

Legal Eligibility for Land Rights Owners for Cancellation of Certificates

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Abstract

Regarding repressive legal protection, which aims to correct problems that have already occurred, there are no relevant rules in the legislation to provide land right's defense, certificates whose registration of transfer of rights is canceled. This is because the Indonesian land registration system adheres to a negative publication system with a positive tendency, so that although the certificate is a strong evidence, it can still be canceled. This research uses normative research methods. Legal protection for holders of land rights certificates in Indonesia is still not fully guaranteed. Although land registration is carried out through the rights registration system, the fact is that the state only acts as a passive administrator. This is reflected in the explanation of Government Regulation Number 24 Year 1997 Section 32 Verse (2), which states that certificates do not guarantee the absolute truth of the data contained therein. The legal protection provided is also preventive and limited, i.e. only for certificate holders who meet conditions such as having controlled the land for more than five years, having good faith, and actually controlling the land. However, this provision can still be overridden by a court decision, as emphasized in SEMA No. 2 of 1991, which leaves room for a lawsuit even after the five-year period has elapsed. This reflects the weak legal position of the certificate holder when the registration of a transfer of land rights is invalidated due to administrative or procedural defects.

Keywords: *Land Ownership Rights, Legal Protection, Deed Cancellation.*

INTRODUCTION

The Agrarian Registration Law (hereinafter referred to as UUPA) Section 4 regulates land rights. Land rights can be controlled by individuals, jointly owned and/or legal entities. Those who own land are required to register their rights with the National Land Agency (hereinafter referred to as BPN). To ensure legal certainty regarding land rights, registration is required as stipulated in Section 19 Verse 1 of the UUPA. The law provides legal guarantees for those who hold land rights. Furthermore, land registration is regulated in Government Act Number 10 Year 1961 about Land Registration, which was later replaced by Government Regulation Number 24 Year 1997 about Land Registration (hereinafter referred to as PPPA). (I Ketut Oka dan Tetti Samosir, 2022)

The publication system determines whether the land registration process will run smoothly or not. This publication system aims to test whether a certificate is absolute or non-absolute. There are two systems within the Publication System, namely the positive system, which applies a title registration system, and the negative system, which applies a deed registration system.

Referring to PPPA, registration of land rights is carried out in a rights registration system which then results in changes to rights, followed by proof of registration of those rights, namely the Land Book (register) as a document containing legal and physical data. With this evidence, a certificate can be issued which is a copy of the register. Despite the negative publication system, the government does not guarantee the accuracy of certificate registration. This means that as the registration administrator, the government must maximise its efforts to present accurate data in the land register and registration map, so that there is no evidence to the contrary and the data presented is valid.

The government, through Article 1 of the PPPA, emphasises that as long as the physical and legal data contained in the certificate matches the recorded information, the certificate can be trusted and used as a strong legal basis, including in the event of a dispute arising at a later date. This means that land certificates have strong evidentiary value. However, it should be noted that these forces are relative, not absolute. If it is proved that there are defects in the procedure or the data does not match, then the legal force of the certificate can be canceled.

The functioning of land registration is determined by how registered land data is released, or the publication method employed in land registration in the relevant nation. The publication system is used to assess a certificate's evidential power, namely whether it is strong or weak, absolute or not absolute. There are two land registration publication systems: positive and negative. The distinction between the positive and negative publication systems is the land registration system. The positive publishing system utilizes the Registration of Titles system, whereas the negative publication method uses the Registration of Deeds system. (Adolf Roberto Sinaga, 2024)

In Indonesia's land system, land certificates serve as crucial proof of ownership rights. PPPA Section 32 is one of the key legal underpinnings for this regulation. The government underlines in Verse (1) that a land certificate is a solid evidence-based demonstration of entitlement. This means that as long as the certificate's physical data (such as the location, size, and boundaries of the land) and juridical data (such as the name of the right holder and the type of land right) match the information recorded in the measurement certificate and land book, the certificate can be trusted and used as a strong legal basis in a variety of situations, including a dispute. However, it is important to recognize that this strength is relative rather than absolute. If there is proof of procedural errors or data anomalies, the legal force of the certificate might be reversed.

Then, in Verse (2), this law expands legal protection for persons who already have a certificate. The law protects a person or legal organization that receives a certificate in good faith, that is, without knowledge of any past dispute or administrative flaw, and who actually own the land. In this instance, other parties who believe they have a claim to the land must move promptly. They have up to five years from the date of the certificate's issuing to file a formal objection or challenge it in court. Otherwise the right to suit is lost. The issues raised in this research are, first, the legal protection given to certificate holders based on the use of the negative publication system with a positive tendency in the land registration system, and second, the philosophical perspective of changing the negative publication system with a positive tendency into a positive publication system.

The implementation of good land registration is the basis and embodiment of administrative order in the land sector. To achieve administrative order, every plot of land and unit of flats, including the transition, encumbrance and write-off must be registered. In line with the intent and purpose in Act of Minister of Land Affairs and Spatial Planing Numer 11 Year 2016 Section 2 Verse (2) explaining the settlement of land disputes, it is said that the settlement of land cases aims to provide legal certainty and Justice regarding the control, ownership, use and utilization of land.

The problem arises when the holder of an administratively valid land certificate can still be sued by other parties claiming rights to the land. This can lead to legal uncertainty and agrarian conflicts. Therefore, the study of legal protection in this system as well as consideration for switching to a positive publication system is very relevant.

One of the cases that occurred due to the negative publication system with a positive tendency in the land registration system adopted by Indonesia is the cancellation of the recording of the transfer of rights in the certificate, the plaintiff (Ny. ORO) filed a lawsuit to cancel the certificate, on the grounds that the Certificate of property rights number : 17xx/Kelurahan Mln, dated December 16, 2002, an area of 11,162 m² on behalf of Mrs. TMB as defendant II

intervention was issued on the Customary Land of Marga/Keret Osok Malainsimsa by BPN Sorong City (as defendant) without the knowledge and consent of the plaintiff (Ny. Audio). The court decided to grant the plaintiff's claim on the grounds that the issuance of the Certificate of property rights was invalid and violated the plaintiff's customary land rights, and the court decided to grant the claim because the defendant could not show the land history register. This makes the defendant II intervention (Ny. TBH, I feel bad about that. Certificates that have been obtained by a legitimate process ranging from the signing of AJB to the recorded name Ny. TMB in SHM number : 17xx / Kelurahan Mln.

One of the problems that often arises in land cases is caused by the land registration system in Indonesia, namely a negative system that actually tends to be positive. A negative system with a positive tendency means that the government does not provide legal certainty to land rights holders. The government is also not responsible for the data contained in land certificates. The data will be considered valid as long as no other party challenges it.

This is a matter of concern for holders of certificates of land rights. Received a lawsuit from another party so that the occurrence of land disputes due to the negative publication system has a positive tendency in the land registration adopted by Indonesia. The things raised in this study, first, the legal protection given to certificate holders based on the application of negative publication system with a positive tendency in the land registration system, the second philosophical perspective of the change of negative publication system with a positive tendency to be a positive publication system.

The evidence provided by the state to landowners is a certificate, which contains data such as legal data and physical data on the land. Physical data includes the physical condition of the land, such as its location, boundaries, and area, as well as any buildings and plants growing on the land. Legal data includes information on rights, such as the name of the rights holder and any other parties who have rights to the land. Problems often arise when the holder of a certificate that is administratively valid is sued by another party who claims to have rights to the land. This can lead to legal uncertainty and agrarian conflicts. Therefore, a study of legal protection in this system would be highly relevant.

RESEARCH METHODS

To aim and answer what Research want, this study used Normative method, normative study that investigates legal aims, values of justice, the validity of legal regulations, legal conceptions, and legal norms. Normative legal research may alternatively be defined as the act of identifying legal norms, principles, and doctrines to address the legal concerns at hand. (Amiruddin & Zainal Asikin, 2019) Legal research may also be defined as the production of arguments, theories, or conceptions as prescriptions or answers to the problems at hand. (Peter M. Marzuki, 2023)

To facilitate the research, this study uses the Statutory Approach, which examines the issue using legislation. The aim is to determine how these legal regulations can address the issues in this study. According to Act Number 12 Year 2011 Section 1 Verse 2, a law is a written regulation that contains legal norms that are generally binding and are established or enacted by state institutions or authorised officials through procedures stipulated in the law. (Peter M. Marzuki, 2023)

RESULT AND DISCUSSION

Satjipto Rahardjo defines legal protection as an attempt to defend human rights that have been infringed and to ensure that every member of society can access and experience the rights granted by relevant legal rules. (Satjipto Rahardjo, 2005) Philipus M. Hadjon separates legal

protection for the people into two categories based on the technique used: protection that prevents breaches (preventive) and protection supplied after violations occur (repressive). Preventive legal protection tries to avoid the authorities' arbitrary acts by giving space for individuals to object or voice their ideas before a government decision is made. In reality, this type of protection is provided by administrative procedures, such as licensing systems or public consultations, which allow public participation in decision-making processes that may influence their rights. (Philipus M. Hadjon, 2007)

On the other hand, oppressive legal protection is effective as a solution when issues have already developed, such as asserting rights for parties who are deemed harmful by others. Legal protection in Indonesia includes settlements by the General Court and Administrative Court. Legal protection is founded on and entrenched in the ideology of recognizing and preserving human rights, which was traditionally prevalent in the West. The evolution of ideas connected to the recognition and preservation of human rights resulted in the limiting and placing of duties for government and society. (Philipus M. Hadjon, 2007)

According to the description above, legal protection is a type of protection for human rights that are violated by other parties, including land rights. In this instance, legal remedies are an essential tool for legal subjects to defend their rights under the law. This approach is intended to provide clarity and security for holders of land rights certificates. Land rights certificates are land registration items consisting of a copy of the land book that offers juridical data, coupled to a measuring letter that presents physical data, and bound together in a green folder cover with the Garuda bird emblem. The aim of land registration, as indicated in Section 3 letter an of Government Regulation Number 24 of 1997, is not only to offer legal clarity, but also to provide legal protection for holders of land rights so that they may show themselves as holders of the relevant rights.

According to Urip Santoso, land registration provides legal protection to persons who acquire land rights certificates, allowing them to feel tranquil, protected, and unaffected by any lawsuits. The bearer of a land title certificate can acquire such legal protection if there is no juridical flaw when the land title certificate is granted, whether it is a deficiency in content, method, or authority. (Urip Santoso, 2016) Legal protection for holders of land rights certificates in Indonesia remains uncertain, as the land registration system follows the concept of negative publishing with a positive tendency. Under this method, a certificate recorded in a person's name might still be disputed by another party claiming rights to the land. This underscores the vulnerability of the negative publishing system, in that a party who has been formally registered as the holder of a right in a land book or certificate nevertheless confronts potential legal action from a party that feels offended or has a claim to the same piece of property.

The concept of *nemo plus juris* applies in the negative publication system, which states that no one may transfer or assign rights other than their own. (Boedi Harsono, 2013) A person without title to a parcel of land cannot register it or transfer it to another party. This approach is used to offer legal protection to the genuine owner of land for which a certificate has been issued in the name of someone else. (Urip Santoso, 2016) When evaluated in depth, the negative publication system, which tends to be positive, has failed to offer adequate legal protection for land certificate holders, because certificates that have been lawfully registered in the name of an individual are nevertheless subject to cancellation. Normative legal certainty occurs when a regulation is clearly drafted and promulgated. In this context, clear indicates that there is no ambiguity or question, and it does not clash with other rules. Legal certainty is the unambiguous enforcement of the law. (Muhammad Boby, 2022)

The institution of *acquisitive verjaring* is well-known in the negative publishing method for settling conflicts. However, customary law acknowledges *rechtsverwerking* as a solution to the negative publishing system in land registration. Specifically, if a person ignores or neglects to work on his property for a period of time, the owner's right to recover the land will be lost if

the land is worked on by another party in good faith, according to customary law. The rules of the UUPA that are in accordance with this institution are connected to the nullification of land rights due to abandonment, as stated in Sections 27, 34, and 40 of the UUPA. (Urip Santoso, 2016)

According to Arie S. Hutagalung, in the concept of customary law, there is an institution known as losing the right to sue or *rechtsverwerking*, which basically regulates that if someone owns land but leaves it unattended for a certain period of time, and other people use the land in good faith, the landowner can no longer demand that the land be returned. This institution is consistent with customary law, which holds that land is the common property of its community members and cannot be simply possessed without being used, as well as the restriction on land abandonment under national land law. (Arie S. Hutagalung, 2005) The concept of *rechtsverwerking*, which is implicitly embraced by Government Act Number 24 Year 1997 Section 32 Verse 2, aims to provide legal certainty to two (two) parties, namely: 1) In the case of a certificate holder, if five years have elapsed since the certificate was issued by the District/Municipal Land Office and no lawsuit has been filed against him, he cannot be sued by any party who believes that he owns the land; and 2) The actual landowner is required.

BPN who issued the Certificates that are more than 5 years old do not constitute grounds for filing a lawsuit for loss. This applies to those who feel aggrieved by the issuance of such certificates. Land certificates included in the State Administrative Decision (KTUN) may be subject to legal action in accordance with Act Number 9 Year 2004 amending Act Number 5 Year 1986 about State Administration, Article 53 Verse 1, who feel aggrieved by the issuance of the certificate may file a lawsuit through the State Administrative Court, where the certificate may be declared null and void or invalid with or without compensation and/or rehabilitation with a grace period of 90 (ninety) days.

The grace period for bringing a complaint with the State Administrative Court is primarily intended to provide legal protection to holders of land rights certificates. In this scenario, the 90-day time restriction is designed to limit the scope of claims by aggrieved parties, especially if it is known that a certificate was issued in the name of another person on land that has never been transferred. However, the usefulness of this clause has been undercut by the implementation of SEMA No. 2 of 1991, which stipulates that the timeframe will be computed on a case-by-case basis, beginning when the plaintiff believes his rights have been violated. This strategy has the potential to prolong legal ambiguity and open the door to challenges to registered certificates, making the legal protection that should be supplied by the land registration system not ideal for genuine rights holders.

Based on the provisions of Section 53(1) of Act Number 9 Year 2004 and with reference to the publication system adopted, a party who feels aggrieved by the issuance of a certificate of land title registered in the name of another party may file a written claim with the local State Administrative Court demanding that the certificate of land title issued by the District/Municipal Land Office be declared void or invalid, with or without a claim for compensation, on the following.

Regarding preventive legal protection for holders of land rights certificates, Section 32(2) of Government Regulation No. 24 of 1997 states that in order for a certificate not to be challenged by other parties who believe they have an interest in the certificate, all of the elements of the Section must be met cumulatively. These criteria include that the land title certificate is issued lawfully, that it is obtained in good faith, that the owner holds the land title, and that no objection has been lodged within five years of the certificate's issuance. According to Urip Santoso, whether or not the issuance of a land title certificate is valid refers to whether the process of issuing the certificate complies with the provisions of Government Regulation No. 24 of 1997 in conjunction with Minister of Agrarian Affairs Regulation No. 3 of 1997. (Urip Santoso, 2016)

The second criterion is that the certificate was obtained in good faith. Urip Santoso contends that a potential purchaser is regarded to be in good faith if, before to purchasing property, he or she investigates the legitimacy of the land ownership, which is often done with the aid of a registered agent. The third element, namely the right to land, is regulated in actuality; in this case, according to Urip Santoso, the benchmark is physical control over the property. The third component is the 5-year term, which is the threshold for launching a lawsuit by another person with an interest in a certificate. In terms of repressive legal protection, which seeks to repair previously occurring issues, there are no applicable requirements in the legislation to give legal protection for holders of land rights certificates whose registration of transfer of rights has been revoked. This is because Indonesia's land registration system follows a negative publication method with a positive tendency, thus even if a certificate provides powerful proof, it may still be annulled.

CONCLUSION

Land registration carried out under the registration system does not guarantee protection for land rights holders, due to the lack of active participation by the state in the registration process. This is reflected in the explanation of Government Act Number 24 Year 1997 Section 32 Verse (2), which indicates that certifications do not guarantee the exact truth of the information included in them. The legal protection granted is also preventative and restricted, since it only applies to certificate holders who fulfill the conditions of having controlled for more than five years, having good faith, and genuinely controlling the land. This clause, however, can still be overcome by a judicial ruling, as stressed in SEMA No. 2 of 1991, which allows for a lawsuit even after the five-year time has expired. This shows the poor legal position of certificate holders when the registration of a transfer of land rights is revoked due to administrative or procedural errors. Thus, the state's responsibility in land registration should be more than just that of a data recorder; it should also be responsible for ensuring legal clarity and preserving its residents' civil rights. When the state does not offer enough legal protection for certificate holders, the basic aim of the land registration system, which is to give legal certainty and protection, is not completely met.

The responsibility of the Land Office for the cancellation of the certificate of title to land refers to the adopted publication system. In accordance with the principle of a negative publication system with a positive tendency adopted by Indonesia, when one day there is an error in what is stated in the certificate, which results in the recording of the transfer of land rights canceled, the state is not responsible for losses suffered by the parties. In this case, the Land Office as the agency that carries out the task of land registration in the Regency/City area is not responsible for losses suffered by holders of land rights certificates if the recording of the transfer of land rights is canceled. This makes the position of victims such as Mrs. TMB is weak before the law, in the absence of a clear mechanism for compensation. Another case is if officials in the land office when carrying out their positions are proven to have committed maladministration actions, in addition to being charged with responsibility to the institution in the form of administrative sanctions as possible in Government Regulation Number 94 Year 2021 about civil servant discipline and Act Number 25 Year 2009 about public services. Violation of the principles of public service, especially the principle of balance of rights and obligations, reinforces that such actions are a form of maladministration, which not only harms the rights of citizens, but also damages the image and accountability of land institutions. Officials who are authorized to carry out land registration at that time will also be burdened with responsibilities to third parties. In the event that a third party who feels aggrieved files a lawsuit, then the responsibility is charged to the personal of the official as an individual who committed the act of maladministration.

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