



Cancellation of Land Ownership Certificate by the State Administrative Court Reviewed from the State Administrative Justice Law

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Abstract

Based on Article 32 paragraph (2) of Government Regulation No. 24 of 1997 concerning Land Registration states, in the event that a land area has been issued a certificate legally and on behalf of a person or legal entity who acquires the land in good faith and expressly controls it, then the other party who feels that it has the right to the land, can no longer demand the exercise of the right if within a period of 5 years from the issuance of the certificate does not object in writing to the holder of the certificate or the Head of the Land Office concerned or does not file a lawsuit to the Court regarding the mastery or issuance of the certificate. Legal problems arise that a certificate that has been issued a certificate for 5 years can not be sued in court on a validity basis. The results showed that the cancellation of land rights certificate by tun court based on The State Administrative Court Law, cancellation of land certificates by deliberation and other efforts and unilateral settlement by the National Land Agency (BPN) has been carried out, where the plaintiffs held a review of the State Administrative Decision that has been issued can not be received by the plaintiff or the disputing party. Prior to the ruling that has legal force it remains prohibited for the relevant State Administration officials to carry out mutations on the land in question, it is to avoid the occurrence of problems in the future that cause harm to the litigants and third parties.

Keywords: *Cancellation of Certificates; Land Rights; State Administrative Courts*

Introduction

Land ownership can occur as a result of various legal actions, such as conversions, subsidies, purchases and sales, and more. In daily practice, the acquisition of land rights occurs mainly as a result of the purchase and sale of land through the Land Deed Official (PPAT). The deed of sale and purchase is made by and before ppap intends to transfer ownership of the land from the seller to the buyer. Deed of sale and purchase is evidence of transfer of rights to a land, which proves that the transfer of property rights to the land is carried out in accordance with the provisions of applicable law.¹

If the procedure of transfer of rights has been done completely and correctly then the land is legally transferred from the seller to the buyer, so that the buyer becomes the owner of the next land

¹ Kansil, Christine ST Kansil, *Kitab Undang Undang Hukum Agraria*, Sinar Grafika, Jakarta 2001, hlm. 86

rights. As a land rights holder, the landlord gets proof of land ownership in the form of land rights which is a state administrative decision. While the deed of sale and purchase made by PPAT is an agreement made by public officials, and is not a decision of the State Administration, where the deed of sale and purchase with a certificate of ownership of a land are two things owned by each. different legal positions.

In that different legal position, the legal judgment by the judge becomes different, where the deed of sale and purchase there is a position of legal judgment of the agreement and subject to the terms of the validity of the agreement, and if it is made unlawfully then the deed of sale and purchase can be annulled by the District Court. While the certificate of property rights on land is in the position of assessment of state administrative law, and subject to the valid requirements of a Decree of State Governance, and if made unlawfully, then the certificate of property rights on the land will be declared null and void by the State Administrative Court.²

Certificate of ownership of land issued based on the deed of sale and purchase, made through such strict procedures and *presedur*, the purpose of which is so that wherever possible the truth of the data on the land poured in it can be guaranteed the truth.³ The procedures and procedures, including the creation of a deed of sale and purchase must use a form that has been determined by the provisions of Article 95 and Article 96 paraturan of the Minister of Home Affairs No.8 of 1982, as a provision that is closed, meaning that if violated then in accordance with the provisions of Article 98 Paraturan Minister of Home Affairs No.8 of 1982, then the deed of sale and purchase is null and void.

Similarly, the issuance of a certificate of property rights on land made based on a deed of sale and purchase, before the certificate of property is issued, it must be preceded by an announcement for 30 days for systematic land registration and 60 days for sporadic land registration as stipulated in Article 26 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, to give an opportunity to certain parties to object , before the certificate of property rights to it is issued, which means also that the certificate of property rights on the land, not only given the force of law but also given binding power, as well as a law when passed by the House of Representatives and the Government will have the force of law, and at the time announced in the State Gazette will have binding power.⁴

Issuance of certificates as an effort to be able to provide the truth of land data as optimally as specified in Article 32 paragraph (2) of Government Regulation No. 24 of 1997 concerning Land Registration reads: In the event that a field of land has been issued a certificate legally and on behalf of the person or legal entity who obtained the land in good faith and clearly controlled it, then the other party who feels that it has the right to the land, can no longer demand the exercise of such rights if within a period of 5 years from the issuance of the certificate does not file a written objection to the certificate holder or to the Head of the Land Office concerned or not file a lawsuit to the Court regarding the possession of *atan* or issuance of the certificate.

Issuance of certificate of property rights (SHM) on land can come from various legal acts of revocation of the certificate must have a letter of proof of transfer of property rights to the land, which proves that the transfer of property rights to the land has been done in accordance with the provisions of the applicable law.⁵

Thus SHM on land issued based on the deed of sale and purchase, made through such strict procedures and procedures, the purpose of which is so that wherever possible the truth of the data on the land poured in it can be guaranteed the truth.⁶

² I Dewa Putu Satriadiana, "Analisis Hukum Putusan Pengadilan Tata Usaha Negara Mataram Nomor 52/G/2010/Ptun.Mtr Terhadap Pembatalan Sertifikat Pengganti Hak Milik Atas Tanah", *Jurnal IUS*, Vol V, No. 2, 2017, hlm. 190-200

³ Gunardi, Markus Gunawan, *Kitab Undang Undang Hukum Kenotariatan*, Raja Grafindo Persada, Jakarta, 2007, hlm. 156

⁴ Soehino, *Hukum Tata Negara, Teknik Perundang-undangan*, Liberty, Yogyakarta, 1981, hlm. 154

⁵ Kansil, Christine ST Kansil, *Kitab Undang Undang Hukum Agraria*, Sinar Grafika, Jakarta 2001, hlm. 86

⁶ Gunardi, Markus Gunawan, *Kitab Undang Undang Hukum Kenotariatan*, Raja Grafindo Persada, Jakarta, 2007, hlm. 156

Issuance of SHM on land, before the certificate of property is issued, it must be preceded by an announcement for 30 days for systematic land registration and 60 days for sporadic land registration as stipulated in Article 26 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, to give an opportunity to certain parties to object, before the certificate of property rights to it is issued, which also means that the certificate of property rights on the land, not only given the force of law but also given binding power, as well as a law when passed by the House of Representatives and the Government will have the force of law, and at the time announced in the State Gazette will have binding power.⁷

Grace period of announcement to the public for 60 days before SHM on land is issued, if connected with the provisions in Article 55 of Law No. 5 of 1986 concerning State Administrative Justice that has been amended by Law No. 9 of 2004 amended by Law No. 51 of 2009 concerning The Second Amendment to Law No. 5 of 1986 (hereinafter abbreviated as The State Administrative Justice Law) reads, "A lawsuit may only be made within a period of ninety days from the receipt or announcement of the Decision of the state agency or Administrative Officer."

The above provisions hint as if any lawsuit against the validity of the certificate will most likely be past time, because before the certificate was issued has been made an announcement for 2 months by the Officials of the National Land Agency. However, in judicial practice, concerning the cancellation of the certificate of property rights on land by the State Administrative Court, the provisions of Article 55 of the State Administrative Justice Law are interpreted in such a way through the Circular Letter of the Supreme Court (SEMA) No. 2 of 1991 concerning Guidelines for the Implementation of Some Provisions in Law No. 5 of 1986 concerning State Administrative Justice (hereinafter abbreviated as SEMA State Administrative Justice), section 3 reads:

"For those who are not intended by a State Administrative Decision but who feel the interests are harmed then the grace period as intended in Article 55 of Law No. 5 of 1986 amended by Law No. 9 of 2004 is calculated kasuistis from the moment he feels his interests are harmed by the Decision of state administration and aware of the decision".

With the SEMA, empirically and juridically the legal impact of the cancellation of the certificate of property rights on land indefinitely - for the certificate of land rights issued at any time, because the tense time of filing a lawsuit as stipulated in the SEMA above is calculated from the moment that feel harmed knowing the State Administrative Decision. Sema Administrative Justice of this State, as if to put aside the provisions of Article 55 of the State Administrative Justice Law, as if following the proof of land law with a purely negative publishing system.

Furthermore, the cancellation of SHM on land by the State Administrative Court based on sema state administrative judiciary can be justified, when viewed from the point of view of procedures and procedures for issuance of certificates of property on land as stipulated in Regulation of the Minister of Agriculture and Agrarian No. 2 of 1962, and also seen from the point of view of article 32 paragraph (2) government regulation No. 24 of 1997, as well as the provisions of Article 55 of the State Administrative Justice Law, or whether SEMA No. 2 of 1991 can be seen as a filler of legal vacancies, considering Article 55 of the State Administrative Justice Law only regulates the grace period of filing a lawsuit for the decision of the State Administrative Court (KTUN) intended only.⁸

As for third parties who are harmed by the issuance of KTUN by the State Administrative Agency or Officials as a party that is not intended by the KTUN has not been reached by Article 55 of the State Administrative Justice Law. The cancellation of the certificate of property rights on land by the State Administrative Court, is already a common legal practice, which causes landowners based on SHM

⁷ Soehino, *Hukum Tata Negara, Teknik Perundang-undangan*, Liberty, Yogyakarta, 1981, hlm. 154

⁸ Ikrar Cardova, Imam Jauhari, Muazzin, "Kekuatan Hukum Sertipikat Tanah Yang Dikeluarkan Oleh Badan Pertanahan Nasional (Studi Kasus Putusan Mahkamah Syar'iah Banda Aceh Nomor 223/Pdt.G/2017/Ms.Bna)", *Jurnal IUS Kajian Hukum dan Keadilan*, Vol. 8 Issue. 2, August 2020, hlm. 259.

evidence of land to lose their property rights, even though the property rights are issued based on a valid sale and purchase based on proof of sale and purchase deed made by PPAT. It becomes a question, whether the purchaser of the land can continue to control the land he bought, based on the deed of sale and purchase, which was not annulled by the State Administrative Court. Or whether the decision of the State Administrative Court has the power of execution, where the holder of SHM on land whose certificate is revoked can be punished by the State Administrative Court to hand over the land to the winning party.

There are several lawsuits related to the issuance of certificate of property rights above the property rights of others by *bpn diantranya*:

1. "Decision of PTUN Banda Aceh No. 44/G/2019/PTUN. BNA that BPN has issued a certificate of ownership of land in Meureubo, West Aceh District in 1995, and in 2012 BPN reissued the certificate on behalf of others.
2. Decision of PTUN Banda Aceh No. 4/G/2019/PTUN. BNA, that BPN has issued a certificate of property rights in 2010 to several people, but the fact of the trial proves that the plaintiff can not prove the certificate of property rights in the court.
3. Decision of PTUN Banda Aceh No. 50/G/2019/PTUN. BNA which is valid and valuable certificate No. 241 2013, located in Tansaril Village, Kec. Bebesen, Central Aceh District and declared valid and valuable certificate of property rights No. 243 2003 on behalf of others.
4. Decision of PTUN Banda Aceh No. 30/G/2017/PTUN. BNA Ordered the Defendant to revoke The Certificate of Property No. 7 of 2000, located in Rumah Panjang Village, Kec. Susoh, South West Aceh District".

From the above case as a result of the issuance of certificates above the property rights of others by the National Land Agency resulted in the loss of utilization of land that has been managed by others, and resulted in uncertainty of a certificate of property rights, while according to the legislation has provided legal certainty for citizens to manage and maintain their rights as evidenced by the certificate.

But the fact is, there is still the issuance of certificates on the property rights of others that can be revoked by PTUN. Legal problems arise that a certificate that has been issued certificate for 5 years can not be sued in court legally. This is in response to the content of Article 32 paragraph (2) of Government Regulation No. 24 of 1997. However, PTUN can cancel the certificate that has been valid for 5 years, as a result of the *subtansi* contained in paragraph (2) of Government Regulation No. 24 of 1997 does not provide legal certainty obtained by the *sertifikat* owner.

In order to obtain legal certainty regarding the certificate of land rights, one of the certificate holders filed a lawsuit to the state administrative court that is considered to have the competence to provide legal certainty to the rights holder and cancel one of the certificates that arise so that only one valid certificate has an object and the other does not or is not the object listed in the certificate.

Another legal problem, BPN as the organizer of the government in the field of land that issues certificate of property also has the competence to provide legal certainty, but in practice there is still an error in issuing a certificate of property that harms the parties who have a certificate of property rights, meaning *bpn* has not been able to maintain the issuance of certificates professionally and maximally. Therefore, there needs to be a review of why the issuance of certificate above the property rights of others.

Based on the background description above, the scope of the subject matter can be formulated, namely, how the implementation of the cancellation of land rights certificate by the TUN court based on the State Administrative Justice Law.

Research Method

This type of approach is an empirical juridical approach. This study uses primary and secondary legal materials by conducting structured interviews as well as unstructured interviews as well as discussions conducted related to this research. Data is collected through field research and literature research. The data is analyzed by qualitative analysis.⁹

Result and Discussion

1. Reasons for Cancellation of Land Rights by TUN Court

Land disputes that often result in the state administrative court issuing a ruling in the form of a warrant for the revocation of the certificate is a land ownership dispute. The issuance of certificates is done in bad faith or against the law. The source of this problem can be explained from enrollment to certificate issuance. Irregular land governance is also one of the triggering factors for land disputes. Evidence of unclear land ownership and lack of documentation will trigger clashes between citizens regarding the seizure of land rights. There is also often a dispute about certificates stemming from the fault or negligence of the National Agency in the region. Therefore, the cancellation of the certificate in accordance with the order of the decision of PTUN is carried out against the certificate that causes the dispute, for example cases such as disputes of false certificate, double letter and original but false certificate, which if further examined, one of the causes related to the process of land registration containing administrative law defects.

As mentioned above, the causes of land disputes are mostly caused in the land registration process. The error of procedures made by the state administrative officials in this case the Land Office caused the issued certificate to contain a defect in administrative law. So this can be the reason also for the State Administrative Court issued a ruling in the form of an order to cancel a certificate of land rights.

And against the cancellation of the certificate is more affirmed and stated in the Regulation of the Minister of Agrarian State / Head of the National Land Agency No. 9 of 1999 concerning The Procedure of Granting and Annulment of Rights to State Land and Management Rights, Article 1 number 14 states, "The cancellation of land rights is the cancellation of decisions granting land rights or certificates of land rights because the decision contains administrative law defects in its issuance or to implement court decisions that have a permanent legal force".

Meanwhile, the defects in administrative law according to Article 107 of the Regulation of the Minister of Agrarian State / Head of National Land Agency No. 9 of 1999 which reads, "Administrative law defects as referred to in Article 106 (1) are:

- a. procedure error;
- b. error in the application of laws and regulations;
- c. error of the subject of rights;
- d. rights object errors;
- e. rights type errors;
- f. extensive miscalculation;
- g. there is overlap of land rights;
- h. juridical data or physical data is incorrect; Or
- i. other administrative errors".

⁹ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana Pranada Media Group: Jakarta, 2008, hlm. 158.

Related to the defect of administrative law in the issuance of Certificate of Property rights on land can be seen also in Article 62 paragraph (1) Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 year 2011 which specifies that "Certificate of rights to land containing defects in administrative law is canceled or the government records changes in the maintenance of land registration data according to the legislation". Furthermore, Article 62 paragraph (2) stipulates that which includes administrative law defects, among others:

- a. procedural errors in the process of determining and/or registering land rights;
- b. error of procedure in the registration process of transfer of rights and/or replacement certificate;
- c. error of procedure in the registration process of affirmation and/or recognition of rights to customary former land;
- d. procedure errors in the process of measurement, mapping and/or extensive calculation;
- e. overlapping rights or property rights to land;
- f. error of the subject and/or object of rights;
- g. other errors in the application of laws and regulations.

Thus, if the issuance of a certificate of land rights contains one or more elements contained in matters that are included as administrative defects as mentioned above, then it is sufficient to be the reason for the State Administrative Court to issue a ruling in the form of an order to annul the certificate of rights to the land.

2. Implementation of Cancellation of Land Rights by TUN Court Based on State Administrative Justice Law

According to the results of the interview, the judge of the Banda Aceh State Administrative Court, the occurrence of a certificate of property rights on dual land is a complex problem because there are several factors that affect the emergence of two decisions of the State Administration officials, there is pure administration and there is a non-legal in other words the failure done by bpn and deliberately done by the person with the applicant (public awareness). So the implementation of the verdict made by the panel of judges depends on the existing evidence and the facts of the trial.¹⁰

Certificate has a double side where as a sign of civil rights (ownership) is also a State Administrative Decision. Double certificate is a form of decision of the State Administrative Officials who are wrong by issuing two certificates with the same motorcycle tax, so to find the validity of one of the certificates, the State Administrative Court is the place for the implementation of testing of both certificates by providing legal certainty to one of the two certificates. Especially for the Banda Aceh State Administrative Court several cases related to the dispute of dual certificates of land rights are very varied and most of these dual certificate disputes occur in areas where the value of the land price soars, and the population is fairly dense. Cancellation of one of the certificates is the authority of BPN by paying attention to the results of the existing ruling, bpn subsequently crossed out the certificate ordered by the court.

From the verdict, the winning party in the case can sue the opponent again to sue civilly or criminally because the PTUN Verdict is one of the evidence to sue again in the District court, And the decision of the State Administrative Court is not necessarily the land belongs to the winning party in the case, do not let in the future anyone sue again with stronger evidence.

According to the results of the interview, the judge of the Banda Aceh State Administrative Court, dual certificates are rampant in areas that have high selling value of land and the dynamics of rapid population development, therefore such issues are the scope of PTUN as an institution that accepts,

¹⁰ The results of an interview with PTUN Banda Aceh Judge, on October 21, 2020

decides, and resolves disputes of state administration.

The settlement of dual certificate disputes is carried out in the State Administrative Court when the settlement of deliberations and other efforts and unilateral settlements conducted by the National Land Agency (BPN) has been conducted, where the plaintiffs conduct a review of the State Administrative Decisions that have been issued can not be accepted by the plaintiff or the parties to the dispute.¹¹

Before a ruling that has a permanent legal force (In Kracht Van Gewijsde) is prohibited for the relevant State Administration officials to carry out mutations on the land in question, it is to avoid the occurrence of problems in the future that cause harm to the litigants and third parties.

In the dispute of the dual certificate of the National Land Agency will conduct research on the history of the land and its provisions, and with the court's decision, the land agency must cancel one of the certificates.

In the event of the annulment of the right to land due to carrying out a court ruling of permanent legal force, namely:

- a. "The decision to cancel the right to this land is carried out on the request of interest.
- b. The decision of the court that can be used as the basis for applying is the verdict in the amar verdict which in its warning includes a statement of null and void or which is essentially the same as that (Article 124 paragraph (2) PMNA/KBPN/9/1999).
- c. The process of implementation of the cancellation, namely:
 - 1) The application is submitted in writing to the head of BPN or through the provincial BPN Regional Office or land office;
 - 2) Every single application or several rights to a particular land located in one district / city;
 - 3) The application contains:
 - a) Description of the applicant either an individual applicant or a legal entity accompanied by a copy of buti including citizenship for the applicant and deed of establishment of the company and its changes if the applicant is a legal entity.
 - b) Information on the land which includes juridical data and physical facts of the disputed land".

The case to be analyzed related to the issuance of a certificate of property rights above the property of others by bpn diantranya:

- a. "The decision of PTUN Banda Aceh No. 44/G/2019/PTUN. BNA that BPN has issued a certificate of ownership of land in Meureubo, West Aceh District in 1995, and in 2012 BPN reissued the certificate on behalf of others.
- b. Decision of PTUN Banda Aceh No. 4/G/2019/PTUN. BNA, that BPN has issued a certificate of property rights in 2010 to several people, but the fact of the trial proves that the plaintiff can not prove the certificate of property rights in the court.
- c. Decision of PTUN Banda Aceh No. 50/G/2019/PTUN. BNA which is valid and valuable certificate No. 241 2013, located in Tansaril Village, Kec. Bebesen, Central Aceh District and declared valid and valuable certificate of property rights No. 243 2003 on behalf of others.
- d. Decision of PTUN Banda Aceh No. 30/G/2017/PTUN. BNA Ordered the Defendant to revoke The Certificate of Property No. 7 of 2000, located in Rumah Panjang Village, Kec. Susoh, South West Aceh District".

¹¹ The results of an interview with PTUN Banda Aceh Judge, on October 21, 2020

The origin of the problem can be described starting from the land registration until the issuance of the Certificate, and therefore the Certificate, then there is a dispute over ownership of the land more specifically the problem of the Certificate. Poorly disciplined land administration is also one of the triggering factors for land disputes. Evidence of unclear land tenure and no documentation will result in disputes between citizens in the fight for land rights.

Certificate disputes that occur due to errors or omissions of the National Land Agency. Property Certificate Dispute on Land is a dispute that occurs over the validity status of a certificate of property owned by a person or a civil legal entity. Therefore, the cancellation of the Certificate by the State Administrative Court, carried out against the Certificate that has a dispute, for example cases such as the dispute of Dual Certificate and Original Certificate but False (legal and administrative defects). All these problems arise in the land registration process. The above cases are the cause of the cancellation of certificates by the National Land Agency.

One of the main aspects of the validity of a KTUN. In other words, the actions or legal actions of entities or government officials in issuing State Administrative Decisions in accordance with the applicable provisions and authority for it. The meaning of competence or authority in general can be interpreted as a right to act or a power to make decisions, rule, and bestow responsibility on others.

Within the legal framework, any legal action or action taken by the State Administration Official must be based on the law (applicable laws and regulations). The laws and regulations give birth to the authority or legal resources of the State Administrative Office. Philipus M. Hadjon states that, in the State of law, if the ruler wishes to put obligations above the citizens (of society), that authority must be found in a law".

In the law there are several sources or certain ways that give birth to the authority of the agency or the State Administrative Office, namely:

- a. "Attribution (attribute competence) Is a source of authority granted by the Legislation in government institutions that previously did not have.
- b. Delegated competence Is the delegation of authority that has based on attribution to other government agencies or officials.
- c. Mandate competence (mandate competence) Is the delegation of authority based on the Legislation of one government body or official to another government agency or official in one environment".

If there is a deficiency in the authority that becomes the basis, it can be the basis for the State Administrative Court within the limits of its authority to issue a decision on the annulment of the TUN Decision.

In the concept of Public Law, authority is a core concept in Constitutional Law and Administrative Law. Any government policy or action must be sourced or based on legitimate authority from either attribution sources, delegates, or mandates.

Aspects of legal procedures are one of the important conditions that must be met by a decision issued by a government agency or official. In the Law of the Republic of Indonesia No. 5 of 1986 Jo Law of the Republic of Indonesia No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Justice, it is determined that one of the reasons that can be used in a Lawsuit is a State Administrative Decision contrary to the prevailing laws and regulations.

Explanation of Article 53 Paragraph (2) letter a Law of the Republic of Indonesia Number 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Justice,

states that a State Administrative Decision may be judged contrary to the prevailing Laws and Regulations, if the decision concerned:

- a. "Contrary to the provisions in the legislation that is procedural or formal.
- b. Contrary to the provisions in the Legislation of a material or substantial nature.
- c. Issued by an unauthorized State Administrative Agency or Official".

Procedure is one aspect of validity of a government action. Errors in the procedure resulted in the State Administrative Decision issued defects so that it is declared invalid and can be canceled. Decisions that are not distinguished into 3 (three), namely:

- a. "Provisions null and void (nietigheid van rechtswege);
- b. Void provisions (nietig, absoluut nietig);
- c. Irrevocable provision (vernietigbaar) (Utrecht, 1986)".

Thus, the aspect of legal procedure is one of the basis of the decision of the State Administrative Court to cancel the Certificate of land rights, because the agency or government officials have issued a decision because there is a procedural error in its issuance.

Cancellation of certificate of land rights by the State Administrative Court on the grounds of substance defects is the cancellation of the decision on the issuance of a Certificate of land rights issued by a government agency or official who is known to have a substantial error so as to contravene the prevailing laws and regulations.

Error of substance means an error of a principal nature in the issuance of a decision on the granting of land rights on which the Certificate is issued. In the concept of Administrative Law, one of the important aspects of the validity of decisions issued by the agency or state administrative officials is aspects of substance such as subject, object, content, and purpose. The substantial scope relates to the content and purpose of the basic regulations not contrary to the Higher Legislation or regulations in the issuance of such decisions or provisions.

One aspect of the validity of a decision or provision issued by a body or state administration official is a substantive aspect, meaning that the object of the decision is no error in re. If it is proven that there is an error in re, then in accordance with article 53 of Law No. 51 of 2009 concerning State Administrative Justice, then the decision is canceled because it is contrary to the prevailing laws and regulations.

The cancellation of the certificate can be done outside the judicial mechanism, namely by submitting an application submitted in writing to the Minister or the Ministry of Agrarian and Spatial Affairs / National Land Agency through the Head of the Land Office whose work area includes the location of the land in question.

The mechanism is stipulated in Article 110 jo. Article 108 paragraph (1) Agrarian Candy / BPN 9/1999. Application can be made if there is suspected administrative law defect in the issuance of the certificate as stipulated in Article 106 paragraph (1) jo. Article 107 Agrarian Candy / BPN 9/1999 as follows:

Decision on the cancellation of land rights due to the number of administrative laws in its issuance, can be made because of an interested application or by an authorized Official without a request (Article 106 paragraph (1)).

"The administrative legal defects referred to in Article 106 (1) are:

- a. Procedure error;
- b. Mis-application of laws and regulations;
- c. Error of the subject of rights;
- d. Rights object error;
- e. Error type rights;
- f. Extensive miscalculation;
- g. There is an overlap of land rights;
- h. Juridical data or physical data is incorrect; Or
- i. Other administrative errors".

Decision letter on the cancellation of land rights according to Article 104 paragraph (2) Agrarian Candy / BPN No. 9 year 1999, issued if there are:

- a. defects in administrative law; and/or
- b. carry out court rulings that have a fixed legal force.

Based on the provisions of Article 104 paragraph (1) Agrarian Candy / BPN No. 9 of 1999, which became the object of cancellation of land rights include:

- a. "decision letter granting rights to land;
- b. certificate of land rights;
- c. decision letter granting land rights in the framework of land tenure arrangements".

From the above formulation, Hasan Basri Nata Menggala & Sarjita in the book Cancellation and Restriction of Land Rights concluded that:¹²

- a. "The annulment of the right to land is a legal act that intends to sever, terminate or remove a legal relationship between the subject of the right to land and the object of land rights;
- b. Types/types of activities, including cancellation of decision letter granting land rights and/or certificate of land rights;
- c. The cause of cancellation is due to a defect in administrative law and/or to carry out a court ruling that has a permanent legal force, because the rights holder does not meet the conditions stipulated in the decision letter granting the right to land and because of a mistake in the decision letter granting the right in question".

Based on the description above, there are 3 ways to cancel a certificate of land rights:

- a. Requesting Cancellation to the Minister of Agrarian and Spatial Affairs / National Land Agency through the Land Office.

The reason for the cancellation of the certificate of land rights is due to administrative legal defects, such as miscalculation and land area, thus invading other land, overlapping land rights, procedural errors, or other acts, such as forgery of letters.

This is requested in writing to the Minister of Agrarian and Spatial Affairs / National Land Agency through the Land Office whose work area includes the location of the land in question.

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¹² Hasan Basri Nata Menggala & Sarjita. *Pembatalan dan Kebatalan Hak atas Tanah*. Yogyakarta: Tugu Jogja Pustaka, 2004, hlm. 7

b. Lawsuit to the State Administrative Court (PTUN)

According to Article 1 number 7 of Law No. 30 of 2014 concerning Government Administration of State Administrative Decisions (KTUN) is a written provision issued by government agencies and/or officials in the administration.

Certificate of land rights is one form of KTUN. Also worth noting is the deadline to sue to PTUN, which is 90 days from the receipt or announcement of the decision of the state administrative body or officials as stipulated in Article 55 of the Law Number of Years on State Administrative Justice.¹³

c. Lawsuit to The District Court

Any person who wishes to file a lawsuit against the law stipulated in Article 1365 of the Civil Code on the basis and evidence that the plaintiff thinks and the plaintiff's value is detrimental, for example, you sell a piece of land to the buyer and the buyer has not paid fully to you, but have filed a process behind the name of the land certificate.

But you need to remember that there is a period of expiry, because the application for cancellation or lawsuit to the court can only be filed a maximum of 5 years since the issuance of the certificate, as stipulated in Article 32 paragraph (2) Of Government Regulation No. 24 of 1997 concerning Land Registration which reads: In the event that a field of land has been issued a certificate legally on behalf of the person or legal entity who obtained the land in good faith and clearly controlled it, then the other party who feels that it has the right to the land can no longer demand the implementation of such rights if within 5 (five) years from the issuance of the certificate does not file a written objection to the certificate holder and the Head of the Land Office concerned or does not file a lawsuit to the Court regarding land tenure or issuance certificate.

Conclusion

The implementation of the cancellation of the certificate of land rights by the TUN court based on the State Administrative Justice Law, namely, the decision of PTUN for the winning party in the case can sue the opponent again to sue civilly or criminally because the Decision of PTUN is one of the evidence tools to sue back in the District court, and the decision of the State Administrative Court is not necessarily the land belongs to the winning party in the case , lest anyone sue again in the future with stronger evidence.

It is expected that the application for cancellation lawsuit can be submitted to the State Administrative Agency or Officials who issued the certificate (BPN) not only submitted to the State Administrative Court. Because the certificate of land rights is a written provision that aims to provide legal certainty that is as a State Administrative Decision which is a written determination, in the form of a permit, concrete, individual and final so as to give rise to rights and obligations for rights holders and to others indirectly and issued based on applicable laws and regulations.

¹³ Shirly Claudia Permata, Rachmad Safa'at, R. Imam Rahmat Safi'I, "Implementasi Putusan Hakim Terhadap Pembatalan Sertifikat Hak Milik Atas Tanah", Jurnal Ius Kajian Hukum dan Keadilan, Vol. 6, No. 3, Desember 2018, hlm. 476

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Interview

The results of an interview with PTUN Banda Aceh Judge, on October 21, 2020

Legislation

Undang-undang No. 5 tahun 1986 jo. UU No. 9 tahun 2004 jo. UU No. 51 tahun 2009 tentang Peradilan Tata Usaha Negara.

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Peraturan Pemerinta No. 24 tahun 1997 tentang Hak Tanggungan atas Tanah.

Perma No. 6 Tahun 2018 tentang Pedoman Penyelesaian Sengketa Administrasi Pemerintahan Setelah Menempuh Upaya Administratif.

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