Implementation of Issue of Substitute Certificate and Legal Implications (Study at the Land Office of North Lombok Regency)

Hilman; Lalu Wira Pria Suhartana
Postgraduate program Legal Study and Notaries; Mataram University; Indonesia

Abstract
The purpose of this research is to find out the implementation of issuance of substitute certificates and legal implications. Factors influencing the issuance of the replacement certificate because the certificate was lost and because the certificate was damaged, and the certificate still used the old certificate and the legal implications of issuing a substitute certificate. The sources of data found in this study are from interviews with the Head of the Land Law Relations Section of the North Lombok National Land Agency Office, the Head of the Land Registration Subsection of the North Lombok Regency National Land Agency and the Ganges Sector Police of North Lombok Regency.

The results showed that the issuance of the Substitute Certificate and Legal Implications consisted of three stages, namely, the preparation stage of the applicant, the registration stage, the implementation stage of the certificate of replacement by the Office of the North Lombok National Land Agency. Legal implications arising from the issuance of a replacement certificate in the event of a violation of land rights can carry out prosecution of the violator based on their rights in accordance with Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration that the certificate is a strong and legal certificate. but if there is another party who feels they have the right to the land, then they may submit a written objection to the holder of the certificate and the National Land Agency or submit a complaint to the Court regarding land ownership or issuance of the certificate.

Keywords: Implementation; Replacement Certificate; Implications

Introduction
Land and houses are primary needs after clothing and food, which land has a large role in the dynamics of development, then in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that Earth, Water and Natural Property contained in it controlled by the State and used as much as possible for the prosperity of the people.

Given the increasing need for land for the benefit of the community and in the context of providing legal protection and certainty for the rights of their citizens both individual and public rights over land and houses, regulations are issued in the use and use of land, among others, by issuing Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations concerning Land Registration which is
regulated in Article 19 and Government Regulation Number 10 of 1961 which has been revised with Government Regulation Number 24 of 1997 concerning Land Registration.

To ensure the protection and legal certainty of land, the LoGA has outlined the necessity to carry out land registration throughout Indonesia, as mandated by Article 19 of the BAL. The Article includes general provisions of land registration in Indonesia, namely:

1. To ensure legal certainty by the government, land registration throughout the territory of the Republic of Indonesia is held according to the provisions regulated by Government Regulations.

2. The registration in paragraph 1 of this article includes:
   a. Land Measurement, Mapping and Bookkeeping.
   b. Registration of land rights and the transfer of these rights.
   c. The granting of proof of rights documents, which applies as a strong evidentiary tool

3. Land registration is held keeping in mind the state and society, the need for socio-economic traffic and the possibility of its implementation, according to the Minister of Agrarian considerations.

4. In Government Regulations the costs concerned are referred to in paragraph (2) above, provided that the people who are not able to be released from payment of these costs.

The provisions in Article 19 of the BAL are provisions directed at the government to carry out land registration throughout Indonesia, which at the same time is a legal basis for the implementation of land registration in the framework of proof of land rights which applies as a strong evidence.

One of the objectives in the revision of Government Regulation No. 10 of 1961 was to further spur the implementation of land registration, which had been felt to be slow enough.¹ The implementation of land registration in the community is a State task carried out by the Government for the benefit of the people, in order to provide the status of land rights in Indonesia.

The implementation of land registration in order to provide the status of land rights in Indonesia.

1. To provide legal certainty and protection of the rights holders of a plot of land, apartment units and other registered rights so that they can easily prove themselves as the rights holders concerned.

2. To provide information to interested parties including the Government so that it can easily obtain data needed in conducting legal actions regarding plots of land and units of flats that have been registered.

3. For the orderly implementation of land administration.

Regarding the importance of land registration, Bachan Mustafa argues that land registration will give birth to land certificates which have the meaning to provide legal certainty, because the law clearly can be identified both the identity of the rights holders and the identity of the land. So, if there is a violation of property rights to the land, it can take action to prosecute the violator based on his property rights. Article 32 Government Regulation Number 24 of 1997 which contains:

1. Certificate is a proof of right that applies as a strong evidentiary instrument regarding physical data and juridical data contained in it, insofar as the juridical data and physical data are in accordance with the data contained in the measuring letter and the relevant land book.

2. In the event that a land certificate has been issued legally in the name of a person or legal entity that obtains the land in good faith and has real control over it, the other party who feels that he has the right to the land cannot claim the right if within 5 (five) years after the issuance of the certificate has not

filed an objection in writing to the holder of the certificate and the Head of the relevant Land Office or has not filed a claim to the Court regarding land ownership or issuance of the certificate.

Over time the ownership of the holder of land rights over the land certificate, there are often problems regarding the certificate he owns. Even though land certificates are very important and are strong evidence of ownership of land rights. Such problems include damage to land title certificates caused by accidental damage due to natural disasters or damage due to age-consuming paper and the tearing of certificates due to carelessness of the holder, so that they cannot be used or read the certificate. In addition to the damage to the certificate of other problems faced by holders of certificates, the existence of which is unknown, so that it is very detrimental to the holders of land rights.

The issuance of a replacement certificate due to loss is not much different from the issuance of a certificate of land rights and the issuance of a replacement certificate because it is damaged. However, in the issuance of substitute certificates because they are lost, prior research must be conducted on juridical data regarding the parcel and announcements in the mass media. This is done to avoid misuse of the lost certificate and fraud from the applicant because the certificate of loss is lost, which gives false information that says the certificate is lost, it turns out to be a guarantee of debt to someone.

The issuance of the certificate of replacement land is very important for the holder of land rights, because with this certificate the evidence shows that he is the owner of the land. In connection with this, in this case the government provides a solution or a solution for the people who experience damage or loss of certificates of land rights, namely by issuing substitute certificates. As stated in Article 57 paragraph (1) of Government Regulation number 24 of 1997, the application for the right holder is issued a new certificate in lieu of a damaged certificate, lost, still uses a certificate which is no longer used, or not submitted to the auction buyer in an execution auction. And regarding the issuance of this substitute certificate, it is more clearly regulated in the Minister of Agrarian Regulation / Head of BPN Number 3 of 1997 concerning Provisions on the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

Article 52 of BAL Number 5 of 1960 has mandated law enforcement, in the field of land registration can be subject to criminal sanctions for certain acts. The implementing regulations of this provision are formulated in Government Regulation Number 10 of 1961 concerning Land Registration, especially in Article 42 to Article 44 which has been revised with Government Regulation Number 24 of 1997 concerning Land Registration.

Criminal policy in PP No. 10 In 1961 this was no longer found in PP No. 24 of 1997. This means that the criminalization policy in land registration has changed to decriminalization of certain acts that have been formulated as criminal acts in the field of land registration but have turned into administrative violations.

Seeing the above provisions after the revision of Government Regulation Number 10 of 1961 became Government Regulation Number 24 of 1997 concerning Land Registration, there was a vagueness of norms regarding criminal sanctions in land registration.

Research Methods
This research method uses several techniques, namely:

1. Types of Legal Research
This type of research is empirical Normative legal research, which is to see how the law in reality in the field (legal enforceability in society).

2. Source of Legal and Data Material
   1) Library material
Materials obtained from various sources or library materials, such as legislation, legal books, journals or research results and other literature that are in accordance with the problems in this study.

a. Primary legal materials are binding legal materials, and consist of:
   1. Basic norms or conditions, namely the opening of the 1945 Constitution
   2. Basic Rules:
      a) The torso of the 1945 Constitution
      b) Decrees of the People’s Consultative Assembly.
   3. Legislation:
      a) Equitable laws and regulations
      b) Government regulations and similar regulations
      c) Presidential Decrees and similar regulations
      d) Ministerial decrees and equal regulations,
      e) Regional Regulations.
   4. Un codified legal material, such as customary law,
   5. Jurisprudence,

b. Secondary legal material, namely, legal material that can provide an explanation of primary legal materials, such as: draft laws, research results, opinions of legal experts.

c. Tertiary legal materials, namely, materials that provide instructions and explanations for primary legal materials and secondary legal materials, such as dictionaries (law), encyclopedia.2

2) Field data
Data obtained directly from the research field by conducting interviews with informants and respondents. The speakers included: The North Lombok Regency Land Office and the Community.

Result and Discussion

1. Implementation of Issuance of Certificate of Substitution of Land Rights If the Certificate Is Damaged and Missing

   a. Factors for issuing certificates of replacement for land rights

   Issuance of certificates of replacement for land rights is an activity to issue certificates again for certificates issued, but the certificate has been lost or has been destroyed due to various reasons or also because the certificate issued has been damaged so that the land title certificate can no longer be used. In this research, the issue of issuing certificates of substitution for land rights that have been issued by the

The factors that caused the replacement certificate of land rights to be issued are as follows:

1) If the certificate is damaged, and the cause of the damage is not questioned whether due to a deliberate, negligent or natural disaster and others, the certificate must be replaced with a new certificate.

2) If the certificate is lost, it is also not questioned the cause of the loss of the certificate, the certificate must be replaced.

3) If the certificate of land rights in the hands of the right holder still uses the old certificate of ownership which is no longer used. The certificate was printed by the state and remains open for the possibility of changes according to changes in the applicable legal provisions. The certificate can be requested by the right holder to be replaced with a new certificate in the sense that the substitute is facultative.

4) If the land is executed by auction because it is used as the object of mortgages where the defaulting debtor, the rights holder (debtor) does not submit the land certificate to the auction buyer, the certificate must be replaced with a new one.

Requests for substitute certificates at the North Lombok Regency Land Office are mostly requested because the certificate of land rights is lost from the certificate of land rights that has been damaged and others, say still using the old blank.

The title of land rights can be said to be lost, if the land title certificate is separated from physical control by the right-holder, it can be caused by being scattered, stolen, fire, entrusted to the person, apparently never returned and the subject is not plastic at all can be used as a means of proving a right.

The certificate of land rights has been damaged, meaning that the certificate has become physically transformed so that the right holders need to replace it, or because there are some certificates lost due to tears, dirty due to ink or paint and so on. So that either the certificate is damaged, lost or uses an old blank, it is best for the right holder to apply for a replacement certificate on the land to ensure legal certainty against all possibilities that will occur.

Substitution of certificate due to the above matters is recorded in the certificate and the land book of the certificate in question at the land office. And in the case of certificate changes due to missing, damaged or renewed certificates of certificate issued by the replacement certificate, the old certificate is withdrawn and destroyed by the land office.

b. Respondents’ Knowledge About Substitute Certificates

Respondents’ knowledge of the importance of land title replacement certificates in the legal area of the land office of North Lombok Regency, according to interviews with author Mochamad Risky, head of the land rights registration section said, there were around 85% of respondents who realized the importance of substituting certificates of land rights. So that the land office of North Lombok Regency is easier to conduct orderly administration in the land sector, in general respondents know the importance of land title substitute certificates, but there are still some respondents who still do not realize the importance of substitute certificates for land rights. the request is due to the insistence of other people or third parties because the land is inherited or will be transferred, guaranteed as bank collateral and so on.

---

4 Interview with Mochamad Risky, Head of Subdivision of Land Rights Registration at the North Lombok Regency Land Office on Monday, March 25 2019.
c. The requirements for a substitute certificate application include:

1) Certificate because it’s missing

Before submitting a request for the issuance of a certificate of replacement for land rights because there are two missing things that must be considered, the applicant must first submit a report of loss to the local police to fulfill the conditions specified by the Law through the Land Office of North Lombok Regency.

Requirements for reporting loss of land / certificate / cheek / giraffe and other land ownership documents from the police include:

a) Certificate from the Village Head / Village Head where the land is located (wet stamp).
b) Certificate of land ownership with a stamp of Rp. 6000, - and is known and signed by the Village Head / Village Head.
c) A statement letter is not in a dispute signed by the Village Head / Village Head.
d) A copy of the missing letter / certificate.
e) Photocopy of UN and last year’s STTS.
f) Power of attorney with a stamp duty of Rp. 6000, - if the arrangement is represented by someone else.
g) Copy of valid KTP of the owner / recipient of the power of attorney.
h) Newspaper advertisements from two different news / daily newspapers published at least 2 (two) months before being reported.
i) A statement letter not being guaranteed to another party with a stamp of Rp. 6000, - known and signed by the village head / village head.
j) All the above requirements are photocopied in duplicate 2 (two) each and entered into a folder before being submitted for the making / issuance of the loss letter.

After the Letter of Loss from the Police was published, it was continued to register the application for issuance of a certificate of replacement for land rights to the Land Office of North Lombok Regency with the following conditions:

a) Application form that has been filled in and signed by the applicant or the proxy is sufficiently stamped.
b) Power of attorney if authorized.
c) A copy of the applicant’s identity (KTP, KK) and power of attorney if authorized by the ticket window clerk.
d) A copy of the establishment deed and ratification of a legal entity that has been matched with the original by the ticket window clerk, for a legal entity

e) Copy of Certificate (if any)
f) Declaration under oath by the right holder / omit
g) Letter of report of loss from the local police.

---

5 Samsul Hadi, KA. SPKAT II, Police of the Ganges Sector. Interview Results on Tuesday Date, March 26, 2019.
6 Herman, Staff of the Registration Counter at the North Lombok Regency Land Office. Interview results on Monday Date, March 25, 2019.
2) Certificate because it is damaged

Basically the requirements in submitting a request for a certificate of replacement for land rights due to damage are not much different from the requirements for submitting a replacement certificate application because they are lost, except in submitting a request for a certificate of replacement for land rights because there is no oath before the Head of the Land Office, and no certificate loss from the police and no non-dispute statement and a statement not being guaranteed to a third party.

   a) The requirements that must be fulfilled by the applicant are:

b) Application forms that have been filled in and signed by the applicant or their proxies are sufficiently stamped.

c) Power of attorney if authorized.

d) Photocopy of the identity of the applicant (Identity Card / Family Card) and the authority if authorized, which has been matched with the original by the ticket window clerk.

e) Photocopy of deed of establishment and ratification of legal entity that has been matched to the original by the ticket office clerk, for a legal entity.

f) The damaged original certificate.

g) Latest year Land and Building Tax (PBB).

In addition to the above, the land office of North Lombok Regency also issued a certificate of replacement for land rights because it was still using old blanks and due to widespread changes in the land. In submitting a request for the issuance of a substitute certificate because it is still using the old blank, the application must also fulfill several requirements determined by the Office of the Land Agency.

Requests for the issuance of certificates of replacement for land rights because they still use old forms also include the replacement of certificates of land rights in the context of renewal or change of rights using old certificates by crossing out old rights and replacing them with new rights as referred to in Article 132 paragraph (3), this is regulated in the Regulation of the Minister of Agrarian Affairs / Head of BPN Number 3 of 1997 and Article 137 paragraph (3), concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

Based on the interview with Mr. Mochamad Risky, the head of the land rights registration section of the North Lombok Regency Land Office said that the replacement of certificates and certificates could also be through buying and selling where the land rights certificate still uses old certificates, and the replacement of certificates and land titles based on the request of a new right holder or buyer.\(^7\)

2. Legal Implications for Rightsholders with the Issuance of Substitute Certificates

   a. Criminal acts in land registration

Crimes or criminal violations in land law can be in the form of crimes and violations in the making of physical data and juridical data, for example the destruction of land mark markers and changing them in other places, providing false data relating to the existence of land, and carried out by several people concerned, such as the village head, village head, sub-district head and people who apply for rights.

Related to the above opinion, in the Criminal Code it can be found that provisions capable of minimally capturing criminals in the field of land registration, among others, by using Article 406 paragraph (1) in conjunction with Article 407 paragraph (1) of the Criminal Code, violation of Article 263

\(^7\) Mochamad Rizky, Head of the Sub-section of Land Registration for the North Lombok Regency Land Office. Interview Results on Monday Date, March 25, 2019.
of the Criminal Code concerning Forgery of letters and Article 55 of the Criminal Code concerning Participation (Article) in conjunction with Article 385 of the Criminal Code concerning Bedrog.

With this criminal provision, the policy of criminalization in legislation in the land sector has been accommodated. But in the process of investigation and law enforcement there are still technical difficulties, making it difficult to implement because it must also be proven that the act was carried out by fulfilling the element of error (schuld). Without errors, a person cannot be convicted (geenstraf zonder schuld), this principle implies that someone who commits a criminal case that can be proven without any element of error in him, then he can be freed in all charges.

b. Aggravated letter forgery

The maximum sentence is increased to 8 (eight) years in prison if according to Article 264 paragraph (1), forgery is carried out against:

1) Authentic deeds;
2) Debt securities or letters of debt (certificates) from a country, or part of that country, or from a public institution (openbare instelling);
3) Sero or debt securities (bonds) or a sign of a letter from an association, foundation, company, talon or dividend or a bung sign of the above and second letters;
4) Letters of credit or trade letters that can be circulated. The use of this letter can be punished in paragraph (2).

BPN officers as the authorized agency, in the case of issuing certificates of land rights, need to first check the records of physical data and juridical data in the land book, so that the issuance of certificates is not overlapping or there are 2 (two) certificates or more above 1 (one) plot of land. The possibility can also occur above the Property Rights Certificate issued also Business Use Rights (HGU). If there is a party that feels disadvantaged and complains about the matter to the police, then the Police must carry out an investigation of the process, procedures, and if necessary on its authority, can see the land book in question, based on Article 131 and Article 132 of the Criminal Procedure Code.

c. Cancellation of land title certificates

According to Utrecht, the provisions are divided into two types, namely legal provisions (rechtsgeldigde beschikking), and invalid provisions (nietrechtsgeldigde beschikking), invalid provisions can be in the form of null and void provisions (nietig van rechtswege) void provisions (nietig). Juridical terms “cancel” and “can be canceled” differences in meaning are as follows:

1) Cancel (nietig), often referred to as “null and void due to law” (nietig van rechtswege). It means that for the law, the actions taken do not exist, without the need for a judge’s decision or the decision of another competent government body to declare the cancellation of part or all of the consequences.\(^8\)

According to Bachsan Mustafa, the statute which is null and void because of law is a provision that stipulates the existence of a legal action for part or all of the law is deemed non-existent, without the decision of a competent judge or State Administrative body to declare null and void. So, the decree was canceled since its issuance.\(^9\)


The difference in meaning between “cancel” with “can be canceled” (vernieitigbaar), is that the effect of the cancellation that is null and void applies from the time of making the decree which is canceled, so that the condition is returned as before the determination (invalid ex tunc).10

2) Cancel absolutely (absoluut nietig), used if the cancellation can be demanded by everyone.

3) Cancel relative, used if cancellation can only be demanded by certain people.

Cancellation of certificates containing negative elements

In general, the cancellation of certificates of land rights is closely related to the decisions of the Head of the BPN / Land Office that are wrong as a result of the following:

1) The act of administrative law is carried out under its authority but does not heed the method or form determined by its basic rules.

2) Administrative legal actions are carried out under their authority, and in accordance with the procedures and forms determined by the regulations, but the contents are against the law or violate moral / ethical / moral conduct.

3) Administrative law actions are carried out under their authority and according to procedures, but the decisions taken contain elements of coercion, fraud, oversight, and negative influences from third parties.

4) Administrative law actions are carried out under their authority and according to the procedure, but only decide only part of the whole affairs.

5) Administrative law actions are carried out under their authority and according to procedures, but added conditions that turn out these conditions do not belong to their authority (detournement depouvoir), in this case for example the certificate of land rights is granted if the owner is willing to surrender a portion of his land for road widening.

With administrative legal actions that are wrong, the decisions taken are illegal and contain legal defects. This is related to the principle of legal certainty. However, if the decision contains deficiencies, the stipulation is valid if there is no addiction or appeal until a certain period of time (expired). This is in line with the negative structure in the land registration administration system adopted by the Agrarian Basic Law.

Cancellation of certificates containing positive elements

In contrast to the positive system of land registration system, that is proof of someone’s right to land is absolute and cannot be contested. If it turns out that there is evidence that is defective, indicating a legal defect from the acquisition of the right, then he cannot claim a cancellation, except for the claim of compensation payment.11

Someone or some people can take the effort to cancel land rights (before entering the court) if the person feels that in his publication there is an administrative legal flaw. As stated in Article 106 paragraph (1) Minister of Agrarian Regulation / Head of National Land Agency Number 9 of 1999, it is said that:

“The decision to revoke land rights due to administrative legal disability in its issuance can be requested because of an interested application or by an authorized official without an application.”

Cancellation of land rights carried out by an authorized official is carried out if it is known that there are administrative legal defects in the process of issuing rights giving decisions or certificates without an application (Article 119). So anyone who feels aggrieved by the issuance of a certificate of land rights, and he considers the issuance of administrative legal defects, can take the effort to cancel land rights.

In Article 107 of the Minister of Agrarian Regulation / Head of the National Land Agency Number 9 of 1999, it is stated that:

“Administrative legal defects as referred to in Article 106 paragraph (1) are: a) procedural errors; b) errors in the application of laws and regulations; c) wrong subject rights; d) reproach the object of rights; e) fault of type of rights; f) extensive calculation errors; g) there is overlapping of land rights; h) juridical data or incorrect physical data; or i) other administrative errors.”

In Article 3 of Law Number 5 Year 1986 also stated that:

1) If the State Agency or Administrative Officer does not issue a decision while it is an obligation, then the right is equalized;

2) If a State Administrative Agency does not issue a decree, while the period specified in the legislation referred to has passed, then the State Administration Agency or Official is deemed to have refused the expenditure of said decision;

3) In the event that the legislation concerned does not determine the period as referred to in paragraph (2), then after a period of four months after the receipt of the application, the State Administration Agency or Administration Officer concerned shall be deemed to have issued a decision of rejection.

The provisions of Article 3 paragraph (1) determine the basic principle, namely that each TUN body or position is obliged to serve every request of the community that he receives, if the matter requested by him according to the basic regulations is his duty. If he neglects the obligation, even though he does nothing about the application he receives, the law considers him to have rejected the request. The decision is fictitious and negative because the TUN agency or office that receives the request is silent, does nothing, and does not issue any decisions, but by law it is deemed to have issued a written determination containing a rejection of a request that that was accepted, so that the request for the cancellation of the rights in the name submitted to the BPN, if it was not responded to by the BPN, the BPN was deemed to have issued a written determination containing the rejection of the application. Therefore, the BPN which is considered to have issued a Written Determination, the refusal can be sued in the State Administrative Court with a period of 90 days calculated after the TUN Official concerned is deemed to have issued a verdict.

**Conclusion**

In the Implementation of Issuance of Substitute Certificates at the Land Office of North Lombok Regency in accordance with the procedures and regulations in force. Legal protection given to holders of substitute certificates issued by the North Lombok Regency Land Office is the same as legal protection against holders of land rights certificates in general, where certificates of land rights are strong evidence, which provides legal certainty and protection to their owners.

The legal implications that arise in the issuance of certificates of replacement for land rights at the North Lombok Regency Land Office basically occur because the landowner claims that the certificate of ownership rights has been lost even though the reality is not, this can be subject to criminal sanctions for certain acts and does not cover the possibility of lawsuits to the State Administrative Court if there is an administrative defect in the issuance of certificates of replacement for land rights by the National Land Agency.
References

Books


Interview
Interview with Dick Atmajaya, Head of Land Law Relations at the North Lombok Regency Land Office.

The results of the interview with Mochamad Risky, Head of Subdivision of Land Rights Registration at the North Lombok Regency Land Office.

The results of interviews with Herman, Staff of the Registration Counter at the North Lombok Regency Land Office.

Results of Interview with Samsul Hadi, KA. SPKAT II, at the Ganges Sector Police Office in North Lombok Regency.

The result of the interview with Ms. Anna, the applicant was a substitute certificate at the North Lombok Regency Land Office.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (http://creativecommons.org/licenses/by/4.0/).