

Legal Analysis of Administratively Defective Certificates

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Abstract

To achieve legal certainty and legal protection of land rights, a land rights certificate is given as proof of a person's ownership of land and its buildings. Land registration is carried out to ensure legal certainty. The aim of the research is to determine the procedures for canceling certificates belonging to administrative defects. This research uses a normative juridical method with a statutory regulatory approach. Research results found that the Certificate of Ownership was administratively flawed based on Minister of Agrarian Regulation No. 3 of 1999 article 1 number 12 states that the basis for canceling a certificate can be canceled because the decision is administratively flawed. Administrative defects in the Certificate Issuance, the relevant Certificate may be submitted for Cancellation. Certificate cancellation can be done via BPN and TUN. In the process of issuing a certificate of land rights, there may be errors or administrative defects, so it can be canceled in three ways, namely Cancellation of land rights issued because there are administrative legal defects in the issuance of the decision to grant and/or certificate of land rights or implementing a court decision that has been made obtain permanent legal force.

Abstract

Untuk mencapai jaminan kepastian hukum dan perlindungan hukum hak atas tanah, maka diberikan sertifikat hak atas tanah sebagai bukti kepemilikan seseorang atas suatu tanah beserta bangunannya. Penyenggara Pendaftaran Tanah Dilakukan Demi Terjaminnya Kepastian Hukum. Adapun Tujuan Penelitian untuk mengetahui Prosedur Pembatalan Sertifikat Milik cacat administrasi. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan peraturan perundang-undangan. Hasil Penelitian Menemukan Bahwa Sertifikat Hak Milik cacat administrasi Berdasarkan Peraturan Menteri Agraria No. 3 tahun 1999 pasal 1 angka 12 bahwa dasar Pembatalan Sertifikat Bisa Dibatalkan karena Keputusan Tersebut cacat administrasi. cacat administrasi pada Penerbitan Sertifikat Maka Sertifikat terkait dapat diajukan Pembatalan. Pembatalan Sertifikat Bisa Melalui BPN dan TUN. Dalam proses penerbitan sertipikat hak atas tanah, bisa saja terdapat kesalahan atau cacat administrasi, maka dapat dibatalkan melalui tiga cara yaitu Pembatalan hak atas tanah diterbitkan karena terdapat cacat hukum administrasi dalam penerbitan keputusan pemberian dan/atau sertipikat hak atas tanahnya atau melaksanakan putusan pengadilan yang telah memperoleh kekuatan hukum tetap.

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1. INTRODUCTION

The government's role in development is to advance general welfare, make the life of the nation intelligent and create a just and prosperous society both materially and spiritually based on Pancasila based on the Preamble to the 1945 Constitution. That the earth and water and the natural resources contained therein are controlled by the state and used to the greatest extent of the prosperity of the people, then in controlling land by the Indonesian state for the greatest prosperity of the people (Article 33 paragraph (3) of the 1945 Constitution). The state's right to control the people is the highest organization of people's power. According to Machiavelli, power is aimed at saving the life of the state and maintaining independence.

Land is something that is necessary for human life as a place to live and as a source of livelihood. The land has land rights as regulated in Law number 5 of 1960 concerning Basic Agrarian Principles Article 4 paragraph (1) which states that on the basis of the state's right to control as intended in Article 2, various types of land are determined. a type of right to the surface

of the earth, called land, which can be given to and owned by people alone or jointly with other people and legal entities.

Nowadays, many land problems arise over land rights granted due to the community's lack of understanding or unlawful acts where the issue is brought to the court process. Thus, the need for the community to have legal certainty in ownership of land rights means that the community must carry out land registration to obtain a certificate of land rights as in Article 19 paragraph (1) of the UUPA which states that to guarantee legal certainty by the Government, land registration will be held throughout the region. The Republic of Indonesia according to the provisions is regulated by Government Regulations. The provisions governing land registration are further regulated in Government Regulation Number 10 of 1961 concerning Land Registration and refined by Government Regulation Number 24 of 1997.

After the land registration is carried out, a land ownership certificate appears which provides legal protection and legal certainty for the holder of the land rights because the certificate has strong evidentiary power. Article 20 paragraph (1) UUPA regulates property rights that property rights are hereditary, strongest and fullest rights that people can have over land, bearing in mind the provisions in Article 6. Ownership rights are rights that are owned from generation to generation by expert's inheritance if the owner dies without being bound by a time limit and the owner has full authority over property rights.

The process of registering land rights will be recorded in the land book register of the village concerned. For each right that is recorded, a copy is made of the relevant land book to describe the land, a measurement letter is made, then bound together with a cover paper whose form is determined in the regulations, called a certificate. Our registration system adopts a negative system which means that the truth of the physical data and juridical data contained in the certificate must be accepted as long as there is no other evidence that proves otherwise.

Land registration in a negative system does not guarantee the certainty and correctness of the data presented in the certificate, this creates opportunities for other parties who object to the issuance of a land title certificate, namely a certificate of ownership rights to land for a particular plot of land, to sue the party whose name is listed on the certificate, or an official who has the authority to issue or issue certificates of ownership of the land.

Provisions for canceling land title certificates including land ownership certificates are within the Head of the Land Office, as in Article 12 paragraph (1) letter a of Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 11 of 2016 which states: In the event that disputes and conflicts fall under the authority of the ministry as intended in article 11 paragraph (3), the official responsible for handling disputes, conflicts and cases reports the results of data collection and analysis results as intended in article 10 and article 11 to the Head of the National Land Office. in carrying out an analysis regarding the presence or absence of errors as described in Article 11 paragraph (3) by collecting data and analysis which is included in the ministry's complaint.

2. RESEARCH METHOD

Normative legal research uses normative case studies in the form of legal behavioral products, for example reviewing laws. The subject of the study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So normative legal research focuses on positive law inventory, legal principles and doctrine, legal discovery in cases in concerto, legal systematics, and level of synchronization, legal comparison and legal history.

In normative legal research there are several approaches, with these approaches researchers will obtain information from various aspects regarding the issue they are trying to find answers to. The approach method in this research is the statutory regulation approach. A normative legal research must of course use a legislative approach, because what will be researched are various legal regulations which are the focus and central theme of the research.

3. RESEARCH RESULTS AND DISCUSSION

A land rights certificate is a legal consequence of land registration which can be used as strong evidence for land rights holders regarding physical data and juridical data on land. In issuing a Certificate, a process is required that involves the applicant, adjoining land owners, Village Officials and related agencies to obtain explanations and documents as a basis for rights related to the Certificate application.

This is done so that the land title certificate has strong legal evidentiary value for the holder. Article 32 of Government Regulation Number 24 of 1997 formulates as follows, that:

1. A certificate is proof of valid rights, if the physical data and juridical data are in accordance with the data in the measurement letter and land rights book in question.
2. In the event that a plot of land has been legally issued a Certificate in the name of a person or legal entity who acquired the land in good faith and actually controls it, then other parties who feel they have rights to the land cannot demand the implementation of that right within 5 years. Since the issuance of the Certificate, he has submitted a written objection to the holder of the Certificate and the head of the land office concerned or has not submitted a lawsuit to the court regarding the control or issuance of the Certificate."

To provide legal certainty and legal protection, land rights holders are given certificates as proof of land rights. The UUPA does not mention the name of the registered certificate of land rights. Article 13 paragraph 3 of Government Regulation Number 10 of 1961 states that a registered certificate of land title is called a certificate, which is a copy of the land book and measuring certificate after being stitched together with a paper cover whose form is determined by the Minister of Agrarian Affairs. In Article 1 number 20 of Government Regulation Number 24 of 1997, it is stated that a certificate is a letter of proof of rights as intended in Article 19 paragraph (2) letter c UUPA for land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in the relevant land book.

Based on the provisions of Article 2 of the UUPA which gives the State authority over the right to control the earth, water and space, including land, it is implied that it regulates a person's legal relationship with land, which in this case includes terminating the relationship or canceling a person's right to land. In general, the UUPA determines that a land right will be extinguished if:

1. the term of his rights expires;
2. cancelled, because a condition is not fulfilled by the holder of the right to the land;
3. deprived of rights (onteigening);
4. Voluntarily released by the rights holder.

According to Article 1 number 14 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency (PMNA/KBPN) Number 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights, cancellation of land rights is the cancellation of the decision to grant land rights or certificates. Land rights because the decision contains legal defects in its issuance or to implement a court decision that has permanent legal force. Thus, what is canceled is not the land rights but the State Administrative decision which resulted in the existing land rights according to the provisions of the UUPA being canceled and also annulled.

The legal basis for the authority to revoke or annul a State Administrative Decree in the land sector by the Head of the National Land Agency based on legal or administrative defects in its issuance is as follows:

1. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles;
2. Government Regulation Number 24 of 1997 concerning Land Registration;
3. Presidential Decree Number 26 of 1999 concerning the Establishment of the National Land Agency;
4. Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1999 concerning Delegation of Authority and Cancellation of Decisions Granting Rights to State Land.

5. Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights.

More clearly in the Presidential Regulation of the Republic of Indonesia Number 10 of 2006 concerning the National Land Agency it is regulated that in carrying out its duties the National Land Agency carries out its functions, including canceling and terminating legal relations between people and/or legal entities and land in accordance with the provisions of statutory regulations applicable.

Article 107 of the Minister of State for Agrarian Affairs/head of the National Land Agency number 9 of 1999 stipulates:

Administrative legal defects as intended in article 106 (1), namely:

- a. Wrong procedure
- b. Wrong application of legislation
- c. Wrong object of rights
- d. The fault is the subject of rights
- e. Wrong kind of right
- f. Wrong in broad terms
- g. There are overlapping land rights
- h. Juridical or physical data is incorrect
- i. There are other errors of an administrative nature

Article 1 paragraph (20) Government Regulation no. 24 of 1997 is enforced as a provider of certainty and legal protection for land rights by having to be registered in order to submit an application for land rights to obtain a certificate, because a certificate is valid evidence based on land ownership and control protected by the rules.

The result of a land dispute is the cancellation of the Land Rights Certificate, which is a legal action taken by the Government, namely the National Land Agency, in the land sector. The reason is that the Land Rights Certificate is not a permanent proof of ownership, but is strong, meaning that the Certificate is a sign of proof. Ownership of physical and juridical data is contained in the Certificate as long as it is contained in the land book and measurement certificate, so that if there are parties who object to the issuance of the Land Rights Certificate, they can submit objections to the National Land Agency to cancel it or file a lawsuit in Court.

4. CONCLUSION

From the discussion above, the author draws several conclusions, namely: The basis for canceling the certificate is legally flawed which is explained in the Regulation of the Minister of Agrarian Affairs Article 1 number 14 of 1999 which explains that the decision to cancel the grant of land rights is the cancellation of the land rights certificate because the decision contains administrative legal defects. Legal defects mean a policy or procedure that is not in accordance with the enactment of the law. Regarding administrative legal defects in the issuance of land ownership certificates, it can also be seen in article 62 paragraph (1) of the Regulation of the Head of the National Land Agency Number 3 of 2011 which explains: Certificates of ownership rights Land containing administrative legal defects may be subject to cancellation or changes by the government in the maintenance of land registration data according to statutory regulations. The legal consequence of a certificate that is legally flawed in its issuance is cancellation. Cancellation of certificates with administrative law defects can be submitted through BPN and TUN, resolution of problematic certificates can be done by renewing the certificate or by registering the certificate again.

5. BIBLIOGRAPHY

- Effendi Wargan, *Agrarian Law in Indonesia An Analysis from a Legal Practitioner's Point of View*, Jakarta: Rajawali, 1991
- Soerjono Soekanto, *Legal Research Methods*, Jakarta: UI Press, 1998

Indonesia, National Land Agency, PP no. 10 of 2006

Dotulung, MTP Cancellation of Land Rights Certificate Due to Administrative Legal Defects. *Lex Privatum*, 6(1).2018

Government Regulation Number 24 of 1997 concerning Land Registration;

Law Number 30 of 2014 concerning Government Administration;

Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of Rights to State

Land and Management Rights.