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Issuance of Legally Defective Land Rights Certificates at the Jayapura City Land Office

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Abstract

This study aims to determine the factors that cause certificates to be legally defective at the Jayapura City Land Office and to determine how to cancel certificates that are legally defective at the Jayapura City Land Office. The approach method used in this study is the normative and empirical legal approach method, namely an approach that refers to laws, literature, written regulations or other secondary legal materials and to see how it is applied through field research. The results of this study revealed that the factors that caused the certificate to be legally defective at the Jayapura City Land Office were 2 (two) main things, namely the first from the applicant himself with dishonesty by making fake documents from blank signatures to parties adjacent to the land, in other words it can be said that the applicant from the beginning had bad intentions with the intention of lying to the land office by entering false data, the second from the Land Office itself because of administrative legal defects such as procedural errors, errors in the application of laws and regulations, errors in the subject of rights, errors in the type of rights, errors in calculating the area, there is overlapping land rights, incorrect legal data or physical data or other errors of an administrative nature and the Way to Cancel a Certificate that is legally defective at the Jayapura City Land Office can be done by means of an application by the relevant party with a court decision that has permanent legal force.

Keywords: Certificate; Legal Defect; Certificate Cancellation.

Introduction

Land is a gift from God Almighty as one of the fulfillments of human needs. For people in cities, land is needed for the construction of offices and settlements which is a sign of urbanization of villagers to cities, while for people in villages/hamlets, land is a means of fulfilling the needs of people's lives such as farming and social activities. In Land Law, the term land is used in a legal sense, as an understanding that has been given official limitations by the Basic Agrarian Law Number 5 of 1960, hereinafter abbreviated by the author as UUPA. The provisions of Article 1 paragraph (4) state: "in the sense of the earth, including the body of the earth beneath it and that which is under water." According to the basic concept of social science that humans as social beings who in an effort to fulfill their needs need help from others, a relationship is created between one person and another, both in the realm of material, cultural, economic and so on. The need for people for housing is increasing along with the increasing population, so the need for land by the community is also increasing, both for housing and for other activities.



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Based on Article 20 UUPA, the acquisition of ownership rights is a hereditary, strongest and most complete right that can be owned by a person over land, taking into account the provisions regarding the social function of having land rights as referred to in Article 6 UUPA. Based on Article 21 paragraph (1) and (2) UUPA, "in principle only Indonesian citizens can have land ownership rights", in addition "the government determines legal entities that can have land ownership rights and their requirements". To guarantee the legal certainty of land rights, a rights registration process is required, the final product of which is a land rights certificate. Land rights certificates function as strong evidence. This is the main function as stated in Article 19 paragraph (2) letter c UUPA. A person or legal entity will easily prove themselves as the rights holder of a plot of land if their name is clearly stated on the certificate (Adrian Sutedi, 2011).

Objects in the form of land often give rise to various problems and legal disputes, both within the family regarding inheritance issues, or with neighbors regarding the boundaries of adjacent land, and there are even third parties or other parties who play a role in creating an atmosphere that gives rise to land disputes (Suhanan Yosua, 2010). Some cases are also related to overlapping issues (there is more than one certificate for the same object) resulting in legal defects.

The existence of legal defects in land title certificates can usually be caused by negligence or deliberate acts by the parties or also the officers of the National Land Agency in the process of making the land certificate. Therefore, the checking process is very important when making a certificate and strict sanctions are needed for deviations made by the parties involved in it. The National Land Agency, which is a government agency tasked with issuing a land title certificate and is also responsible if an error occurs in issuing a certificate.

Cancellation of Land Rights due to legal defects will create the potential for land ownership disputes. This dispute occurs because the legal basis used as the basis for obtaining a land ownership right which is then issued a land title certificate contains subjective defects, so at any time the event that gave birth to the right can be challenged for its validity. If it can be proven that the lawsuit for the validity of a legal act is true, then this fact can be used as a basis for requesting the cancellation of the land title granting letter or land title certificate. This Land Dispute is caused by a certificate that is legally defective, such a situation makes the legal force of the certificate doubtful. Thus, the cancellation of land rights due to legal defects is an interesting study to study because in this problem the community needs to know what and how Land Rights (HAT) can be canceled.

Literature Review

The Basic Agrarian Law (UUPA) is a basic regulation that regulates the control, ownership, allocation and control of land use which aims to organize the management and utilization of land for the greatest prosperity of the people. One aspect needed for this purpose is regarding the legal certainty of Land Rights, which is the main basis in the framework of the Basic Agrarian Law (UUPA) is a basic regulation that regulates the control, ownership, allocation and control of land use which aims to organize the management and utilization of land for the



greatest prosperity of the people. One aspect needed for this purpose is regarding the legal certainty of Land Rights, which is the main basis in the framework of the legal certainty of land ownership (Muchtar Wahid, 2008).

Certificates as proof of rights, issued for the benefit of the relevant rights holder, in accordance with the physical data contained in the measurement letter and the legal data that has been registered in the land book. Obtaining a certificate is the right of the land rights holder, which is guaranteed by law (Herman Hermit, 2014). Article 32 Paragraph (2) of Government Regulation No. 24 of 1997 states: In the event that a certificate has been legally issued for a plot of land 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 can no longer demand the implementation of these rights if within 5 (five) years since the issuance of the certificate they have not submitted a written objection to the certificate holder and the head of the relevant land office or have not filed a lawsuit with the Court regarding control of the land or the issuance of the certificate.

A certificate of legal defects is proof of land rights that has been issued and there are things that cause it to be cancelled, because in its administration there are elements of coercion, error, fraud and others. Or the formal procedure is not appropriate or violated, and the legal consequences are that it is cancelled (Rusmadi Murad, 1991). If there is a legal defect in the issuance of the certificate or there is a party that is harmed by the issuance of the certificate, the certificate can be canceled by law. This can cause a problem in the land sector that exists in the community. For this reason, it is necessary to provide education to the community so that there is no more cancellation of land rights.

The legal basis for the regulation regarding the Cancellation of Land Title Certificates is:

- a. Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights (Regulation of the Minister of Agrarian Affairs/BPN No. 9/1999); and;
- b. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 11 of 2016 concerning Settlement of Land Cases (Regulation of the Minister of ATR/BPN No. 11/2016).

Method

This study employs a combination of normative and empirical legal research methods to provide a comprehensive analysis of the subject matter. The normative legal method involves examining and analyzing existing laws, legal principles, doctrines, and regulations relevant to the topic. This approach primarily focuses on secondary legal materials, including legislation, court decisions, scholarly articles, textbooks, and other documented legal sources. By thoroughly reviewing these materials, the study aims to understand the legal framework, principles, and doctrines that govern the issue under investigation.



In addition to the normative approach, this research integrates empirical legal methods to observe and assess how these legal rules and principles are implemented in real-world settings. Empirical legal research involves collecting and analyzing data obtained from field studies, interviews, observations, or surveys to examine the practical application of the law. This dual approach allows the study to bridge the gap between legal theory and practice by evaluating whether and how legal norms are effectively enforced or observed in society.

The data collection process includes gathering relevant secondary data from books, academic journals, official government publications, and legal databases to establish a solid theoretical foundation. These sources provide comprehensive insights into the applicable laws and scholarly interpretations necessary for the normative analysis.

For the empirical component, field research is conducted to collect primary data by engaging directly with relevant stakeholders or observing legal processes in action. This may include interviews with legal practitioners, government officials, or affected parties, as well as direct observation of legal procedures or dispute resolution mechanisms.

The combination of these methods enables the study to not only describe and interpret the existing legal framework but also critically assess its implementation and effectiveness in practice. This integrated methodology ensures a balanced and well-rounded analysis, providing both doctrinal insights and practical evidence to support the study's conclusions and recommendations.

Result and Discussion

Land certificates as authentic evidence of land rights, their truth is considered perfect as proof of the existence of rights, some also argue that they are authentic evidence of land rights registration. According to Article 1 number 20 of PP No. 24 of 1997, it explains the definition of "A certificate is a letter of proof of rights as referred to in Article 19 paragraph (2) letter c of the 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."

What is meant by an authentic deed is explained in Article 1868 of the Civil Code, namely; "a deed made in the form determined by law by or before an authorized public official for that purpose at the place where the deed was made." Likewise, the process of issuing a certificate, in accordance with the intent of the article, is therefore named an authentic deed.

In relation to administrative legal defects, it is also detailed in paragraph (3) of Article 11 of the Regulation of the Minister of ATR/BPN No. 11/2016, which localizes the forms of administrative legal defects that fall under the authority of the Ministry of ATR/BPN, namely:

- a. Procedural errors in the process of registering confirmation and/or recognition of rights to land formerly owned by customary law;
- b. Procedural errors in the process of determining and/or registering land rights;
- c. Procedural errors in the process of determining abandoned land;
- d. Overlapping rights or certificates of land rights where one of the bases of the rights clearly contains errors;



- e. Procedural errors in the process of maintaining land registration data;
- f. Procedural errors in the process of issuing replacement certificates;
- g. Errors in providing land data information;
- h. Procedural errors in the process of granting permits;
- i. Misuse of space utilization; or
- j. Other errors in the application of laws and regulations.

Legal defects in the form of administrative defects are errors/procedural mistakes made within the scope of the National Land Office, as stipulated in Article 107 of PMNA/KBPN No. 9 of 1999. These errors are not always entirely errors made by the Land Office. Often these errors arise due to several things outside the service activities at the Land Office.

The author takes the example of the case of the Cancellation of Land Ownership Certificate Number 02638 issued on October 17, 2013 covering an area of 1,273 m² located on Jalan Raya Abepura Sentani, Hedam Village, Heram District, Jayapura City, Papua Province, which is registered in the name of Tropina Mebri, S.Sos., M.Si, the core of the problem is related to the overlapping of land rights ownership between the Ut Omnes Unum Sint Foundation and Tropina Mebri, S.Sos., M.Si. A plot of land measuring 1,273 m², located on Jalan Raya Abepura Sentani, Hedam Village, Heram District, Jayapura City, Papua Province, registered with a certificate of ownership number 02638 dated October 17, 2013 in the name of Tropina Mebri, S.Sos., M.Si, claimed to belong to the Ut Omnes Unum Sint Foundation. After the File Processing Team of the Papua Province BPN Regional Office for Dispute Assessment and Handling conducted research on the Document for Issuance of Certificate of Ownership 02638/Hedam An.TropinaMebri, S.sos. M.Sidi found an administrative error that can be described as follows based on evidence of a photocopy of List of Entries 201 concerning the processing of legal data and determination of land boundaries.

In the contents of the document, there is a discrepancy with the land plot map as attached to the registration application file where it was found in the document determining the boundaries of the land plot contained in the neighbor's agreement column, the boundary states that the north is customary land and the west is customary land and both columns were signed by Ms. Tropina Mebri herself, and after the processing team conducted research on other application documents attached by Ms. Tropina Mebri, there was a factual discrepancy with the information contained in the legal data processing document and the determination of the boundaries of the land plot where in the document of the statement of no dispute in the column of the agreement of the bordering land owner states that the North borders Mr. Martinus Manggo, the East borders Mr. Yunus Pulalo (PNS of the Heram Village Office), and the South also borders Mr. Yunus Pulalo (PNS of the Heram Village Office). Meanwhile, based on the existing data contained in the land area map as attached to the data processing team, the actual boundaries based on the land area map document are that the North is bordered by Measurement Letter Number: 368/1981 and Measurement Letter Number: 69/1977 and the West is bordered by Measurement Letter Number: 2365/1994.

Cancellation of Land Title Certificates based on legal defects is sometimes difficult to implement by the National Land Agency because it is challenged by land rights holders, this is



because the certificate owner feels disadvantaged. However, on the other hand, there are other parties who also have an interest in the land who also feel disadvantaged by the issuance of land rights which are also claimed by a third party. Site reviews are often challenged by land title certificate holders by not providing space to conduct detailed checks on the objects to be canceled. Local government officials who are the closest to the community are also powerless.

The issuance of land title certificates is preceded by an application for land rights from the applicant by attaching the basis for rights, the applicant's identity, SPT PBB, and a statement of land ownership known to the local village/sub-district officials. However, because land administration in the village is not orderly, the Land Ownership Letter issued by the village/sub-district officials cannot be completely correct. In essence, the Land Office agency does not have the right to test the material truth in detail of land ownership that still has the status of village land because it is an immaterial right of a village, where the village knows in detail the status of the land, the land owner and the history of the land. The Land Office can only test a land that has a certificate because if the land already has a certificate, then indirectly the data/documents are already in the Land Office and its truth is only tested in terms of law.

So far, the author sees that the Regional Office of the National Land Agency has never handled a cancellation case based on the Ministry's Initiative. Most cases handled are cancellations due to administrative defects with applications / complaints from the complainant and implementing court decisions that have permanent legal force. To find out the procedure for canceling land title certificates due to legal defects at the Regional Office of the National Land Agency of Papua Province, the author should take one of the certificate cancellation cases carried out by the BPN because it is not widely known by the public in general, for example one case is the Cancellation of Land Ownership Certificate Number 02638 issued on October 17, 2013 covering an area of 1,273 m² located on Jalan Raya Abepura Sentani, Hedam Village, Heram District, Jayapura City, Papua Province, which is registered in the name of Tropina Mebri, S.Sos., M. Si. The procedure carried out is as follows (with applications / complaints):

- a) The Indonesian Christian Student Movement (GMKI) for and on behalf of the Ut Omnes Unum Sint Foundation made a Complaint Letter submitted in writing to the Jayapura City Land Office with Number 190078/SC/EXT/B/JPR/IX/2014 dated 17 September 2014;
- b) Officers at the Jayapura City Land Office received the application files;
- c) The Head of the Jayapura City Land Office analyzed and examined the completeness and accuracy of the legal data and physical data of the application for cancellation of land rights as referred to in Article 108 paragraph (1) and examined the eligibility of the application before further processing in accordance with the provisions of applicable laws and regulations;
- d) The Head of the Jayapura City Land Office issued a Land Case Handling Order Number 521/Sprin-600.14/91-71/XII/2014 concerning a plot of land measuring 1,273 m², located on Jalan Raya Abepura Sentani, Hedam Village, Heram District, Jayapura City, Papua Province, registered with a certificate of ownership number 02638 dated October 17, 2013 in the name of Tropina Mebri, S.Sos., M.Si, dated September 17, 2014;
- e) Jayapura City Land Office, Land Dispute and Conflict Section issued Land Case Analysis on



September 18, 2014, Minutes of Implementation of Field Deployment Task Number 535/BA-GL/SKP/2014 dated September 23 in the context of Handling Land Cases for the Land Object and Data Processing Minutes (RPD) for Land Cases issued on October 8, 2014;

- f) The Head of Jayapura City Land Office issued Letter Number 594/600.14/91/X/2014 dated October 16, 2014 Regarding Proposal for Cancellation of Land Ownership Certificate Number 02638 to the Papua Province BPN Regional Office;
- g) The Papua Province BPN Regional Office for the Study and Handling of Conflict Disputes and Land Cases issued a Land Case Handling Order Letter Number: 560/Sph-91/IV/2015 dated May 7, 2015;
- h) The Papua Province BPN Regional Office for the Study and Handling of Conflict Disputes and Land Cases issued a Task Order Letter Number: 561/St-91/IV/2015, dated May 7, 2015;
- i) From the Results of the Land Dispute Study regarding the Cancellation of the land ownership certificate number 02638, the Papua Province BPN Regional Office for the Study and Handling of Conflict Disputes and Land Cases issued an Internal Title Invitation Letter Number 207/18-91/II/2017;
- j) Minutes of Implementation of Land Dispute Presentation dated February 21, 2017 regarding the Application for Cancellation of Land Ownership Certificate Number 02638 due to administrative legal defects;
- k) The Papua Province BPN Regional Office made a Minutes of Implementation of Presentation dated February 21 regarding the Application for Cancellation of Land Ownership Certificate Number 02638 dated October 17, 2013 covering an area of 1,273 m², located on Jalan Raya Abepura Sentani, Hedam Village, Heram District, Jayapura City, Papua Province, registered in the name of Tropina Mebri, S.Sos., M.Si due to administrative legal defects;
- l) After going through the examination and research process, it can be concluded that there has been an administrative legal defect because there has been an overlap in the process of issuing certificates on the same land plot object, strengthened by the Results of the Minutes of the Implementation of Field Title Tasks Number: 535 / BA-GL / SKP / 2014 dated September 23, 2014 and procedural errors in the process of determining and / or registering land rights, it is necessary to carry out an administrative process in the form of Cancellation of Land Rights Certificates; 13. The Head of the National Land Agency Regional Office issued Decree Number 70 / SK-91 / NP.01 / VII / 2019 Dated July 5, 2019 concerning Cancellation of Land Ownership Certificate Number 02638 Issued on October 17, 2013 Covering an area of 1,273 m² located on Jalan Raya Abepura Sentani, Hedam Village, Heram District, Jayapura City, Papua Province, registered in the name of Tropina Mebri, S.Sos., M.Si.

Conclusion

Factors that cause certificates to be legally defective at the Jayapura City Land Office are 2 (two) main things, namely the first from the applicant himself with dishonesty by making fake documents from blank signatures to parties adjacent to the land, in other words it can be said that the applicant from the beginning had bad intentions with the intention of lying to the land office



by entering false data, the second from the Land Office itself because of administrative legal defects such as procedural errors, errors in the application of laws and regulations, errors in the subject of rights, errors in the type of rights, errors in calculating the area, there is overlapping land rights, incorrect legal data or physical data or other errors of an administrative nature. Meanwhile, the method for canceling a certificate that is legally defective at the Jayapura City Land Office can be done by means of an application by the relevant party with a court decision that has permanent legal force.

The author suggests that the Jayapura City Land Office must conduct continuous surveys and mapping, meaning that data maintenance must be maintained continuously to avoid unwanted things in the form of administrative legal defects and also in measuring and determining land boundaries, the BPN must not trust the applicant, must go directly to the location so that it is clear which parties are adjacent to the land to avoid disputes in the future. Meanwhile, for the people in Jayapura City who want to make a land title certificate, they must have good faith, do not just want to get a certificate but the data requested by the Land Office is falsified. This can also cause disputes in the future and can cause both material and non-material losses for those concerned.

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