. Therefore, the Decree issued by the Fourth, Makassar City Land Office is in the form of Certificate of Ownership Number 20996/Kelurahan Tamamaung dated October 30, 2001, Letter of Measurement dated June 19, 2001. Number 00653/2001 covering an area of 142 M<sup>2</sup> (one hundred and forty-two square meters) on behalf of Maronta GD. Sarro, has violated the legislation.

Sixth, on November 1, 2006 Plaintiff II Ali Imran, SH. Has purchased residential land from A. Hadjessah Chairan S.H. As mentioned in point 1 above, the area is 164.5 M<sup>2</sup> (one hundred sixty-four point five square meters) with a price of Rp. 25,000,000,- (twenty five million rupiahs) located in Tamamaun Village, Panakukang Subdistrict, Makassar City with boundaries namely, the North side is bordered by Sulaiman's land; To the east, it is bordered by land owned by A. Hadjessa Chairan, SH; To the south it is bordered by the road; To the west it is bordered by the land of Tenreng.

Seventh, on November 20, 2006 Plaintiff II Ali Imran, SH. To the office of Notary Andi Jumaini, SH., to issue the Deed of Sale and Purchase of the land purchased from A. Hadjessa Chairan, S, H, but after a few months later Notary Andi Juamaini, S.H was apparently unable to issue the Deed of Sale and Purchase on the grounds that, above land owned by Andi Hadjessa Chairan, S.H with Certificate Number: 49/Desa Tamamaung, picture of situation dated March 22, 1997, Number: 1417 Area 329 M<sup>2</sup> (three hundred and twenty-nine square meters) there are double certificates. Then on February 10, 2014 Ali Imran, S.H submitted a letter to the Makassar City Land Office, asking for an explanation, is it true that the land owned by A. Hadjessah Chairan S.H. Certificate of Ownership Number: 49/Desa Tamamaung Year 1997, there are multiple certificates. Furthermore, on August 11, 2015 the Makassar City Land Office conveyed to Ali Imran S.H through Letter Number: 116/200-3-73-71/1/2015 regarding requesting an explanation, in the letter it was stated that after measurements were made on April 29, 2013 based on Assignment letter number: 1416/St-20.01/VI/2013, it is known that the Certificate of Property Rights Number: 20996/Kelurahan Tamamaung, dated October 30, 2007 is described in a letter of measurement dated June 19, 2001, Number: 00653/2001 Area 142 M<sup>2</sup>. Recorded in the name of Maronta Dg Sarro. Based on this, Plaintiff II Ali Imran, SH. filed a lawsuit for the cancellation of Certificate of Ownership Number: 20996/ Kelurahan Tamamaung, dated October 30, 2001, letter of measurement dated June 19, 2001, Number: 00653/2001, area of 142 M<sup>2</sup> in the name of Maronta Dg. Sarro, at the Makassar State Administrative Court as referred to in Article 55 Law of the Republic of Indonesia Number 5 of 1986 concerning State Administrative Courts.

Eighth, Certificate of Ownership Number: 20996/Kelurahan Tamamaung dated October 30, 2001, letter of measure dated June 19, 2001 Number: 00653/2001, area of 142 M<sup>2</sup>. On behalf of Maronta GD. Sarro, suppressed part of the land belonging to Plaintiff II Ali Imran, SH. purchased from land owned by A. Hadjessah Chairan S.H. As for the part that is crushed by the Certificate of Ownership, it is in the southern part with an area of ± 71M<sup>2</sup>. Issuance of Certificate of Ownership Number:

21996/Kelurahan Tamamaung, dated October 30, 001 letter measuring dated June 19, 2001 Number: 00653/2001, area of 142 M<sup>2</sup> (one hundred and forty-two square meters) on behalf of Maronta Dg. Sarro, very detrimental to Plaintiff II, because as the buyer who has controlled and occupied the land, however, the Sale and Purchase Deed cannot be issued. Therefore, Plaintiff II filed a lawsuit at the Makassar State Administrative Court as referred to in Article 53 (1) of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court.

Ninth, the action of the Defendant who has issued Certificate of Ownership Number: 20996/Kelurahan Tamamaung, dated October 30, 2001, Letter of Measurement dated June 19, 2001 Number: 00653/2001, area of 142 M<sup>2</sup> (one hundred and forty-two square meters) in the name of Maronta Dg. Sarro, on the land belonging to Plaintiff II Ali Imran, SH. purchased from A. Hadjessa Chairan, SH. as the previous legal owner, as stated in the Certificate of Ownership Number: 49/Tamamaung, picture of the situation number: 1417/1997, the Defendant has violated the prevailing laws and regulations in casu Government Regulation Number: 24 of 1997 concerning Land Registration Article 31 paragraph (1) reads "The certificate is issued for the benefit of the right holder concerned in accordance with the physical data and juridical data that have been registered in the land book as referred to in Article 30 paragraph (1). In conjunction with the Regulation of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997 Article 59 which reads "For the purposes of researching juridical data on land parcels, both written and unwritten evidence are collected in the form of witness statements and/or relevant statements, which are shown by the holder of land rights or their proxies or other interested parties to the Adjudication Committee".

Tenth, the actions of the Makassar City Land Office contradicted the General Principles of Good Governance, namely the principle of imprecision, namely because the Defendant issued a Certificate of Ownership Number: 20996/Kelurahan Tamamaung dated October 30, 2001, Letter of Measurement dated May 19, 2001 Number: 00653/2001 covering an area of 142 M<sup>2</sup> (one hundred and forty-two square meters) in the name of Maronta GD. Sarro. In the case of the land above, the Certificate of Ownership Number: 49/Tamammaung has been issued previously, the picture of the situation Number: 1417/1997 on behalf of A. Hadjessah Chairan, SH. Therefore, Plaintiff II Ali Imran, SH filed a lawsuit against the Defendant based on Article 53 paragraph 2 letters a and b of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court. issued by the Defendant in the form of Certificate of Ownership Number: 20996/Kelurahan Tamamaung, dated October 30, 2001, Letter of Measurement dated June 19, 2001, Number: 00653/2001 covering an area of 142 M<sup>2</sup> (one hundred and forty-two square meters) in the name of Maronta GD. Sarro, has violated the laws and regulations, therefore the Plaintiff/appeal is declared null and void and requires the Defendant to revoke the object of the dispute.

In addition, the Plaintiffs' claim is not appropriate in filing a lawsuit (Absolute Competence) because what the Plaintiffs argue in filing their lawsuit is a wrong thing

because the things that are the basis for the positum of the lawsuit already involve the issue of ownership of civil rights or have clearly been constitutes the Absolute Competence of the General Courts Institution as regulated in Article 77 paragraph 1 of Law Number 5 of 1986 jo. Law Number 9 of 2004. The answer regarding the subject matter of the case is based on data at the Makassar City Land Office that the Certificate in casu was originally issued based on the Sale and Purchase Deed dated May 16, 2001 No. 371/III/3/KP/V/2001 so that the arguments of the Plaintiffs' claims are fabricated arguments, so they should be rejected or at least not accepted.

Legal efforts made by H. M. Amin and Ali Imran, S.H who felt aggrieved against the issuance of certificates by the Makassar City Land Office filed a lawsuit to the Makassar State Administrative Court with Case Number: 68/G/2015/P.TUN.Mks. In the first instance process, the lawsuit of H. M. Amin and Ali Imran, S.H was granted in its entirety by the panel of judges so that the Certificate of Property Rights Number: 20996/Kelurahan Tamamaung, dated October 30, 2001, Letter of Measurement dated June 19, 2001 Number: 00653, covering an area of the last 142 m<sup>2</sup> on behalf of Maronta Dg Sarro was declared void and the Makassar City Land Office was required to revoke the certificate.

Based on the decision, the Makassar City Land Office as the defendant was dissatisfied with the decision so that they submitted an appeal to the Makassar State Administrative High Court, but based on the decision Number 93/B/2016/PT.TUN.MKS the panel of judges at the appeal level upheld the court's decision at the lower level. First, so that the Certificate of Ownership Number: 20996/Kelurahan Tamamaung, dated October 30, 2001, Letter of Measurement dated June 19, 2001 Number: 00653, covering an area of 142 m<sup>2</sup>, the last one in the name of Maronta Dg Sarro is still declared null and void and the Land Office of Makassar City is required to revoke the certificate.

The case continued and continued until it went to the cassation level at the Supreme Court because the Makassar City Land Office, which was previously the defendant at the first level and the appellant at the appeal level, were dissatisfied with the decision. Different things happened at the cassation level, the panel of judges at the cassation level granted the Makassar City Land Office's cassation request in Decision Number 148 K/TUN/2017. Based on this decision, the panel of judges at the cassation level canceled the decision of the Makassar State Administrative High Court Number 93/B/2016/PT.TUN.MKS, dated 27 September 2016 which upheld the Makassar State Administrative Court Decision Number 68/G/2015/P. TUN.Mks dated April 25, 2016. In addition to that decision, the panel of judges at the cassation level also tried by stating that they accepted the defendant's exception and stated that the plaintiffs' claim was unacceptable.

Based on the cassation decision Number 148 K/TUN/2017, H.M.Amin and Ali Imran, S.H were dissatisfied because the decision annulled the Makassar State Administrative Court's decision which was upheld by the Makassar State Administrative High Court's decision which implies that the certificate of Ownership Rights Number: 20996 / Kelurahan Tamamaung, dated October 30, 2001, Letter of

Measurement dated June 19, 2001 Number: 00653, the last 142 m<sup>2</sup> in the name of Maronta Dg Sarro was not declared null and void so that on the land object there were still 2 overlapping certificates. H. M. Amin and Ali Imran, S.H made extraordinary legal efforts, namely submitting a request for judicial review to the Supreme Court which in the judicial process the Supreme Court issued a judicial review decision Number 31 PK/TUN/2018.

## **2. Judge's Consideration of Decision No. 31 PK/TUN/2018**

The judge's consideration of the dual certificate issue is based on Decision No. 31 PK/TUN/2018 the authors group into 2 categories, namely the Makassar State Administrative Court Decision Number 68/G/2015/P.TUN.Mks and the Makassar State Administrative High Court Decision Number 93/B/2016/PT.TUN. MKS (Accepts Application for Revocation of Property Rights Certificate Number: 20996/Kelurahan Tamamaung On behalf of Maronta GD. Sarro)

- a. The judge's consideration of the Plaintiff's lawsuit has expired (Decision of the Makassar State Administrative Court Number 68/G/2015/P.TUN.Mks)

The Panel of Judges is of the opinion that because the Plaintiffs are parties who are not directly addressed by the State Administrative Decree, the calculation of the grace period for filing a lawsuit is carried out on a casuistical basis, namely since the non-addressed party knows and feels that his interests have been harmed by the issuance of the a quo dispute object. legal norms/rules as contained in the jurisprudence of the Supreme Court of the Republic of Indonesia Number: 5 K/TUN/1992, dated January 21, 1993, Juncto Jurisprudence Number: 41 K/TUN/1994, dated November 10, 1994, Juncto Jurisprudence Number: 270.K/ TUN/2001, dated May 4, 2002, which basically reads "The grace period for filing a lawsuit for those who are not addressed by a State Administrative Decree is calculated on a case-by-case basis from the moment he feels that his interests have been harmed by the State Administrative Decree and becomes aware of the decision."

After being linked with the provisions of Article 55 of Law Number 5 of 1986 and the rule of law in the jurisprudence of the Supreme Court of the Republic of Indonesia Number: 5 K/TUN/1992, dated January 21, 1993, Juncto Jurisprudence Number: 41 K/TUN/1994, dated November 10 1994, Juncto Jurisprudence Number: 270.K/TUN/2001, dated May 4, 2002, the Panel of Judges is of the opinion that because the Plaintiffs only knew and felt that their interests had been harmed by the issuance of the decision on the object of the a quo dispute on August 11, 2015 and The Plaintiff was registered at the Makassar State Administrative Court on November 9, 2015, the Plaintiffs' lawsuit is still within a grace period of nine and 90 (twenty days) so that there is sufficient reason for the Panel of Judges to reject the Defendant's exception regarding the time limit for filing a lawsuit.

- b. Judge's consideration regarding the Plaintiff's Lawsuit which is absolute competence (Decision of the Makassar State Administrative Court Number 68/G/2015/P.TUN.Mks)

Absolute competence is the authority of the Court Body in examining certain types of cases which absolutely cannot be examined by other Courts, both within the same judicial environment, for example between the District Court and the High Court or in a different judicial environment, for example between the District Court and the State Administrative Court. As for the absolute authority of the District Court based on Article 50 of Law Number 2 of 1986 in conjunction with Law Number 8 of 2004 concerning General Courts are criminal cases and civil cases, the authority to adjudicate the District Court in civil cases covers all disputes regarding property rights or rights arising therefrom, accounts payable or other civil rights. Regarding the authority of the State Administrative Court in Law Number 5 of 1986 jo. Law No. 9 of 2004 jo. Law No. 51 of 2009 concerning the State Administrative Court has expressly provided limitations regarding the absolute competence of the State Administrative Court, as affirmed in Article 47, Article 50, Article 1 point 10 jo. Article 1 point 9 and Article 3 with the exception of Article 2 and Article 49. The object of the lawsuit in the a quo dispute is the Certificate of Ownership Number: 20996/Kelurahan Tamamaung, dated October 30, 2001, Letter of Measurement dated June 19, 2001 Number: 00653, area of 142 m<sup>2</sup> in the name of Maronta Dg Sarro.

After the panel of judges looked at the fundamentum petendi (posita) of the Plaintiffs' lawsuit, the Panel of Judges was of the opinion that based on the provisions of Article 47, Article 50, Article 1 number 10 jo. Article 1 point 9 of Law Number 5 of 1986 as last amended by Law Number 51 of 2009 that what the Plaintiffs argue is not about a dispute over ownership rights of a certificate as a product of proof of land rights, but the Plaintiffs requesting the Court to cancel the object of the a quo dispute because the procedure for issuing certificates issued by the Defendant is contrary to the prevailing laws and regulations and contains administrative defects which also do not meet the provisions of the General Principles of Good Governance resulting in losses for the Plaintiffs, as stated contained in the provisions of Article 53 paragraph 2 letters a and b of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts. Thus, it is the authority of the Makassar State Administrative Court to examine decisions that are the object of a lawsuit in the a quo dispute. Based on the description of the legal considerations above, the Panel of Judges concluded that the exception regarding Absolute Competence was declared rejected.

- c. Judge's Consideration on Testing in terms of Procedure (Decision of the Makassar State Administrative Court Number 68/G/2015/P.TUN.Mks)

The examination of a State Administrative Decision from a procedural point of view is related to the stages that must be carried out by an official or state administrative body before issuing a State Administrative Decree. Article 20 of Government Regulation Number 24 of 1997 concerning Land Registration stipulates that: 1) Land parcels whose boundaries have been determined as referred to in Article 17, Article 18 and Article 19 are measured and then mapped in the registration base map; 2) If in the area of sporadic land registration there is no registration base map, another map can be used, as long as the map meets the requirements for making a

registration map; 3) If in the said area there is no registration base map or other maps as referred to in paragraph (2), the making of the registration base map is carried out simultaneously with the measurement and mapping of the land parcel in question; and 4) Further provisions regarding the measurement and mapping of land parcels and the making of registration maps shall be stipulated by the Minister.

Based on evidence T.1 in the form of a Land Book with Ownership Rights Number 20996/Kelurahan Tamamaung, dated October 30, 2001, Letter of Measurement Number: 00653, dated June 19, 2001, covering an area of 142 m<sup>2</sup> last in the name of Maronta Dg Sarro obtained legal facts that there is a note that reads “overlap” with M 49/Tamamaung according to the information from the Head of the Makassar Land Measurement and Registration Sub-division. With respect to the Warkah related to the issuance of Certificate of Ownership Number: 20996/Kelurahan Tamamaung, dated October 30, 2001, Letter of Measurement Number: 00653, dated June 19, 2001, covering an area of 142 m<sup>2</sup> and the last in the name of Maronta Dg Sarro could not be presented in court.

Based on the provisions of Article 12 paragraph (1) of Government Regulation Number: 24 of 1997 concerning land registration, land registration activities for the first time include: 1) Collection and processing of physical data; 2) Proof of rights and bookkeeping; 3) Issuance of certificates; 4) Presentation of physical data and juridical data; and 5) General register and document storage.

The defendant has issued the object of the dispute without first checking the availability of the land registration map which maps the registered lands and does not first provide a land registration map to map the object of dispute and carry out juridical data research or at least neglect to collect juridical data and not keep documents as the basis for the issuance of the disputed object which is a state document, it is sufficient to prove that procedurally the issuance of the disputed object is contrary to Article 12 paragraph (1) in conjunction with Article 20 in conjunction with Article 35 paragraph (4) Government Regulation Number 24 of 1997 concerning Land Registration and the Defendant is not careful in placing/determining the area of the disputed object issued.

In the opinion of the Panel of Judges that the main issue in terms of substance in the a quo dispute is whether one plot of land can be registered more than once in the land registration system for the first time in the land registration system regulated in the provisions of the applicable laws and regulations. Article 19 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles stipulates that: 1) To ensure legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations; 2) The registration referred to in paragraph (1) of this Article includes: measurement, mapping and bookkeeping of land, registration of land rights and the transfer of such rights, issuance of certificates of proof of rights, which serve as strong evidence.

Article 3 Government Regulation Number 24 of 1997 concerning Land Registration stipulates that land registration aims to provide legal certainty to the

holder of the right to a parcel of land, apartment unit and other registered rights so that he can easily prove himself as the holder of the right in question. Based on the formulation of Article 19 paragraph (1) of Law Number 5 of 1960 in conjunction with Article 3 of Government Regulation Number 24 of 1997, in the opinion of the Panel of Judges using a theological interpretation (a legal interpretation taking into account the intent and purpose of the legislation) that the purpose of land registration is to provide legal certainty for land rights holders so that on the land registered for the first time there is only one certificate.

The provisions of Article 1 point 1 of Government Regulation Number 24 of 1997 concerning Land Registration stipulates 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 the form of maps and lists, regarding plots of land and apartment units, including the provision of proof of title for parcels of land that already have rights and ownership rights to flat units as well as certain rights that encumber them.

Furthermore, Article 1 point 6 of Government Regulation Number 24 of 1997 concerning Land Registration explains that physical data is information regarding the location, boundaries and area of registered land parcels and flats, including information regarding the existence of buildings or parts of buildings above them. The provisions of Article 1 point 5 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights stipulate that Juridical Data is information regarding the legal status of registered land parcels and flats, the holder of the rights. and rights of other parties and other burdens that burden them.

Based on Article 11 of Government Regulation Number: 24 of 1997 concerning land registration, it is stated that the implementation of land registration includes activities for registering land for the first time and maintaining land registration. Based on the Decree of the Head of the National Land Agency Number 34 of 2007 concerning Technical Instructions for Handling and Settlement of Land Problems, especially regarding the issue of Determination of Rights and Land Registration and in the Technical Instruction Number: 08/Juknis/DV/2007 concerning Drafting of Decisions on Cancellation of Decrees on Granting Land Rights /Registration/Certificate of Land Rights in number II CLASSIFICATION number 6 reads Cancellation of Land Rights/Registration/Certificate of Land Rights due to administrative legal defects. (g) there is overlapping land rights.

The Panel of Judges has conducted a Local Examination and based on the appointment and acknowledgment of the Plaintiffs, it was found that the plot of land contained in the object of the dispute was located at Jalan Sukaria I No. 1 Kelurahan Tamamaung, Kecamatan Panakukang, Makassar City is located in the Plaintiff's plot of land as stated in the Certificate of Ownership Number: 49/Kelurahan Tamamaung dated July 15, 1997, Situation Picture No. 1474 dated March 22, 1997, with an area of

329 m<sup>2</sup> under the name of A. Hadjessah Chairan S.H which was purchased by the Plaintiffs, minutes of local examination dated February 26, 2016).

Based on the above provisions, it is connected with evidence T.1, and evidence P.I. II-9, the Panel of Judges concluded that substantially on the land in the Certificate of Ownership Number: 20996/Kelurahan Tamamaung, dated October 30, 2001, Letter of Measurement Number: 00653, dated June 19, 2001, the last 142 m<sup>2</sup> in the name of Maronta Dg Sarro had occurred overlaps with the land in the Certificate of Ownership No. 49/Kelurahan Tamamaung dated July 15, 1997, Situation Picture No. 1474 dated 22 March 1997 with an area of 329 m<sup>2</sup> in the name of A.Hadjessah Chairan S.H., so that the Defendant's action in issuing a decision on the object of the a quo dispute has resulted in legal uncertainty for the holders of land rights in casu.

Furthermore, regarding the General Principles of Good Governance as regulated in Article 53 paragraph 2 letter b of Law Number: 9 of 2004 concerning amendments to Law Number: 5 of 1986 concerning the State Administrative Court, the Panel of Judges may conclude that the Defendant in issued a decision on the object of dispute was not careful because the object of dispute was issued on a Certificate of Ownership Number: 49/Kelurahan Tamamaung dated July 15, 1997, Picture of Situation No. 1474 dated March 22, 1997 with an area of 329 m<sup>2</sup> under the name of A. Hadjessah Chairan S.H which was purchased by the Plaintiffs, resulting in the cancellation of the certificate of object of the dispute a quo.

According to the author's view, testing in terms of substance means that it is not justified if there are 2 (two) or more certificates on the same land object because ownership of one land object can only be owned, registered and issued 1 (one) certificate. Therefore, if a certificate is issued after the issuance of the previous certificate, substantially it can be said to be wrong and not in accordance with the laws and regulations and the purpose of land registration is for legal certainty. The government through the National Land Agency, in this case the Makassar City Land Office, should continue, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels. and units of flats, including the issuance of certificates of proof of rights for parcels of land that already have rights and ownership rights to flat units as well as certain rights that encumber them.

d. Decision of the Makassar State Administrative High Court Number 93/B/2016/PT.TUN.MKS

Based on the decision of the Makassar State Administrative High Court Number 93/B/2016/PT.TUN.MKS, the panel of judges received an appeal from the Makassar City Land Office. The content of the decision of the Makassar State Administrative High Court is to strengthen the decision of the Makassar State Administrative Court Number 68/G/2015/P.TUN.Mks.

### **3. Supreme Court Cassation Decision Number 148 K/TUN/2017 and Judicial Review Decision Number 31 PK/TUN/2018 (Rejecting Application for**

**Revocation of Property Rights Certificate Number: 20996/Kelurahan Tamamaung On behalf of Maronta GD. Sarro)**

Based on the decision of the Supreme Court Cassation Number 148 K/TUN/2017, the panel of judges at the Cassation Court of the Supreme Court argued that *Judex Facti* had misapplied the law because to examine the object of the dispute it was necessary to first resolve the issue of ownership of land rights between Plaintiffs I and 2 and Maronta Dg Sarro thoroughly civil law through the general court. Based on these considerations, in the opinion of the Supreme Court, there are sufficient reasons to grant the Cassation Petitioner from the Head of the Makassar City Land Office. Based on this, the Decision of the Makassar State Administrative High Court Number 93/B/2016/PT.TUN.MKS, dated 27 September 2016 which affirms the Makassar State Administrative Court Decision Number 68/G/2015/P.TUN.Mks dated 25 April 2016 is untenable and must be cancelled.

Based on the Judicial Review Decision Number 31 PK/TUN/2018 That the reasons for the Judicial Review cannot be justified, the Supreme Court's decision at the cassation level is in accordance with the applicable laws and regulations, namely that there is no Judge's oversight or real error in it, with the consideration of that the core problem in the case concerns proving ownership of land, so that it is a civil case whose settlement must go to the general court. Based on these considerations, the petition for judicial review submitted by the petitioners for judicial review is unreasonable and must be rejected.

In the author's view, as described previously, it is inappropriate if the exception of absolute competence is rejected by the panel of judges on the grounds that the ownership of Maronta Dg Sarro is not necessarily illegal on the basis that Maronta Dg Sarro also has a certificate of ownership legally issued by Makassar City Land Office. This basically has to be proven first in a civil court to prove related to the party entitled to the land object by presenting the original owner as the seller of the land purchased by H. M. Amin and Ali Imran S.H, namely A. Hadjessah Chairan S.H and Maronta Dg Sarro as parties the defendant because he has a certificate on the same land object. So according to the author's view that the steps of H. M. Amin and Ali Imran S.H taking the direct route to request the cancellation of the certificate are quite risky because the panel of judges in making decisions will be on 2 choices that are legally justified and in the end it will return to the subjectivity of the judge in making decisions do analysis.

The decision of the Supreme Court at the Cassation and Review level to reject the claims of H. M. Amin and Ali Imran S.H cannot be said to be wrong because to determine absolute competence in this case the judge will think subjectively. As the author's opinion in the analysis above regarding the considerations of the State Administrative Court judges regarding absolute competence, it can be interpreted in 2 things, namely it can be rejected and it can be accepted, it depends on the subjectivity of the judge in interpreting.

**E. CONCLUSION**

Supreme Court Cassation Decision Number 148 K/TUN/2017 and Judicial Review Decision Number 31 PK/TUN/2018 (Rejecting Application for Revocation of Property Rights Certificate Number: 20996/Kelurahan Tamamaung On behalf of Maronta GD. Sarro). The panel of judges at the Cassation session of the Supreme Court argued that *Judex Facti* had misapplied the law because to examine the object of the dispute, it was necessary to first resolve the issue of land rights ownership between Plaintiffs I and 2 and Maronta Dg Sarro in a civil manner through the general court. Based on these considerations, in the opinion of the Supreme Court, there are sufficient reasons to grant the Cassation Petitioner from the Head of the Makassar City Land Office. Based on this, the Decision of the Makassar State Administrative High Court Number 93/B/2016/PT.TUN.MKS, dated 27 September 2016 which affirms the Makassar State Administrative Court Decision Number 68/G/2015/P.TUN.Mks. April 25, 2016 cannot be maintained and must be cancelled. Judicial Review Decision Number 31 PK/TUN/2018 that the reasons for the Judicial Review cannot be justified. So, the petition for reconsideration submitted by the Petitioners for Review is unreasonable and must be rejected.

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