

Analysis of the Cancellation of Ownership Certificates Without Official Notice (Case Study of the Cibinong District Court Decision No. 99/Pdt.G/2016/PN Cbi)

Analisis Pembatalan Sertifikat Hak Milik Tanpa Pemberitahuan Resmi (Studi Kasus Putusan Pengadilan Negeri Cibinong No. 99/Pdt.G/2016/PN Cbi)

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Abstract

This study examines the legal implications of canceling a Certificate of Ownership (SHM) without officially notifying the certificate holder, using Cibinong District Court Decision No. 99/Pdt.G/2016/PN Cbi as a case study. The research aims to assess how well the cancellation process aligns with the relevant laws and regulations, especially the Basic Agrarian Law (UUPA) and ATR/BPN Regulation No. 21 of 2020. The research



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employs a qualitative method with a normative legal approach, involving the examination of pertinent legal documents and regulations. The results show that the Land Office's one-sided annulment of the SHM, carried out without the involvement or notification of the rightful holder, violates due process and legal certainty principles. This action contravenes Article 32 of the ATR/BPN Regulation No. 21/2020, which stipulates that legal products cannot be annulled if the rights holder is not involved in the case and has obtained their rights in good faith. This study concludes that cancelling land certificates without involving the right holders ignores legal protection, creates legal uncertainty and has the potential to cause injustice. In terms of land rights protection, it is recommended that the principles of transparency, fairness and the rule of law become the basis for future dispute resolution.

KEYWORDS *Certificate of Ownership (SHM), Cancellation, Legal Steps, Legal Certainty*

Abstrak

Penelitian ini mengkaji implikasi hukum dari pembatalan Sertifikat Hak Milik (SHM) tanpa pemberitahuan resmi kepada pemegang sertifikat, dengan menggunakan Putusan Pengadilan Negeri Cibinong Nomor 99/Pdt.G/2016/PN Cbi sebagai studi kasus. Penelitian ini bertujuan untuk menilai seberapa baik proses pembatalan ini sesuai dengan hukum dan peraturan yang relevan, terutama Undang-Undang Pokok Agraria (UUPA) dan Peraturan ATR/BPN Nomor 21 Tahun 2020. Penelitian ini menggunakan metode kualitatif dengan pendekatan hukum normatif, yang melibatkan pemeriksaan dokumen hukum dan peraturan yang relevan. Hasil penelitian menunjukkan bahwa pembatalan sepihak oleh Kantor Pertanahan terhadap SHM, yang dilakukan tanpa keterlibatan atau pemberitahuan kepada pemegang sah, melanggar prinsip-prinsip due process dan kepastian hukum. Tindakan ini bertentangan dengan Pasal 32 Peraturan ATR/BPN No. 21/2020, yang menyatakan bahwa produk hukum tidak bisa dibatalkan jika pemegang hak tidak terlibat dalam perkara dan telah memperoleh haknya dengan itikad baik. Studi ini menyimpulkan bahwa pembatalan sertifikat

tanah tanpa melibatkan pemegang hak mengabaikan perlindungan hukum, menciptakan ketidakpastian hukum dan berpotensi menimbulkan ketidakadilan. Dalam hal perlindungan hak atas tanah, direkomendasikan agar prinsip-prinsip transparansi, keadilan, dan supremasi hukum menjadi dasar dalam penyelesaian sengketa kedepannya.

KATA KUNCI *Sertifikat Hak Milik (SHM), Pembatalan, Langkah Hukum, Kepastian Hukum*

Introduction

Land is crucial to human life, particularly regarding individual property rights. As land is a fundamental societal need, its regulation be it regarding use, ownership, or legal framework must be executed meticulously and transparently. The 1945 Indonesian Constitution guarantees land rights as a fundamental right of all citizens. According to article 28D paragraph (1), every individual is entitled to recognition, guarantees, protection, and equitable legal certainty, along with equal treatment under the law. Meanwhile, article 28H paragraph (4) states that all individuals have the right to possess private property and that no one can confiscate such property without just cause. The Indonesian government established Law Number 5 of 1960 on Basic Agrarian Principles (often referred to as the Basic Agrarian Law or UUPA) as a manifestation of these constitutional guarantees. This law, which came into force on September 24/1960, constitutes the primary basis of Indonesia's land law system. The UUPA governs different categories of land rights and establishes land management principles designed to guarantee fairness, equity, and conformity with societal needs.

Indonesia adheres to the principle of a welfare state, implying that all regulations, particularly those at lower levels, should be consistent with and not conflict with higher level laws. The state bears both moral and legal responsibilities, aligned with Pancasila values, to ensure that justice is genuinely experienced by the people, particularly in issues concerning

land ownership and control¹. The state upholds justice in land management partly through the land registration system. The primary aim of land registration is to ensure legal clarity regarding who possesses rights to a specific parcel of land. The government conducts various land registration activities continuously and in a structured manner.

As part of the government's efforts to meet the objectives of Article 33 paragraph (3) of the 1945 Constitution regarding land and to facilitate the utilization of functions in the land sector, the implementation of the UUPA will establish a national agrarian law. As stipulated in Article 19(1) of the UUPA, the government is responsible for supervising land registration throughout Indonesia. This indicates that the government must establish a transparent and structured system to ensure that everyone is aware of the true owner of a piece of land. Land registration is important because it provides strong legal proof of land ownership. Registration will prevent confusion and disputes over land ownership, as all details will be clearly documented. So, this article makes sure the government is responsible for handling the land registration process so all landowners get clear legal certainty and protection².

Legal assurance of land ownership can be achieved through the registration of property rights and the issuance of certificates as proof of those rights. A land certificate, which is an official document, protects the legal rights of the rightful owner to their land. It acts as evidence of ownership and aids in stopping others from making unlawful claims to the land³. Land regulated in Article 19 paragraph (2) of the UUPA, which includes:

- a) Calculation (in this case the land measurement), field inspection, and documenting of land, as a component of the land registration process;

¹De Rooy, O. R., Salmon, H., & Nendissa, R. H. (2021). Hak Atas Tanah Pada Kawasan Konservasi. *PAMALI: Pattimura Magister Law Review*, 1(1), 40. <https://doi.org/10.47268/pamali.v1i1.483>

² Salim, A. (2019). Penerbitan sertifikat ganda certificate of rights certificate with double. *2(2)*, 174–187.

³ Murni, C. S., & Sulaiman, S. (2022). Sertifikat Hak Milik Atas Tanah Merupakan Tanda Bukti Hak Kepemilikan Tanah. *Lex Librum : Jurnal Ilmu Hukum*, 8(2), 183–198.

- b) land rights transfer and registration; and
- c) provision of evidence of rights, which serves as a strong method of proof.

This makes it easier for the government to obtain the legal and physical information needed to take legal action against registered land parcels⁴. The government, being the authorized entity, must meticulously supervise and appropriately address any land-related issues to ensure legal certainty regarding land. This initiative safeguards landowners' rights and minimizes the likelihood of disputes.

As stated in Article 19, paragraph (2), letter c of the UUPA, the title certificate serves as a robust means of proof. According to Article 20 paragraph (1) of the UUPA, property rights is defined as the strongest and fullest hereditary land right, considering its social role⁵. Throughout 2024, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) noted considerable progress in resolving land cases. Out of the 5,973 received cases, 2,161 have been resolved successfully. The settlement encompassed 936 disputes, 32 conflicts, and 1,193 land cases. Of these, the number of disputes amounted to 1,664 cases, conflicts to 60 cases, and the cases that entered the legal realm totaled 4,249⁶.

Certificates as proof of land rights hold a central position in the national land system, as they provide legal certainty and protection to the rights holders. A land certificate serves not only as an administrative document but also as robust proof in ownership disputes, be they among family members or with external parties. The owner, along with their heirs, is safeguarded against future unilateral claims or legal issues with a certificate. Thus, the certificate plays a crucial role in protecting land rights and ensuring legal security⁷.

⁴ Rahadjie, P. I., Hafidz, M., & Buana, A. P. (2022). *Journal of Lex Generalis (JLS)*. *Journal of Lex Generalis (JLS)*, 3(3), 404–417.

⁵ Laraswati, R. O., & Hermono, B. (2016). *Tinjauan Yuridis Pembatalan Sertifikat Hak Milik Karena Overlapping Dalam Perkara Peradilan Tata Usaha Negara (Studi Kasus : Putusan Mahkamah Agung No.71/g/2016/PTUN/MKS)*. *Novum: Jurnal Hukum*, 168–176.

⁶ tribunnews. (2024). "2.161 Kasus Pertanahan Berhasil Ditangani Kementerian ATR/BPN Sepanjang Tahun 2024".

Diakses: <https://www.tribunnews.com/properti/2024/12/31/kementerian-atrbpn-selesaikan-36-persen-dari-5973-kasus-pertanahan-di-2024>

⁷ Beni Bosu, *Perkembangan Terbaru Sertifikat (Tanah, Tanggungan dan Condominium)*,

Bogor Regency, West Java, is facing serious problems in the land sector. A total of 29 landowners in Nagrak Village, Sukaraja Subdistrict, reported the unilateral cancellation of their Certificates of Ownership (SHM) by the Bogor District Land Office. The land has been their control since 1997 through a legal sale and transaction with Sanusi in front of PPAT A.E.B. Sitorus. The SHM was issued officially and without administrative defects. In 2016, H. Asep Ubaedillah filed a lawsuit against Mrs. Abes Syariah at Cibinong District Court under case No. 99/Pdt.G/2016/PN Cbi, without involving the SHM holders, even though the object of dispute included their land. The court granted the lawsuit and declared the SHM to have no binding legal force. Based on the verdict, the Land Office cancelled the SHM in 2022 without notice to the owners. This fact only to light during mediation in July 2024, after the land had been by developer PT Ambar Graha Sejahtera⁸.

The cancellation action is contrary to Article 32 paragraph (1) of Permen ATR/BPN No. 21 of 2020, which prohibits the cancellation of land law products if the right holder is not a party to the case and obtained his rights in good faith. Cancellation without the presence of the legal owner also violates the principle of due process of law and legal protection of land ownership rights. Article 32 paragraph (1) of Permen ATR/Ka.BPN Number 21 of 2020 stipulates that the Ministry or Regional Office cannot cancel land law products under certain conditions. These conditions include⁹:

1. Land rights have been transferred to a third party:
This means that the land rights that are the object of the dispute have been transferred to another party.
2. The third party is not involved in the case: they do not take part directly in the legal proceedings concerning the land dispute.
3. The third party acquired the right in good faith: The third party acquired the land rights in good faith, in

(Jakarta: Mediatama Saptakarya, 1997), hlm 5.

⁸ QNews. (2023). "Tanah Diserobot, 39 Pemegang Sertifikat Hak Milik dari 49 Bidang di Nagrak Laporkan ke Polres Bogor." Diakses dari: <https://qnews.co.id/tanah-diserobot-39-pemegang-sertifikat-hak-milik-dari-49-bidang-di-nagrak-lapor-ke-polres-bogor/>

⁹ Ganda, S., Minahasa, D. I., Grace, O., & Saroinsong, M. (2025). 1 2 3 4. 13(2).

accordance with the laws and regulations in force prior to the case.

The Land Office's to revoke the land certificate solely based on that court ruling without conducting a proper administrative review shows possible violations of the procedures set out in ATR/BPN Regulation No. 21 of 2020¹⁰. Moreover, the cancellation happened without giving the landowner a chance to explain or defend their rights, which goes against the principle of *audi et alteram partem* (the right to be heard)¹¹.

According to Permen ATR/BPN 21/2020, ATR/BPN has the authority to resolve conflicts or disputes related to land, including the cancellation of legal land documents. As stipulated in Article 29 of Permen ATR/BPN No. 21/2020 Legal Products may be cancelled for the following reasons: (i) administrative or juridical defects, and (ii) the enforcement of a court ruling that is legally binding. Administrative defects in legal products, such as land certificates, can arise from object and subject issues or mistakes in the data provided during the certificate creation process. Subject errors are committed by legal subjects applying for a certificate using inaccurate information, whereas object errors occur during the mapping and/or measurement of the land¹². The ministry of agrarian affairs and spatial planning/national land agency (ATR/BPN) aims to guarantee legal certainty in resolving land disputes, by issuing Permen ATR/BPN No. 21 of 2020 as the official regulation for handling all land related cases.

Due to the overlapping regulations regarding the cancellation of Certificates of Ownership, legal uncertainty arises, particularly affecting parties who suffer from administrative defects. Both in legal and physical aspects the

¹⁰ Rahman, A. (2021). Tinjauan Yuridis Terhadap Pembatalan Sertifikat Hak Milik oleh Kantor Pertanahan. Yogyakarta: Sekolah Tinggi Pertanahan Nasional. Diakses dari: <https://repository.stpn.ac.id/3866/1/AULIA%20RAHMAN.pdf>

¹¹ Wahyudi, F. (2023). "Analisis Yuridis Pembatalan Sertifikat Tanah Akibat Sengketa Perdata." Jurnal Galuh Justisi, Vol. 11, No. 2, hlm. 234–246. Diakses dari: <https://jurnal.unigal.ac.id/galuhjustisi/article/view/12865>

¹² Somomoeljono, S. (2021). Pembatalan Sertifikat Tanah Dalam Perspektif Hukum Agraria Dan Tindak Pidana Korupsi. Jurnal Res Justitia: Jurnal Ilmu Hukum, 1(2), 168–178. <https://doi.org/10.46306/rj.v1i2.11>

regulatory framework reflects the principles of good governance and is explicitly documented.

Based on the above background, the following problems can be formulated: (1) What is the juridical analysis of the cancellation of a certificate of ownership without official notification based on the Cibinong District Court Decision No. 99/Pdt.G/2016/PN Cbi? (2) What legal steps can be taken by SHM holders to regain their rights?

Aside from that, this study aims to: (1) identify and analyze the legal basis for cancelling a certificate of ownership without official notification, referring to the Cibinong District Court Decision No.99/Pdt.G/2016/PN Cbi; and (2) explore and assess possible legal steps that SHM holders can take to reclaim their rights.

Method

This study employs a qualitative method combined with normative juridical approach. The qualitative method is designed to explore facts deeply by providing detailed, systematic, and thorough descriptions of a phenomenon using descriptive data, which may include written texts of the research subjects. This approach is utilized to gain a thorough understanding of the legal matters being examined. Normative juridical research is research that conceptualis law as what is written in laws and regulations (law in book) The legal norms applied in this study consist of relevant laws and regulations, including statues, government regulations, and presidential decrees. However, the concept of law goes beyond just the written texts of laws and regulations, it also encompasses legal principles, doctrines, and court rulings that serve as legitimate sources of law.

Result & Discussion

A. Juridical Analysis of the Cancellation of Land Ownership Certificate without Official Notice Based on Cibinong District

Court Decision No. 99/Pdt.G/2016/PN Cbi

Article 1 point 14 of Permen ATR/Ka.BPN Number 21 of 2020, states that a certificate can be canceled if there are administrative error or legal defects in its issuance, as well to carry out court decisions that have permanent legal force. Furthermore, Article 29 of Permen ATR/BPN Number 21 of 2020 stipulates that:

- 1) Cancellation of legal products is performed by officials with the necessary authority due to:
 - a) administrative/juridical defects;
 - b) The execution (or enforcement) of a court decision that has obtained permanent legal force
- 2) Earlier to the cancellation as alluded to in passage (1) letter a, the Service or territorial Office in agreement with its specialist might inform of arrive rights and contract rights within the case of lawful products to be cancelled within the frame of arrive rights or certificates of arrive burdened with contract rights.

Under the aforementioned regulations, two types of authority exist for resolving land disputes involving certificate cancellation, namely:

- 1) Using administrative remedies at the BPN and not enforcing court decisions: and;
- 2) Legal dispute in the land sector that fall under the judiciary's authority, particularly the state administrative court, often involve reviewing the validity of decisions or certificates.

Over time, regulations regarding the cancellation of legal products like land rights certificates based on court decisions have become more detailed. It is now evident that the BPN cannot automatically enforce every court decision that has permanent legal force.

The arrangement is formulated in the provisions of Article 32 paragraph (1) of Permen ATR / Ka.BPN No. 21 of 2020 which stipulates that "The Ministry or Regional Office in accordance with its authority cannot cancel Legal Products either because

of administrative defects and/or juridical defects or as the implementation of a court decision that has permanent legal force, in the event that:

1. The rights to the land associated with the disputed property have already been transferred to a third party;
2. The third party, in its capacity as current rights holder, was not involved as a party in legal case;
3. The third party acquired the land rights in good faith, following the applicable laws and regulations, before the case took place

In addition to the regulations mentioned earlier, the implementation of court decisions can be restricted or withheld, as stipulated in Articles 37 passage (2) of Permen ATR/Ka.BPN No. 21 of 2020 against:

- 1) Object of the decision to other conflicting decisions;
- 2) In the decision, its stated that the claim cannot be recognized;
- 3) The decisions issue is being subjected to seizure;
- 4) The area of the arrive plot concerning the case protest lacks clarity and has no execution;
- 5) The area, region, and boundaries of the arrive divide of the case object stated within the administering/legitimate considerations are located with the area, range, and boundaries of the executed arrive divide;
- 6) The land involved in the case has been converted into State land on its rights have been cancelled;
- 7) The Decision is totally unrelated to the object for which cancellation is requested;
- 8) Other valid reasons.

A person or civil legal entity who feels aggrieved by a court may file a written lawsuit with the competent court, requesting that the disputed court judgement be cancelled or declared invalid, with or without a claim for compensation/rehabilitation, in accordance with Article 53 of Law No. 5 of 1986¹³. Even if there is a court decision declaring the certificate invalid, the certificate is not immediately cancelled, but the party who won

¹³ Sahnan, Arba, M., & Wira Pria Suhartana, L. (2019). Authority of the National Land Agency in Settlement of Land Disputes. *Jurnal IUS Kajian Hukum Dan Keadilan*, 7(3), 436–450. <https://doi.org/10.29303/ius.v7i3.714>

the case must submit an application for cancellation through the head of the land office on the basis of the court decision as mandated in Article 33 paragraph (2) of Regulation No. 21 of 2020. This is necessary because the act of cancelling a land certificate is part of the administrative action of a government organ as outlined in the jurisprudence of Supreme Court Decision No. 350 K/Sip/1968¹⁴.

Within the case of the cancellation of lawful items with regulatory defects as alluded to within the arrangements of Article 30 of the serve of ATR/Ka.BPN direction Number 21 of 2020, it stipulates:

- 1) For the following circumstances, the Minister may decide to cancel: A court ruling that has acquired permanent legal effect; b. legal papers produced by the land office that include administrative or legal flaws.
- 2) The head of the regional office issues a cancellation decision based on: a. administrative and/or legal defects in the legal product issued by the head of the land office; or b. a court with permanent legal force that cancels a legal product issued by the Head of the Regional Office or the Head of the Land Office.
- 3) In certain circumstances, the Minister has the authority to cancel legal products that have been issued by land offices under the authority of the head of the regional office if there are administrative/legal defects.
- 4) The format of the decision on Cancellation of Legal Products in paragraph (1) and paragraph (2) in Appendix XIII is an integral part of this Ministerial Regulation.

In this case, the certificate holders were not brought in as parties to the proceedings under Cibinong District Court Decision No. 99/Pdt/G/2016/PN Cbi. As explained by the Defendant in the counterclaim, *"The owners of the 49 (forty-nine) certificates of ownership, whose names differ, must also be included as DEFENDANTS in the a quo case because the land object of these certificates has a legal relationship and legal interest in relation to the land object a quo, especially since the*

¹⁴ Mahadewi, A. A. I. D. 2013. Pengaturan Prosedur Pembatalan Sertipikat Hak Atas Tanah yang Merupakan Barang Milik Negara. *Jurnal Magister Hukum Udayana* 2 (3).

certificates are claimed by the Plaintiff in their lawsuit to be annulled." Therefore, the ownership certificate held by the SHM holder not have been revoked by the Bogor District Land Office. According to civil law principles, any party with a direct interest in the disputed land must be given the opportunity to defend their rights before any legal action such as cancellation is taken.

According to Articles 8 and 12 of the Minister of ATR/BPN Regulation No. 21 of 2020, every process for managing and resolving land cases, including certificate cancellations, must undergo administrative stages that involve assessments, field research, initial hearings, and presentations with relevant parties, including rights holders. In this context, not including certificate holders in the process is a breach of their right to procedural fairness, as it denies them the opportunity to clarify or defend themselves.

Furthermore, based on Article 27 paragraph (2) of Law No. 5 of 1960 regarding Basic Agrarian Regulations (UUPA), ownership rights to land can only be extinguished for several reasons that are explicitly defined, one of which is due to a court ruling that possesses permanent legal force. However, in Ruling No. 99/Pdt.G/2016/PN Cbi, the court did not explicitly order the cancellation of the certificate but merely stated that the plaintiff is the legitimate owner of the land object. Therefore, the action of the Land Office in directly cancelling the SHM without waiting for a condemnatory ruling and without proper administrative procedures is an act of exceeding authority (*ultra vires*) and violates the principle of *rechtzekerheid* (legal certainty).

Unilateral cancellation without notice also contradicts the principle of legal protection for land rights holders as guaranteed by Article 28D paragraph (1) of the 1945 Constitution, which states that everyone is entitled to recognition, guarantees, protection, and fair legal certainty.

1. Evaluation of the Procedures for Cancelling Certificates of Rights based on the UUPA and Permen ATR/BPN No. 21/2020

UUPA does not provide explicit regulations for the cancellation of SHM, but acknowledges that registered land rights can lapse in cases of rights revocation, cancellation due

to legal defects, or court decisions (Articles 27, 34, and 40 of UUPA). Permen ATR/BPN No. 21/2020, however, outlines a more detailed administrative mechanism for addressing land cases, including the cancellation of certificates due to legal defects. Permen ATR/BPN No. 21/2020 emphasises that cancellation of certificates by land officials can only be done if:

- 1) There are proven physical or juridical data defects, such as overlapping, falsification of documents, or procedural errors in issuance.
- 2) There is no third party in good faith who is harmed.
- 3) The procedure is carried out with tiered verification, including clarification from the parties, and decided through a tiered case handling mechanism at the Land Office, Regional Office, to the Ministry of ATR/BPN.

However, if there is a third party acting in good faith that is not involved in the process or matter as referred to in Article 32 paragraph (1), then the cancellation may not be carried out. This is an important limit to ensure legal protection and the principle of due process of law.

As explained in UUPA and Permen ATR/BPN No. 21 of 2020, cancellation of land certificates, in this case Certificates of Ownership (SHM), must be carried out through a transparent and fair mechanism. Cancellation cannot be done unilaterally, especially if the person concerned is not involved in the dispute resolution process. The regulation emphasizes that a certificate cannot be revoked through administrative procedures if a person has lawfully and honestly acquired land rights and is not involved in a litigation. A breach of the principle is demonstrated by the event that took place in Bogor Regency. Despite the court ruling declaring that the 49 certificates on the land a quo lack binding legal force, the land office has continued with the cancellation process. This is in conflict with the applicable legal procedures and the principle of justice.

After a final court decision, the winning party is required to submit a request to the land office to follow up on the outcome of the decision. The land office must first make sure that everyone who is impacted has had a chance to defend their rights. This is intended to stop the land office from unilaterally implementing a court ruling in cases when not all parties

involved have been consulted. It also serves as a safeguard to ensure that the decision being executed has gone through a fair legal process. Cancellations made without a transparent and just procedure can lead to legal uncertainty and financial losses for landowners. To ensure that the community's rights are legally protected, every administrative cancellation action must be executed with care and in line with relevant regulations. It is necessary to establish clear arrangements concerning the legal consequences of failing to complete procedural stages (with the rights holder's explanation). The goal is to prevent unilateral actions and to ensure that the authority of land officials is perceived as legitimate.

2. Violation of the Principle of Due Process of Law in the Case

The principle of due process of law ensures that all individuals or parties involved in legal proceedings are entitled to fair treatment and adherence to the relevant procedures. Within the realm of land law, the due process of law principle stipulates that all individuals with land rights must be afforded the chance to present and defend oneself before any decision that can have a negative impact on them is made.

No Clarification and Fair Examination Conducted: In this instance, the SHM holder was not given the opportunity to clarify or defend their rights through a legitimate process. The Bogor District Land Office did not involve them during the clarification process, nor did it request any supporting documents to verify the legitimacy of their certificates. In fact, according to Article 9 of ATR/BPN Regulation No. 21/2020, a clarification process involving the affected parties must be carried out before any cancellation decision is made.

Such a breach of the tenets of due process engenders legal uncertainty and erodes the foundation of equitable justice. This leads to losses that should not be incurred by those affected. This may also undermine public confidence in the land administration system, which ought to adhere to principles of justice and transparency. As per Gustav Redbruch's legal certainty theory¹⁵, the decision to cancel a certificate issued by

¹⁵Achmad Ali, *Menguak Teori Hukum (Legal Theory) & Teori Peradilan (Judicialprudence)*

the Land Office (BPN) must fulfill legal objectives, which include ensuring justice, benefits, and legal certainty. Certificates given out by the arrive Office (BPN) ought to comply with arrive enactment and be based on great administration standarts, mishandle the denial of control, accuracy, and prudence.

3. The Legal Concequences of Annulling Ownership Certificates Without Including the Rights Holder as a Parties to the Case

Land title certificates are issued to those who hold legal rights to the land in order to ensure protection and legal certainty. This certificate is the basis for ownership of rights as determined by physical data and legal provisions in the land book. The certificate's listed physical and legal data must match the information recorded in the land register and the applicable measurement letter.

In addition, revoking the certificate of ownership without including the rightful owners would lead to an illegitimate outcome and the process could potentially violate *audi et alteram partem* (the right to be heard), as a basic legal principle in administrative dispute resolution. The cancellation of a certificate without involving the rights holder can be deemed legally invalid as it does not comply with the procedures established in the ATR/BPN Ministerial Regulation No. 21 of 2020, particularly Article 9, which mandates clarification with the affected parties. There is then the potential for a lawsuit at the Administrative Court (PTUN) where the holder of the land rights (SHM) may challenge the cancellation decision in the Administrative Court (PTUN) because it is considered an administrative decision that harms their rights, issued without proper procedures, causing legal uncertainty, harming the legitimate owner's interests, and perhaps eroding public trust in the system of land administration.

Gustav Redbruch's Legal Certainty Theory states that the option to cancel a certificate from the Land Office (BPN) must be in line with the legal objectives of justice, practicality and assured legality. In this case, the certificate issued by the Land

Termasuk Undang-Undang (Legisprudence) Volume I Pemahaman Awal, Kencana Prenada Media Group, Jakarta, 2010, hlm 288.

Office (BPN) must be in accordance with land regulations and subject to the general principles of good governance (including the principles of prudence and accuracy, and the prohibition of abuse of authority). Certificates must be issued by authorised parties without abuse of authority and must ensure justice for affected parties, provide benefits, and provide legal certainty for the community¹⁶.

In the implementation of the law, the principle of justice must be upheld.¹⁷ Justice can largely be achieved only through the state, as the policies implemented by the state have the greatest impact on the development of structures relevant to political, economic, social, cultural, and ideological processes.¹⁸ To guarantee that land policies are applied consistently and to attain justice, legal certainty must be utilised. Land rights holders are granted land rights certificates to ensure legal certainty and protection. In terms of legal certainty theory, land authorities and legal institutions must guarantee that all activities concerning land ownership are executed through a clear and transparent process. This includes involving all relevant parties in the legal process, giving proper notice, and ensuring that decisions are made in accordance with applicable laws. Such an approach upholds legal certainty and provides landowners with a sense of security over their property rights.

B. Legal Action Property Rights Certificate Holders Can Take To Reclaim Their Rights

The authority to revoke or cancel the issuance of title deeds rests administratively with the section head of the Land Registry as well as in terms of evaluating the steps to be taken.

¹⁶ Sumiati, H., Andriansah, & Kadaryanto, B. (2021). Kepastian Hukum Sertifikat Hak Milik atas Tanah Dalam Hukum Pertanahan Indonesia. *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum*, 7(2), 135–145. <https://doi.org/10.33319/yume.v7i2.111>

¹⁷ Ramli, A., Putra, T I., Dewanti, N F D., Kinasih, S W. Arifin, R., Idris, S H. (2023). Applying In Dubio Pro natura In Environmental Crime Cases: Legal Perspective in Indonesia. *The Indonesian Journal of International Clinical Legal Education*, Vol 5 (4).

¹⁸ Ramli, Asmarani. 2012. "Telaah Atas Reforma Agraria Untuk Keadilan Dan Kesejahteraan Dalam Tataran Teori Kebenaran." *Jurnal Ilmu Hukum Amanna Gappa* 20(1):50.

This authority also includes the ability to take political action in situations where a court judgement cannot be enforced¹⁹. Permen ATR/BPN 21/2020 regulates the classification of disputes and conflicts into 3 categories (severe cases, moderate cases, and mild cases). Article 2 of Permen ATR/Ka.BPN clearly outlines the scope of the regulation, from receiving complaints to what kind of legal protection is provided.

The component for cancelling certificates on the premise of authoritative abandonment is also regulated in Article 6 of Regulation 21/2020, among others:

- a) Case Assessment, which includes the case title, core issues (such as identifying the disputed object and the plaintiff's objections or claims), case background, and supporting data or documents that will serve as the basis for the initial case review.
- b) Preliminary Assessment, which in this case carried out under the supervision of Director and Head of Section V, Seeks to identify the agency or institution authorized to handle the case, along with its intended target and timeframe for resolution. The outcomes of this initial review will subsequently be recorded in minutes that summarize the review and are signed by the scribe
- c) Investigate in order to gather physical data, legal data, field data, information materials from the involved parties, and information on the land in question and the relationship between these parties. Armed with a covering letter and an assignment letter, research officers complete this step. The study report, which needs to be signed by the head of the land office or the regional office, will include the results.
- d) The investigation results outline the main issues, obstacles, and recommendations for possible solutions moving forward.
- e) The legal status of legal products and the legal stance of each party engaged are clarified by the presentation

¹⁹ Affan Zaidan, & Listyowati Sumanto. (2023). Pembatalan Sertipikat Hak Milik Atas Tanah Dalam Prespektif Jaminan Kepastian Dan Perlindungan Hukum Terhadap Pemegang Hak Atas Tanah. *Reformasi Hukum Trisakti*, 5(4), 1564–1576. <https://doi.org/10.25105/refor.v5i4.18703>

of the study findings indicated in paragraph (1), paragraph (2) focuses on evaluating the findings and addressing problems to develop a plan of action if necessary. Finally, these conclusions and recommendations from both the Director and Head of Section V are recorded in the minutes.

- f) Final title, which includes issuing a resolution regarding the case, accompanied by a recommendation letter and a directive letter from the Minister or Director General VII.
- g) Lastly, regarding case resolution, the authority lies with either the Regional Office or the Land Office.

1. Administrative Remedies

In Indonesia's legal system, individuals can seek legal protection by challenging decisions related to land management. Certificate cancellations can also be pursued outside of court through a written application based on administrative law violations, as stated in Article 6 (1) and Article 8 (2) of Minister of ATR/BPN Regulation No. 21 of 2020. According to Article 29 paragraph (1) of the same regulation, there are two valid reasons to request a certificate cancellation, namely:

- 1) Administrative defects/juridical defects; or
- 2) Implementation of a court decision that has permanent legal force.

Land certificates that contain administrative defects can arise from subject errors (such as incorrect applicant information) or object errors (like mapping or measurement inaccuracies). According to article 35, such flaws can be grounds for certificate cancellation:

- 1) Errors of issuing land rights, register rights and store land registry data;
- 2) errors in the measurement;
- 3) errors replacement certificates;
- 4) mistakes made during the mortgage rights certificates issuance procedure;
- 5) mistakes made when implementing laws and regulations;

- 6) the subject of the right is incorrect;
- 7) error in the object of the right;
- 8) Overlapping;
- 9) errors in determining land consolidation;
- 10) error in verifying land reform items;
- 11) errors in the process of issuing cancellation decision letter;
- 12) a criminal court decision with permanent legal force proving criminal acts such as forgery, fraud, embezzlement, or other crimes;
- 13) documents or data used in issuing a certificate that do not originate from the authorized agency, as confirmed by a certificate from the relevant agency;
- 14) Even if not specifically mentioned in the judgment, a court decision may identify flaws in the transfer of rights or in the issue of a legal product., as long as the legal reasoning is clear.

Strong supporting evidence/data is very important, because the validity and clarity of the registration error can decide if the cancelation application is succesful. According to Article 38(2) of Permen ATR/BPN No. 21/2020, if a court decision declares legal products “null/invalid/not legally binding or lacking strong evidential value” the legal product can be revoked based on the rulling, namely regarding:

- a) Determination of land rights;
- b) Registration of land rights;
- c) Maintenance of land registration data;
- d) Replacement certificates of land rights;
- e) Certificate of mortgage rights;
- f) Cancellation;
- g) The determination of abandoned land;
- h) Certificate of ownership rights over apartment units;
- i) Determination of land consolidation;
- j) Affirmation of land reform object;
- k) Determination the willingness to provide compensation for former perticuliere land;
- l) The choice regarding the issuance of location permits for territories that span multiple provinces;
- m) Determination of State Administrative Officials

within the Ministry in the field of ground that is made of concrete, individual, and final.

In article 40 of the ATR/BPN Ministerial Decree No. 21 of 2020 states that the procedure for revoked land rights certifications which is the authority of the national land agency includes, applications for cancellation of legal products due to the enforcement of court decisions that have obtained permanent legal force as referred to in article 29 paragraph (1) letter a must meet the following requirements:

- a) application letter or complaint letter;
- b) legalised photocopy of the applicant's identity and his/her proxy if authorised;
- c) original power of attorney if authorized;
- d) legalised photocopies of evidence of ownership/possession of the applicant's land;
- e) physical and legal data or documents submitted for cancellation;
- f) photocopy of legalised court decision;
- g) photocopy of legalised minutes of execution showing or proving the existence of administrative and/or juridical defects.

In particular, Permen ATR/BPN No. 21 of 2020 acts as official law in the resolution of all land cases, including those brought on by administrative errors. The Ministry of ATR/BPN's efforts to provide legal clarity in the organized management of land matters include this regulation. The process for settling land cases must be viewed as a component of a comprehensive state administrative law system due to its administrative nature. This indicates that the process of revoke land certificates because of administrative flaws is a component of a legal framework that preserves the community's ideals of fairness rather than a one-off act. Additionally, in accordance with Article 30 paragraph (3) of Permen ATR/BPN No. 21 of 2020, the authorized official (in this case, the Minister of ATR/BPN) may revoke the decision to revoke the land certificate that was previously issued by the land official if it is later demonstrated that there are no administrative flaws in its issuance. This demonstrates that the process for fixing administrative flaws is a democratic and

accountable administrative law mechanism rather than an instance of power abuse.

2. *Judicial Remedies*

A certificate of ownership is a strong, non-permanent evidence of ownership, which means that the certificate is proof of ownership of the physical and juridical data contained in the certificates as long as it is in accordance with the land book and measurement letter.

Legal protection against the settlement of state administrative disputes as a result of the issuance of state administrative decisions (*beschikking*) according to F.H van der Burg can be pursued through two possibilities, first through state administrative court / administrative court (*administratie rechtspraak*) and second through administrative appeal (*administratief beroep*)²⁰. The State Administrative Court has two avenues or streams of litigation. The State Administrative Court serves as the court of first instance for state administrative decisions that do not recognize administrative remedies, while the High Administrative Court is the direct recipient of lawsuits pertaining to state administrative decisions that do²¹. The District Court or the State Administrative Court are the courts with the authority to resolve conflicts or lawsuits involving agricultural resources. The claims of parties that feel wronged are the basis for efforts to settle legal disputes.

In Accordance with state administrative justice Law No. 5 of 1986, the State Administrative Court has ninety days from the date of the announcement or receipt of the State Administrative body's or official's decision to cancel land certificates. If the time period exceeds 90 days, the path taken must be through the District Court. Based on Article 29 (1) of Permen ATR/BPN No. 21/2020, certificate can be challenged/cancelled if there are suspected administrative or juridical defects to implement a court decision with permanent legal force.

²⁰ F.H van Der Burg, et.al., *Rechtsbescherming tegen de Overheid*, (Nederland: Nijmegen, 1985), p.2

²¹ Philipus M. Hadjon, et.al., *Pengantar Hukum Administrasi di Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2002), h.317.

In this case, judicial efforts have been made, where on 12 April 2016, H. Asep Ubaedillah filed a lawsuit related to the cancellation of the land certificate to the Cibinong District Court, which issued Decision No. 99/Pdt.G/2016/PN Cbi. in Although the object of dispute was the certificate of ownership owned by the SHM holders, they were not involved in the lawsuit. As a result, they were denied the opportunity to legally defend their rights. The court ruling indicated that their certificates were legally ineffective. The cancellation of the certificates by the Bogor District Land Office was only carried out in 2022 without a notification letter to the SHM holders, creating legal uncertainty and violating the principle of due process of law.

The cancellation of land certificates through the courts must consider the proper jurisdiction, since the dispute object is a government issued product namely, the certificate from the Land Office. After the court decision is legally binding, the winning party can submit an application to the relevant agency for administrative adjustment. After that, the land office will take administrative action by cancelling the certificate, in accordance with the applicable laws and regulations. With this cancellation, the land rights become void and the right holder on the certificate also loses their rights.

There's no doubt that the rise in agrarian conflicts calls for swift, thorough, and fair resolution methods that ensure legal certainty. Serious measures must be taken to implement regulatory arrangements that have a sense of legal certainty and justice as well as administrative issuance for the government or officials who are authorized to provide evidence of land or certificates, given that agrarian disputes or conflicts have a considerable effect on individuals' lives and the economy at both local and national levels.

3. Alternative Dispute Resolution Through Mediation or Arbitration

Mediation according to Nolan Haley is a participatory intervention process that is short-term, structured, task-orientated and participatory. The parties involved in the dispute collaborate with a neutral mediator to reach an agreement that

is acceptable to both parties²². Mediation, as outlined in Law No. 30 of 1999 on arbitration and alternative dispute resolution, can be used to resolve land disputes. The mediation process includes three stages: preparation, the mediations meeting, and post mediation follow up. This means that the outcome of the mediation is an agreement between the two parties to the dispute, along with the details of its implementation. After the mediation agreement is signed by both parties in the presence of the BPN official acting as mediator. If the peace deed is binding, it cannot be filed as a case if it has been declared in the form of peace²³.

Article 41 essentially explains that in should mediation result in an agreement, a peace accord is established and recorded with the local district court registrar to ensure it has binding legal force. However, the peace agreement that results from mediation through the BPN as a mediator does not necessarily become like a mediator in court; the court's decision is a unanimous decision and binds the parties. Although the dispute didn't directly involve BPN, the agreement reached still serves the same purpose resolving the conflict and ensuring that no further issues will arise²⁴ Moore, cited by Jonathan G. Shailor, states that in order for mediation to be successful, a third party must be acceptable to the disputing parties, impartial, fair, and devoid of decision-making power. The disputing parties choose to voluntarily settle the issue in a way that benefits both of them²⁵.

If neither party can show up for the mediation invitation three times in a row, the mediation may be deemed unsuccessful. This is mentioned in Permen ATR / BPN Number 21 of 2020's Article 44, paragraph (3). Not every step and procedure in the mediation process goes as planned or in line with the parties'

²² Nolan-Haley, Jacqueline M. *Alternative Dispute Resolution*. St. Paul, Minnesota: West Publishing Co., 1992.

²³ Paramartha, I. M. W. H., & Pemayun, C. I. A. (2018). Kekuatan Hukum Mediasi Sebagai Salah Satu Alternatif Penyelesaian Sengketa Pertanahan. *Journal Ilmu Hukum*, 7 (3), 1-13.

²⁴ Rasmawati, I., Laturette, A. I., & Radjawane, P. (2022). Kedudukan Badan Pertanahan Nasional Sebagai Mediator Dalam Penyelesaian Sengketa Pertanahan. *TATOHI: Jurnal Ilmu Hukum*, 2 (1), 47-68.

²⁵ Moore, Christopher W. *The Mediation Process: Practical Strategies for Resolving Conflict*. 3rd ed. San Fransisco : Jossey-Bass Publisher, 2003.

desires. Both the parties and the mediator in charge of presiding over the mediation process must overcome a number of challenges. It will be challenging for the mediator to weigh the possibilities presented to both sides if one of the parties is unwilling to provide the mediator with the truth. as well as one or both parties' self-centeredness.

In the mediation conducted on 31 July 2024, although the SHM holders were not directly involved in the civil case that led to the cancellation of their certificates, they were finally given the opportunity to object to the cancellation. Unfortunately, they only found out about the cancellation at a very late stage, after their land had already been occupied by a third party (developer). This process demonstrates the negligence or procedural shortcomings of the Land Office, which should have provided formal notification or involved land rights holders in the legal process.

This of course violates the rights of SHM holders to receive legal protection in accordance with laws and regulations, especially with regard to the cancellation of land certificates and the involvement of interested parties in the dispute. In this case, the mediation process, while important, should have been conducted earlier, before the cancellation of the certificate occurred, so that the rights of the SHM holders could be defended from the outset and they would not be victims of administrative or procedural errors.

According to the theory of legal protection proposed by Philipus M. Hadjon, which categorises legal protection into two types²⁶:

- 1) Preventive legal protection: measures taken before rights are violated, including fair administrative procedures.
- 2) Repressive legal protection: measures to restore after a violation, such as taking legal action or filing an administrative objection.

In this instance, the Bogor District Land Office's cancellation of the certificate of ownership (SHM) without informing the

²⁶ Hadjon, Philipus M. *Perlindungan Hukum Bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-prinsipnya, Penanganannya oleh Peradilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*. Surabaya: Bina Ilmu, 1987.

right holder is blatantly against the preventive legal protection principle. Hadjon argues that preventive protection should provide people the chance to object or defend themselves, as well as the knowledge of the administrative procedures pertaining to their rights. In the framework of oppressive legal protection, the land title owner has already lost their right to due process, which ought to have been protected in the preventative stage, even though they may potentially object or sue after the cancellation.

Government liability arises from objections, lawsuits, or judicial reviews filed by individuals, communities, or legal entities against government actions in carrying out government functions. Such actions can be taken in court or out of court with demands in the form of payment of money (subsidies, compensation, benefits, etc.), issuing or revoking/cancelling decisions or regulations, and taking other actions to fulfil their obligations. Law is basically abstract, but can take concrete forms in its manifestation. A legal provision can only be considered beneficial if its application leads to good results, maximum happiness, and reduced suffering.

Conclusion

The Bogor District Land Office's revocation of Land Ownership Certificates (SHM) in accordance with Cibinong District Court Decision No. 99/Pdt.G/2016/PN Cbi violates the legality, due process, and protection principles that ought to be the cornerstones of land administration procedures. As required by Ministerial Regulation of ATR/BPN No. 21 of 2020, the cancellation was executed without official notification and without participating the certificate holders in the process of clarification or case exposure. Additionally, the court ruling that served as the foundation did not specifically mandate the revocation of the certificates, making the land officials' administrative action an abuse of power (*ultra vires*) and possibly harmful to third parties who legitimately and honestly obtained their rights.

Therefore, any cancellation of land certificates must be carried out with care, accountability, and full participation from

all interested parties in order to ensure legal certainty and the protection of land rights. Strict administrative procedures must also be enforced, along with strong internal oversight and strong penalties for officials who misuse their power. For affected certificate holders, legal remedies that may be pursued include filing administrative objections to the Ministry of ATR/BPN, submitting a lawsuit to the Administrative Court (PTUN), or seeking resolution through mediation as an alternative dispute mechanism that upholds the principles of deliberation and substantive justice.

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