



## Legal Certainty To Double Land Statement Letter (Sk1) Holders In Land Borders (Study Case In Teteilanan Village, South Barito Regency, Center Kalimantan)

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### Article's Information

### Abstract

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*This research was motivated by the number of land disputes that occurred in Central Kalimantan which was caused by the existence of a double land Certificate (SKT) issued by the Village Head. This study raises a land dispute that occurred between party X and a palm oil company where each party owns an SKT on land objects on the same border land with a different district base. This dispute occurs because there are no clear and firm rules governing double SKT on border land so there is no legal certainty for SKT holders. Based on the description above, the researcher raises the problem formulation: what is the legal certainty for holders of double land certificates on the land border of Teteilanan Village, South Barito Regency, Central Kalimantan)? This research uses juridical empirical research, juridical sociological approach, primary and secondary data sets which are analyzed using qualitative analysis. The results of this study indicate that there is no legal certainty for holders of multiple land Certificate, this is because the land Certificate can be used as evidence of control over land rights in carrying out the land registration process*



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*related to the presence of incomplete land documents. The existence of double SKT is caused by 3 (three) first things, namely the lack of order in the administration of land records in the village registration book, related to the problem that the apparatus in charge of land registration must re-collect data then register in the village registration book on the results of the re-data collection. Second, the replacement of the Village Head or Village Apparatus, related to this problem the new Village Head or Village Apparatus must double-check the village registration book in order to minimize the occurrence of double SKT. Third, namely the loss or damage of the village registration book, related to this problem, the village head or the relevant village apparatus must make a copy of the data contained in the village registration book such as a copy of a photocopy or electronic file.*

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## **A. Introduction**

The land is unique and almost cannot be disturbed while also having the value of incomes. The land is more than just soil of mine with building above the surface. The land has a strategic valued to the human life, because it is very significant. Therefore, it needs management and benefits to the prosperity of Indonesian society in accordance with the Article 33 of Indonesian 1945 Constitution (UUD 1945) that stated, “the earth, water, and natural resources contained is under the possession of the state and solely used for the community’s prosperity”. This is also under Law No. 5/1960 on Basic Rules on Agrarian (UUPA). Therefore, the reformation for land registration is a base to implement the message contained in UUPA. Main problem of land issue is cause by unregistered lands.

The provision in community practice still indicates of unregistered lands which means they do not own a land certificate. Based on its position, lands are divided into registered and unregistered land. Registered lands are lands that has registered its rights in the land office, whereas unregistered land are land that do not own a typical rights and its status is under the state. Usually, lands by state are possessed and processed by the community hereditary based on a land statement letter from the head village as early evidence prior to a land certificate.

As stated in the description of Article 24 of the Government Regulation No. 24/1997 on land registry, there is a written evidence to prove the ownership upon land that is used for old rights registration and is a completed document for the land registration’s interest including, the deed for transfer of right that is made under counter with the head village as witness before the enforcement of Government Regulation No. 24/1997 on Land Registry . Land Statement Letter or SKT is a right that is used in numerous area. The object of SKT is a land without certificate which is possessed by people and then given a letter by the head

village to prove the acknowledgment of that land. Therefore, SKT is published. Lands that are not registered are generally in the village area where the ownership rights on land is proved by SKT which is published by the head village and trading transaction on the principle of trust between seller and buyer with a deed under counter that's signed by parties witnessed by two witnesses and known by the head village.

The position of head village is viewed from the Government Regulation No. 24/1997 on Land Registry regulated in Article 7, Article 8, Article 39, and Article 5 paragraph (3) point a of Government Regulation No. 37/1998 on PPAT Position Regulation that states on head village with government apparatus that has task on strategic in assisting the land office in implementing land registration. Head village is considered to be a motivator and able to socialize to community on land registration either sporadic or in data maintenance. Head village in daily lives always correlation with community and paternalistic which is still in relation with the Head Village on position, which is applied by the community.<sup>1</sup>

Cases in Teteilanan Village, South Dusun District, South Barito Regency, Central Kalimantan. Land dispute is an individual land of X, where X has a land of 80.000 m<sup>2</sup> which is divided into 4 area to A, B, C, and C with each of it is 20.000m<sup>2</sup>. these lands are borders with SKT that is published on 2 November 2009 in front of Head Village of Teteilanan. As time passes, the entire land of X without his understandings is possessed by a palm oil corporation. This palm oil corporation stated that the land is a result of trade with the society so the corporation also has SKT from the Pematang Krau Head Village or East Barito Regency. With the SKT published causes individually has SKT on the same object. However the SKT made by X is published by South Barito Regency while the palm oil corporation is published by East Barito Regency. The parties have each SKT on the same land from different agencies. Currently, this dispute is not settled even though both parties have tried to mediate. Therefore, if there is a legal uncertainty on double SKT in the border of land. The problem is analyzed by using juridical empirical research, juridical sociological approach, with primary data of interview through purpose sampling or even secondary data as supporting data which analyzed through qualitative analysis technique. Based on identification as the author stated, then the problem is how is the legal certainty of double SKT holder in Teteilanan Village, South Barito Regency, Kalimantan Central?

## **B. Discussion**

Land dispute mostly happens between corporation, the community, and government. According to Sarjita, land dispute is a conflict between to parties or more that is injured that is settled through mediation or court.<sup>2</sup> Besides that, definition on land dispute according to Ali Achmad, which is the contradiction between to or more parties with different interest of ownership that could cause of law for both.<sup>3</sup> Just like the dispute of double SKT in border land in Teteilanan Village of South Barito Regency. Based on the formation of Law No. 27/1959 on Center Kalimantan of Level 2 Region formation, the width of South Barito is 12.644Km, however after the expansion in 2002<sup>4</sup> most of South Barito is developed to East

<sup>1</sup> Samuel Christian, *Pedoman Pengikatan Jual Beli Tanah Beserta Benda-benda yang Berada diatasnya*, Media Ilmu, Jakarta, 2008, hlm. 25.

<sup>2</sup> Sarjita, *Teknik dan Strategi Penyelesaian Sengketa Pertanahan*, (Yogyakarta: Tugujogja Pustaka, 2005), hlm. 8.

<sup>3</sup> Ali Achmad Chomzah, *Hukum Pertanahan: Seri Hukum Pertanahan III Penyelesaian Sengketa Hak atas Tanah dan Seri Hukum Pertanahan IV Pengadaan Tanah Instansi Pemerintah*, (Jakarta: Prestasi Pustaka, 2003), hlm. 14.

<sup>4</sup> Law No. 5 of 2002 concerning the Establishment of the Katingan Patent District, Regency Seruyan, Sukamara Regency, Lamandau Regency, Gunung Mas Regency, Pulang Pisau Regency, Murung Raya Regency, dan Barito, Central Kalimantan Province, and Central Kalimantan Province. South Barito Patent Regency as an autonomous region by considering the development and progress of Central Kalimantan Province as seen from the aspects of economic development, regional

Barito<sup>5</sup> until the width becomes 8.830 km<sup>2</sup> consisting of 6 districts, which are Dusun Selatan, Dusun Utara, Karau Kuala, Gunung Bintang Awai, Jenamas dan Dusun Hilir. With this development there is an influence with the area of East Barito. Object in this research is bordered by an area of land in Teteilanan Village. Teteilanan Village is a village in Dusun Selatan District which is bordered with East Barito Regency. Dispute settlement is a rights on individual land of X, where X has a land of 80.000 m<sup>2</sup> which is divided into 4 area to A, B, C, and C with each of it is 20.000m<sup>2</sup>. These lands are borders with SKT that is published on 2 November 2009 in front of Head Village of Teteilanan.

As time passes, the entire land of X without his understandings is possessed by a palm oil corporation. This palm oil corporation stated that the land is a result of trade with the society so the corporation also has SKT from the Pematang Krau Head Village or East Barito Regency. With the SKT published causes individually has SKT on the same object. However the SKT made by X is published by South Barito Regency while the palm oil corporation is published by East Barito Regency. The parties have each SKT on the same land from different agencies.:<sup>6</sup>(a) land formulation, means land that is an object on land, (b) ownership, SKT proposed by the right owners on land, (c) measurement, done by guaranteeing the land to understand the border of land, (d) validity is signed by bordered, and (e) validity is signed on head village and if there is no signature from both parties then the head village cannot sign it.

The border process is done by the head village themselves that understand the land in the environment, if the land is accordingly correct then signatory is made. Examination made to prevent dispute in the future.<sup>7</sup> After the requirement are fulfilled then the applicant or right owner on land that ask to the respected people on the land's origin because basically these people are aware of the history of a land. In Teteilanan Village, if it is acknowledged and there is no dispute then it is continued by parties.<sup>8</sup> After the signatory then the land has SKT. SKT is only published by the head village on the land so other head village is not rightful to other SKT.<sup>9</sup> Therefore, from the explanation of SKT requirement, Gama, S.H. states that SKT made by X is a legal SKT as a ownership evidence of land in Teteilanan Village of South Barito Regency. Other than a prove of land ownership, SKT is also an income from region, because applicant of SKT must pay tax to the region by elevating SKT requirement to become land certificate. SKT could be a base of making a land certificate in the land agency.<sup>10</sup>

Currently, SKT is no longer needs as on of the requirement to register a land, this is after the publication on Minister of Agrarian Affairs and Regulations on National Land Administration 1756 / 15.I / IV / 2016 concerning Public Land Registration Implementation this announcement is given to all land office to simplify land registration by erasing one of the requirement of land certificate which is SKT. This requirement is deleted by the land agency because SKT takes a long time. community that already owns a SKT still can elevate it ti land certificate<sup>11</sup> according Gama, S.H., national land agency regulation only

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potential, social power, socio-political, and regional education, the Barito Patent Regency as an expansion of the South Barito Patent Regency. The aim of this expansion is to encourage the improvement of services in the fields of government, development, and society as well as to provide the ability to utilize regional potential.

<sup>5</sup> The north is bordered by the sub-district of the southern hamlet, East Selehah is bordered by the province of Tabalong, in the west it is bordered by the Jenamas district

<sup>6</sup>Interview with Bapak Gama S.H selaku Kepala Desa Teteilanan.

<sup>7</sup>Interview with Bapak Gama S.H selaku Kepala Desa Teteilanan.

<sup>8</sup>Interview with Bapak Gama S.H selaku Kepala Desa Teteilanan.

<sup>9</sup>Interview with Bapak Gama S.H selaku Kepala Desa Teteilanan..

<sup>10</sup>Interview with Bapak Gama S.H selaku Kepala Desa Teteilanan.

<sup>11</sup> Sofia Hasanah, *Surat Kepemilikan Tanah atau Surat Keterangan Riwayat Tanah* diakses pada <https://www.hukumonline.com/> tanggal 15 April 2020, pukul 13.45 WIB.

applies in the cities, while in countryside still uses SKT.

SKT will always be relevant before it is elevated into a certificate.<sup>12</sup> According to Harry Antonio Pahlawanku, S.H., proposal process of certificate uses SKT will still be processed, because SKT is basically an authentic proof on land so that the ministry announcement only simolifies the certificate proposal if the land does not have SKT by making a physical letter attached to the ministry announcement<sup>13</sup> the community only needs to a provided form of letter that is signed and witnessed by two people. The Sout Barito Land Gency uses the precautionary principle by pointing on the village registration book since the village already owns the data of SKT.<sup>14</sup> Ownership of land that uses SKT seldomly causes dispute. Disputes that are very often is double SKT, a letter that is made by two people on one same object.

According to Gama, S.H., double SKT happens because there is a change between village administration which head village so the documents on land registry in the village has vabished wich causes double SKT.<sup>15</sup> This is then firmed by Harry Antonio Pahlawanku, S.H., that stated a double SKT is often caused by lack of registry list and not disciplined data in the land registry that causes double SKT.

Cases in Teteilanan Village, South Dusun District, South Barito Regency, Central Kalimantan. Land dispute is an individual land of X, where X has a land of 80.000 m2 which is divided into 4 area to A, B, C, and C with each of it is 20.000m2. these lands are borders with SKT that is published on 2 November 2009 in front of Head Village of Teteilanan. As time passes, the entire land of X without his understandings is possessed by a palm oil corporation. This palm oil corporation stated that the land is a result of trade with the society so the corporation also has SKT from the Pematang Krau Head Village or East Barito Regency. With the SKT published causes individually has SKT on the same object. However the SKT made by X is published by South Barito Regency while the palm oil corporation is published by East Barito Regency. The parties have each SKT on the same land from different agencies. This causes the double SKT upon parties.<sup>16</sup>

This land is a border land with East Barito Regency. SKT owned by the X is published by as a ground to make land certificate from teteilanan regency by Mr. Rahmuntu, S.E. the case started when the land by X is a result of trade with a teteilanan village community for Rp 5.000.000 oer 100m. and then it is registered to the village office to be made SKT. The first step is measuring and then signed by the owners of the law on 2 November 2009. Based on the statement from X, land certificate was not made immediately because teteilanan village is obliged to make SKT first.<sup>17</sup> The palm oil corporation stated that SKT is a product published by deed of land officials (PPAT) or Head Village :<sup>18</sup> SKT by corporation was from the process of trade between community with the corporation of community procedure which sells the land to make a application by performing measures wit several procedures of:<sup>19</sup>

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<sup>12</sup>Berdasarkan wawancara dengan Bapak Gama S.H selaku Kepala Desa Teteilanan yang dilakukan pada tanggal 2 April 2020, pukul 10.40 WIB.

<sup>13</sup>Interview with Harry Antonio Pahlawanku, S.H. as Head of Right Substance and Right Empowerment of South Barito Regency

<sup>14</sup>Interview with Harry Antonio Pahlawanku, S.H. as Head of Right Substance and Right Empowerment of South Barito Regency

<sup>15</sup>Interview with Harry Antonio Pahlawanku, S.H. as Head of Right Substance and Right Empowerment of South Barito Regency

<sup>16</sup>Interview with X

<sup>17</sup>Interview with the Palm Oil Corporation

<sup>18</sup>Interview with the Palm Oil Corporation

<sup>19</sup>Interview with the Palm Oil Corporation

- a. seller must of Identity Card (KTP), KTP of married couple, and family card (KK), or heir. If an identity of seller is fulfilled then the palm oil corporation will measure, when the process of measure there is a border of land witnessed by heir team
- b. Measuring will be put in the news.
- c. Team of the oil corporation will negotiate price. The negotiation is in the knowledge of spouse, children, or heir as information of rights transfer.
- d. if all negotiation is reached, then it is written in the news or transfer of area, if the seller has SKT, SHM, or AJB then it is given to the corporation of palm oil to anticipated so that the seller does not sell the land again.
- e. If all document and procedur are completed legally, than the corporation of palm oil gives photos on area and width of location, also heir witnessed by head village.

So this document is the basis for the oil palm company as proof of ownership of the land with SKT. Below is a description of the land that is the object of the dispute between party X and the oil palm company. The object of the dispute is on Jalan Solid Karya, Teteilanan Village, which is the boundary land between the southern sub-district of the southern barito district and the eastern barito district. A dispute here can mean a problem between two people or more where both of them are mutually questioning certain objects, based on the decision of the Head of the National Land Agency Number. 24 of 2007 concerning Technical Guidelines for the management and resolution of land problems, land disputes are differences in values, interests, opinions, and / or perceptions between individuals and / or legal entities regarding the status of use or utilization of certain land parcels. This understanding was then given some emphasis in Regulation of the head of the National Land Agency no. 3 of 2011 concerning the management of assessments and handling of land cases. Land disputes are disputes that occur between individuals, legal entities, or institutions that do not have a broad socio-political impact.

Land dispute in its practice is an administrative, civil, and criminal crime in correlation with ownership, transaction, registration, guarantee, benefit, and ulayat rights. while object of the land includes individual or legal entity, asset state or regional government, state land, adat land, previous west land, national land, and other lands.<sup>20</sup> This dispute is a border dispute because of opinion diference, value of place, borders, and width of a land acknowledged by a party that is established by the National Land Agency or still in process. The object of dispute in this research is a lad between two village which are Teteilanan Village and Bambulung Village. the border ground is a regency border through the process that is not donet cartometric.<sup>21</sup> This is due to the regency is the place of the boarder establishment team both province and center. The authority of border in village is regent based on Minister of Home Affair regulation No. 45/2016 on the Guidance of Establishment and Determination of Village Boarder.<sup>22</sup>

This is aimed to guarantee the governmental administration in providing clearenc and legal certainty towards borders of a village that fulfills the technical and juridical aspect.<sup>23</sup> din this research, due to the very narrow boarders of village, the double SKT dispute could easily

<sup>20</sup>Berhard Limbong, *Konflik Pertanahan*, Pustaka Margaretha, Jakarta, 2012, hlm. 47.

<sup>21</sup>Pasal 1 angka 11 Peraturan Menteri dalam Negeri Nomor 45 Tahun 2016 tentang Pedoman Penetapan dan Penegasan Batas Desa memberikan pengertian metode kartometrik adalah penelusuran/penarikan garis batas pada peta kerja dan pengukuran/perhitungan posisi titik, garis, jarak dan luas cakupan wilayah dengan menggunakan peta dasar dan informasi geospasial lainnya sebagai pendukung.

<sup>22</sup> Yulia Indri Astuty, *Hubungan Skala Batas Antar Kabupaten/Kota Dengan Batas Antar Desa/Kelurahan Dalam Konteks Penegasan Batas Wilayah*, disampaikan dalam Seminar Nasioanal Geomatika 2018 mengenai Penggunaan dan Pengembangan Produk Informasi Geospasial Mendukung Daya Saing Nasional, dikutip pada <https://www.researchgate.net>, pada tanggal 25 April 2020, pukul 10.00 WIB.

<sup>23</sup> Based on Ministry of Home Affairs Regulation No. 45/2016

happen where two or more parties have an SKT from different officials. X obtained theirs from the Teteinelan Village while the palm oil corporation obtain theirs from Bambulung Village. in this case, the National Land Agency is only a facilitator in the dispute settlement through mediation.

According to Harry Antonio Pahlawanku, S.H., regarding to the dispute case it can be finished by land mark of SKT because since the beginning the mark is the history of the land. Regarding to the dispute that are proposed to the court, there is an examination process by seeing the completion of each party's proof.<sup>24</sup> If in this dispute there is no settlement and all parties are injured, then the dispute will go to court. The provision on this is the National Land Agency No. 3/2011 on Management of Land Cases that gives defines that land cases as land conflicts is done by a court that is handled in the National Land Agency of the Republic of Indonesia. The Author conclude that double SKT possession is cause by things as follow:

- a. Less orderly land registration book, village registration book. Administration of village registration books is not carried out in an orderly manner. Along with the journey, time has occurred as well as regarding the physical properties of the land but not with regard to administrative matters. The less orderly land administration condition as defined by the Government has occurred for a long time so that the changing generations of social material can create land disputes.
- b. The switch of Head Village and Village Apparatus. The change of Head Village is one of the reason of double SKT, basically land data is the responsibility of Head Village. In signatures of SKT, head village is states as parties that knows the land and publishes the SKT so that the Head Village changes then the land could have a jumbled information.
- c. The book registry has vanished or not disciplined therefore double list is possible

Besides that, in this dispute must be cleared on the border of villages, if the land is truly from Teteilan Village or Bambulung Village, regarding the closure in border of village in Article 19 paragraph (2) of the Ministry of Home Affairs No. 45/2016 on the guidance to Establishment and Determination on Village Border that states the settlement dispute on villages on Regency is different with city and province. Based on this regulation, the researcher concludes that the dispute ibject is in the Teteilanan Village, and is rightfully X's land. According to the double SKT dispute, it is not because a law product of land agency. The author states that the dispute settlement can be done through mediation. Mediation is regulated in National Land Agency No. 11/2016 on Land Settlement, if data is found that land data is not an authority<sup>25</sup>, then the official who is responsible for handling the dispute will deliver a written explanation to the complaining party which contains a statement that the land dispute settlement is submitted to the complaining party. if the parties are willing to mediate, then the mediation is carried out based on the principle of deliberation to reach a consensus for the good of all parties, the mediation is carried out for a maximum of 30 days. mediation purposes in land disputes:<sup>26</sup> (1) guarantees transparency and sharpness of analysis, (2) collective and objective decision making, (3) minimizes claims on dispute resolution

<sup>24</sup> Interview with Harry Antonio Pahlawanku, S.H. as Head of Right Substance and Right Empowerment of South Barito Regency

<sup>25</sup> Land disputes that are under the authority of the Ministry of Minister of Agriculture, Article 11 paragraph (3) are: (a) Procedural errors in the process of judging, mapping and / or calculating, (b) Procedure errors in the registration process of affirming and / or enforcing rights to former customary land (c) Error procedure pros r in the process of stipulating and / or u registration of land rights, (d) Error procedure u r in the process of determining abandoned land, (e) T u overlapping rights or certificate of land title which is one of the reasons for its obvious error, (f) Error procedure u r in the process maintenance of land registration data, (g) error in the process of maintaining land registration data (h) error in providing information on land registration (i) error in the process of granting permission (j) misuse of spatial use, or (k) Other errors in determining regulations u ranper u ndn

<sup>26</sup> Article 38 paragraph (3) of Minsitry of Religion No. 11/2016 on Land Case Settlement

results (4) accommodates information / opinions from all parties in dispute over other withdrawals that need to be considered, and ( 5) facilitate dispute resolution through deliberation. mediation arrangements for land disputes in the land office as referred to in Article 39 paragraph (1) of the regulation of the head of BPN No. 11 of 2016 concerning the settlement of land cases that the mediation participants are determined, namely: (1) processing team, (2) ministerial officials, regional office of the BPN ) mediator from the ministry of BPN regional office, (4) parties and / or other parties, (5) experts related to disputes between agencies and elements of society. Apart from the parties, the mediation participants as stipulated in Article 39 paragraph (1) must receive an assignment from the ministry, if the mediation is not attended by the parties even though they have been invited three times in succession, the mediation will be declared canceled. Then the Land Office makes a notification letter to the complaining party that the complainant or mediation has been completed, accompanied by an explanation. the implementation of mediation is recorded in the minutes and the results of the mediation are set forth in the Mediation Official Report, which contains (1) the main problem that occurred, (2) the chronology of the problem, (3) a description of the problem, and (4) the result of the mediation.

The mediation minutes are signed by the mediator and the journalist, while the minutes are signed by officials from the ministry, the BPN regional office and / or the land office, the mediator and the parties and representatives of the participants. in the event that one of the parties does not want to sign the mediation minutes, then said unwillingness is recorded in the mediation minutes. In the event that the mediation finds an opportunity, a peace agreement will be made based on the mediation minutes that bind the parties. The peace agreement is registered with the clerk of the local district court so that it has binding legal force.<sup>27</sup> According to researchers, the dispute resolution method is very appropriate to resolve this dual dispute problem.

The author gives his opinion that, apart from the three reasons mentioned above, the problem in the form of disputes arising from the issuance of double SKT in Teteilanan Village, South Barito Regency, Central Kalimantan is due to the absence of legal rules that strictly regulate SKT as a sign of border land ownership. As previously explained, the author has explained that there is a legal vacuum regarding the rules that provide legal certainty to double SKT holders on border lands, so that in the SKT issuance pact on border land there is legal uncertainty that causes disputes in the form of multiple SKT To create legal certainty as one of the objectives of the law, it is imperative that a regulation be made specifically to fill the legal void. According to Gustav Radbruch, there are concepts related to 3 (three) ideas which are basic elements of law, defined as the goal of law which includes justice (*gerechtheid*), legal benefit (*zwechmatigheid*), and legal certainty (*rechtmatigheid*).<sup>28</sup>

Based on Gustav Radbruch's explanation above, we can clearly see that legal certainty is one of the goals to be achieved from the formation and application of law in society, in this case the life of the nation and state. Legal certainty is also dignified as a condition in which laws are formed for the people in the state in a clear, firm manner, and clear in their implementation. Legal certainty will also be achieved when the law is developed in a sustainable manner and adheres to the principles, as well as the making and development of the constitutions has to related to one another, leading to a unity that does not contradict each other.<sup>29</sup> According to Utrecht, legal certainty contains 2 (two) meanings, namely , the existence of general rules. which makes individuals aware of what actions are allowed or not

<sup>27</sup> Mulyani Zulaeha, *Mediasi Interst Based Dalam Penyelesaian Sengketa Tanah*, Jurnal Kertha Paertika, Vol 38, No. 1, Januari-April, 2016, hlm. 161-162.

<sup>28</sup> Achmad Ali. *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Perseroan Terbatas Toko Gunung Agung Tbk, Jakarta, 2002, hlm 83

<sup>29</sup> *Ibid*, hlm 84.



to be done, and second, in the form of legal security for individuals from the arbitrariness of the government, therefore these general rules will allow individuals to know what the State may impose or do on individuals in broader sense.<sup>30</sup> This law is derived from Juridical-Dogmatic theory which are based on a positivistic theory in the sphere of law, which tends to perceive law as something autonomous, and independent, in adherences of this thought, law is nothing but a compilation of rules. The purpose of law is nothing but to guarantee the realization of legal certainty. Legal certainty is manifested by law by its nature which only makes a general rule of law. Moreover, the general nature of legal rules verifies that law does not aim to bring about justice or benefit, but solely for certainty.<sup>31</sup>

The opinion on legal certainty was also expressed by Jan M. Otto as quoted by Sidharta, namely that legal certainty in certain situations requires:<sup>32</sup> (1) clear, consistent and accessible legal rules issued by the state authority; (2) the ruling (government) party consistently apply these legal rules and also submit to and obey them; (3) the majority of citizens in principle approve of the content and therefore adjust their behavior to these rules (4) judges (in court) shall stand independently and do not take sides, also consistently apply these legal rules when in resolving legal disputes; and (5) concretely implemented judicial decisions. The five conditions put forward by Jan m. This Otto shows that legal certainty can be achieved if the legal substance is in line with the needs of society. The law will only be able to create legal certainty, if the law that was established from and reflects the culture of the people. This type of legal certainty knows as realistic legal certainty, which requires harmony between the state and the society in having an orientation and understanding the legal system. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those who are entitled according to law can obtain their rights and that decisions can be implemented. Although legal certainty is closely related to justice, legal certainty is not identical only to justice but it has to meet specific requirements, that the law shall generalized, protective towards all citizen, while justice is more subjective, individualistic, and different to one another.<sup>33</sup>

Based on this theory, the author argues that to achieve and attaining legal certainty, the regulation concerning SKT as a form of control over border land, needs to meet these elements, namely: “generalized rules, its aim is to achieve individuals understanding concerning what can and cannot be done, protect individuals from arbitrariness from the authority or other parties, clear, easy to obtain, can be applied consistently, the regulation content and principles are approved by the majority of citizens, so that they will adjust their behavior to these regulation, the Judge can use it as a reference for resolving disputes so as to produce concrete decisions and can be implemented”. Therefore, in relation to this problem, with the existence of simple and concrete regulations, it can guarantee that the rights of SKT holders are protected as proof of border land ownership, from disputes including double SKT.

## **C. Conclusion**

### **1. Concluding Remarks**

Up to this date legal certainty for holders of multiple Land Certificate (SKT) on the border land of Deşa Teteilanan, South Barito Regency, Central Kalimantan is considered inadequate. This can be seen from the dispute over the double SKT scheme as a sign of ownership of land rights on the border land of Deşa Teteilanan, South Barito Regency, Central Kalimantan. The dispute regarding the double SKT can occur due to the lack of

<sup>30</sup> Ridwan Syahrani, *Rangkuman Intisari Ilmu Hukum*, Citra Aditya Bakti, Bandung, 1999, hlm 23.

<sup>31</sup> Achmad Ali, *Op.cit*, hlm 83.

<sup>32</sup> Sidharta, *Moralitas Profesi Hukum: Siatu Tawaran Kerangka Berfikir*, Perseroan Terbatas Refika Aditama, Bandung, 2006, hlm 85.

<sup>33</sup> Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Liberty. Yogyakarta, 2007, hlm 60.

orderly administration of land records in the village registration book, the replacement of the Head of Desa or Village Apparatus, the missing registration book, as well as legal vacuum regarding the rules which gives legal certainty to holders of double SKT on border lands. To create legal certainty, it is necessary to have rules that can fill the void that occurs, these rules must also be made by complying these following elements: generalized rules, its aim is to achieve individuals understanding concerning what can and cannot be done, protect individuals from arbitrariness from the authority or other parties, clear, easy to obtain, can be applied consistently, the regulation content and principles are approved by the majority of citizens, so that they will adjust their behavior to these regulation, the Judge can use it as a reference for resolving disputes so as to produce concrete decisions and can be implemented.

## 2. Suggestion

- a. The author hopes that the government, especially the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency, will not abolish the provisions regarding land certificates as a requirement for applying for a certificate.
- b. The Regional Government and the Regional People's Representative Council (DPRD) as legislators in each region must enact regional regulations that provide legal protection for SKT holders over land in villages where regional division has occurred.
- c. The author that dispute resolution regarding double SKT can be resolved through an out of court dispute resolution mechanism, namely by using mediation.

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*Tanah*