

Implementation of the Contrarius Actus Principle in Revocation of Land Certificate Without A Court

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Abstract

Proof of ownership of land is a land certificate. Often in the issuance of land certificates, there are problems. Land certificates that have been issued usually cause problems and must be canceled. One of the causes of the revocation of land certificates is invalid data which contains administrative defects. The problem arises that often the Head of the Land Office is reluctant to cancel the land certificate and prefers the applicant for the revocation of the land certificate to file a lawsuit in court or through litigation. This was suggested by the Head of the Land Office because of his misunderstanding of the Contrarius Actus principle. The Contrarius Actus principle is a principle in administrative law where the State Administrative Officer who makes State Administrative Decisions is automatically authorized to change, replace, revoke and cancel the documents he has made. and juridical defects must be revoked by the Head of the Land Office without having to wait for a court decision if they have fulfilled the revocation requirements.

I. Introduction

The certificate is proof of land ownership issued by the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia (Fadhlorrohan, 2018). The certificate is a copy of the land book registered with the Land Office. Landowners who already hold land certificates, get legal protection and legal certainty of their land ownership status (Mustarin, 2017).

Legal certainty in ownership of land titles is provided by entries in the Land Register. Land Registry is a series of activities carried out continuously, continuously and regularly by the Government to collect, process, account, present and manage physical and legal data in the form of maps and lists of land and

residential units. includes maintenance. Including the provision of legal documentation for land parcels where title and housing unit ownership and certain rights attached thereto already exist (Ramadhani, 2021).

The purpose of the Land Registry is to provide legal certainty and legal protection to owners of rights to land, dwellings and other registered rights, and to facilitate their identification as owners of the rights in question. is to Inform stakeholders, including governments, and make readily available the data they need to carry out legal processes related to registered land and housing units. Practice orderly land management (Murni, 2020).

Ownership of land rights arises when the rights are recorded in the land book by issuing land certificates as proof of rights that apply as a strong proof of physical data and juridical data contained therein, as long as the physical data and juridical data follow the data. is in the letter of measurement and the book of land rights in question (Hayati, 2016). If a parcel of land has been legally issued in the name of the person or legal entity that acquired the land in good faith and controls it, then the other party who feels he has rights to the land can no longer demand the exercise of that right if within 5 (five) five) years after 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 the control of the land or the issuance of the certificate (Somomoeljono, 2021).

However, it can be seen that the certificate can be canceled because it is caused by first being able to prove an unlawful act (criminal), unlawful act and/or default (civil) based on a court decision that has permanent legal force; or Based on the decision of the authorized state administrative official based on the presence of an element of "administrative defects" based on valid evidence (Amalia & Abdullah, 2021). If the legal basis used by the official of the national land agency in canceling the certificate uses the basis of unlawful acts (criminal), acts against the law, and/or default (civil), then the basis is a judge's order based on a court decision that already has permanent legal force (*inkracht van gewijsde*) (Asmara, 2012).

Land certificates that are issued often have administrative and juridical defects and must be canceled. Often the Head of the Land Office refuses to cancel the Land Certificate on the grounds that there must be a court decision, even though it is very clear that the land certificate contains elements of administrative defects and juridical defects. For this reason, for the sake of legal certainty, the Head of the Office must be able to process the revocation of land certificates without having to wait for a court decision.

2. Research Method

The legal research method is carried out using a normative legal research method with a normative juridical approach. In Benuf & Azhar (2020) the use of normative legal research methods is one type of legal research methodology based on analysis through applicable laws and regulations and in accordance with legal issues that are the focus of research. The approach according to

Sunggona (2003) in Benuf & Azhar (2020) juridical normative is an approach that refers to the applicable laws and regulations. Sources of data obtained by means of library studies in the form of secondary data for the basic materials studied by tracing the regulations and other literature related to research. Secondary Data The data obtained and used for this research are in the form of applicable laws and regulations. The purpose of choosing a normative legal research method is so that researchers can resolve existing cases to obtain decisions based on applicable positive law (Dimiyati, 2015).

3. Results and Discussion

Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 21 of 2020 concerning handling and settlement of land cases is issued by the Ministry of Agrarian and Spatial Planning/National Land Agency ("ATR/BPN"). This regulation revokes Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 11 of 2016 regarding settlement of land cases. Viewed from the perspective of dispute resolution, the main differences between Perment ATR/BPN 21/2020 and Perment ATR/BPN 11/2016 are as follows: Ministry Initiatives to Resolve Land Cases In Permen ATR/BPN 11/2016, land conflict resolution is carried out based on the initiative of ATR/BPN. However, the ATR/BPN initiative in resolving land conflicts was abolished based on Permen ATR/BPN 21/2020. In Article 3 paragraph (1) Perment ATR/BPN 21/2020 only regulates handling and resolving land disputes, ATR/BPN accepts all complaints originating from individuals/citizens; community groups; legal entities; government agencies; or technical units of ATR/BPN, Regional Offices and Land Offices (Rahmadhan, 2022).

Based on this, even though the ATR/BPN initiative has been abolished, the ATR/BPN technical unit, Regional Office, and Kantah can file complaints on land disputes to ATR/BPN. Classification of Case Handling Perment ATR/BPN 11/2016 does not regulate the classification of disputes and conflicts in handling to distinguish dispute resolution mechanisms. Meanwhile, Perment ATR/BPN 21/2020 regulates the classification of disputes and conflicts into 3 categories, namely severe cases, moderate cases, and mild cases. Serious cases are cases that involve many parties, have complex legal dimensions, and/or have the potential to cause social, economic, political, and security turmoil. Dispute and Conflict Handling is carried out through the following stages: a. case review; b. initial degree; c. study; d. exposure of research results; e. coordination meetings; f. final degree; and g. Case settlement. The above handling steps are not mandatory in terms of disputes and conflicts in the classification of Medium Cases and Mild Cases, because they generally have a low level of complexity in handling. The Broad Terminology in Perment ATR/BPN 11/2016 only specifically regulates the revocation of land rights and to cancel of any legal product issued by ATR/BPN, Regional Office, or land office, if the legal product is intentionally issued as a

State Administrative Decree. Perment ATR/BPN 21/2020 defines ATR/BPN, Kanwil, or Kantah Legal Products as Decisions of State Administration Officials in the Land sector. Additional Reasons for Canceling Legal Products As stipulated in Permen ATR/BPN 11/2016, legal products can be canceled for 11 (eleven) reasons.

Meanwhile, Perment ATR/BPN contains a criminal court decision with permanent legal force that proves the existence of criminal acts of forgery, fraud, embezzlement, and/or other criminal acts; and there is a court decision which, in its legal considerations, proves that there is a fact that there is a defect in the issuance of the Ministry's legal product and/or there is a defect in legal action in the transfer of rights, but the decision is not stated explicitly. exceptions from implementing Court Decisions with permanent legal force, which are more detailed than the previous regulation, which only stipulates 3 (three) exceptions. Furthermore, Permen ATR/BPN 21/2020 regulates how and what decisions can be used as a legal basis to cancel legal products. These provisions can assist the panel of judges in designing enforceable Court Decisions and legal consultants (or parties) to draft civil lawsuits considering the current uniformed regulations. litigation case. If a land dispute is resolved by a customary institution, proof of settlement must be formalized in the form of an authentic deed and/or registered with the District Court. Settlement can be carried out by the Ministry, Regional Office, or Land Office, in the event that the settlement does not conflict with the laws and regulations in force in Indonesia. In Perment ATR/BPN 21/2020 jo. Permen ATR/BPN 11/2016 has the authority of ATR/BPN to resolve a dispute or conflict related to land, including the revocation of legal products.

Based on Article 29 of Permen ATR/BPN 21/2020, the revocation of legal products can be carried out on the grounds:

1. Administrative and/or juridical defects, and
2. Implementation of court decisions that have permanent legal force. Legal products (in this case, land certificates) that are administratively flawed are caused by an error in the data provided when making the certificate, or it can occur due to an error in the object and subject.

Object errors include errors in mapping and/or land measurement, while subject errors are errors from legal subjects who do not correctly provide information in submitting a certificate application. Furthermore, Article 35 of Perment ATR/BPN 21/2020 states as follows:

Revocation of legal products due to administrative and/or juridical defects as referred to in Article 29 paragraph (1) letter a is caused by:

- a. errors in the process/procedure for issuing land rights, registration rights, and processes for maintaining land registration data;
- b. errors in the measurement process/procedure;
- c. errors in the process/procedure for issuing a replacement certificate;
- d. an error in the process/procedure for the issuance of a Mortgage certificate;
- e. errors in the application of laws and regulations;
- f. right subject error;

- g. rights object error;
- h. right type error;
- i. overlapping land rights;
- j. overlapping with forest areas;
- k. error in determining land consolidation;
- l. land reform object confirmation error;
- m. errors in the process of granting permission to transfer rights;
- n. an error in the process of issuing the revocation decision;
- o. there is a criminal court decision with permanent legal force that proves the existence of a criminal act 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 issuance of the Ministry's legal product and/or there is a defect in legal action in the transfer of rights, but the decision is not stated explicitly.

Specifically, errors in procedure and errors in the procedure for making a decision that are not in accordance with the requirements and procedures regulated in the provisions of laws and regulations and/or standard operating procedures are two categories of administrative defects as defined by Law Number 30 of 2014, concerning Government Administration, as amended by Law Number 11 of 2020, concerning Job Creation.

Error The substance of the error in the event that the desired material does not match the formulation in a decision made, for example, there is a conflict of interest, juridical disability, made by physical or psychological coercion, or made by deception. Administrative Disabilities, according to the Big Indonesian Dictionary, are defined as follows: the word Disability is defined as a form of deficiency that causes the value or quality to be less good or less than perfect. the word Administration is defined as businesses and activities that include setting goals and determining ways to organize organizational development.

The principle of *contrarius actus*, which comes from Latin, is also known as *consensus contrarius* (*contrarius action, conflicting law*). *Contrarius actus* is the term used to refer to the action of a government agency or official empowered to voluntarily issue a government executive order or to automatically revoke a government executive order. (Muchsin et al., 2020). This principle is a legal term. In case of repeal or repeal of the previous law (*actus primus*), the opposite act has the same legal effect as *actus primus*. For example, the enactment of a statute can only be revoked by the enactment of a decree declaring that the statute is repealed or amended, and not by the underlying regulations.. The legal transaction can only be canceled through other legal transactions, the concrete action is that the contract agreement can only be changed or canceled with a similar contract agreement (Imam, 2019).

Philipus M. Hadjon and Tatiek Sri Djatmiati in Fitriyani (2022) They hold similar views, but they believe that the principle of treason is defined in administrative law, and that powers attached to state administrative authorities or officials issuing state administrative decisions may also be overturned. I convey my understanding that it is possible. Cases of state administrative decisions regarding ordinary safety provisions are not regulated. This is commonly found in various types of state administrative decisions, which usually state, "This decision will be reviewed if it is found in the future that an error or error has occurred".

According to Mahendra P. Sing, state administrative decisions (administrative acts) must be distinguished from laws and regulations (legislative acts). State administrative decisions regulate a specific concrete case (specific concrete case) and do not regulate general abstract norms (do not lay down general abstract norms) that can be applied to unlimited cases, state administrative decisions regulate a single, individual case (Poernomo, 2017).

The principle of *contrarius actus* is inherent in the implementation of state administrative law because it is directly attached to state administrative bodies/officials. The existence of the *contrarius actus* principle in state administrative law in Indonesia can be seen in Law no. 23 of 2014 concerning Regional Government Article 251 and Law no. 5 of 1986 concerning the State Administrative Court Article 97 paragraph (7), (8) and (9) (Safriani, 2022).

If the national administrative decision made by the state administrator is applied on the ground and contains legal flaws or administrative errors, the state administrator who made the decision by means of the national administrative decision on equality shall revoke it. I have the right. at an equal or higher level. Unless prohibited by law. Therefore, state administrators should carefully consider applicable legal provisions.

According to the principle of *contrarius actus*, the Commissioner of State can cancel land register documents without waiting for a court decision. (Siep, 2021). The principle of *contrarius actus* is attached to the State Administrative Officer so that the Head of the Land Office, as the State Administrative Officer, can cancel the land certificate based on the authority he has. The revocation of the land certificate carried out by the official of the national land agency uses the legal basis of administrative defects, so as long as all procedures have been fulfilled in accordance with the applicable provisions.

However, if in the research and study process, there is evidence of a violation of procedures in order to prove the presence or absence of an element of administrative defect committed by the official of the national land agency, then the act of the official of the national land agency can be referred to as a form of administrative violation. Administrative violations may be subject to reprimand or sanctions as regulated by laws and regulations, as long as the state civil apparatus is given the opportunity to defend itself through administrative efforts in the form of administrative objections and/or appeals as regulated in Article 32 of Government Regulation Number 53 of 2010 concerning Civil Servant Discipline. Therefore, it is sufficient for this situation to be resolved through the

disciplinary mechanism applicable to the state civil apparatus. From the perspective of state administrative law, if the revocation of the land certificate is carried out by the official of the national land agency, it uses the legal basis for an administrative defect.

Enforcement of criminal law, of course, must still refer to the theory of law enforcement, which emphasizes the importance of aspects of legal certainty, legal benefits, and justice. The actions of the officials of the national land agency have a strong legal basis in canceling land certificates based on applicable administrative law using the legal basis of administrative defects so that the community, with the implementation of the legal basis for administrative defects, will get legal certainty, legal benefits, and legal justice in accordance with the theory. in law enforcement.

Perment ATR/BPN 21/2020 specifically becomes a formal law in settlement of every land case that occurs, this is the goal of the Ministry of ATR/BPN in order to provide legal certainty for the settlement of land cases, including the procedure for resolving land cases caused by defects. administration. Because it is administrative in nature, the procedure for resolving land cases is a systemic legal system. That is, from the aspect of justice for people seeking justice with the implementation of administrative defects procedures in canceling land certificates if there are parties who are harmed in the future can prove that there are no administrative defects in the process of issuing land certificates, based on the provisions of Article 30 paragraph (3) Perment ATR/BPN 21/2020, the authorized state official can cancel the decision letter to cancel the land certificate made by the official of the national land agency which is a legal product of the Ministry of ATR/BPR. Thus, the administrative defect procedure is not an arbitrary act of an authoritarian official, but in reality, it is a democratic legal procedure.

4. Conclusion

In order for the land agency institution to function as a *lex specialist derogat generali* as a system that can use administrative defect procedures in land dispute resolution in addition to procedures either through the state administrative court or through the District Court, revocation of land certificates using a legal basis for administrative defects is still required by the community. The national land agency's employees, in their authority and competence, invalidate land rights certificates based on administrative errors rather than criminal activity. Referring to the definition of an administrative defect as stated in Article 35 of Permit ATR/BPN 21/2020 and the explanation associated with the clarification of Article 71 paragraph (1) letters a and b of Law No. 30 of 2014 concerning Government Administration, it can be assumed that administrative actions cannot be referred to as a type of criminal act as long as the entire process of making a policy is in accordance with procedures. If there is a violation of the procedures in assessing the presence and absence of administrative defects, the

sanctions imposed are administrative sanctions, either in the form of warnings or dismissals for state officials who violate them. This is because the application of administrative defect procedures in the revocation of land certificates falls under state administrative law, not criminal law.

Legally construing administrative errors in the context of revoking land rights certificates, which falls under the purview of administrative law in the practice of law, can set precedents that are inconsistent with the guiding principles of law enforcement, which must prioritize legal certainty, legal benefits, and justice. Due to Indonesia's use of a negative setting for the legislation governing land registration, the official of the national land agency's act of revoking the certificate of land rights is deemed invalid by law. The cancellation of the certificate of land rights is automatically declared unlawful by law if at any point the act of canceling the certificate is shown to have no legal basis by a court ruling or administrative error. According to the *Contrarius Actus* principle, if components of administrative and legal flaws are discovered, the Head of the Land Office may revoke the land certificate without having to wait for a court ruling.

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