

A Juridical Review Of Administrative Defects In The Process Of Issuing Replacement Certificates Of Land Ownership Rights

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Abstract

A Certificate of Ownership serves as strong legal evidence of land ownership under the Basic Agrarian Law and Government Regulation Number 24 of 1997 concerning Land Registration. In practice, land certificates may be lost, damaged, or affected by administrative defects requiring the issuance of replacement certificates. Legal issues arise when the issuance process itself contains administrative defects, potentially creating land disputes and legal uncertainty.

This study aims to analyze the legal process for issuing replacement certificates of ownership where administrative defects are identified and to examine the practical obstacles encountered during the issuance process. This research applies normative legal research supported by empirical data through statutory, conceptual, and empirical approaches.

The findings indicate that replacement certificates may only be issued after fulfilling all administrative requirements stipulated by Indonesian land registration laws. Administrative defects such as inaccurate physical or juridical data, falsified documents, incomplete requirements, or procedural violations may result in cancellation of the original certificate before issuing a replacement. Obstacles include incomplete applicant documentation, discrepancies in land registration books, falsification of records, and administrative costs. Strengthening administrative supervision and improving land registration procedures are essential to ensure legal certainty and legal protection.

Keywords: Replacement Certificate, Administrative Defect, Legal Certainty, Land Ownership.

INTRODUCTION

Land holds a vital position in the lives of the Indonesian people; beyond its economic value, it also serves a social function, as mandated by Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The rising public demand for land correlates with an increased potential for land disputes, necessitating a land administration system capable of ensuring legal certainty regarding land rights. Consequently, the government established a land registration system—facilitated by the issuance of land right certificates—to serve as an instrument for the legal protection of rights holders.

Pursuant to Article 19 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), land registration is conducted to ensure legal certainty through activities such as surveying, recording land rights, registering the transfer of rights, and issuing certificates as proof of rights. These provisions are further regulated by Government Regulation Number 24 of 1997 concerning Land Registration, which establishes the certificate as strong evidence regarding both the physical and juridical data of a parcel of land.

Despite possessing strong evidentiary value, a land certificate does not constitute absolute proof. In practice, various issues still arise, such as duplicate certificates, document forgery, measurement errors, administrative mistakes, and the loss of certificates due to theft or the negligence of the rights holder. Such circumstances require the rights holder to apply for the issuance of a replacement certificate from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, in accordance with the procedures stipulated in Articles 57 through 60 of Government Regulation Number 24 of 1997.

Legal issues become increasingly complex when administrative defects are discovered during the process of issuing a replacement certificate. Such defects may include incomplete requirements, discrepancies regarding the rights holder's identity, inconsistencies between physical and juridical data, the use of forged documents, or errors in land administration procedures. If these issues are not properly resolved, the issued certificate risks being revoked—whether through administrative mechanisms or court rulings—thereby undermining the primary objective of land registration: to ensure legal certainty.

This study addresses two research questions: the process for issuing a replacement certificate of land ownership (Right of Ownership) in cases of loss involving administrative defects, and the obstacles encountered during the issuance process. Examining these issues is crucial, as they directly concern the protection of public land rights, the effectiveness of land administration, and legal certainty within the national land registration system.

METHODS

This study is a normative legal study supported by empirical research. Normative legal research is employed to examine the legal norms governing the issuance of replacement certificates for land ownership rights, while empirical research is conducted to gain insight into the practical implementation of these provisions at the Land Office.

The approaches employed in this study comprise the statute approach, the conceptual approach, and the empirical approach. The statute approach involves identifying and reviewing relevant legal provisions governing land registration, the issuance of replacement certificates, the cancellation of certificates, and the authority of the National Land Agency. The conceptual approach is used to analyze legal theories concerning legal certainty, legal protection, and legal utility, while the empirical approach is conducted through interviews with authorized officials at the Denpasar City Land Office.

The legal materials utilized include primary legal sources, namely Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997

concerning Land Registration, the Civil Code, and various implementing regulations in the land sector. Secondary legal materials were obtained from scholarly books, legal journals, prior research findings, and the opinions of agrarian law experts. Tertiary legal materials consist of legal dictionaries, legal encyclopedias, and various other supporting documents.

Legal materials were gathered through library research, involving the examination of various laws and regulations, scholarly literature, and court rulings concerning disputes over land title certificates. To reinforce the normative analysis, interviews were also conducted with officials from the Land Office regarding the procedures for issuing replacement certificates and the obstacles encountered during implementation. Subsequently, all legal materials were analyzed qualitatively using a descriptive-analytical method to formulate a comprehensive legal argument addressing the issues under study.

RESULTS AND DISCUSSION

Process of Issuing a Certificate of Replacement for Lost Land Ownership Rights if There is an Administrative Defect

Land registration is an instrument established by the state to guarantee legal certainty regarding land ownership rights. Through the land registration system, each parcel of land acquires a legal identity recorded in the land register and a certificate, which serves as evidence of rights possessing strong evidentiary value. Therefore, the issuance of any certificate—including a replacement certificate due to loss—must be carried out in accordance with procedures prescribed by laws and regulations to prevent future disputes.

Government Regulation Number 24 of 1997 provides the legal basis for the issuance of replacement certificates. Articles 57 through 60 stipulate that a replacement certificate may only be issued upon the application of the right holder whose name remains recorded in the land register, or—in the event of the right holder's death—upon the application of their lawful heirs. Prior to issuing a replacement certificate, the Land Office is required to conduct an administrative review of all submitted documents to ensure the absence of administrative defects or disputes regarding the land in question.

If, during the examination process, discrepancies are found regarding physical data, legal data, the identity of the right holder, the use of invalid documents, or indications of administrative forgery, the process of issuing a replacement certificate cannot proceed until the issues have been clarified and resolved. This measure implements the principle of prudence in land administration, ensuring that every state administrative product is issued based on accurate data that is legally defensible.

Stages for Issuing a Replacement Certificate of Land Ownership Title for Lost Certificates

The issuance of a replacement certificate constitutes a form of land registration data

maintenance aimed at providing legal protection to land rights holders in cases where the certificate is lost, damaged, destroyed, or utilizes an obsolete form that is no longer valid. These provisions are explicitly set forth in Articles 57 through 60 of Government Regulation Number 24 of 1997 concerning Land Registration. They authorize the Land Office to issue a replacement certificate once all administrative requirements have been deemed complete and in compliance with applicable legal regulations.

Based on research findings, the process for issuing a replacement certificate begins with the submission of an application to the Land Office by the right holder or their authorized representative. The application must be accompanied by the applicant's identification, a power of attorney (if applicable), a loss report from the Indonesian National Police, a sworn statement regarding the loss, proof of Land and Building Tax (PBB) payment, and other supporting documents as required by prevailing regulations. Subsequently, officials examine the land register, survey records, registration maps, and other legal data to verify that the applicant is the legitimate right holder.

The next stage is the announcement regarding the plan to issue a replacement certificate via mass media, as stipulated in Article 59 paragraph (2) of Government Regulation Number 24 of 1997. This announcement is intended to provide an opportunity for any other party claiming a legal interest in the land parcel in question to submit an objection within thirty days from the date of the announcement. If no objection is raised within that period, or if any objection raised is deemed unfounded, the Head of the Land Office may issue the replacement certificate.

The procedure demonstrates that the issuance of a replacement certificate is not merely an administrative act but also serves a function of legal protection for both the right holder and third parties. Through the public announcement mechanism, the state seeks to prevent the issuance of certificates that could potentially give rise to future disputes. Therefore, every stage must be carried out meticulously, transparently, and accountably to ensure the realization of the principle of legal certainty in land administration.

Juridical Analysis of Administrative Defects in the Issuance of Replacement Certificates

An administrative defect in land law refers to a situation where a state administrative decision is issued without satisfying the procedural or substantive requirements stipulated by statutory regulations. In the context of issuing a replacement land certificate, such a defect may take the form of an error regarding the identity of the right holder, a discrepancy between physical and juridical data, the use of invalid documents, errors in the land register entry, or a failure to comply with the public announcement procedures mandated by Government Regulation Number 24 of 1997.

This study finds that a primary cause of administrative defects is the incompleteness of

documents submitted by applicants. In practice, numerous applications are submitted without adequate proof of ownership, or there are discrepancies between civil registry documents and the data recorded in the land register. Such conditions prolong the verification process and create a potential for disputes if a thorough examination is not conducted. Furthermore, the study reveals issues such as the absence of corresponding certificate data in the land register, the use of certificate forms not issued by the National Land Agency, and suspected forgery of documents used as the basis for certificate issuance. These circumstances constitute serious administrative defects, as they carry the potential to invalidate the certificate through either an administrative decision or a court ruling.

From the perspective of state administrative law, every state administrative decision must adhere to the principles of legality, due care, legal certainty, and transparency. Failure to comply with any of these principles deprives the issued administrative decision of its legal legitimacy, rendering it liable to annulment through either administrative mechanisms or the State Administrative Court (PTUN). Consequently, the process of verifying data prior to the issuance of a replacement certificate constitutes a crucial stage in upholding the validity of a land administration instrument.

Obstacles in Issuing Replacement Certificates for Lost Land Ownership Titles Involving Administrative Defects

The issuance of replacement land certificates does not always adhere to the procedures stipulated in Government Regulation Number 24 of 1997 concerning Land Registration. Research findings indicate that various obstacles—stemming from administrative, public, and institutional factors—impede the effectiveness of land services. These obstacles not only prolong the application processing time but also carry the potential to trigger legal disputes, thereby affecting the certainty of land rights.

The first obstacle is the incompleteness of the administrative documents submitted by the applicant. In practice, there are still applicants unable to provide a complete set of ownership documents—such as updated personal identification, a police report regarding lost documents, a sworn statement, or proof of land possession that aligns with the data in the land register. These discrepancies require Land Office officials to re-examine all documents, thereby prolonging the certificate issuance process.

The second obstacle is the discrepancy between physical data and legal data held in land administration records. Certain applications reveal differences—regarding land area, parcel boundaries, the identity of the rights holder, or the title number—between the existing certificate and the land register. Such discrepancies may stem from past administrative recording errors, data alterations made without following proper procedures, or errors during the land parcel measurement

process. Consequently, the Land Office is required to conduct a re-examination or even a re-survey to verify the data's validity before a replacement certificate can be issued.

The next challenge involves suspected land document forgery. Investigations have revealed applications for replacement certificates based on documents inconsistent with the official records of the National Land Agency; these include the use of certificate forms not issued by the authorized agency as well as documents that have been tampered with. Consequently, the processing of such applications must be suspended pending further examination—whether through administrative procedures or criminal law enforcement—should elements of document forgery be detected.

In addition to administrative hurdles, the study identified obstacles related to costs and announcement procedures. Article 59 of Government Regulation Number 24 of 1997 mandates that the planned issuance of a replacement certificate be announced in a daily newspaper. The cost of this announcement represents a financial burden for the applicant; in practice, this often delays the processing of applications, particularly for individuals with limited financial means.

Thus, the challenges associated with issuing replacement certificates are fundamentally influenced not only by normative aspects but also by the quality of land administration, the integrity of land data, human resource readiness, and the level of public awareness regarding administrative requirements. Therefore, efforts to improve land services must be comprehensive to ensure that the objectives of land registration—namely, achieving legal certainty—are optimally realized.

CONCLUSION

Based on the research findings and discussion, it can be concluded that the process of issuing a replacement certificate for lost land ownership rights—in cases involving administrative defects—is carried out in accordance with the mechanisms stipulated in Government Regulation Number 24 of 1997 concerning Land Registration. Prior to the issuance of a replacement certificate, the Land Office is required to verify physical data, juridical data, the land register, and the rights holder's identity, as well as to issue a public announcement. If administrative defects are discovered—such as data discrepancies, document forgery, procedural errors, or other administrative violations—the issuance of the replacement certificate cannot proceed until the matter is resolved in accordance with applicable legal provisions.

Key obstacles in the issuance of replacement land certificates include incomplete applicant documentation, data discrepancies between the certificate and the land register, the use of invalid documents, and high administrative costs—including fees for public announcements in the mass media. These issues prolong the service process and create a potential for land disputes if thorough administrative verification is not conducted.

Suggestion

First, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency needs to enhance oversight of the process for issuing replacement certificates by optimizing the land data digitization system, thereby ensuring that all physical and legal data can be verified with greater accuracy prior to certificate issuance.

1. Secondly, the Land Office needs to improve the quality of public services by simplifying administrative procedures, enhancing human resource competence, and strengthening document verification systems to prevent administrative errors that could lead to the invalidation of land certificates.
2. Thirdly, the public—as holders of land rights—needs to raise legal awareness by properly safeguarding land documents, promptly reporting any loss of certificates in accordance with established procedures, and ensuring that all documents submitted for the issuance of replacement certificates are valid and accurate, thereby supporting the maintenance of orderly land administration.

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