

The Implementation of Cancellation of Land Title Certificates Due to Administrative Defects After the Enactment of Government Regulation No 18 of 2021: A Case Study of the Land Office in Malang Regency

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Abstract. The research examines the implementation of the cancellation of land certificates due to administrative defects by the National Land Agency (BPN) in Malang Regency following the enactment of Government Regulation No 18 of 2021. Researchers adopted a socio-legal approach with a juridical-anthropological perspective to investigate human behaviour within the cultural context, particularly in the legal realm. Researchers collected primary data through interviews with the Head of the Section for Control and Resolution of Disputes at the Land Office of Malang Regency. Secondary data, including legal regulations, documents, literature, and online sources, were obtained through a literature review. The study reveals that the annulment process is categorized into light, moderate, and severe cases based on complexity. Challenges include determining parties acting in bad faith, lacking technical guidance for evidence collection, and lacking a timeframe for dispute resolution, resulting in inefficiencies. The BPN of Malang Regency received minimal cancellation requests, reflecting low public awareness. Efforts to address these challenges involve classifying cases appropriately, recommending cancellations to the Regional Office, and enhancing public awareness through awareness campaigns. The study concludes that while the BPN follows prescribed procedures, improvements in defining good faith, establishing clear evidence collection guidelines, and implementing timeframes for dispute resolution are essential for more efficient and just handling of certificate cancellations.

Keywords: Administrative Defects; Cancellation Process; Land Certificates; National Land Agency.

INTRODUCTION

The land is the most crucial part of a territory. Without a territory, a country cannot assert itself as a sovereign entity (Article 1 of the Montevideo Convention of 1993). Land also holds social value, meaning that property rights are not absolute, but the state guarantees and respects the land rights granted to its citizens author [1]. Therefore, legal certainty in land ownership protected by the law is essential for the author [2].

Land registration is established as regulated in Part II Article 19 of the Agrarian Law [3] to ensure legal certainty and administrative order regarding ownership rights to land. Article 19, § (1) of the Agrarian Law states that:

"To ensure legal certainty by the Government, land registration is conducted throughout the territory of the Republic of Indonesia according to the provisions regulated by the Government Regulation."

In 1961, the Government issued Government Regulation No 10 of 1961 regarding Land Registration, later amended by Government Regulation No 24 of 1997 concerning Land Registration (from now on referred to as GR 24/1997). Article 2 of GR 24/1997 states: "Land registration is carried out based on simplicity, security, affordability, up-to-date, and transparency principles."

The outcome of this registration process is issuing a land certificate, which establishes a clear

ownership status through a system of harmful publication with a positive tendency. However, a drawback of this system is that the validity of a right and its transfer relies on registration and the validity of the legal act performed by the authors [4]. To mitigate this risk, the Ministry of Agrarian and Spatial Planning/National Land Agency (Kementerian ATR-BPN) has implemented regulations for handling and resolving land cases author [5]. Specifically, Minister of Agrarian and Spatial Planning/Head of the National Land Agency Regulation No 21 of 2020, also known as Ministerial Regulation ATR/BPN 21/2020, addresses these matters authors [6].

Article 29 § 1 of Ministerial Regulation ATR/BPN 21/2020 states that: "The authorized official carries out the annulment of Legal Products due to: a) Administrative and/or juridical defects; b) Implementation of a court decision that has obtained legal force."

Presidential Regulation No 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (from now on referred to as PR 18/2021) includes provisions regarding the time limit for the annulment of land rights due to administrative defects:

"Article 64

1) The annulment of Land Rights due to administrative defects can only be carried out:

a) Before the expiration of a period of five years from the issuance of the Land Rights certificate, for:

- Land Rights first issued and not yet transferred;
- Land Rights that have been transferred, but the parties involved do not act in good faith regarding the transfer of rights by the provisions of the legislation or;

b) Due to overlapping Land Rights.

2) If the five years referred to in § 1 letter a is exceeded, the annulment shall be carried out through judicial mechanisms."

Suppose the rules for the annulment of certificates due to administrative defects can be resolved by the Ministry of Agrarian and Spatial Planning/National Land Agency. In that case, the public no longer needs to file a lawsuit against the certificate in court authors [7]. The resolution of conflicts through administrative efforts also demonstrates the accountability of government bodies/agencies for the policies they have enacted. Additionally, the relevant bodies and agencies

provide oversight and legal protection, as interpreted by the author [8].

Malang Regency is the second-largest district among the 38 districts/cities in East Java, following Kabupaten Banyuwangi. The total area of Malang Regency, based on data from the official website of Malang Regency, is approximately 2,977.05 km² author [9]. The vast area of Malang Regency correlates with the susceptibility to land conflicts and disputes. According to news from Radar Malang, in January 2022, around 800 thousand land parcels in Malang Regency were still uncertified. In terms of percentage, this accounts for approximately 60% of the land parcels in the area that have not been issued certificates author [10]. The Land Office of Malang Regency has taken on the responsibility of completing certificate issuances as a separate task; this includes addressing any administrative defects that may be present in the issued certificates. To complete the certificate annulment process, the Land Office follows specific steps. It is essential to determine whether the non-litigation administrative resolution process conducted by the Land Office is by PR 18/2021; this includes considering the recent policy on the time frame for cancelling land ownership certificates, which specifies five years from the initial issuance. If the time frame is exceeded, it is necessary to determine whether the parties resolve the process through litigation mechanisms.

Additionally, it is crucial to assess how many certificates have been cancelled due to administrative defects; this serves as a means of oversight and accountability for the institution, as previously mentioned by the author. Given these factors, the author expresses interest in researching the implementation, challenges, and efforts involved in handling certificate cancellations at the Land Office of Malang Regency.

The problem formulation for this research revolves around two key questions. Firstly, it delves into the implementation process of annulment for land ownership certificates due to administrative defects carried out by the Land Office of Malang Regency. This investigation focuses on the post-enactment period of Government Regulation No 18 of 2021, which addresses Management Rights, Land Rights, Apartment Units, and Land Registration. Secondly, the research aims to identify and understand the challenges faced by the Land Office of Malang Regency in handling the annulment of land ownership certificates. It also explores the proactive efforts

undertaken by the Land Office to address these challenges after the enforcement of Government Regulation No 18 of 2021, emphasizing aspects related to Management Rights, Land Rights, Apartment Units, and Land Registration.

Theoretical basis

The researcher will discuss a previous study with a similar theme in this subsection to provide accountability for their original research; this ensures that no one plagiarizes others' work. Alfons conducted an earlier study on cancelling land ownership certificates due to administrative defects [11]. However, the current study differs in using socio-legal research with a juridical-anthropological approach. The legal framework to be examined includes Government Regulation No 18 of 2021 and Minister of Agrarian and Spatial Planning/National Land Agency Regulation No 19 of 2020. The second study author [12] focuses on the annulment of land ownership certificates based on court decisions. At the same time, the current research concentrates on the implementation of certificate annulment due to administrative defects by the Ministry of Agrarian and Spatial Planning/National Land Agency. The third study author [13] explores the implementation of cancelling certificates with administrative defects by the Ministry of Agrarian and Spatial Planning/National Land Agency, specifically in the Land Office of Malang Regency context. This study aims to understand how the Land Office implements, faces challenges, and makes efforts in the post-issuance period of Government Regulation No 18 of 2021.

METHOD

The research employed a socio-legal approach, specifically adopting a juridical-anthropological perspective to examine human behavior within the cultural context, particularly in the legal realm author [14]. The study took place at the National Land Agency Office of Malang Regency. The researchers gathered primary data through interviews with the Head of the Section for Control and Resolution of Disputes at the Land Office of Malang Regency. Secondary data, including legal regulations, documents at the research location, literature, and online sources, was obtained through a literature review. The research focused on the annulment of certificates with administrative defects after the enactment of Government Regulation No 18 of 2021 concerning Manage-

ment Rights, Land Rights, Apartment Units, and Land Registration by the National Land Agency. Data analysis was qualitative, involving systematic organization and obtaining descriptive-analytical insights from authors [15].

RESULTS AND DISCUSSION

The implementation of the cancellation of land certificates due to administrative defects by the National Land Agency of Malang Regency. In Government Regulation No 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (from now on referred to as PR 18/2021), the definition of the certificate itself is not explicitly stated.

Therefore, the researcher adopts the definition of a certificate as indicated in Article 1 No 20 of Government Regulation No 24 of 1997 concerning Land Registration (from now on referred to as GR 24/1997): "A certificate is a proof of rights document as referred to in Article 19 (2) letter c of the Agrarian Law for land rights, management rights, waqf land, ownership rights of apartment units, and encumbrance rights, each of which has been recorded in the relevant land register."

Proof of ownership of land rights provides legal certainty for land ownership to individuals whose names are listed in the certificate, aiming to avoid land disputes. In the legal theory of land registration, there are three prevailing theories regarding land law publication authors [16].

1) *Positive System*: This system ideally guarantees the names in the land register. Legal subjects cannot contest the data recorded in the land book, even if it turns out that the registered individual is not the rightful owner of the respective land. Germany and Switzerland utilize this system.

2) *Negative System*: The main characteristic is that it does not guarantee the names listed in the land register; they can be contested if the registered names do not belong to the actual owners. In such a system, the Land Title Officer plays a passive role, meaning the official is not obligated to investigate the authenticity of the documents submitted to them. France and the Netherlands use this system.

3) *Torrens System*: The main feature is that the land certificate is the most complete and indisputable proof of land rights. Changing the land register is impossible unless obtaining the land

certificate involves forgery or fraud. Australia, the Fiji Islands, and Canada apply this system.

Regarding the status and publication of land law, Indonesia adheres to a system of harmful publication with a positive tendency, meaning that only the legal act of transferring recognized rights is acknowledged, not its registration author [17]. Even if it is registered in the land book and a certificate is issued, the content of the certificate can still be contested by the actual rights holder author [18]. In the law of evidence, a principle states, "Acta publica probant sese ipsa," meaning an act that appears as an authentic deed and meets the specified requirements will be valid or considered authentic until proven otherwise by authors [19]. If a party feels aggrieved by the issuance of the certificate, that party must first request the National Land Agency Office for the annulment of the certificate author [20]. According to Article 6 of Ministerial Regulation ATR/BPN 21/2020, there are seven stages to handle land disputes, especially regarding the annulment of certificates due to administrative defects: 1) Case assessment; 2) Initial hearing; 3) Investigation; 4) Presentation of Research Results; 5) Coordination Meeting; 6) Final hearing; 7) Case resolution.

In Ministerial Regulation ATR/BPN 21/2020, cases are categorized into light, moderate, and severe. In light cases, officials resolve technical-administrative complaints or requests for guidance by sending a letter to the complainant or applicant. Mild cases include disputes between parties where the legal and/or administrative dimensions are sufficiently precise. If resolved through legal and administrative approaches, they do not provoke social, economic, political, and security disturbances. Severe cases, on the other hand, involve multiple parties, have complex legal dimensions, and/or have the potential to provoke social, economic, political, and security disturbances (Article 5 of Ministerial Regulation ATR/BPN 21/2020 concerning the Handling and Resolution of Land Cases).

In Ministerial Regulation ATR/BPN 21/2020, reasons for the annulment of certificates due to administrative and/or juridical defects are outlined, including:

- a) Errors in the process/procedure of issuing land rights, registering rights, and maintaining land registration data;
- b) Errors in the measurement process/procedure;

- c) Errors in the process/procedure of issuing replacement certificates;
- d) Errors in the process/procedure of issuing Mortgage Certificates;
- e) Errors in the application of legal regulations;
- f) Errors related to the rights holder;
- g) Errors related to the rights object;
- h) Errors in the type of right;
- i) Overlapping land rights;
- j) Overlapping with forest areas;
- k) Errors in determining land consolidation;
- l) Errors in affirming land reform object;
- m) Errors in the process of granting permission for the transfer of rights;
- n) Errors in the process of issuing cancellation decree;
- o) Existence of a legally binding criminal court decision proving criminal acts such as forgery, embezzlement, theft, and/or other criminal acts;
- p) Presence of documents or data used in the certificate issuance process that are not products of the respective institution, based on a statement from the relevant institution;
- q) The existence of a court decision that, in its legal considerations, proves the existence of defects in the issuance of legal products by the Ministry and/or defects in legal actions in the transfer of rights but is not explicitly stated in the verdict.

Based on the interview with Moch. Zainul Arifin, A. Ptnh., M. H., Head of the Section for Control and Handling of Issues at the National Land Agency Office of Malang Regency, the concrete classification of cases is based on their handling procedures. If officials determine during the case assessment up to the initial hearing that the data and considerations of the applicant are complete, then they classify the case as light. If officials find it necessary to invite the respondent to clarify the complaint they received during the case assessment, they classify it as a moderate case. If officials determine during the case assessment that, in addition to the respondent, they need to invite other institutions, they classify that type of case as severe.

In addition to following the stages outlined in Article 6 of Ministerial Regulation ATR/BPN 21/2020 for handling disputes, the National Land Agency also refers to Government Regulation 18/2021, especially Article 64, in the dispute

resolution process. Article 64 sets a time limit of five years from the issuance of the certificate for processing the applicant's request, and officials will reject the request if it exceeds this timeframe. The rejection is in the form of a letter sent to the applicant. Suppose the data and arguments presented by the applicant are irrefutable. In that case, the National Land Agency then prepares a recommendation containing arguments based on data from each stage, which is sent to the Regional Office of the National Land Agency, with a copy also sent to the applicant. The copy to the applicant either states rejection or is considered a recommendation to be sent to the Regional Office.

Therefore, the Regional Office has the authority to annul the certificate, and the National Land Agency only follows up on letters from the applicant through the established stages in Ministerial Regulation ATR 21/2020. Even though the recommendation implies the possible annulment of the land title certificate, the Regional Office still coordinates with the National Land Agency, which issued the recommendation, to hear their explanation. Equally important is the substance of the applicant's request for the annulment of the certificate due to administrative defects. The National Land Agency can broaden the scope of annulment requested by the applicant if, during the stages of case assessment up to the initial hearing, there is data on the certificate that can be annulled but is not requested for annulment by the applicant.

Challenges and Efforts in Handling Certificate Annulments. Article 64, § 1 of Government Regulation No 18 of 2021 (from now on referred to as PP 18/2021) states:

1) The annulment of Land Rights due to administrative defects can only be carried out:

a) Before the period of five years from the issuance of the Land Rights certificate for:

- Land rights certificates issued for the first time and not yet transferred or

- Land Rights certificates that have been transferred, but the parties did not act in good faith regarding the transfer of rights according to the provisions of laws and regulations or

b) Due to overlapping Land Rights."

When looking at the provisions in Article 64, § (1) of PP 18/2021, there are three essential points to consider:

1) The time limit for issuing the certificate,

2) Overlapping land rights, and

3) The good faith of the parties in the transfer of rights.

The first point regarding the time limit for the certificate issuance is normatively clear: within five years from the certificate's issuance. If, after we (National Land Agency - BPN) conduct a case review and initial hearing, it is found that the data requested for annulment is precise, but because the issuance time exceeds five years, then we will send a letter to the applicant essentially stating that their request has exceeded the time limit. If the applicant disagrees with the letter, they can file a legal remedy through the court mechanism.

Furthermore, regarding overlapping land rights, if, after conducting a case review and initial hearing, it is found that the certificate requested by the applicant indicates an overlap or there are two parties who both have rights to the same land object, in practice, the National Land Agency (BPN) will still conduct the stages as mentioned in Article 6 of Ministerial Regulation ATR/BPN 21/2020. Also, the respondent may be called at certain stages, and mediation is possible before the Final Hearing stage. Mediation is a dispute resolution institution outside the court/litigation mechanism. So, in addition to the stages mentioned in Article 6 of Ministerial Regulation ATR/BPN 21/2020, BPN can establish a mediation institution to resolve land cases. If the mediation process is challenging, the mediator can seek guidance from the local Head of BPN. It is also possible for the Head of BPN to act as a mediator; this is somewhat different from the mediation mechanism within the Judicial Institutions. The role of BPN is an extension of the Ministry of Agrarian and Spatial Planning to assist the president in carrying out state governance (Executive Function), especially in the field of land author [21].

The third point concerns the parties' good faith in transferring land rights. Although regulations frequently mention good faith, no legislation defines or explains its meaning; therefore, the researcher explores data sources in literature and how practitioners interpret good faith. According to the Indonesian Dictionary (KBBI), good faith is 1) noun trust; strong belief; 2) noun intention (good); willingness. Historically, the Roman people initially used the meaning of good faith, where at that time, good faith was translated as 'bonafide,' related to honesty, good intentions,

and sincerity of heart. Good faith is the basis of contract law and is universally recognized, making it a general principle of law author [22]. In practice, especially in the court system, the burden of proof to determine lousy faith lies with the party claiming ownership of the land author [23]. The Supreme Court's plenary session discussed the criteria for good faith. It formulated them in Supreme Court Circular No 5 of 2014 concerning the Implementation Guidelines for Court Duties (SEMA 05/2014). In the meeting results, the court stated that the buyer acting in good faith must meet two conditions and should be protected based on Article 1338 § (3) of the Civil Code:

a) Conducting the sale and purchase of the land object through a legal procedure and documents as stipulated by regulations, namely:

- Purchasing land through public auction or;
- Purchasing land before the Land Deed Official (PPAT) (by the provisions of Government Regulation No 24 of 1997) or;
- Purchasing land belonging to customary/land/unregistered land carried out by customary law, i.e., conducted in cash and the presence/knowledge of the local Village Chief.

b) Exercising caution by examining matters related to the promised land object, including:

- The seller is the person entitled/owns the land being the subject of the sale and purchase, by proof of ownership, or;
- The land/subject being sold is not under seizure, or;
- The land/subject being sold is not under collateral/encumbrance status, or;
- Regarding certificated land, officials must obtain information from the National Land Agency (BPN) and review the history of the legal relationship between the land and the certificate holder.

The principles of caution and having traced valid documents are two crucial points identified by the Supreme Court to determine the criteria for buyers acting in good faith. However, SEMA 05/2014 is internally binding to the Supreme Court, so these guidelines are not mandatory for other Ministries' agencies. Although the National Land Agency (BPN) has undertaken the stages of handling land disputes and conflicts based on Article 6 of Ministerial Regulation No 21/2020, due to the lack of technical guidance on searching and finding evidence that there is a party acting in

bad faith in the transfer of land rights, BPN faces difficulties in resolving such conflicts. Consequently, the cancellation request is stalled; furthermore, the absence of a timeframe for the dispute resolution process (Standard Operational Procedure) at the BPN level results in inefficient field implementation. There is no legal basis for attributing faults or delays in the time-consuming dispute resolution process to the BPN, ultimately affecting the justice-seeking community. From 2021 to 2023, the BPN of Malang Regency received only one cancellation request (submitted in 2023) due to administrative defects, and the request is still in process. However, Malang Regency is the second-largest area in East Java. The BPN needs to conduct public awareness campaigns to enhance the community's knowledge and critical understanding of land matters, especially regarding cancelling certificates due to administrative defects.

CONCLUSIONS

Implementing the cancellation of land certificates due to administrative defects by the National Land Agency (BPN) of Malang Regency begins with the following stages: Case Review, Initial Hearing, Research, Exposure of Research Results, Coordination Meeting, Final Hearing, and Case Resolution. In practice, not all stages need to be followed. It is essential first to determine the classification of the case, whether it falls into the categories of light, moderate, or severe. This classification is based on the Case Review and Initial Hearing results. The BPN will recommend sending the results of this cancellation to the Regional Office because the Regional Office has the authority to cancel certificates. The Regional Office will invite the BPN to clarify the handling results.

Challenges faced by the BPN in cancelling certificates due to administrative defects are, firstly, when the requested cancellation is related to parties acting in bad faith because the determination of good faith is not yet fully understood. The BPN also struggles to identify which parties act in bad faith since each party presents strong arguments. The second challenge is the absence of a timeframe for resolving incoming requests, resulting in inefficient field implementation. Furthermore, the lack of public awareness about the cancellation of certificates due to administrative defects contributes to a low No of requests related to cancellations due to administrative defects.

To enhance the efficiency of the cancellation process, the BPN should develop more precise guidelines for determining good faith and provide practical criteria for identification. Establishing a standardized timeframe for resolving incoming requests could significantly improve the overall efficiency of field implementation. Moreover, officials should conduct proactive public aware-

ness campaigns to inform and educate the community about the cancellation process, encouraging more requests related to administrative defects. These suggestions aim to streamline the cancellation procedures, address challenges, and foster increased public participation in the certificate cancellation process.

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