

# Juridical Analysis of Proof Land Right Cancellation (Certificate) To Realize Legal Certainty (Research Study At The Office Of The National Land Board Of Batam City)

Eli Casili<sup>1</sup>, Idham<sup>2</sup>, Ramon Nofrial<sup>3</sup>

<sup>1</sup>Student at Master of Notary

<sup>2-3</sup>Lecturer at Faculty of Law  
Universitas Batam, Indonesia

## ABSTRACT

*The certificate is a strong grip in terms of proving his property rights, because it is issued by a legitimate and legally authorized agency. This study uses a descriptive normative method by using secondary data from the research results obtained. the legal arrangement for the implementation of the cancellation of land rights to realize legal protection and certainty in which the one responsible for the cancellation of the certificate is the National Land Agency. By registering land rights or granting land rights to all subjects of rights, they are also given the authority to use the land according to its designation. solutions in the implementation of the cancellation of land rights, the existence of internal and external factors that occur, solutions from the author of the State to form an insurance institution on land or include insurance institutions that are able to work together on the payment of compensation for land rights that have been registered, especially those with the potential for cancellation or nullification of certificates.*

**Keyword :** *Cancellation Of Land, National Land Agency, Legal Certainly and Protection.*

## INTRODUCTION

The regulation of land with the status of property rights as has been confirmed in the UUPA, specifically the legal regulation norms are regulated in Article 20 paragraph (1). In this regard, that the legal arrangements relating to property rights as regulated in Article 6 of the UUPA concretely and explicitly confirms that all land rights have a social function. Soil is a system of layers of the earth's crust that are not solid with various thicknesses. This is based on the increasing development in urban and rural areas that affect the socio-economic life of the community.

The Basic Agrarian Law is the juridical basis for the reform of agrarian law in Indonesia, in the context of eliminating legal dualism that regulates agrarian issues, ensuring legal certainty, and creating legal unification in the agrarian sector. The strongest evidence for ownership of land rights, namely physical data and juridical data contained in the certificate, is considered correct as long as it cannot be proven otherwise by other evidence which can be in the form of a certificate.

Notaries have an obligation, namely by reading them so that the contents of the notary deed are clear, as well as providing access to information, including access to relevant laws and regulations for the parties to the deed. The parties can freely determine whether to agree or disagree with the contents of the notarial deed to be signed. Development policies, especially for urban areas, the consequences that arise from the implementation of development in people who own land in urban areas will be displaced and marginalized, resulting in misery and destitution. This is as a result of the rapid population growth so that housing needs are increasing, but not all people can afford to be able to buy or build their own houses. This happened because to be able to buy or build their own

house. This happens because of the limited amount of land area and the high price of land, so it cannot be reached, especially for the economically weak community whose income level is still very low.

All of this does not reduce the possibility of revocation of rights in the public interest and appropriate compensation, based on statutory regulations. The National Land Agency always strives for a solution to settle land disputes based on the applicable laws and regulations by paying attention to a sense of justice and respecting the rights and obligations of each party. The existence of a material right over the property of another person always arises because of the right owned by the holder of the property right to an object to give limited rights to the object he owns.

## LITERATURE SOURCE

The sources of data in this study were obtained from primary materials in the form of laws and regulations such as:

1. The 1945 Constitution of the Republic of Indonesia;
2. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles State Gazette of the Republic of Indonesia of 1960 Number 104
3. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the Land Agency of the Republic of Indonesia Number 12 of 2019 concerning Land Consolidation, State Gazette of the Republic of Indonesia of 2019 Number 756
4. Civil Code, Staatsblad Year 1847 Number 23
5. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration; Supplement to the State Gazette of the Republic of Indonesia Number 6630
6. Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning its Implementing Regulations, State Gazette of the Republic of Indonesia of 1997 Number 59, Supplement to the State Gazette Number 3696

## RESEARCH METHODOLOGY

The method used by the author is descriptive normative by using secondary data from the research results obtained. Basically this type of research aims to be able to provide a clear and complete picture by collecting, compiling, clarifying and analyzing the data obtained in order to solve the problems faced in this case, especially regarding the Legal Juridical Analysis of Cancellation of Evidence of Land Rights (certificates) for Realizing Legal Protection and Certainty.

## FORMULATION OF THE PROBLEM

Based on the description of the background above, the problems in this study are:

1. How is the legal arrangement for the implementation of the cancellation of land rights to realize legal protection and certainty?
2. How is the process of issuing proof of land rights (certificate) at the office of the national land agency in batam?
3. What are the factors causing the cancellation of proof of land rights as well as solutions in implementing the cancellation of land rights in Batam?

## DISCUSSION

### LEGAL ARRANGEMENTS FOR THE IMPLEMENTATION OF CANCELLATION OF LAND RIGHTS TO REALIZE LEGAL PROTECTION AND CERTAINTY

The principle at the highest level is that Earth, Water, Space, and the natural resources contained therein are controlled by the State. It is clear from the explanation that the power given to the State over the earth, water and natural resources contained therein places an obligation on the State to as stated in the Basic Agrarian Law "regulate the ownership and lead its use, until all land in the entire territory of the nation's sovereignty used for the greatest prosperity of the people. Further provisions from article 33 paragraph (3) of the 1945 Constitution, where in article 2 of the Basic Agrarian Law, where in article 2 paragraph (1) of the Basic Agrarian Law it is stated that:

“On the basis of the provisions in Article 33 paragraph 3 of the Constitution and the matters referred to in Article 1, the earth, water and space, including the natural resources contained therein, are at the highest level controlled by the State, as an organization of all power. people”.

Overall legal provisions, both civil law and state administrative law as well as state administrative law which regulates relations between people, including legal entities with earth, water, and space in the entire territory of the country and also regulates the authorities originating from in certain relationships. Article 3 of Government Regulation Number 24 of 1997 concerning Land Registration, which stipulates that land registration aims at:

1. To provide legal certainty and legal protection to the holder of the right to a parcel of land, apartment unit and other registered rights so that he can easily prove himself as the holder of the right in question.
2. To provide information to interested parties including the government so that they can easily obtain the data needed to carry out legal actions regarding land parcels and apartment units that have been registered.
3. For the orderly implementation of land administration.

Based on the legal provisions above, the basis for establishing certainty of ownership of land rights is by registering land. The general explanation of the LoGA, in accordance with its purpose, namely to provide legal certainty, makes land registration mandatory for holders of land rights. Land registration activities for the first time will produce a letter of proof of rights, in the form of a certificate.

The definition of certificate according to Article 1 number 20 of Government Regulation Number 24 of 1997 concerning Land Registration, is a certificate of proof of rights as referred to in Article 19 Paragraph (2) letter c of the Basic Agrarian Law for land rights, management rights, waqf land, rights ownership of the apartment unit and mortgage rights, each of which has been recorded in the relevant land book. Article 125 and Article 131 paragraph (2) of the Regulation of the State Minister of Agrarian Affairs/KBPN No. 3 of 1997 concerning the implementing regulations of PP no. 24 of 1997 concerning land registration. Article 125 regulates the recording of changes in land registration data based on a court decision or a decision by a judge/Chairman of the court by the Head of the Land Office in the register of the relevant land book and the general register. Whereas in Article 131 paragraph (2) it is emphasized that the registration of the abolition of land rights, management rights or ownership rights to flats caused by the cancellation or revocation of the rights in question is carried out by the head of the land office at the request of the interested.

Article 104 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999, stipulates that:

- a. The cancellation of land rights includes the cancellation of decisions on granting rights, certificates of land rights and decisions on granting rights in the context of regulating land tenure.
- b. The cancellation of land rights as referred to in paragraph (1) is issued due to administrative law defects in issuing decisions on granting and or certificates of land rights or implementing court decisions that have permanent legal force.

The National Land Agency, which is a government agency tasked with issuing a certificate of ownership of land, is also responsible if there is an error in issuing a certificate. The cancellation of a certificate of ownership of land by the National Land Agency is caused by several factors, namely, due to administrative legal defects and due to following court decisions that have permanent legal force. And in the case of following a court decision that has obtained permanent legal force, in which a process of proof is very important to be able to protect the actual land owner and is fully the responsibility and authority of the judge to decide a dispute that has been entered and resolved in the court process, which the decision is binding on the parties involved in it.

Article 1 paragraph (1) Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency Number 9 of 1999 defines: Cancellation of land rights is the cancellation of a decision to grant a land right or certificate of land rights because the decision contains administrative legal defects in its issuance or to implement court decisions that have permanent legal force.

## **PROCESS OF ISSUING PROOF OF LAND RIGHTS (CERTIFICATE) AT THE BATAM CITY NATIONAL LAND AGENCY OFFICE**

Issuance of certificates of land rights issued by the National Land Agency in the form of land certificates involving the applicant, adjoining land owners, civil servants, villages and related agencies to obtain an explanation of the documents as the basis for rights related to the certificate application, so that explanations from related parties have the opportunity for a certificate of legal defect to arise. The land title certificate as evidence of the letter has not fulfilled the wishes of the community, because in the process there are often disputes/conflicts in terms of

determining who has the right to the land object. To overcome this problem, the Government launched a Complete Systematic Land Registration program (PTSL) namely the first land registration program that is carried out simultaneously for all land registration objects that have not been registered in the entire territory of the Republic of Indonesia in one village/district area.

According to Irwan Toni as the Coordinator of Conflict, Dispute and Case Handling at the Batam City BPN office on July 21, 2022 At 9:10 WIB, he stated that in the past the National Land Agency for issuing certificates still used manuals, so to minimize overlapping certificates, the National Land Agency create digitalization patterns that minimize overlapping land certificates at published land locations, BPN makes a sophisticated system so that every measurement or application that will enter we will of course digitize it first as it is scanned, measured and it's online throughout Indonesia. With digitalization, the National Land Agency can minimize cancellations or overlaps in the issuance of land rights certificates.

The digitalization product issued by the National Land Agency regarding the issuance of certificates, input and registration of land is the Computerized Land Activities (KKP) which can be used throughout Indonesia, while checking boundaries and area images online can also be through an application from BPN called Touch Tanahku. The procedure for registering land rights electronically is regulated in the Regulation of the Minister of Agrarian Affairs and the Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates and is explained in Government Regulation Number 18 of 2021 concerning Management Rights of Flats and Land Registration Units. Electronic certificates are expected to be effective in national land management which can minimize duplicating certificates, counterfeiting and illegal land transactions by land mafias and also reduce the risk of loss of fire, rain and theft of physical documents.

The electronic land registration system is a new thing and must be socialized first about the electronic system. The meaning of the electronic system states that a system of electronic tools and procedures that have the function of preparing, combining, analyzing, changing, placing, showing, informing, delivering, and share information electronically. Land registration is one of the functions, namely the function of land administration which is the core center of the driving force of overall land management. According to the author, in the functions of land administration there must be clarity of direction, objectives and basic principles in land administration. In addition to the guarantee of legal certainty, there is also certainty regarding the designation, use, and utilization (including restrictions)..

Land administration is basically to formulate how the control and ownership of land by the subject of rights, both individuals and legal entities is recorded based on the type or status of the legal relationship. For example, the status of the land with the right of ownership based on the provisions of the spatial plan is designated for the green lane, it must be strictly carried out in its recording. Including the important things that must be considered are the link between the rights to the earth's surface (land) with the permit to extract mining materials that are below the earth's surface, and so on. In this administration, on the one hand, the policy on the utilization, designation and use of the land must be taken into account, on the other hand, the policy for ownership and control of the land must also be considered. The problem is, the regulations/laws that regulate the legal relationship between people and land are not yet complete. These legal regulations concern the law of evidence, contract law, inheritance law, ability to act, and so on.

### Konsep Dasar Administrasi Pertanahan



Image: Basic Concepts of Land Administration

Issuance of certificates is intended so that rights holders can easily prove their rights. Therefore, the certificate is a strong means of proof as referred to in Article 19 of the Basic Agrarian Law. In this regard, if there is still uncertainty regarding the rights to the land in question, which is evident from the records in the books as referred to in Article 30 paragraph (1), in principle, certificates cannot be issued. However, if the records concerning incomplete physical data are not disputed, a certificate can be issued. Certificates can be issued if the physical data or juridical data are complete and there are no records (the records have been deleted). On the other hand, if the said records still exist, the issuance of the certificate will be postponed.

The juridical data included in the certificate also includes restrictions related to the said rights as referred to in Article 90 paragraph (2), namely: restrictions on the transfer of rights, restrictions on land use related to coastal boundaries and restrictions on land use in protected areas. The certificate is a letter of proof of rights to land rights (ownership rights, business rights, building use rights and use rights), management rights, waqf land, property rights for flat units, mortgage rights, each of which has been recorded in the land book. concerned. The certificate serves as a strong proof of physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the Letter of Measurement and the Land Book. Five (5) years since the certificate is issued, no lawsuit is filed, resulting in expiration. By registering land rights in the land book (bookkeeping) and recording in a measuring letter, it is evidence that the rights, rights holders and parcels of land have been legally registered (Article 29 paragraph (2) Government Regulation Number 24 of 1997)

## **FACTORS CAUSING CANCELLATION OF PROOF OF LAND RIGHTS AS WELL AS SOLUTIONS IN THE IMPLEMENTATION OF CANCELLATION OF LAND RIGHTS AS WELL AS SOLUTIONS IN IMPLEMENTATION OF CANCELLATION OF LAND RIGHTS IN BATAM CITY**

In this discussion, the author relates it to Applied Theory in the sense that it is a theory that is in the micro scope and is ready to be implemented and applied. The author uses Bentham's theory of utilitarianism which states that the essence of happiness is pleasure and a life free from misery. In the field of law, this theory explains that the good and bad of the law must be measured for the good and bad of the consequences produced by the application of the law.

The occurrence of individualization of ownership both legally and illegally is unavoidable. Because it has often become news that a group of people dare to claim land that they consider abandoned is finally occupied and attempted to be obtained even without the legal procedures stipulated in obtaining the land rights themselves. Land like this will also be an inheritance to the next generation, so that finally legal action is taken for its transfer. Even some legal actions that occur from the reality of the community on the land are often not transferred according to the expectations or demands and guidelines of the law.

As a result, many overlapping land rights, as well as their use, can no longer be properly administered. In the end, the pre-registration management of the land registration itself is often out of control. Then, various kinds of letters appeared which were considered as the basis for the land tenure rights, in the event that their appearances were also not based on existing legal provisions. The author himself never felt sure that a certificate would be the only means of security. Moreover, the existing land regulations in Indonesia mention that in Article 19 paragraph 2c. That "the provision of letters of proof of rights, which serves as a strong means of proof". So the letter of evidence here is not the only evidence, but it is only referred to as a strong proof, meaning that the certificate is not absolute as proof of a person's right to land. But only as evidence that the administration of the land has been carried out and then with the administration the evidence is given. So that if it is not the only one, of course, if the right holder uses it as a security for someone's land ownership, it will certainly not materialize. The registration carried out by the land holder must be able to reduce the incidence of land disputes over his ownership. And with a certificate must be able to help his life to be used in economic traffic. So to support the realization of the will the benefits of the certificate mentioned above. The government in issuing it must be able to take responsibility both formally for the certificate, let alone materially, because he is the one who issued it. If the government does not guarantee the certificates issued materially, it is certain that its function as property security will not materialize. If it does not materialize, then it will not be used as securities as well, which of course will not be used as an economic object of interest to the public.

With facts like this, the government should indeed carry out this land registration according to its purpose so that in addition to protecting one's land rights, the government will also be able to control the development and use of land in an effort to support the progress of land access expected in urban development and/or rural development in fill human life. This protection should also not only be imposed on the Government. But with the

existence of a private guarantee agency. It is time for the private sector to be involved in strengthening financial guarantees if the government is unable to provide compensation or compensation due to the expropriation of someone's land. Thus, in an effort to strengthen the legal protection of the registered land, there must be proof of the Insurance Fund Institution in the Land Registration and Land Rights as an Effort to strengthen the guarantee of legal certainty (Title Insurance).

For this reason, the proposed policy is that this desire can be utilized and even provide a solution for accelerating the implementation of land registration in this country, this policy must be made in a strict regulatory policy. And because of its technical nature, it would be sufficient if such policies were regulated in the form of Government Regulations, Presidential Regulations or Decisions of Heads of Agency or Regional Regulations. So that in each region there is the same policy in determining the will of legal protection mandated by the land registration regulations. In order to provide legal guarantees given by the government regarding land rights, the government provides proof of rights called certificates and is used as very strong evidence. This means that the information contained therein has legal force and must be accepted by the judge as true information as long as there is no other evidence that can prove it. And if there are overlaps or errors in procedures and mapping, the proof of land rights or certificate is a legally flawed certificate, this certificate can have legal consequences for the holder of the proof of right

## CONCLUSIONS AND RECOMMENDATIONS

### 1. CONCLUSIONS

1. The provisions of the regulation regarding the cancellation of land rights are regulated by Article 1 paragraph (1) of the Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency Number 9 of 1999 defines: "cancellation of land rights is the cancellation of a decision to grant a land right or certificate of land rights due to a contains administrative law defects in its issuance or to implement court decisions that have obtained permanent legal force. It is concluded that the cancellation of land rights includes 3 (three) service products of the National Land Agency, namely:
  - a. Decree on the Granting of Land Rights.
  - b. Land Rights Certificate.
  - c. Decree on the Granting of Land Rights in the context of Land Tenure Arrangements.
 Matters that are categorized as administrative law defects are when in the three service products of the National Land Agency above there are:
  1. Procedural error;
  2. Errors in the application of laws and regulations;
  3. Error subject rights;
  4. Error object rights;
  5. Error type rights;
  6. Area calculation error;
  7. There are overlapping land rights;
  8. There are untruths in physical data and/or juridical data; or
  9. Other errors of administrative law nature.
2. Issuance of certificates is intended so that rights holders can easily prove their rights. Therefore, the certificate is a strong means of proof as referred to in Article 19 of the BAL. In this regard, if there is still uncertainty regarding the rights to the land in question, which is evident from the records in the books as referred to in Article 30 paragraph (1), in principle, certificates cannot be issued. However, if the records concerning incomplete physical data are not disputed, a certificate can be issued.
3. A certificate of land rights issued by the Regency or City Land Office as a strong proof of rights, can still be canceled on the basis of a decision of the District Court in which the dispute is civil or the Administrative Court in which the dispute is of a state administrative nature. The cancellation of the certificate of land rights can also be submitted by the aggrieved party to the Head of BPNRI because there is an administrative legal defect.

### 2. SUGESTION

1. With the latest regulations and easy access to the digital world to get information, the community should be more careful and more careful with the land owned and controlled by the community by completing honest

- land rights control. on land in accordance with city or regional regulations with an honest process. When there is dishonesty in the community, it becomes a dispute.
2. A certificate of land rights issued by the Regency or City Land Office as a strong proof of rights, can still be canceled on the basis of a decision of the District Court in which the dispute is civil or the Administrative Court in which the dispute is of a state administrative nature. The cancellation of the certificate of land rights can also be submitted by the aggrieved party to the Head of BPNRI because there is an administrative legal defect.
  3. There needs to be more creative socialization efforts for the community in order to prevent the transfer of rights to land rights disputes that are not in accordance with the legal principles of the transfer of rights in realizing legal certainty and protection in the land sector.
    - a. To the Head of BPN
 

The National Land Agency must remain careful and thorough in issuing land certificates. Land socialization should be carried out frequently to the community and related parties so that it is clearer on the correct land registration procedure so that there are no problems in the future.
    - b. To the village
 

Land administration data from the village or sub-district level must be completed and must always follow the rules of administrative order so that the land data no longer has errors in providing data for the completeness of making certificates.
    - c. To the Community
 

The community must play an active role and provide honest data in land registration and land rights certificates. The community must also participate in the orderly administration of land by confirming the development of the land.
    - d. To Notary/PPAT
 

The Notary/PPAT in making the deed must be more careful and thorough, and must use the correct data, by examining the data provided by the client for the registration requirements to hold so that there are no problems after the issuance of the certificate

## REFERENCES

1. Desy A.P, 2019, Mengenal Tanah, Graha Printama Selaras, Sukoharjo.
2. Hartanto Andy, 2015, Panduan Lengkap Hukum Praktis, Kepemilikan Tanah, Laskbang Grafika, Yogyakarta.
3. Harsono, 2005, Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Djambatan, Jakarta.
4. \_\_\_\_\_, 2013, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Universitas Trisakti, Jakarta.
5. Idham, 2004, Konsolidasi Tanah Perkotaan Dalam Perspektif Otonomi Daerah Untuk Mewujudkan Kemampuan Fungsi Lingkungan Hidup. Alumni, Bandung.
6. \_\_\_\_\_, 2021, Konstitusionalisme Tanah Hak Milik di Atas Tanah Hak Pengelolaan, Alumni, Bandung.
7. Machfudi Zarqoni Muhammad, 2015, Hak Atas Tanah, Prestasi Pustaka, Jakarta.
8. Mujahir Utomo, 2016, Ilmu Tanah, Prenada Media Group, Jakarta
9. Rusmadi Murad, 1991, Penyelesaian Sengketa Hukum Atas Tanah, Mandar Maju, Bandung.
10. Salim HS, 2002, Pengantar Hukum Perdata Tertulis BW, Sinar Grafika, Jakarta.
11. Santoso, 2010, Pendaftaran dan Peralihan Hak Atas Tanah, Prenada Media Group, Jakarta.
12. Yamin, 2004, Hukum Agraria. Pustaka Bangsa Press, Medan.
13. Undang-Undang Pokok Agraria Nomor 5 Tahun 1960 Lembar Negara 1959 Nomor 75
14. Peraturan Menteri Agraria Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 6 Tahun 2018 tentang Percepatan Pendaftaran Tanah Sistematis Lengkap
15. Kementerian Perencanaan Pembangunan Nasional/Bappenas, 2021, Perkembangan Ekonomi Indonesia dan Dunia, Vol 5, No 3
16. Lubnah, 2018, Kekuatan Pembuktian Akta pengikatan Jual Beli Tanah pada Pengadilan, website: <http://scholar.unand.ac.id/33107/2/BAB%20I.pdf>
17. Online Jurnal, 2021, website: Anonim, 2021, Pendahuluan jurnal Website: <https://dspace.uin.ac.id/bitstream/handle/123456789/4133/05.1%20bab%20I.pdf?sequence=5&isAllowed=y>

18. Permana Satya Dwi Agung I Gusti & I Ketut Sandi Sudarsana Sandi I Ketut, 2014, Kepastian Hukum Sertifikat Hak Milik Atas Tanah Sebagai Bukti Kepemilikan Bidang Tanah, JURNAL - i gusti - KEPASTIAN SERTIFIKAT HAK MILIK TANAH.pdf
19. Shirly Claudia Permata, 2018 "Implementasi Putusan Hakim Terhadap Pembatalan Sertifikat Hak Milik Atas Tanah" IUS, Volume 6, Nomor 3.

