

Cancellation of Land Ownership Certificates due to Administrative Defects Based on Legal Certainty

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Abstract. *The purpose of this research is to know and analyze the legal consequences of the cancellation of land ownership rights that become juridical defects and administrative defects, as well as to know and analyze the settlement of land disputes over land ownership rights in the future. The research approach uses a juridical sociological approach. The result of this study is the cause of the cancellation of the land title certificate is due to a dispute between one party and another over the same plot of land, so that the party who feels aggrieved applies for cancellation. the cancellation of the land title certificate, it is proven that the sale and purchase deed which is the basis for issuing the certificate, both the material data and the formal data contained in the sale and purchase deed are contrary to the applicable laws and regulations or contrary to AUPB. The settlement of a land dispute in the future requires a special land court institution in order to avoid the occurrence of overlapping and contradictory decisions that do not guarantee legal certainty based on justice for the entire community. In other words, the certainty reflected in a law should also be reflected in judge decisions that are oriented towards the sense of justice contained therein. Prioritizing the basis of legislation, decisions administration, and justice in every policy of State based on justice and legal certainty is a demand and reality in the formation of new laws, especially laws used in land dispute resolution in Indonesia.*

Keywords: Administrative; Cancellation; Certificate; Land.

1. Introduction

Land is a source of livelihood and livelihood for humans and society so that it is the most basic human need, with the belief that land is highly valued and useful for human life, in fact land and humans cannot be separated. Humans live and

develop and carry out activities on the land so that at all times humans are in contact with the land.¹

In Indonesia, the concept of a certificate is a formal document used as a juridical instrument to prove ownership of land rights issued by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency as a Non-Ministerial Government Institution that carries out duties in the land sector nationally. Providing land rights certificates is a manifestation of one of the main objectives of the UUPA, namely to provide legal certainty regarding land rights for all Indonesian people. This is as stated in article 19 paragraph 1 of the UUPA concerning land registration which states that:

"To ensure legal certainty, the government is holding land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations."

Quoting Muchsin Gunawan, he stated that the population number is increasing from year to year, but this increase in number is in conflict with the condition of the land because the land area cannot possibly increase or expand, this contradiction often triggers the emergence of frictions of interest related to the use and land use, which results in land disputes arising. Land conflicts that occur in society appear in various forms. There are quite a few parties involved in the conflict resolution process, both the state and civil society institutions such as non-governmental organizations. However, the dispute resolution process often reaches a dead end, making the conflict even more protracted.²

Lawsuits against the issuance of land title certificates are possible because the land registration system adopted in Indonesia is a negative system with a positive tendency, which means that the actual rights holder is protected from the actions of other people who transfer their rights without the actual rights holder knowing. The main characteristic of this negative system with positive tendencies is that land registration does not guarantee that the registered names are the actual owners. The name of the previous right holder from whom the right applicant obtained the land and then registered it is a link in the chain of legal actions in registering land rights.³

Case of certificate with administrative defects Object in question Decree of the Head of the Regional Office of the National Land Agency for the Special Capital Region of Jakarta Province number: 10/Pbt/BPN.31/IV/2020 dated 20 April 2020 concerning Cancellation of Certificate of Ownership Rights Number: 6414/Bambu Apus on behalf of Bambang Suryana, et al in a dispute over land covering an area of 2,671 M² located on Jalan Bambu Apus RT 003 RW 03, Bambu Apus Village,

¹MP Sihan, *Land and Building Acquisition Fees: Theory and Practice*, Raja Grafindo Persada, Jakarta, 2003, p. 1

²Bernhard Limbong. *Land Conflict*. Margareta Pustaka. Jakarta, 2012, p. 65

³AP Parlindungan, *Land Registration and Conversion of Land Rights According to UUPA*, Alumni, Bandung, 1985, p. 37

Cipayung District, East Jakarta Administrative City, between PT. Bambu Indah Timur with Bambang Suryana.

In this case the basis for the issuance of Building Use Rights No.00323/Bambu Apus in the name of PT. Bambu Indah Timur, is based on the 1991 Deed of Sale and Purchase, namely between Mr Kalong Bin Senan and Mr Yusuf dated March 20 1991, while the Basis for Issuance of Certificate of Ownership No. 6414/Bambu Apus in the name of the PLAINTIFFS is based on Deed of Sale and Purchase No. 41/DB/I/1973 from Lamin Bin Narun to Mrs. HM Romlah Bin Djodjodiredjo and signed by Moh. Amin, SH, Head of Pasar Rebo Subdistrict, Monday 19 February 1973, that it is factually clear that the PLAINTIFF's acquisition of the land rights belonging to the PLAINTIFF was first owned by the PLAINTIFF rather than the Sale and Purchase Deed held by Brother Yusuf as the basis for the issuance of Building Use Rights No. 00323/Bambu Apus dated 27 May 2005, following Certificate of Rights to Use Ban Gunan No. 00323/ Bambu Apus has changed from being in the name of Yusuf to being in the name of PT. Bambu Indah Timur on 29 March 2006.

The action of BPM which has issued the object of dispute in the form of Decree No.10/Pbt/BPN.31/IV/2020 dated 20 April 2020 concerning the cancellation of Certificate of Ownership No. 6414/Bambu Apus in the name of the PLAINTIFFS is contrary to the 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.

Based on this background description, the aim of this research is to find out and analyze the legal consequences of canceling property rights to land which become juridical defects and administrative defects, to find out and analyze the resolution of land disputes over land ownership rights in the future.

2. Research Methods

The research approach uses a socio-juridical approach or socio-legal research method, because the problem studied concerns the relationship between juridical factors and sociological factors. In this research, the object is a judicial review of the cancellation of land ownership certificates due to administrative defects. Sociological legal research is called field legal research, because this research is carried out by observation, interviews or distributing questionnaires. As field research, this research is mostly carried out on primary data. This research specification uses a descriptive analysis method, namely by describing and providing the researched data as carefully as possible about a problem with the aim of strengthening theories which can also develop a new theoretical framework.⁴

⁴Soerjono Soekanto, Introduction to Legal Research, UI Press, Jakarta, 2015, page 42

3. Results and Discussion

3.1 Legal Consequences of Cancellation of Land Ownership Rights Which Cause Juridical and Administrative Defects

The stipulation of regulations in the land aspect where the UUPA is made is in an effort to provide guarantees for the existence of legal certainty for holders of land rights. So, to provide legal certainty, it is necessary to have a land registration mechanism in all regions of Indonesia. As stated in Article 1 of the Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration, describes the definition of land registration. Land registration is a series of activities carried out by the Government continuously, sustainably and regularly, including collecting, processing, bookkeeping, and presenting and maintaining physical data and juridical data, in the form of maps and lists, regarding plots of land, above- ground space, space. Underground and apartment units, including the provision of letters of proof of title to plots of land, above ground space, basement space for which there are already existing rights and ownership rights to apartment units as well as certain rights that encumber them.⁵

This also includes the granting of a certificate as an authentic form of proof of ownership of one's rights to a piece of land. It can be concluded that this stage is an effort to realize juridical certainty in land rights for the authorities, which is established through the publication of an archive that has inkrah legal force, namely in the form of a deed of land authority. A certificate that is found to be legally defective is a means of proving ownership of authority over land which is already valid and it is found that there are parts that cause cancellation, because in the manufacturing procedure it is found that there are elements of coercion, error, fraud or in other cases. It could also be that the formal procedures are inconsistent or violate the law, and give rise to legal consequences, namely cancellation of the certificate. Land title certificates that have already been registered are likely to still be found to have problems resulting in disputes that lead to applications for cancellation of land title deeds through the court stage.⁶

Cases related to land ownership certificate disputes are usually submitted to the Administrative Court or District Court. The difference between PTUN and PN is that PTUN is the object of the case (objectum litis) and is a decision of the TUN issued by a TUN official or authority, whereas in PN the object of the case is the rights and interests of the community which has been harmed as a result of the issuance of the TUN decision, including Certificates of Rights. Land issued by BPN often harms the rights and interests of the community. The existence of the Supreme Court Cassation Decision Number 162 K/TUN/2012 shows that land

⁵Fran's Hidayatulloh (et. al), Legal Defects in the Transfer of Land Rights, IURIS NOTITIA: Journal of Legal Studies, Vol. 1, No. 1, April 2023, pp. 20-27

⁶Ikhwansyah & Djumardin. Legal and Administrative Defects in the Cancellation of Land Title Certificates. Jatiswara, 33(1), 2018,

dispute resolution can be through the State Administrative Court, if the object is a State Administrative Decree and the party issuing it is a State Administrative Official.

Based on Article 53 paragraph (1) of the First Administrative Court Law, the reasons that can be used to file a lawsuit against the invalidity of a decision are regulated, namely: The TUN decision being sued is in conflict with the applicable laws and regulations; and the TUN decision being challenged is contrary to the general principles of good governance.

The problem is regarding the 2671 m² plot of land with the status of Ownership Rights Number 6414/Bambu Apus located on Jalan Bambu Apus RT 003/RW 003, Bambu Apus Village, Cipayung District, East Jakarta Administrative City. Basis for Issuance of Building Use Rights No.00323/Bambu Apus in the name of PT. Bambu Indah Timur, is based on the 1991 Deed of Sale and Purchase, namely between Mr Kalong BinSenan and Mr Yusuf dated March 20 1991, while the Basis for Issuance of Certificate of Ownership No. 6414/Bambu Apus in the name of the PLAINTIFFS is based on Deed of Sale and Purchase No. 41/DB/I/1973 from Lamin Bin Narun to Mrs. HM Romlah Bin Djodjodiredjo and signed by Moh. Amin, SH, Head of Pasar Rebo Subdistrict, Monday 19 February 1973, that it is factually clear that the PLAINTIFF's acquisition of the land rights belonging to the PLAINTIFF was first owned by the PLAINTIFF rather than the Sale and Purchase Deed held by Brother Yusuf as the basis for the issuance of Building Use Rights No. 00323/Bambu Apus dated 27 May 2005, following Certificate of Rights to Use Ban Gunan No. 00323/ Bambu Apus has changed from being in the name of Yusuf to being in the name of PT. Bambu Indah Timur on 29 March 2006.

Judge's decision declaring void or invalid Decree Number: 10/Pbt/BPN.31/IV/2020 dated 20 April 2020 concerning Cancellation of Certificate of Ownership Number: 6414/Bambu Apus in the name of Bambang Suryana, et al in a land dispute covering an area of 2,671 M² located on Jalan Bambu Apus RT 003 RW 03, Bambu Apus Village, Cipayung District, East Jakarta Administrative City, between PT. Bambu Indah Timur with Bambang Suryana et al. and Require the DEFENDANT to revoke Decree Number 10/Pbt/BPN.31/IV/2020 dated 20 April 2020 concerning the cancellation of Certificate of Ownership No. 6414/Bambu Apus on behalf of the PLAINTIFFS in a land dispute covering an area of 2,671 M² located on Jalan Bambu Apus RT 003/RW 03, Bambu Apus Village, Cipayung District, East Jakarta Administrative City.

Based on an interview with Mrs. Fenny Novita as Coordinator of the Substance of Disputes, Conflicts and Cases at the Central Jakarta City Administration Land Office, on December 10 2023, stated that:⁷

⁷Results of an interview with Ms. Fenny Novita as the Coordinator of Substance of Disputes, Conflicts and Cases at the Central Jakarta City Administration Land Office, on December 10, 2023

“The legal consequences in this case were that BPN revoked Decree Number 10/Pbt/BPN.31/IV/2020 dated April 20 2020 concerning the cancellation of Certificate of Ownership No. 6414/Bambu Apus on behalf of the Plaintiffs in a land dispute covering an area of 2,671 M² located on Jalan Bambu Apus RT 003/RW 03, Bambu Apus Village, Cipayung District, East Jakarta Administrative City.”

“The court has the authority to decide the invalidity or declare that a certificate does not have legal force, but the court does not have the authority to cancel the certificate in question. The difference in principle lies in the authority and legal consequences. The statement that a certificate has no legal force is the authority of the court, while the cancellation of the certificate is the authority of the BPN. Meanwhile, the object of cancellation of land rights consists of: a) a decision letter granting land rights; b) land title certificate; c) decision letter granting land rights in the context of regulating land control.”

Cancellation of a land title certificate as a follow-up to a court decision that has permanent legal force is carried out by submitting a request for cancellation by the winner of the case to the BPN. Any request for cancellation based on this court decision cannot immediately be implemented by the BPN. This of course can provide legal uncertainty for the winner of the case because quite a lot of time, energy, thoughts and costs have been spent to obtain justice in the judiciary.

Court decisions that have permanent legal force can be used as a tool to provide legal protection for the party winning the case for land that has been legally determined to be his. A judge's decision can provide legal certainty. The principle of legal certainty is one manifestation of the principle of legality in a rule of law state.⁸

3.2 Arrangements for Settlement of Land Disputes over Land Ownership Rights in the Future

Legal certainty regarding land rights is very important, as the mandate of UUPA contains two dimensions, namely certainty of the object of land rights and certainty of the subject of land rights, namely certainty of the location of the land plot in geo-referenced coordinates on a land registration map and certainty of the subject being indicated. of the name of the land right holder listed in the land registration book at the land agency, where a copy of the map and land registration book is known as a Land Certificate.⁹

⁸I Dewa Ayu Trisna Anggita Pratiwi and Made Gde Subha Karma Resen, Legal Consequences for the Winner of the Case Regarding the Inability to Execute the Cancellation of Land Rights Based on Court Decisions, *Kertha Semaya Journal*, Vol. 11 No. 12 of 2023, pp. 3029-3038

⁹Agus Salim, Settlement of Legal Disputes Against Ownership Certificate Holders with the Issuance of Dual Certificates, *USM Law Review Journal* Vol 2 No 2, Year 2019, pp. 174-187

Legal relationships and legal acts that exist or occur due to human interaction activities in maintaining life and in meeting daily needs, sometimes give rise to legal consequences that can result in both.¹⁰

Implementation of land law reform plans has so far been hampered. As a result, land law becomes a sleeping law so that it does not support efforts to achieve people's welfare as mandated by the constitution. This is due to the many legislative provisions produced by the government in the past which did not reflect the aspirations of the community and were not in accordance with development needs which were based on religious law and customary law. The lack of role of the national legislation program (Prolegnas) and the large number of government institutions involved in the judicial process for land matters have resulted in overlapping decisions. It is not uncommon for one rule to conflict with another, causing confusion in the implementation of the law.

Settlement of land disputes in the future requires a special land court institution so that overlapping and contradictory decisions can be avoided so as not to guarantee legal certainty based on justice for the entire community. In other words, the certainty reflected in a law should also be reflected in the judge's decision which is oriented towards the sense of justice contained therein. Prioritizing the basis of legislation, decisions and justice in every State administration policy that is based on justice and legal certainty is a demand and reality in the formation of new laws, especially laws used in resolving land disputes in Indonesia.

It is hoped that a special court for land disputes can play a role in minimizing uncertainty in resolving land claims issues. In this way, economic development will run more smoothly so that the welfare of the Indonesian people will increase.

4. Conclusion

The cause of the cancellation of the land title certificate is due to a dispute between one party and another party over the same plot of land, so that the party who feels disadvantaged applies for cancellation. Both material data and formal data contained in the sale and purchase deed are in conflict with applicable laws and regulations or are in conflict with the AUPB. legal consequences of Decision Number: 145/G/2020/PTUN.Jkt. is that BPN revokes Decree Number 10/Pbt/BPN.31/IV/2020 dated 20 April 2020 concerning the cancellation of Certificate of Ownership No. 6414/Bambu Apus on behalf of the Plaintiffs in a land dispute covering an area of 2,671 M² located on Jalan Bambu Apus RT 003/RW 03, Bambu Apus Village, Cipayung District, East Jakarta Administrative City. Settlement of land disputes in the future requires a special land court institution so that overlapping and contradictory decisions can be

¹⁰Muh. Rizal Ramli (et. al). Polemic of Land Rights Dispute, Litigation Journal, Vol. 9, No. 1, 2021, pp. 18-26

avoided so as not to guarantee legal certainty based on justice for the entire community. The certainty reflected in a law should also be reflected in the judge's decision which is oriented towards the sense of justice contained therein. In this way, economic development will run more smoothly so that the welfare of the Indonesian people will increase.

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