

LEGAL CONSEQUENCES FOR ISSUANCE OF AN ADMINISTRATIVELY DEFECTIVE LAND RIGHT REPLACEMENT CERTIFICATE (A CASE STUDY OF DECISION NO.54 K/TUN/2007)

Bethari Laksita Rahmania Luhri Sukoco
Adi Sulistyono
Rahayu Subekti

ABSTRACT

Issues in issuing land rights replacement certificates that are legally defective or not following the procedures determined by legislation in Decision No. 54 K/TUN/2007 will cause problems for the owner and those who feel aggrieved by the decision National Land Agency. Legally defective replacement certificates, including administrative defects, will affect a land rights certificate cancellation. The implementation is not carried out according to the applicable legal rules. The fault, in this case, lies with the land agency in Indonesia, namely the National Land Agency, which has the authority over certificate management starting from land registration to cancellation of land certificates. This article discussed the procedures and legal basis for canceling the replacement certificate. Besides, it also discussed the legal consequences and the basis for canceling the replacement certificate due to administrative defects with the analysis of Decision No. 54 K/TUN/2007. The method used to compile this article was the normative legal method. This research used statutory and conceptual approaches. This research was descriptive analysis research that meant reviewing, studying, understanding, and analyzing applicable regulations in Indonesia. The objective of the discussion regarding the issuance of a legally defective replacement certificate was to find out the procedure or setting for canceling the replacement certificate by submitting an application made by the Applicant. The cancellation could be made with the authorized institution, namely the National Land Agency or State Administration, to understand and find the legal consequences of issuing a replacement certificate for land rights that were not under procedures or administratively defective. By looking for the legal consequences of a replacement certificate with administrative defects, legal protection could be found for a land-right certificate holder. The certificate is a piece of solid evidence and proof of ownership, so it must legally determine legal force to create the validity of a certificate based on ownership of land that has been protected by law.

Keywords: Legal Consequences, Replacement Certificate, Land Rights, Administratively Defective.

INTRODUCTION

The issuance of a replacement certificate may be due to loss or damage, so the certificate holder applies to issue a replacement certificate. Issuing a replacement certificate must be carried out according to the procedure to create legal protection for the holder of the right; suppose the lost certificate is not requested to issue a replacement certificate. That case will lead to disputes in the future because the certificate is proof of ownership rights to the land that has been declared by the agency that has the authority and is legally valid. It is called legal protection because the certificate and the holder/ owner of the certificate of rights are protected from interference from other parties. In legal certainty, the holder/ owner of the certificate can prove that the land belongs to him and the certificate held is legally owned following the name on the certificate. (Dadi Arja Kusuma, 2017).

The certificate is considered accurate and substantial evidence in the law sight, but it is not definite evidence. In the certificate, there is information that contains legal force, but it must be with correct information. If another party issues the certificate holder, it could be because that party feels aggrieved. In a lawsuit regarding a land dispute, the court will decide on the truth of the certificate as evidence, and the judge will give the truth with permanent legal force (Wangean, 2018).

Based on the basic Agrarian Law (land regulations in Indonesia), there are 2 (two) land rights, namely the first is primary land rights, namely primary land rights, namely land rights originating from state land such as property rights, Right to Cultivate, Right to Build on state land and Right to Use on state land, and secondly, secondary land rights are rights to secondary land derived from land controlled by other parties, including Building Use Rights (HGB) on land Management Rights or HaB land with Ownership Rights, Use Rights on Management Land or Use Rights on Land with Ownership Rights, Rental Rights for Buildings, Pawn Rights (land pawns). (Soerodjo, 2003)

In the international world, the international human rights law system does not define land rights definitively, there is no detailed procedure, however, there are discussions that are carried out progressively and in depth to build a solid argument in providing guarantees for the protection of land rights. Interestingly, the deepening given in the international human rights legal order has provided a link between land rights and rights that precede or even affirm one and a series of rights that are connected to each other. And in the global world, there is also an issue regarding land rights that must be protected, namely the World Bank which has just issued a standard called the Environmental and Social Framework as a measure of protection for access to land availability and land rights, especially for the poor and other vulnerable groups. In particular, criticism is given to the low space provided by the World Bank for the protection of access and rights to land for vulnerable groups (poor groups and indigenous peoples), which is still minimal in cases of land grabbing. continued in the Post-2015 Sustainable Development Goals (SDGs), it is explained that there is a universal commitment to encourage poverty alleviation and promote a better life expectancy in the global development agenda. This universal commitment is closely related to providing the main source of livelihood, namely land as a place where the public can advance their lives and livelihoods. Internationally, it is also concerned with the protection of land rights and the

usability of lands so that their utilization can be carried out optimally, encouraging wider participation in the protection of public rights in the issue of land ownership, fisheries management and forestry in the context of food security. The issue of guaranteeing the protection of land rights is indeed not the main issue elaborated in achieving the MDGs targets and measuring the success of the SDGs. However, there is a discussion on developing recommendations from these two global agendas to include the issue of land ownership in the dimensions of developing the MDGs and SDGs ideas that are more implementable and intersect with other global issues such as access to justice, poverty, and so on. (Kontras, 2015)

Issuing a replacement certificate must be in accordance with the processes and systems that have existed in the legislation. Arrangements regarding issuing a replacement certificate due to loss have been regulated in land law in Indonesia concerning land registration. The right to land can be called a certificate, and the certificate has been issued against the things that make the certificate null and void. It can be due to an element of error or negligence in carrying out the process. The result is considered void proof of ownership (Rusmadi, 1991:29). If it is issued not under applicable procedures, it can be said that the certificate has administrative defects. Administrative defects can be due to an error from the applicant who does not complete the data or does not comply with the stages of the mechanism that must be passed. It can also be due to an error in the object, such as the wrong measurement of the mapping on the plot of land and an error in the object, namely, the applicant did not provide clear and correct information.

The authors provided an overview related to the case of issuance of an administratively defective replacement certificate in Decision No. 54 K/TUN/2007, Certificate of Ownership No. 1669/BMD, Letter of Measurement No. 2407/1982 dated August 3, 1982, in Benua Melayu Darat Village. On behalf of Hermanto Oscar, there was a building above it. The Pontianak Tax Service Office has auctioned through the Head of the Pontianak Receivable and Auction Service Office concerning Tax Receipts to taxpayers on behalf of PT. OSCAR BERLIAN MOTORS. The issuance of the Decree on the Issuance of Certificate of Substitution of Ownership Rights No.3748, Letter of Measurement No.3154/BM.Darat area of 699 M2 on January 7, 2005, in the name of Andika Sariputra, was used to replace the Certificate of Ownership No. 1669/BMD, Letter of Measurement No. 2407/1982 dated August 3, 1982. Andika Sariputra explained that Certificate of Ownership No. 1669/BMD was not submitted to Andika Sariputra as the auction buyer for the execution of the tax confiscation. In this case, the land and buildings legally owned by Indonesian law by the Plaintiff named Hermanto Oscar, he owns a company that stands on the land, a company named PT. OSCAR BERLIAN MOTORS did not pay taxpayers to the Indonesian state, then the Tax Service Office in Pontianak City executed the land and auctioned it off, after that the land was successfully auctioned and got an auction buyer named Andika Sariputra, Hermanto felt aggrieved by the auction, he felt that his personal property was confiscated even though it was the company that did not pay taxes, then Hermanto filed a lawsuit at the Pontianak District Court, after that Andika as the winner of the auction wanted to have the land certificate but Andika did not ask Hermanto regarding the certificate and the Tax Service and the Auction Party did not confirm to Hermanto, and it turned out that Andika Sariputra had submitted an application for the issuance of a replacement certificate to the Pontianak City National Land Agency. In the process of issuing a replacement certificate carried out by the Pontianak City National Land Agency, it is not in accordance with applicable procedures so that it can result in losses for the parties concerned, and the certificate has been legally issued and issued by the Pontianak City National Land Agency. the administratively defective certificate must be canceled and considered never to have been issued because the old certificate has not been lost and is still legally owned by another party, this article will discuss the procedure for canceling an administratively defective certificate and the legal consequences of the issuance of the replacement certificate.

The executed party refused to submit the original certificate of the land. However, Hermanto Oscar did not know about the auction. He was never asked to submit the original land certificate, namely the Ownership Certificate No. 1669/BMD. The Head of State Receivable and Auction Services had never confirmed the land certificate. The implementation of the issuance of a replacement certificate, in this case, was carried out not under the existing law, including violating procedural and opposing the principles of impartiality and the principle of accuracy. The issuance of a Certificate of Substitution of Ownership Rights No.3748 was considered administratively defective.

Based on the case above, some problems made the replacement certificate considered administratively flawed because the information used as the reason for the request for a replacement certificate was not accurate; besides that, the implementation of the application was not under the laws and regulations.

RESEARCH METHOD

The definition of research methods focused on the scientific way to obtain data with a particular purpose and value, so a discovery must have an appropriate research method to achieve the data to be studied. This understanding was put forward by an expert named Sugiyono. The research in this article used normative law. According to an expert, Soerjono Soekanto, teaching the normative law of the nature and scope of the legal discipline was about law as a rule in reality (Sonata, 2014). According to Peter Mahmud, a legal expert in Indonesia regarding normative research, normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer legal issues faced. Normative research relied on written studies or sources from secondary data and legal materials such as legislation, court decisions, legal theory, literature, legal journals, and legal documents. The research used statutory and conceptual approaches. This research was descriptive analysis, which meant reviewing, studying, understanding, and analyzing the regulations in the State of Indonesia concerning the case or problem being studied (Kontjaraningrat, 2007:42). Furthermore, this research reviewed and comprehended the applicable laws and regulations regarding issuing a replacement certificate with a case in a court decision regarding the legal consequences of issuing an administratively defective replacement certificate.

RESULTS AND DISCUSSION

1. Process of Cancellation of Certificate instead of Land Rights

The function of the certificate is based on article 3 of Government Regulation no. 24 of 1997, namely, legal certainty and legal protection to holders of rights to a plot of land, apartment units and other registered rights so that by proving themselves as the holder in question, they provide information on interested parties including the government in order to easily obtain the necessary data, for the presentation of Land Office data on registration maps, land registers, certificates of measurement, land books and registers of names. (Sutedi, 2006)

In the context of resolving land disputes as the last spearhead, certain parties carry out lawsuits in the realm of civil law, the realm of criminal law which is examined, tried and decided through the General Court or State Administrative disputes are examined, tried and decided through the State Administrative Court. Land rights have 2 (two) sources, namely certificates of land rights as a State Administrative Decree (KTUN). (Isis Ikhwanayah, 2018)

A replacement certificate was ratified and issued by the National Land Agency. The issuance of a replacement certificate must be for the right reasons, such as because the old certificate has been lost or damaged. The applicant who could apply must be the applicant concerned. It was based on formal and material data according to the data stored by the National Land Agency. Replacement certificates that have been issued can be canceled but provided a complaint from a party who felt that it had something to do with the land certificate.

Article 6 of Law no. 39/1999 on Human Rights also provides protection for indigenous peoples and their land rights, including against criminalization, which reads in full: "(1) In the context of upholding human rights, differences and needs within indigenous peoples must be considered and protected by law and order. law, society, and government; (2) The cultural identity of the customary law community, including the rights to customary land is protected, in line with the times". Community rights to land or property rights which are categorized as property rights are also stated in Article 17 of the Universal Declaration of Human Rights: (1) Everyone has the right to own property alone as well as in association with others, and (2) No one shall be arbitrarily deprived of his property, (1) Everyone has the right to own property, either alone or jointly with others, (2) No one may be deprived of his property arbitrarily). (Alting, 2010)

The applicants must be able to complete the requirements and documents that the National Land Agency Office has determined to avoid the cancellation of a replacement certificate. They must complete the application form and sign and affix it with stamp duty. If there was a legal representative, they must attach a power of attorney. In addition, they also attached a photocopy of the Identity Card and a certificate issued by the local Village Government in accordance with the existence of the land parcel, a statement of ownership and known to the witness, a photocopy of the lost certificate, a copy of the Property Tax (PBB) payment, proof of heirs issued by the Land Deed Making Official, a letter explaining the lost land certificate which issued by the Police, a statement letter for the certificate applied for was not in dispute, the physical field was still appropriate, and a statement with an oath from which eliminated the certificate (National Land Agency, 2012). If the applicant has met the requirements above, there would likely be no cancellation from the National Land Agency because the applicant has gone through the proper flow.

The applicant must comply with the implementation procedure. If it did not comply, then the replacement certificate that has appeared and approved could be canceled by the Head of the National Land Agency, following Government Regulation No. 24 of 1997. There were provisions regarding the procedure for canceling land ownership based on the article 105 PMNA/Head of BPN No. 9/1999. The party authorized to issue a certificate cancellation decision was the Head of the National Land Agency. Furthermore, the transitional regulations regarding the meaning of cancellation of land ownership rights in Regulation of the Head of the National Land Agency or Perkaban No. 3 of 2011 concerning Management of the Assessment and Handling of Land Cases (Damayanti, 2017).

Land certificates that were considered legally flawed, including having administrative defects or getting errors in the administration of issuing certificates, could be caused by errors in the administrative process or procedure, errors in calculating land and land subjects, errors in applying legal regulations, errors in invalidating physical and juridical data, and errors related to the administrative field. The applicants tried to apply to the National Land Agency to issue a certificate. The applicants must meet some guidelines, starting with the following requirements, including original and photocopy of the applicant's data (name, address, occupation, religion, age, and place of birth). If a legal entity was requested to attach a deed of establishment of the company, a letter from the village head on land ownership for which land registration had not been carried out including the location and boundaries and types of land use, a statement that the land was not in dispute, a statement from the person concerned about the boundaries of its location with the signature of the head of the neighborhood association, a statement letter containing the reasons for the cancellation the certificate was attached with evidence/ documents that could be used as evidence, and the cancellation of the certificate was also processed by the National Land Agency by researching the juridical data and biological data of the land. After that, it was recorded on the form book, and the Land Office gave a receipt for the files provided by the National Land Agency. The cancellation order began from the head of the regional office. It was then submitted to the provincial land agency office and then submitted to the head of the land division for recording and consideration. (Khairina, 2014).

2. Legal Consequences and Basis for Cancellation of Substitute Certificate Due to Administrative Defects in Case Study of Decision No.54 K/TUN/2007

A replacement certificate issued by the National Land Agency, classified as an administrative defect, had a legal consequence. The replacement certificate would be canceled. This statement was based on Article 1, number 12 of the Regulation of the Minister of Agrarian Affairs/ Head of the National Land Agency Number 3 of 1999, explaining the cancellation of the decision regarding granting a right to land rights because the decision contained a legal defect in its issuance or implements a court decision that had permanent legal force.

The legal basis of the object of the cancellation of land rights was Article 104 paragraph (1) PMNA/ Head of BPN No. 9 of 1999, namely: First: Decree on granting ownership rights to land, second: Certificate of ownership of land, and third: Decree on granting land rights in the context of regulating land tenure. A canceled certificate meant that the right to ownership of the certificate had been revoked. A replacement certificate that had been canceled meant that the ownership right to the land certificate had been removed, and the state-controlled the status of the land. The legal basis for this statement was contained in Article 22 to Article 27 of the Law. No.5 of 1960 concerning the Basic Agrarian Law (Land Law in Indonesia). Furthermore, suppose the replacement certificate has been canceled. The applicants must register for the abolition of land ownership rights by applying and completing documents such as Decree from the authorities, which has stated that the person's land ownership rights have been canceled. The previous original certificate was not in the owner's hands. Then, there must be informed about the existence of the certificate. The legal basis for this provision was article 131 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of National Land Agency Number 3 of 1999. In that case, Government Regulation Number 40 of 1996 discussed the abolition of land rights: public interest, surrendered voluntarily by the owner, abandoned by the owner, because it violated the principle of nationality, destruction of land, expiration of the term, on the decision of the judge. (Ricky Firanda, 2020).

Legal protection for certificate holders in lieu of land rights is the same as legal protection for certificates for the first time. The certificate is a proof of rights that applies as a valid and strong evidence. If there are no objections or problems in the application process, the National Land Agency (land in Indonesia) will submit a replacement certificate to the applicant as the owner of the land object. As regulated in the Basic Agrarian Law (regulation on land in the state of Indonesia) Number 5 of 1960 Article 19 paragraph (2) letter c, Government Regulation Number 24 of 1997 Article 1 number 20 and Article 32 paragraph (1). With the existence of these regulations and laws, the holder of the certificate of land rights has permanent legal protection. The replacement certificate has the same function as the first land title certificate. If in the future there is a problem with the replacement certificate holder, the government can provide permanent legal protection to the replacement certificate holder in accordance with the Basic Agrarian Law (regulations on land in Indonesia) and Government Regulations. (Irawan, 2021)

Based on Decision No. 54 K/TUN/2007, the litigants were the First and Second Cassation Petitioners, namely: Head of the Pontianak Land Office and Andika Sariputra, against Cassation Respondent, Hermanto Oskar. Furthermore, the Judge has granted Cassation petitions for Petitioners I and II for cases related to the issuance and Cancellation of replacement certificate issuance of Decree on Issuance of Substitute Certificate of Ownership No.3748, Letter of Measurement No.3154/BM. Darat area of 699 M2 on January 7, 2005, on behalf of Andika Sariputra to replace Certificate of Ownership No. 1669/BMD, Letter of Measurement No. 2407/1982 dated August 3, 1982. The implementation of the issuance of a replacement certificate, in this case, was a procedural violation and was against the law concerning land regulations in Indonesia. Therefore, the new certificate, namely Land Rights No.3748, was considered administratively flawed.

Based on Indonesia's existing land regulations, administrative and legal defects include procedural omissions, inaccuracies in applying the law, errors in the object of rights and subjects of rights or types of rights, and land area calculation. Decision No. 54 K/TUN/2007 issued a replacement certificate has been contrary to the procedural law provisions. The Replacement Certificates of Ownership Rights No. 3748/BMD was published on January 12, 2005. On January 15, 2005, the Pontianak Post daily announced the announcement. The announcement should have been made first after being published under Article 59 paragraph (3) of Government Regulation Number 24 of 1997. Based on the consideration of the Panel of Judges, it has been granted the request of the Petitioners for Cassation I and II and stated that the Respondent's claim was not accepted. In the judge's decision, Andika Sariputra as the applicant for the issuance of a replacement certificate and the Pontianak City National Land Agency, the judge made a wrong decision in this case because Hermanto also still has rights. that applies in Indonesia. The cancellation of the replacement certificate must wait for the decision of the District Court, which Hermanto Oskar had previously submitted. Furthermore, the judge should think that the implementation of the issuance of the Pontianak National Land Agency certificate and the reason for the issuance of the certificate was considered not under Article 60 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration and against the truth of legal certainty. The replacement certificate should be declared null and void, and the canceled certificate had no legal force for the owner. The decision of the State Administrative Judge should be considered invalid and it is necessary to cancel the certificate because the decision of the State Administrative Court will have permanent legal force, thus the Administrative Court Decision does not automatically change the legality of ownership of one's land rights, but with the PTUN decision by the parties can be used as evidence when submitting a claim for ownership of land rights to the District Court, this will result in a loss that is borne by Hermanto on the decision of the judge of State Administration in Indonesia.

CONCLUSION

The procedure for canceling a replacement land certificate was the same as complying with the procedure for canceling ownership of the land of someone who controlled, which was based on Article 105 PMNA/Head of National Land Agency Number 9 of 1999. The cancellation could only be carried out by the Head of the National Land Agency by issuing his decision to cancel land rights by issuing a decision letter on the cancellation of the issuance authority under what was stipulated in PMNA/ National Land Agency Number 9 of 1999.

The official and legal replacement certificate from the National Land Agency was classified as an administrative defect and had legal consequences, namely that the replacement certificate would be canceled. This statement was based on Article 1 number 12 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning and the Head of the National Land Agency Number 3 of 1999 explaining if the decision on land ownership of someone has a legal or administrative defective, the decision of the granting of the right can be revoked by the competent authority. It can be canceled by a court decision which can annul the land ownership rights because the court decision is a permanent legal force for the parties concerned.

REFERENCES

- Dadi Arja Kusuma, Rodliyah & Sahnun. (2017). Sertifikat Hak Milik Atas Tanah Sebagai Alat Bukti. *Jurnal IUS*, 11 (2): 310-321.
- Wangean, Beny Hadinata. (2018). Pembatalan Ratusan Sertifikat Hak Atas Tanah Oleh Kantor Wilayah Badan Pertanahan Nasional Jawa Barat (Analisis Putusan Pengadilan Tinggi Tata Usaha Negara Jakarta Nomor 296/B/2013/Pt.Tun.Jkt Jo. Putusan Pengadilan Tata Usaha Negara Bandung Nomor 11/G/201). *Jurnal Legal Reasoning*, 1 (1): 1-10.
- Soerodjo, Irawan. (2003). *Kepastian Hukum Pendaftaran Hak Atas Tanah Di Indonesia*. Bandung: Arkola.
- Kontras. (2015). *Menemukan Hak Atas Tanah Pada Standar Hak-Hak Asasi Manusia Di Indonesia*. Jakarta: Kontras.
- Rusmadi, Murrad. (1991). *Penyelesaian Hukum Atas Tanah*. Bandung: Alumnus.
- Sonata, Depri Liber. (2014). Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum. *Fiat Justisia: Jurnal Ilmu Hukum*, 8 (1): 16-35.
<https://doi.org/10.25041/fiatjustisia.v8no1.283>.
- Kontjaraningrat. (2007). *Metode-Metode Penelitian Masyarakat*. Jakarta: Gramedia.
- Sutedi, adrian. (2006). *Kekuatan Hukum Berlakunya Sertifikat Sebagai Tanda Bukti Hak Atas Tanah*. Jakarta: BP Cipta Jaya.
- Isis Ikhwanasyah, Djumardin. (2018). Cacat Yuridis dan Cacat Administrasi Dalam Pembatalan Sertifikat Hak Atas Tanah. *Jati Swara Jurnal Ilmu Hukum*, 33 (1): 1-11.
- Alting, Husen. (2010). Sertifikat Hak atas Tanah Sebagai Alat Bukti Pemilikan Dalam Rangka Memberikan Kepastian Hukum. *Risalah Hukum Fakultas Hukum Ummul*, 6 (2): 134-140.
- BPN, Mataram. (2012). Dokumen Seleksi HTPT. Has been downloaded on 15 March 2022.
<https://www.bpnkotamataram.com/pendaftaran.html>.
- Damayanti, Dwi Norma. (2017). Pembatalan Sertifikat Pengganti Yang Menyalahi Prosedur (Studi Di Kantor Nasional Kabupaten Lombok Tengah). *Jatiswara jurnal Ilmu Hukum*, 32 (3): 519- 527.
- Khairina. (2014). Sertifikat Cacat Hukum Dalam Hukum Pertanahan Di Indonesia. *JURIS*, 13 (1): 27-39.
- Ricky Firanda, Surya Perdana & Ruslan. (2020). Kekuatan Hukum Penerbitan Sertipikat Tanah Pengganti (Studi Di Kantor Pertanahan Kabupaten Deli Serdang). *AL-MURSALAH*, 6 (1): 1- 11.
- Irawan, Lenny Maulani dan Anang Dony. (2021). Perlindungan Hukum Terhadap Pemegang Sertipikat Tanah Pengganti Karena Hilang. *Indonesian State Law Review*, 4 (1): 1-9.

Bethari Laksita Rahmania Luhri Sukoco
Notary Study Program
Faculty of law, Universitas Sebelas Maret, Indonesia
Email: betharilukman82@gmail.com

Adi Sulistyono
Notary Study Program
Faculty of law, Universitas Sebelas Maret, Indonesia
Email: adi_sumo@yahoo.id

Rahayu Subekti
Notary Study Program
Faculty of law, Universitas Sebelas Maret, Indonesia
Email: rahayusubekti0211@staff.uns.ac.id