

## THE RESPONSIBILITY OF THE NATIONAL LAND AGENCY FOR THE CANCELLATION OF LAND OWNERSHIP CERTIFICATES

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### Abstract

*The certificate of land ownership is a government initiative that arises from the law. The emergence of certificates begins with the land registration mechanism, but even though the issuance of Land Ownership Certificates has gone through the land registration mechanism, it is often accompanied by disputes across all levels of society. Ironically, after these disputes are resolved by the Administrative Court or Civil Court, the defeated holders of Land Ownership Certificates are unable to reclaim their rights over the cancelled certificates. However, the issuance of Land Ownership Certificates by the National Land Agency (BPN) has been carried out in accordance with the procedures outlined in the prevailing legislation, so BPN should rightfully be responsible to the individuals whose Land Ownership Certificates have been cancelled, whether through the Administrative Court or Civil Court. This article, from a juridical-normative perspective, will discuss the issue of accountability of the National Land Agency as one of the institutions entrusted by the State to issue Land Ownership Certificates in relation to the cancellation of land ownership certificates for the holders.*

**Keywords:** National Land Agency, BPN accountability, Land Ownership Certificate

### Abstrak

Sertifikat hak milik atas tanah merupakan sebuah inisiatif pemerintah yang muncul karena hukum. Kemunculan Sertifikat diawali dengan mekanisme pendaftaran tanah, akan tetapi sekalipun terbitnya Sertifikat Hak Milik telah melalui mekanisme pendaftaran tanah, seringkali terbitnya Sertifikat Hak Milik diiringi dengan sengketa hampir pada setiap kalangan Masyarakat, ironinya, setelah Sengketa tersebut mendapatkan Putusan Pengadilan baik melalui Putusan Tata Usaha Negara maupun Putusan Pengadilan Perdata, Pemegang Sertifikat Hak Milik yang dikalahkan tidak dapat mendapatkan hak – hak nya kembali atas Sertifikat Hak Milik yang telah dibatalkan tersebut. Padahal Penerbitan Sertifikat Hak Milik oleh Badan Pertanahan Nasional (BPN) telah dibuat melalui prosedur yang telah digariskan oleh Perundang-undangan yang berlaku, sehingga sudah seharusnya BPN sebagai Lembaga Negara memberikan tanggung jawabnya kepada masyarakat yang telah dibatalkan Sertifikat Hak Miliknya baik melalui Pengadilan Tata Usaha Negara maupun melalui Pengadilan Perdata. Tulisan ini secara yuridis-normatif akan membahas terkait dengan seputar permasalahan pertanggungjawaban Badan Pertanahan Nasional sebagai salah satu institusi yang diberikan kewenangan oleh Negara dalam menerbitkan Sertifikat Hak Milik terkait dengan adanya Pembatalan Sertifikat Hak Milik Atas Tanah bagi Para Pemegang Sertifikat Hak Milik.

**Kata Kunci:** Badan Pertanahan Nasional, Pertanggungjawaban BPN, Sertifikat Hak Milik

## A. INTRODUCTION

The presence of land in the life of society has two significant dimensions, namely as a capital asset<sup>1</sup> and social asset<sup>2</sup>. Land as a capital asset reflects the concept that land is not only the basis for development, but has also evolved into an essential pillar of the economy. Its existence plays a crucial role in the economic structure, as a trading object, and as the foundation for various economic development activities. As a capital asset, land makes an important contribution to the growth and development of a region.

The land law regulated in the UUPA serves as a guideline for people to have the right to land, both for individuals and legal entities. This land ownership can be used for personal or business purposes. Therefore, land ownership related to individual rights always refers to the rights of the Indonesian nation as regulated in UUPA Article 1 paragraph 1<sup>3</sup>.

Therefore, the state has the authority to regulate the utilization of all natural resources in Indonesia to achieve maximum welfare for the people. In particular, the regulation of land is of crucial concern, given that land is one of the sources of livelihood for the people. Therefore, the government has an active role in formulating land policies in Indonesia to create welfare for the people<sup>4</sup>.

Various regulations have been established to ensure legal certainty regarding land or agrarian issues. Therefore, land, as a very important aspect of human life, must have an existence that can guarantee ownership of the land. With the existence of evidence held by individuals or groups related to the land they own, it will ensure the legality of the land as the property of the parties involved. Evidence of land ownership rights can be obtained when we register the land that we own or control. The land registration is carried out to the authorized party or official. Legal certainty for land is an absolute necessity to maintain

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<sup>1</sup> Joni, H, "Tanah Sebagai Aset Sosial Dalam Perspektif Hukum Agraria Nasional". *Jurnal Cakrawala Hukum*, Vol.7, No.1 Juni 2016, hlm. 123–134

<sup>2</sup> Achmad Rubaie, *Hukum Pengadaan Tanah untuk Kepentingan Umum*, Malang: Bayu Media, 2007, hlm. 1.

<sup>3</sup> Sunario Basuki, *Ketentuan Hukum Tanah Nasional (HTN) yang Menjadi Dasar dan Landasan Hukum Kepemilikan dan Penguasaan Tanah* (Jakarta: Program Pendidikan Spesialis Notariat Fakultas Hukum Universitas Indonesia, 2009), hlm. 1

<sup>4</sup> Frans Magnis Soeseno dalam Ida Nurlinda, *Prinsip-Prinsip Pembaharuan Agraria Perspektif Hukum*, Rajawali Pers, Jakarta, 2009, hlm. 61.

stability in land use for development and to ensure legal certainty over land ownership for the community members who want to be involved with the land<sup>5</sup>.

The land ownership certificate is a government initiative that emerged due to the law. The emergence of the certificate began with the land registration mechanism as stipulated in Government Regulation No. 24 of 1997 concerning land registration. Article 1 paragraph (1) of Regulation No. 24 states that "Land registration is a series of activities carried out by the government continuously, continuously and regularly, including data collection, processing, accounting, presentation and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and units of apartments, including providing proof of ownership for land parcels that already have rights and ownership of units of apartments as well as specific rights that burden them."

Even though the issuance of Land Ownership Certificates has gone through the process as explained above, it is often accompanied by disputes in almost every segment of society. The disputes that arise in society today are usually due to problems/conflicts within the community<sup>6</sup>.

Disputes basically arise because of conflicts between one party and another. Therefore, a dispute arises because of a problem that clashes with others, prompting the person involved to immediately want to resolve the issue. Therefore, the question often raised in society is why dispute resolution has to involve the judicial system.

The existence of a judicial body in Indonesia has proven that Indonesian society, which has disputes constitutionally, has the right to defend its interests before the judicial body in order to obtain fair legal certainty and must receive equal treatment before the law, as stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as "UUD RI 45"), which states that Every person has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law.

For the governance system in Indonesia, the principle of legal certainty plays a crucial role in ensuring protection for those who feel aggrieved by a decision made by a

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<sup>5</sup> Anggita, *Penyelesaian Sengketa Konflik Kepemilikan Tanah dengan Pendekatan Litigasi di Pengadilan Tata Usaha Negara*, Savana: Indonesian *Journal of Natural Resources and Environmental Law* Vol. 1 Nomor 01.2024. hlm. 24-38

<sup>6</sup> According to Durkheim as quoted by Doyle Paul emphasizes the social processes that enhance social integrity and cohesion. Although he acknowledges that conflicts occur in social life, he tends to treat excessive conflict as something abnormal in the integration of society. (Doyle Paul, "*Teori Sosial; Klasik dan Modern*", (Jakarta: PT. Gramedia, 1986), h. 231.

State Administrative Official (TUN). The Certificate of Ownership is a State Administrative Decision which can be challenged not only in the State Administrative Court regarding the issuance process of the Certificate of Ownership, but disputes over the Certificate of Ownership are also often contested in the General Court through the mechanism of filing a civil lawsuit.

Nevertheless, after the dispute has been resolved through both administrative court and civil court decisions, it is ironic that the defeated Certificate of Ownership holder cannot regain their rights over the revoked Certificate of Ownership.

On the other hand, the issuance of land ownership certificates by the National Land Agency (BPN) has been carried out through the procedures stipulated by the applicable laws and regulations, so BPN as a State Institution should rightfully fulfill its responsibility to the people whose land ownership certificates have been revoked, either through the State Administrative Court or the Civil Court.

## **B. RESEARCH METHOD**

The type of legal research used is normative-juridical. Normative-juridical research is a type of study that primarily uses literary sources or books for its material<sup>7</sup>. The type of research used is descriptive-analytical. Descriptive research is intended to provide data as carefully as possible about people, situations, or other phenomena<sup>8</sup>. The type of data used in this article is secondary data. This secondary data consists of legal materials and is supported by interviews with informants who have competence and knowledge of the problems discussed in this article. The method of data analysis applied is qualitative, which means delving into the meaning behind the reality or action, or the data obtained and studied is the complete research object<sup>9</sup>.

## **C. ANALYSIS, FINDING AND DISCUSSION**

### **1. Land Ownership Certificate as Proof of Ownership Rights to Land**

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<sup>7</sup> Sri Mamudji, et al., *Metode Penelitian dan Penulisan Hukum*, Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005, hlm. 10.

<sup>8</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, cet 3, Jakarta: UI-Press, 1986, hlm. 10.

<sup>9</sup> Sri Mamudji, et al., *Metode Penelitian dan Penulisan Hukum*., *Op Cit.* hlm. 67.

One form of legal certainty assurance provided by the Government in relation to land rights is through registration, which includes issuing certificates as strong evidence of ownership. Certificates serve as powerful proof of property rights, as stated in Article 32 of Government Regulation No. 24 of 1997 on Land Registration.

- a. A certificate is a proof of rights that serves as strong evidence regarding the physical and juridical data contained within it, as long as this data aligns with the information in the survey letter and land book in question.
- b. In cases where a land certificate has been issued in the name of an individual or legal entity that truly owns the land, any other party claiming rights to the land cannot pursue those rights if they do not file a written objection to the certificate holder and the Head of the Land Office within a period of 5 (five) years from the issuance of the certificate.

According to the opinion above, a certificate can be considered as strong evidence of rights and functions as a powerful means of proof, it must also include both physical and juridical data within it. Therefore, a certificate is regarded as an authentic deed that carries strong evidential power and should be accepted or considered as true data.<sup>10</sup>

However, not all positions held by certificates are valid automatically, unless the certificate meets certain requirements. The physical and juridical data stated in the certificate must correspond with the data in the land book and relevant survey letters. This is because both data are taken from the land book and survey letters. Thus, based on the negative publicity system with a positive element adopted by Indonesian land law, judges must be bound by the data stated in the certificate unless proven otherwise by other parties.<sup>11</sup> The same was also stated in Supreme Court Decision No. 327 K/Sip/1976, dated December 1, 1976, Jo. Semarang High Court Decision No. 91/1972/Pdt/PT.Smg dated January 7, 1975 Jo. Semarang District Court Decision No. 125/1970/Pdt dated February 25, 1971 in its Legal Principles.<sup>12</sup> The statement "Provisions regarding land certificates as evidence of ownership rights do not diminish a person's right to prove that the certificate in question is not genuine."

With regard to the description above, even though the Certificate holder has obtained recognition in the Government Regulation as a translation of the provisions of

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<sup>10</sup> Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah Di Indonesia*, Arkola, Surabaya, 2003, hlm. 110.

<sup>11</sup> Urip Santoso, *Hukum Agraria Kajian Komprehensif*, Edisi Pertama, Cetak an Ke-1, Kencana, Jakarta, 2012, h. 317

<sup>12</sup> Hulman Panjaitan, *Kumpulan Kaidah Hukum Putusan Mahkamah Agung Republik Indonesia Tahun 1953-2008 Berdasarkan Penggolongannya*, Prenada Media Group, Jakarta, 2014, hlm. 67.

Article 19 paragraph (2) letter c UUPA,<sup>13</sup> the certificate does not guarantee legal certainty for its owner because the regulations themselves provide an opportunity where as long as there are other parties who feel they own the land can sue the party whose name is listed in the certificate in civil court to the General Court, or sue the Head of the National Land Agency/Head of the relevant Land Office to the State Administrative Court<sup>14</sup>.

## **2. Mechanism for the Cancellation of Land Ownership Certificates**

Land disputes are formulated in Article 1 of the Minister of State Agrarian/Head of the National Land Agency Regulation No. 1 of 1999 concerning the Procedure for Handling Land Disputes, hereinafter referred to as PMNA/KBPN 1/1999, namely: "differences of opinion between interested parties regarding the validity of a right, granting of rights to land, registration of land rights, including transfer and issuance of proof of the rights, as well as interested parties who feel they have a legal relationship and other interested parties affected by the legal status of the land." Land disputes are regulated in the Land Dispute Law. In other words, it is defined in the Head of the Indonesian National Land Agency Regulation No. 3 of 2011 as a dispute involving legal entities, bodies, or individuals. In short, disputed land refers to land whose ownership is contested by two parties competing to claim ownership of the land. The types of land dispute cases range from falsified documents to illegally changed land boundaries. There are three types of land disputes, namely Light Cases. It is considered a light case because it involves technical management guidelines, which sufficiently complete the comparison with guidelines for applicants or complainants. Second, moderate cases. This is a moderate case because it involves legal resolution and clear control, but does not cause social, political, security, or economic symptoms. Third, serious cases. Conflicts affect many people and can be considered serious if their legal aspects are complex enough to cause social, political, and security problems<sup>15</sup>.

Land disputes are caused by many factors or reasons. These factors are very dominant in all land disputes, because of imperfect regulations, non-compliance with regulations, and lack of response from land authorities to the integrity and quantity of available land. It contains inaccurate data. Incomplete and inaccurate land data, limited

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<sup>13</sup> Adrian Sutedi, *Peraihan Hak Atas Tanah dan Pendaftarannya*, Sinar Grafika, Jakarta, 2009, hlm. 80

<sup>14</sup> Rusmadi Murad, *Administrasi Pertanahan Pelaksanaannya dalam Praktik*, Cetakan I, Mandar Maju, Jakarta, 1997, Hlm. 46, lihat juga Hartanto Andy, *Problematika Hukum Jual Beli Tanah Belum Bersertifikat*, Cet I, Laksbang Mediatma, Yogyakarta, 2009, hlm. 34

<sup>15</sup> Putu Diva Sukmawati, *Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia*, Jurnal Ilmu Hukum Sui Generis P-ISSN: 2809-3925 Volume 2 Nomor 2, April 2022, hal. 91

resources to resolve land disputes, inaccurate land transactions, applicant legal actions, and comparison with other authorities. This leads to duplication of authority. Land disputes that occur in Indonesia are usually related to land ownership agreements, transfer of rights, transfer of rights, and ownership of previously private land. To use land as a fair, transparent, and productive agricultural resource, indigenous rights and the existence of customary law communities must be considered. In addition, the integrity of inventory data, quantity/area, and management status must be complete and up to date in order to create a harmonious and balanced spatial planning<sup>16</sup>.

Disputes over land arise due to the high value and benefits of land today, many people or parties are trying to obtain proof of land ownership rights illegally by violating the law, resulting in the cancellation of their ownership rights. Essentially, cancellation is an act intended to terminate or nullify a legal relationship<sup>17</sup>.

The cancellation of land title certificates is one form of resolving land ownership disputes caused by a decision to grant rights and/or land title certificates issued by the Head of the Land Office containing administrative legal defects, or to implement a legally binding court decision. According to Minister of Agrarian/Head of the National Land Agency Regulation Number 3 of 1999 on Delegation of Authority and Cancellation of Decisions on Granting State Land Rights ("PMNA No. 3 of 1999"), Article 1 number (12) states the formulation of the annulment of land rights, which is: "Cancellation of a decision regarding land rights because the decision contains legal defects in its issuance or the implementation of a legally binding court decision."

"Meanwhile, Article 1 number 14 of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 9 of 1999 concerning Procedures for Granting and Revocation of Rights to State Land and Management Rights ("PMNA 9/1999"), the definition of revocation of land rights is: "Revocation of land rights is the revocation of a decision to grant land rights or land rights certificate because the decision is legally defective in its issuance, or to enforce a legally binding court decision."

Based on both of these regulations, Hasan Basri explains that the definition in Article 1 number (14) of PMNA 9/1999 is broader and clearer than the formulation mentioned in Article 1 number (12) of PMNA No. 3 of 1999. This is because according to

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<sup>16</sup> Ibid

<sup>17</sup> Rozi Aprian Hidayat, "Analisis Yurid Proses Pembatalan Sertipikat Hak Atas Tanah Pada Kawasan Hutan", *Jurnal Kajian Hukum dan Keadilan Ius*, Vol IV, Nomor 2 Agustus 2016, hlm. 89

Article 1 number (14) of PMNA 9/1999, the cancellation can be done not only for the decision to grant land rights, but also for the land rights certificate, so with the cancellation of the decision to grant land rights, the land rights certificate immediately becomes void.

Cancellation can be carried out if there is suspected administrative legal defect in the issuance of the certificate as regulated in Article 106 paragraph (1) jo. Article 107 of Regulation of Agrarian Affairs/National Land Agency 9/1999 states that the decision to cancel land rights due to administrative legal defects in its issuance can be done by interested parties or by authorized officials without a request.

The administrative law defect as referred to in Article 106 (1) is:

- a. Procedural error;
- b. Misapplication of laws and regulations;
- c. Subject error rights;
- d. Object rights error;
- e. Type of error;
- f. miscalculation of area;
- g. There is an overlap of land rights;
- h. Incorrect juridical data or physical data; or
- i. Other administrative errors

In addition to that, the revocation of land rights can also occur due to the implementation of a legally binding court decision. The decree for revoking land rights, according to Article 104 paragraph (2) of Agrarian Affairs/BPN Regulation No. 9/1999, is issued if there is an administrative legal defect; and/or the implementation of a legally binding court decision.

In accordance with Article 104 paragraph (1) of Regulation 9/1999 on Land Affairs from the National Land Agency, the grounds for cancellation of land rights include:

- a. land rights award decision letter.
- b. land ownership certificate.
- c. land right granting decision in the context of land tenure regulation.

Referring to the description above, there are at least three ways to cancel a land right certificate<sup>18</sup>:

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<sup>18</sup> Antonius Alreza Pahlevi M., Mengenal Pembatalan Sertifikat Hak atas Tanah dan Prosedurnya, artikel diakses pada tanggal 5 Juni 2024 pada <https://www.hukumonline.com/klinik/a/mengenal-pembatalan-sertifikat-hak-atas-tanah-dan-prosedurnya-lt5ee0668e6b036/>



- a. Request for Cancellation to the Minister of Agrarian and Spatial Planning/National Land Agency through the Land Office
- b. The reason for the cancellation of land rights certificate is due to administrative legal defects, such as miscalculations and incorrect land area, encroachment on other land, overlapping land rights, procedural errors, or other actions such as document falsification.

Furthermore, referring to Article 1 number 7 of Law Number 30 of 2014 concerning Government Administration ("Law 30/2014"), State Administration Decision ("KTUN") is a written stipulation issued by government bodies and/or officials in the administration of government. However, it is also important to pay attention to the time limit for filing a lawsuit to the State Administrative Court, which is 90 days from the receipt or announcement of the decision by the state administration body or official as regulated in Article 55 of Law Number 5 of 1986 concerning State Administrative Court.

In addition to the cancellation through the Certificate of Ownership Cancellation process in the State Administrative Court, anyone who wants to file a lawsuit for an unlawful act regulated by Article 1365 of the Civil Code with the grounds and arguments that the plaintiff thinks and assesses as detrimental.

### **3. The Responsibility of the National Land Agency for Cancellation of Ownership Certificates.**

Responsibility is a further consequence of performing a role, whether that role is a right and obligation or authority. In general, responsibility is defined as the obligation to do something or behave in a certain way that does not deviate from existing rules<sup>19</sup>. Furthermore, it is emphasized that every fulfillment of obligations and every exercise of rights, whether inadequately or adequately performed, must always be accompanied by accountability, as well as the exercise of authority<sup>20</sup>.

The Institutional Responsibility in this case the National Land Agency (hereinafter referred to as "BPN") in cases where land certificate disputes are examined and adjudicated by administrative courts as well as General Civil Courts is a result of a dysfunctional land registration system, BPN is exclusively responsible for the issuance of certificates because the authority to issue certificates lies with BPN. Under the absolute responsibility system,

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<sup>19</sup> Khairrunisa, Kedudukan, Peran dan Tanggung Jawab Hukum Direksi, Medan, 2008, hlm. 4

<sup>20</sup> Purbacaraka, Perihal Kaedah Hukum, Citra Aditya Bandung, 2010, hlm. 37

the National Land Agency is responsible both inside and outside the court in the event of a land rights lawsuit. If a certificate issued by BPN causes a land dispute, it is the obligation of BPN to take responsibility for the certificate it issued.

In addition to being tasked with the responsibility of carrying out administrative land activities ranging from land data collection to certificate issuance, BPN is also obligated to carry out court decisions. This task may seem quite peculiar because in cases related to certificates, BPN is the only agency responsible for disputes. However, this task must be carried out considering that BPN is the authorized body to issue certificates, hence revocation or cancellation must also be done by BPN<sup>21</sup>.

However, referring to all the provisions contained in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning the Handling and Settlement of Land Cases (hereinafter referred to as "Permen 21/2020"), only mentions provisions related to cancellation procedures without mentioning any accountability of the National Land Agency to parties whose certificates are cancelled, even though the certificates issued by the National Land Agency should already be in accordance with a very lengthy registration mechanism.

In addition to that, the revocation of property ownership certificates is essentially revoked by BPN due to BPN's own negligence, namely the errors in the issuance of certificates by BPN itself in issuing the certificates, as regulated in Article 35 of Regulation No. 20/2020 including:

- a. Errors in the process/procedure of issuing land rights, registering rights, and maintaining land registration data;
- b. errors in the measurement process/procedure;
- c. error in the process/procedure of issuing replacement certificates;
- d. errors in the process/procedure of issuing a Mortgage Certificate;
- e. misapplication of regulations and laws;
- f. subject error right;
- g. object rights errors;
- h. Mistake of right type;

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<sup>21</sup> Martinus Hadi, Tanggung Jawab BPN Terhadap Sertipikat Yang Dibatalkan PTUN, *Jurnal Lex et Societatis*, Vol. II/No. 7/Ags/2014, hlm. 47-48

- i. overlapping land rights;
- j. overlap with forested areas;
- k. Incorrect land consolidation determination;
- l. Error in land object reform statement;
- m. error in the process of granting permission for the transfer of rights;
- n. error in the process of issuing a Cancellation Decision letter;

In a court decision, it is proven in the legal considerations that there are facts of defects in the issuance of legal products by the Ministry and/or defects in legal actions in the transfer of rights but the verdict does not explicitly state it.

Referring to the aforementioned errors, it should not be a form of error that occurs in land registration for the issuance of land ownership certificates, because in issuing land ownership certificates, there are several stages of processes that must be passed by the National Land Agency (BPN) in issuing land ownership certificates both systematically<sup>22</sup> and sporadically<sup>23</sup> as stipulated in Government Regulation No. 24 of 1997 concerning land registration (PP No. 24/1997) as last amended by Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (PP No. 18/2021). However, in PP No. 18/2021, the sequence of mechanisms for land registration both systematically and sporadically is not clearly seen, so the author still refers to PP No. 24/1997.

In addition to that, land registration also refers to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (Permen No. 3/1997), as last amended by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2022 concerning the Delegation of Authority for the Determination of Land Rights and Land Registration Activities (Permen No. 16/2022). However, in Permen 16/2022, the clear sequence of land registration mechanisms is not visible either systematically or sporadically, so the writer still refers to Permen No. 3/1997.

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<sup>22</sup> Systematic land registration is the simultaneous initial registration of all land objects that have not been registered in the area or part of the area of a village or more commonly known by the public as the National Legislation Program (PRONA).

<sup>23</sup> Sporadic land registration is the initial registration of one or more land objects in the area or part of a village/urban village on an individual or mass basis, also known among the community as personal individual application registration.

As for the land registration system for the issuance of Land Certificate, there are several stages that must be passed as stipulated in Chapter V of Government Regulation No. 24/1997, which generally include a. collection and processing of physical data; b. proof of rights and registration; c. issuance of certificates; d. presentation of physical and juridical data; e. storage of general records and documents. Furthermore, in Chapter III of Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 3/1997 Part One on Systematic Land Registration, which outlines the procedure for issuing certificates, including Determination of Location; Formation of Adjudication Committee and Task Force (Satgas); Counseling; Collection of Physical Data; Collection and Examination of Juridical Data on Land; Announcement of Physical and Juridical Data and Confirmation, Confirmation of Rights Conversion and Granting of Rights, Registration of Certificates and Issuance of Certificates.

Furthermore, the land registration system for the issuance of Land Ownership Certificates that must be passed in order to issue sporadic land ownership certificates goes through several stages as determined in Chapter III of Regulation No. 3/1997, including Surveying, Collection and Research of Land Juridical Data, Announcement of Physical and Juridical Data, and Verification, Confirmation of Conversion and Recognition of Rights, Rights Bookkeeping, and Certificate Issuance.

Therefore, in principle, there should be little to no errors in Article 35 of Regulation No. 20/2020 in the issuance of Ownership Certificates, whether issued systematically or sporadically. This is due to the detailed process stages carried out by the National Land Agency.

However, even though the National Land Agency has issued Land Ownership Certificates through a fairly lengthy and detailed procedure, the Certificates are still subject to cancellation through the State Administrative Court or the General Civil Court. This is because the publication system in Indonesia uses a negative publication system, but with following positive elements, so the evidential power of certificates in Indonesia is not absolute but strong. Therefore, land ownership certificates serve as strong evidence of land ownership. The purpose of the certificate as a strong evidence tool is stated in Article 32 of Government Regulation No. 24/1997, which states: "The certificate is a strong evidence of

rights, in the sense that as long as it cannot be proven otherwise, the physical and juridical data stated in it must be accepted as true. Of course, the physical and juridical data in the certificate must correspond to the data in the land book and the relevant survey document, as the data is taken from those documents."

With the existence of this provision, it means that land ownership certificates can still be revoked, which is why many people are filing for revocation of certificates because the regulation allows for it. As a result, there are still many disputes occurring due to the use of a negative-positive publication system in Indonesia. This provision opens the opportunity for others to sue those who already have certificates.

Article 19 of the Basic Agrarian Law (UUPA) stipulates that in order to ensure legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia. This led to the issuance of Government Regulation Number 10 of 1961 which regulates land registration. This regulation governs the process of land registration in Indonesia and its legal consequences, with the end result being the issuance of a land certificate called a sertifikat tanah.

With this Negative system, it opens up the opportunity for others to challenge those who already have certificates, causing uncertainty in the community to register their land because it does not guarantee absolute certainty of land rights. If a person's name is already registered in the land book as the rights holder, their rights can still be disputed as long as the objections provide strong enough evidence. This negative system has a weakness in that the government does not guarantee the truth of the contents of the public registers held in the registration of rights.<sup>24</sup>

With the long process that the National Land Agency (BPN) goes through in issuing Land Ownership Certificates, the publication system used by the Indonesian government should be the Positive Publication System, where the state guarantees that the registration is correct. This means that whoever is registered in the land book obtains what is called an unchallengeable right, except in cases of forgery. Countries that adhere to this positive publication system include Australia, Singapore, Germany, Switzerland, and Commonwealth countries. It is evident that countries daring enough to implement a

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<sup>24</sup> Samun Ismail, *Hukum Administrasi Pertanahan*, Yogyakarta: Graha Ilmu, 2013, hlm. 122.

positive land registration publication system are advanced nations that have achieved land administration orderliness<sup>25</sup>.

Therefore, the State (in this case the National Land Agency) is responsible for providing protection to parties affected by the cancellation of certificates, both original land owners and parties who have obtained the certificate legally from the National Land Agency. This protection can take the form of compensation or replacement for any losses suffered by the parties affected by the cancellation of the certificate.

## **D. CONCLUSION AND RECOMMENDATION**

### **A. Conclusion**

Based on the previous discussion, a conclusion can be drawn that the Certificate of Land Ownership as proof of ownership rights cannot guarantee and provide protection to the holders. This is because the National Land Agency, as one of the authorized officials given authority by the Government, has not been able to provide legal certainty over the products (in this case the Certificate of Land Ownership) issued by the agency, even though the issuance of the certificate through a lengthy and very difficult procedure.

In addition, due to the continued adoption of negative publication systems by the Indonesian government, the process of revoking land ownership certificates is likely to continue to occur both in the State Administrative Court and in the General Civil Court at the District Court. As a result, holders of land ownership certificates will never truly have full assurance of their rights to the land, even with their land ownership certificates.

### **B. Recommendation**

It is recommended that the government reconsiders the current Publication System related to the issuance of property ownership certificates. This is necessary to ensure legal protection and certainty for the holders of property ownership certificates.

In addition to that, the State in this case, the National Land Agency (BPN) as the authorized official to issue Land Ownership Certificates, is responsible for providing protection to parties affected by the cancellation of certificates. This protection may come

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<sup>25</sup> Giandiva Fahlika Erizal, Penerapan Sistem Pendaftaran Tanah Yang Menggunakan Stelsel Negatif Bersendikan Positif Pada Objek Tanah Yang Telah Terdaftar Di Kantor Pertanahan, *Jurnal Notarius* Program Studi Kenotariatan Pascasarjana UMSU Vol. 2, No. 1, Januari-Juni 2023, e-ISSN : 2598-070X ISSN : 2089-1407. Hlm. 152

in the form of compensation or reimbursement for any losses that may be experienced by the affected parties due to the cancellation of the certificate.

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