

## LEGAL PROTECTION FOR BUYERS AGAINST CANCELLATION OF THE CERTIFICATE OF LAND RIGHTS DUE TO ADMINISTRATIVE DEFECTS

Moch Januar Ramadani<sup>1\*</sup>, Yani Pujiwati<sup>2</sup>, Yenni Yunitawati Rukmana<sup>3</sup>

<sup>1,2,3</sup> University of Padjadjaran, Indonesia

\*Correspondent Email: [Januarramadhan1998@gmail.com](mailto:Januarramadhan1998@gmail.com)

---

### Abstract

*The purpose of this research is to analyze the position of land rights certificates which were canceled by BPN due to administrative defects related to the status of land rights and legal protection for buyer. This research makes use of a normative juridical approach as its methodology. In this research, it is stated that Land Rights established on Management Rights and then transferred to third parties/buyers without permission from the Management Rights holder can be categorized as genuine but fake certificates (asphalt), so that such certificates are declared administratively defective and must be cancelled. Regarding protection for buyers whose certificates are later cancelled, legal protection can be implemented repressively, namely by the buyer getting compensation for the canceled certificate which should be the buyer's right.*

*Keywords: Certificate; Certificate Cancellation; Administrative Defects.*

---

### Abstrak

Tujuan penelitian ini adalah untuk menganalisis kedudukan sertifikat hak atas tanah yang dibatalkan oleh BPN karena cacat administratif terkait status hak atas tanah dan perlindungan hukum bagi pembeli. Penelitian ini menggunakan pendekatan yuridis normatif. Dalam penelitian ini disebutkan bahwa Hak Atas Tanah yang berdiri di atas Hak Pengelolaan kemudian dipindahtangankan kepada pihak ketiga/pembeli tanpa seizin pemegang Hak Pengelolaan dapat dikategorikan sebagai sertifikat asli tetapi palsu (aspal), sehingga sertifikat tersebut dinyatakan cacat administratif dan harus dibatalkan. Terkait perlindungan bagi pembeli yang sertifikatnya kemudian dibatalkan, perlindungan hukum dapat dilakukan secara represif, yaitu dengan pembeli mendapatkan ganti rugi atas sertifikat yang dibatalkan yang seharusnya menjadi hak pembeli.

*Kata Kunci: Sertifikat; Pembatalan Sertifikat; Cacat Administrasi.*

---

This is an open-access article under the [CC BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license.



## INTRODUCTION

The process of land registration considers the prevailing state and community conditions, socio-economic traffic requirements, and the feasibility of implementation. Land is essential for the sustenance of all individuals, indeed. According to agrarian law, every piece of land must have well-defined rights and owners.<sup>1</sup> In order to establish ownership of land, it is necessary to register land rights with the local Land Office. This process culminates in the acquisition of a certificate that serves as evidence of the land rights. The land registration process is conducted with prudence and emphasizes legal protection for land rights holders. The system follows a negative land registration approach, which grants strong legal validity unless proven otherwise. Article 19 of Law Number 5 of 1960, also known as UUPA, establishes that Indonesia employs a negative publication system with accompanying positive elements. Consequently, the evidentiary strength of certificates in Indonesia is not absolute, but rather substantial.<sup>2</sup>

A land title certificate is the conclusive outcome of the land registration procedure, encompassing tangible data (pertaining to the land's position, boundaries, and area, as well as any relevant details about the buildings or structures on it) and legal data (including information about the land and buildings' legal status, the individual or entity with ownership rights, and any encumbrances or obligations associated with it). A certificate provides legal assurance of the specific nature of land rights, the individuals entitled to such rights, and the property to which the rights pertain.<sup>3</sup>

Although a certificate may be recognized by the UUPA as a strong form of evidence, it can still be revoked. This is because the certificate does not guarantee legal certainty for the owner. The regulations allow for legal action to be taken by another party who claims ownership of the land listed on the certificate. This can be done through civil lawsuits filed with the General Court or by suing the Head of the National Land Agency (referred to as BPN) in the State Administrative Court. Additionally, there may be lawsuits related to the technical administration of the certificate's issuance.<sup>4</sup> One of the problems that often occurs in Indonesia is due to administrative defects regarding the certificate of title to the land in question

Based on matter the so obtained identification problem, first, what is the Position of Land Rights Certificates Canceled by BPN Due to Administrative Defects Regarding Land Rights Status Above the Management Rights Granted Without the Permission of the Management Rights Holder? Second, what is the legal protection for buyers of land rights certificates against the cancellation of their land rights certificates due to administrative defects?

---

<sup>1</sup>Ningrum Ambarsari and Noor Aziza, "The Urgency of Registration on Uncertified Land", (Volume X Number 1, 2019) p. 92.

<sup>2</sup>Fina Ayu Safitri, "Legal Consequences of Using a Negative Publication System with Positive Elements in Land Registration in the City of Semarang", (*Notarius* , Volume 13 Number 2, 2020) p. 791.

<sup>3</sup>Made Ari Putra Sudana and Ketut Wetan Sastrawan, "Process of Cancellation of Land Ownership Certificates and Legal Protection Based on Court Decisions at the Singaraja District Court" (*Legal Journal*, Vol.5, No.2, 2017) p. 1-2.

<sup>4</sup>Rusmadi Murad, "Land Administration Implementation in Practice", (Jakarta: Mandar Maju, 1997) p. 46.

## METHOD

The study methodology that will be employed is normative juridical research, namely a legal research approach conducted through the examination of library resources or secondary data.<sup>5</sup> The research specification that will be used is descriptive analysis, namely describing the facts in detail about the research object so that problems are found that arise in the form of discrepancies between applicable regulations and practices that occur in the field, then trying to analyze and find a way out of a problem.<sup>6</sup> The research stages carried out were through library research and field research. Related primary legal materials include Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration. The user's text refers to two government regulations. The first one is Government Regulation Number 18 of 2021, which deals with the management rights, land rights, flats, and land registration. The second regulation is Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020, which focuses on the handling and settlement of land cases. The secondary legal materials that will be used include textbooks, legal journals related to the topic raised. The data analysis was conducted using a qualitative normative juridical approach, which involves examining legal norms found in different laws, regulations, and court decisions.<sup>7</sup>

## RESULT AND DISCUSSION

### *1. Position of Land Rights Certificate Canceled by BPN Due to Administrative Defects Regarding Land Rights Status Above the Management Rights Granted Without the Permission of the Management Rights Holder*

The land registration system employed in Indonesia is primarily based on the UUPA, which aims to ensure legal certainty in the land sector. This system utilizes a negative publication system with positive elements, as it generates letters of proof of title that serve as robust evidence.<sup>8</sup> The validity of the evidence provided in the mentioned articles, namely Article 19 paragraph (1) letter c of the UUPA and Article 32 paragraph (1) of PP Number 24 of 1997, is contingent upon the consistency between the physical and juridical data with the data found in the measurement letter and land book in question.<sup>9</sup> Because the evidentiary power of a certificate is strong but not absolute evidence, it is still possible for the certificate to be cancelled.

According to Article 1, Section 20 of Government Regulation Number 24 of 1997 on Land Registration (referred to as PP Number 24 of 1997), a certificate serves as evidence of various types of rights, such as land rights, management rights, waqf land rights, ownership rights to apartment units, and mortgage rights. These rights are recorded in the appropriate land book.

---

<sup>5</sup>Soerjono Soekanto, "Introduction to Legal Research", (Jakarta: UI Press, 1986) p. 7.

<sup>6</sup>Mukti Fajar and Yulianto Achmad, "Dualism of Legal Research: Normative & Empirical" (Yogyakarta: Student Library, 2010) p.183.

<sup>7</sup>Zainudin Ali, "Legal Research Methods", (Jakarta : Sinar Graphics, 2011) p. 105.

<sup>8</sup>Boedi Harsono, "Indonesian Agrarian Law: History of the Formation of Basic Agrarian Laws, Content and Implementation", (Jakarta: Djangkat, 2008) p. 475.

<sup>9</sup>Adrian Sutedi, "Legal Strength of Validity of Certificates as Proof of Land Rights: In Analysis of Cancellation of Land Rights Registration", (Jakarta : Cipta Jaya, 2006) p. 23.

The certificate is stated in Article 32 Paragraph (1) PP Number 24 of 1997 that:

“A certificate is a proof of title which acts as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data in the measurement letter and land rights book in question.”

Yamin Lubis and Abd. Rahim Lubis assert that a certificate serves as conclusive evidence of an individual's entitlement to a specific piece of land. In essence, this circumstance signifies that an individual possesses compelling documentation in the form of an official letter issued by an authorized agency.<sup>10</sup> Concerning the transfer of Land Rights over Management Rights, also known as HPL, it is evident that the land rights associated with HPL land comply with the regulations stated in Article 13 of Government Regulation Number 18 of 2021 (referred to as PP Number 18 of 2021). In the year 2021, it is stated that:

- (1) “Land rights over Management Rights which are collaborated with other parties can be encumbered with mortgage rights, transferred or relinquished.
- (2) Every legal action, including being used as collateral for a debt with the burden of a mortgage on Land Rights over Management Rights, requires a recommendation from the Management Rights holder and is included in the Land Use Agreement.
- (3) In the event that Land Rights above Management Rights are to be released, the release is made by and before an authorized official and reported to the Minister.”

Permit (recommendation) for the transfer of land plots and/or buildings located on land. Management rights are a supervisory (control) function which is the duty and authority of the holder of the management rights concerned regarding the use of land by third parties. With a permit (recommendation), the Management Rights holder can monitor and prevent portions of Management Rights lands controlled by third parties from being transferred in violation of government regulations and policies.

In the event that there is no permission (recommendation) from the Management Rights holder, such a certificate is a legally defective certificate. In this case, a legally defective certificate is proof of land rights that have been issued and there are things that cause it to be cancelled, because in processing it there are elements of coercion, error, fraud, etc. or the formal procedures are not appropriate or violated, and the legal consequences are null and void.<sup>11</sup> Any policy or procedure that is contrary to the validity of the law is the definition of a legal defect, it can also mean the same as imperfection and incompleteness of the law, such as agreements, policies, or other things, and the cause is because it is not the same as the law which results in it not being legally bound.<sup>12</sup>

The regulations governing administrative legal defects in relation to land title certificates are outlined in Article 35 of Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 21 of 2020. This regulation, also known as Minister of ATR/BPN

---

<sup>10</sup> Mhd, Yamin Lubis and Abd. Rahim Lubis, “Land Registration Law”, (Bandung: Mandar Maju, 2012) p. 204.

<sup>11</sup> Rusmadi Murrad, “Settlement of Legal Disputes Over Land”, (Bandung: Alumni, 1991) p. 29.

<sup>12</sup> Ni Made Silvia Gayatri, “Cancellation of Land Ownership Certificate Due to Administrative Defects”, (*Legal Analogy Journal* , Volume 3 Number 1, 2021) p. 81.

Regulation 21/2020, specifies that the cancellation of legal products is necessary when there are administrative and/or juridical defects.

- a. errors in the process/procedure of issuing land rights, registration of rights and the process of maintaining land registration data;
- b. errors in the measurement process/procedure;
- c. errors in the process/procedure for issuing replacement certificates;
- d. errors in the process/procedure for issuing the Mortgage Rights certificate;
- e. errors in the application of statutory regulations;
- f. error of the subject of rights;
- g. wrong object of rights;
- h. rights type error;
- i. overlapping land rights;
- j. overlaps with forest areas;
- k. errors in determining land consolidation;
- l. errors in land confirmation of land reform objects;
- m. errors in the process of granting permission to transfer rights;
- n. errors in the process of issuing the Cancellation decision letter;
- o. there is a criminal court decision with permanent legal force that proves the existence of criminal acts of forgery, fraud, embezzlement and/or other criminal acts;
- p. there are documents or data used in the process of issuing certificates that are not products of the agency based on a certificate from the agency concerned;
- q. There is a court decision which in its legal considerations proves that there is a fact that there is a defect in the publication of the Ministry's legal product and/or there is a defect in the legal action in the transfer of rights but the decision is not stated expressly.”

Based on this definition, land rights established on HPL and then transferred to third parties/buyers without permission from the HPL holder can be categorized as genuine but fake certificates (asphalt), which can be seen that building use rights established on HPL are then transferred to the other party must obtain permission (recommendation) from the HPL holder but in this case the permit (recommendation) does not exist, so even though the certificate has been issued, the procedures carried out are not in accordance with the applicable provisions, as regulated in Article 13 paragraph (2) PP Number 18 of 2021 states that every legal action regarding land rights above HPL must require permission (recommendation) from the HPL holder. With legal actions, namely buying and selling carried out without permission (recommendation) from the HPL holder, such a certificate can be said to be a legally defective certificate which can be categorized as an administrative defect.

What can be categorized as a legal disability certificate are:<sup>13</sup>

- 1) A genuine but fake (asphalt) certificate can occur if the land certificate is officially issued by the local Land Agency Office, and is officially a derivative of the land book and existing structures at the land agency office. Evidence of the falsity of the certificate is only revealed in the event of a dispute and in proving its truth it is necessary to examine the initial requirements for submitting the application.
- 2) Fake certificates are land certificates that are legally flawed both formally and materially, the data is falsified. The land certificate book is printed and signed by yourself by imitating the method of filling in a valid signature and stamp
- 3) Multiple/overlapping certificates. A certificate describing the same plot of land is issued by more than one certificate whose land location overlaps in whole or in part.

Article 35 of the ATR/BPN Ministerial Regulation 21/2020 states that there are 17 types of certificates that can be said to be administrative defects. If you look at the provisions mentioned above regarding land title certificates that are canceled by BPN, these provisions are not cumulative but only 1 provision is fulfilled. can be used as a reason for canceling the certificate due to administrative defects. The status of a land title certificate that is canceled due to an administrative defect related to the status of the land title is null and void by law and is no longer a proof of land title that has evidentiary force. This is because the land title certificate can be proven to have been issued using an administratively flawed process so it should be cancelled.

## 2. *Legal Protection for Buyers of Land Rights Certificates Against Cancellation of Their Land Rights Certificates Due to Administrative Defects*

In Indonesia's legal system, there are two sorts of land registration processes: initial registration, which refers to the first-time registration of land, and maintenance, which involves updating land registration data. Data maintenance activities involve the adjustment of both physical and legal data in various documents such as registration maps, land registers, name lists, measurement letters, land books, and certificates. These adjustments are made to reflect any changes that have occurred since the first registration.<sup>14</sup>

When it comes to preserving land registration data, there are two key aspects to consider: maintaining the physical data and maintaining the legal data. One of the reasons for the necessity of maintaining juridical data is the transfer of land rights through the process of purchasing and selling, which is documented by a deed executed before the PPAT (official land conveyancer). According to Article 37 of PP Number 24 of 1997, the transfer of land rights through sale and purchase can only be officially registered if there is a deed made by an authorized Land Deed Making Official in accordance with the law.

When creating a deed of transfer of land rights before the PPAT, it is crucial to meet both formal and material requirements. These requirements serve the purpose of establishing legal certainty for the parties involved and providing legal protection, particularly for the buyer, as land registration aims to

---

<sup>13</sup>Khairina, "Legal Defect Certificate in Land Law in Indonesia", (*Juris*, Volume 13, Number 1, 2014) p. 32-33.

<sup>14</sup> Urip Santoso, "Registration and Transfer of Land Rights", (Jakarta: Kencana, 2011) p. 32.



achieve. Philipus M. Hadjon defines legal protection as the safeguarding of honor and dignity, as well as the acknowledgment of human rights owned by legal individuals, in accordance with legal laws, to prevent arbitrary actions.<sup>15</sup> Philipus M. Hadjon categorizes legal protection into two distinct types: preventative and repressive legal protection. Preventive legal protection refers to the provision of protection prior to the occurrence of a dispute, with the objective of averting the occurrence of problems. Repressive protection refers to the resolution of conflicts that occur when there is a violation of legal norms in statutory rules.<sup>16</sup>

Legal protection refers to the entitlement of every legal entity to receive equitable treatment. Legal protection is a fundamental entitlement granted to all individuals recognized as legal entities inside a nation. Legal protection, as defined by Satjipto Raharjo, refers to the provision of safeguards for human rights that have been violated by others. This protection is extended to the community, enabling them to fully exercise all the rights granted by the law. Legal protection encompasses various measures aimed at upholding rights and offering support to ensure the safety and well-being of witnesses and/or victims. This can be achieved by means such as restitution, compensation, medical services, and legal assistance.<sup>17</sup>

According to Philipus M. Hadjon, there are two sorts of legal protection: preventive legal protection and repressive legal protection. Ideally, the legal protection that needs to be prioritized is preventive legal protection, this is because preventive legal protection means preventing it before a dispute or loss is experienced so that if preventive legal protection has been implemented then the opportunity for disputes and problems to occur is minimized.

Legal protection that can be carried out before the cancellation of the land title certificate for buyers who have good intentions can be done in a preventive way before a dispute occurs, namely by fulfilling the subject requirements of the land to be purchased and having strong evidence that the buyer is really buying and selling the land. This is done through a sale and purchase deed made before the PPAT in accordance with the provisions of the applicable laws and regulations. Preventive legal protection is implemented during the PPAT (Notary Public) process prior to conducting the Sale and Purchase transaction. This involves doing an initial examination of the certificate that is the subject of the transaction. One of the ways in which this check is carried out is to provide protection to the buyer, in this case to find out the status of the certificate, because during the check it can be seen whether the certificate to be sold really belongs to the legitimate seller, whether the status of the certificate is being confiscated, whether the certificate is being guaranteed or in mortgage status, and has correct information from BPN and the history of the certificate.

Apart from the preventive protection carried out by PPAT, BPN also plays a role in implementing preventive legal protection. After the sale and purchase process is finished, the next step is to register the transfer of land rights at the BPN office. This involves inspecting and identifying the conditions related to the transfer of rights, even though the registration is based on the sale and purchase deed prepared by the PPAT.

---

<sup>15</sup> *Ibid* , p. 1-2.

<sup>16</sup> *Ibid*, p. 15.

<sup>17</sup>Satjipto Rahardjo, "Legal Studies", (Bandung: Citra Aditya Bakti, 2000) p. 53.

However, if the land title certificate owned by the buyer has been canceled due to an administrative defect, then what can be done is repressive legal protection, especially if the case has entered the realm of justice and even has an *inkracht decision*. One form of legal protection that can be carried out after the certificate is canceled is to provide compensation which should be the right of the buyer. The compensation in question in this case can be achieved by filing a civil lawsuit against the law, because what has been done can be categorized as an unlawful act for which civil liability can be sought.

## CONCLUSION

In the event that there is no permission (recommendation) from the Management Rights holder, such a certificate is a legally defective certificate. This is because every legal action regarding land rights above the HPL must require permission (recommendation) **from the HPL Holder Land rights established on HPL and then transferred to third parties/buyers** without permission from the HPL holder can be categorized as genuine but fake certificates (asphalt). So, based on Article 35 of Ministerial Regulation ATR/BPN 21/2020, such a certificate is an administratively defective certificate so that the position of a land title certificate which is canceled due to an administrative defect related to the status of land rights is null and void by law and is no longer proof of title. land that has evidential power. It is necessary to hold a special outreach program for all relevant agencies to find out all the roots of the problem and to find out the best solution for parties with good intentions who are affected. In this case, BPN also issues certificates carefully in accordance with applicable laws and regulations.

There are two distinct sorts of legal protection: preventive legal protection and repressive legal protection. Legal protection is provided to buyers of land rights whose land rights certificates are subsequently revoked due to changes in their land rights status. This legal protection is implemented in a repressive manner. This is because by canceling the land title certificate from the buyer/owner, a loss has actually occurred. This form of repressive legal protection means that if the land title certificate has been cancelled, it can be done by providing compensation which should be the right of the buyer. To better protect land title certificate holders, of course in this case it is necessary to improve the land registration system in Indonesia so that it becomes more integrated. What can be done is to improve the certificate checking and land registration system so that it is more integrated.

## REFERENCES

- Adrian Sutedi, "Legal Strength of Validity of Certificates as Proof of Land Rights: In Analysis of Cancellation of Land Rights Registration", Jakarta:Cipta Jaya, 2006.
- Boedi Harsono, "Indonesian Agrarian Law: History of the Formation of Basic Agrarian Laws, Content and Implementation", Jakarta: Djangkat, 2008.
- Fina Ayu Safitri, (et.al), "Legal Consequences of Using a Negative Publication System with Positive Elements in Land Registration in the City of Semarang", Notarius, Volume 13 Number 2, 2020.
- Khairina, "Legal Defect Certificate in Land Law in Indonesia", Juris, Volume 13, Number 1, 2014
- Made Ari Putra Sudana and Ketut Wetan Sastrawan, "Process of Cancellation of Land Ownership Certificates and Legal Protection Based on Court Decisions at the Singaraja District Court", Legal Journal, Vol.5, No.2, 2017.
- Mhd, Yamin Lubis and Abd. Rahim Lubis, Land Registration Law, Bandung: Mandar Maju, 2012.





- Mukti Fajar and Yulianto Achmad, *Dualism of Legal Research: Normative & Empirical*, Yogyakarta: Student Library, 2010.
- Ni Made Silvia Gayatri (et.al), “Cancellation of Land Ownership Certificate Due to Administrative Defects”, *Legal Analogy Journal*, Volume 3 Number 1, 2021.
- Ningrum Ambarsari and Noor Aziza, “The Urgency of Registration on Uncertified Land”, *Al'adl*, Volume X Number 1, 2019.
- Rusmadi Murrad, “Land Administration Implementation in Practice”, Mandar Maju : Jakarta 1997.
- \_\_\_\_\_, “Settlement of Legal Disputes Over Land”, Bandung: Alumni, 1991.
- Satjipto Rahardjo, “Legal Studies”, Bandung: Citra Aditya Bakti, 2000 .
- Soerjono Soekanto, “Introduction to Legal Research”, Jakarta: UI Press, 1986.
- Urip Santoso, “Registration and Transfer of Land Rights”, Jakarta: Kencana, 2011.
- Zainudin Ali, “Legal Research Methods”, Jakarta : Sinar Graphics, 2011.