



# Cancellation of Land Certificate Based on the Court Decision in Indonesian Legal System

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### **Abstract**

Judge's decision has many benefits in achieving legal certainty, including in the case of the cancellation of certificate of ownership, but for the cancellation of the certificate must be canceled through the Land Office, because legally formally the cancellation is not enough with a court decision only, based on the Regulation of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases there are rules on how to revoke certificates of ownership based on court decisions that have permanent legal force. Object of research is how the to cancel the certificates of land based on court decisions that have permanent legal force, then the legal status of certificates of ownership rights that have not been canceled based on decisions that have permanent legal force. The cancellation certificates of land based on court decisions that have legal force must still be carried out based on the qualifications of Article 49 of Law Number 11 of 2016. The legal reason for refusing to cancel the certificate is to be qualified according to Article 49 paragraph 2 and Article 58 of Law Number 11 In 2016. The status of the certificate that has not been canceled, then legally formally it still belongs to the party listed on the certificate so that legally transferring rights can still be carried out on behalf of the parties listed on the certificate. The suggestion in this research is that the process of canceling the certificate is by requesting the determination of the court to cancel the certificate contained in the object of the case so that a formal juridical cancellation can be carried out at the Land Office based on Law No. 11 of 2016.

**Keywords:** Cancellation; Land Certificate; Court Decision

### **Introduction**

The state of Indonesia is a state of law. The rule of law in principle requires that all actions of the authorities have a clear legal basis or good legality based on written law, as well as unwritten law. This is related to the principle of legal certainty. Legal certainty is needed to provide legal protection to the community, because legal certainty will create the community in living their lives to be more orderly. Therefore, the role of the law is very necessary in achieving the rule of law so that life in an organized society based on the applicable laws and regulations in the community, this is part of the purpose of the law itself in creating a balanced situation by complying with the regulations applies, whereby the rule of law in the life of society is achieved an orderly law.

So that the achievement of the rule of law in people's lives, it will also create the fulfillment of the legal system created by the government as the executor of state power.<sup>1</sup> In connection with legal certainty, one of the things needed by the community in their lives is the need for land as a place to live for the community, because these needs are very much needed as an effort to continue people's lives in an area. The need for land is given a land rights, as a form of legal relations between the state and the community, and the acquisition of land rights is regulated in the legislation in force to obtain legal protection and legal certainty.

The rights to land acquired are owned by the community regulated in Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations explaining:

The land rights referred to in Article 4 paragraph (1) are:

- a. Right of ownership,
- b. Cultivation Rights,
- c. Building rights,
- d. Usage rights,
- e. Lease rights,
- f. Right to open land,
- g. The right to collect forest products,
- h. Other rights not included in the rights mentioned above that will be determined by law and rights that are temporary as stated in Article 53

Property rights are rights that are regulated based on regulations in writing, as rights that can be owned by Indonesian citizens, so that community ownership can carry out their lives in the form of a residence. Therefore property rights are the strongest rights in the basic agrarian law, but to obtain the above rights, including ownership rights, can be done by registering land in the competent authority, namely the National Land Agency.<sup>2</sup> Land registration is very beneficial for the community to obtain land rights as regulated in the basic agrarian law, in connection with that, Sahnun explains the meaning of land registration, which is as follows: Land registration is a series of activities carried out by the government continuously, continuously and regularly, including collection, processing, bookkeeping, presentation and maintenance of physical and juridical data in the form of maps and lists, regarding land parcels and apartment units, including granting of certificates as proof of rights for parcels of land for which there are rights and property rights.

Based on the above understanding, that the core of the most important land registration is the effort in maintaining physical data and juridical data, where physical data relates to the boundaries and conditions in the field regarding land, whereas juridical data is related to the legal status of the land. itself, whether there is a transfer of rights, the abolition of rights and so on. Therefore, speaking of the product of land registration in the form of a certificate of evidence, the agrarian main law does not mention the name of the certificate of land rights. The certificate of proof of land rights that is registered is called a certificate, that is a copy of the land book and the measuring letter after being sewn together together with a cover paper in the form of which was determined by the Minister of Agrarian Affairs.

Pursuant to Article 1 number 20 of Government Regulation Number 24 of 1997, it explains that certificates are proof of rights as referred to in Article 19 paragraph (2) letter c of the agrarian main law

<sup>1</sup> Dominikus Rato, *Philosophy of Law Finding and Understanding Law*, Laksbang Presindo, Yogyakarta, 2010, page 9

<sup>2</sup> Achmad Ali, *Revealing Legal Theory and Legal Theory (Judicial Prudence) including Interpretation of the Law (Legis Prudences)*, Kencana, Jakarta, 2009, page 31

for land rights, management rights, wakaf land, ownership rights for flats and mortgages, each recorded in the relevant land book.

As for the registered land rights as described above, the National Land Agency can issue certificates of land rights, in addition to having the authority to issue certificates of land rights. The National Land Agency also has the authority to settle land cases to carry out court decisions that have permanent legal force.

The authority of the National Land Agency to resolve land cases is regulated in the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 11 Year 2016 Regarding the Settlement of Land Cases (hereinafter referred to as *Perkaban* Number 11 of 2016), in which there are obligations of the National Land Agency to implement court decisions if requested by those who have obtained court decisions that have permanent legal force.<sup>3</sup>The regulation is regulated in Article 49 to Article 60 of Law Number 11 of 2016, the second part concerning the Implementation of Court Decisions, as explained by Article 50 of Law Number 11 of 2016 that: "The court's decision which has permanent legal force, relating to the issuance, transfer, cancellation of land rights and or cancellation of the determination of abandoned land is carried out based on the request of the interested parties through the local Land Agency Office.

With an application made by an interested party for the cancellation of land rights, the National Land Agency must implement a court decision that has permanent legal force as explained by Article 58 paragraph (1) of Law No. 11 of 2016 explaining that: "Implementation of a court decision that has legal force must be carried out unless there are valid reasons for not implementing it. However, related to the process of implementing a court decision that has permanent legal force, it has not provided legal certainty to those who have made requests for revocation of land rights to the National Land Agency. Whereas the applicant already has a court decision that has permanent legal force to revoke a certificate of land rights, whereas the National Land Agency is obliged to cancel the certificate if requested by the applicant.

In terms of rules based on Article 58 paragraph (1) of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 11 Year 2016 Regarding the Settlement of Land Cases (hereinafter referred to as *Perkaban* Number 11 of 2016), explaining that: "The implementation of decisions that have been committed by the law must still be carried out unless there is a valid reason for not implementing them" In this connection, this raises questions by researchers, to look at the process of legally de-binding certificate of ownership in the Land Office, related to dealing with a decision as described above, in which the decision is not in the form of a decision stating that the certificate is invalid or not paralyzed, so that the ruling makes the certificate of ownership status in the ruling unclear.

Therefore, the authors are interested in seeing the process of revoking certificates of ownership based on decisions that have permanent legal force at the Land Office as the object of this study, hereby taking the title of research, namely Cancellation of Land Certificate Based on The Court Decision in Indonesia Legal System, Based on the above, the writer formulates the following problems How is the procedure and regulation in cancellation of land certificate in Indonesian Legal System? What about the legal status of the land certificate if it has not been canceled based on the court decision?

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<sup>3</sup> Boedi Harsono, *Indonesian Agrarian Law, History of the Establishment of the Basic Agrarian Law Content and Implementation*, Djambat, Jakarta, 2008. page. 72

## Research Method

In this study conducted by empirical juridical research methods. Related to the above, based on the opinion of Ali Zainuddin Ali, explaining empirical juridical research with the understanding that: The empirical research method is an approach by looking at the legal realities that occur in society. In the empirical juridical method there are empirical symptoms that occur in society. The empirical symptoms observed are those that occur in the field, then also compare them with the applicable provisions in the community, especially provisions such as laws and regulations, so that it can be seen the difference between the existing rules and events in the field.<sup>4</sup>

Every action needs to be regulated in law, and the law regulated in these rules is a positive law that applies in a country, and it is a form of characteristic of the rule of law. The characteristics of the rule of law also have the principle of legality as a principle that characterizes the rule of law.<sup>5</sup> The principle of legality is a principle that emphasizes legal certainty in regulating the actions of legal subjects, where such arrangements are regulated in writing or contained in a statutory regulation, as well as the revocation of certificates of land rights, then the procedure must be regulated in statutory regulations. Arrangements regarding the cancellation of land rights are regulated in various provisions in force in Indonesia to guarantee legal certainty. Based on considerations in the Regulation of the Head of the National Land Agency No. 11 of 2016 concerning Settlement of Land Cases,

The cancellation of Land Rights aims to provide legal certainty or control, ownership, use and use of land in Indonesia. Based on this information, the purpose of revoking land rights is inseparable from efforts to achieve legal certainty for the party making the request to cancel the certificate both because of administrative defects and to carry out a court decision that has permanent legal force.<sup>6</sup> And also the cancellation of land rights can provide legal protection to applicants who have obtained permanent legal force, so that in revoking land rights, in addition to being useful in formulating strategic policies for resolving land cases in Indonesia, it also provides legal protection to those who make requests for cancellation, because by the annulment of the right to land is the status of the land in dispute by the parties can be made clear by law, where the cancellation administratively in the National Land Agency is important to do, both because of administrative defects and due to carry out court decisions that have permanent legal force.

### *Procedure and Regulation in Cancellation of Land Certificate Based on The Court Decision In Indonesian Legal System*

#### 1. Regulation For Cancellation of Land Certificate

Regulation for cancellation of of land certificate rights based on a court decision that has permanent legal force, is regulated in Regulation Number 11 of 2016 concerning Settlement of Land Cases. Cancellation of certificates of ownership or land rights is an administrative process at the National Land Office, as a form of cancellation carried out to implement a court decision that has permanent legal force. This is done by the National Land Agency to provide legal certainty related to the status of land certificates that have been decided based on a court decision. The effort to revoke a certificate of land at the Land Office is an effort to obtain legal certainty for the applicant, this is because the certificate of land rights is a product of the National Land Agency. So that on the basis of a court decision that has legal force remains an absolute requirement to conduct the cancellation process at the Land Office.

<sup>4</sup> Ali Zainuddin Ali, *Legal Research Methods*, Sinar Grafika, Jakarta, 2009, page 78

<sup>5</sup> Boedi Harsono, *Indonesian Agrarian Law, History of the Establishment of the Basic Agrarian Law and Its Implementation*. Djambatan, Jakarta, 1997, page 56

<sup>6</sup> Moh. Taufik Makarao, *Principles of Judicial Power*, PT Bineka Cipta, Jakarta, 2009, page 97

## 2. Procedure to Cancel Land Certificate

### a. Administration Process

With regard to the cancellation of the land certificate based on a court decision that has permanent legal force, the applicant is the party that wins the case through the decision he has obtained. The cancellation applicant is directed to the receipt for the documents as requirements that must be completed by the applicant, as follows:

1. Photocopy of the identity of the applicant or a photocopy of the identity of the proxy and power of attorney if authorized/
2. photocopy or identity of the applicant is needed, to find out who will make the application, or a power of attorney from the authorized person who takes care of the interests of the applicant.
3. Application letter affixed with a stamp The application shall be made in writing by containing the request addressed to the Head of the Land Office to request the cancellation of the certificate by attaching the necessary documents as conditions that must be fulfilled to be submitted to the receipt of documents at the Land Office.
4. An official copy of a court decision that has permanent legal force which is legalized by an authorized official.
5. Based on interviews by the author with the Head of the Solok Conflict and Land Dispute Handling Subsection, that in this case, the copy of the decision needed is the original copy, to be submitted to the document receiving window.
6. Statement from the Court, that the decision has permanent legal force statement issued by an authorized court official stating that the decision has permanent legal force, so that on the basis of the statement, the decision is given to the Office of Land Document receipt.
7. Minutes of Execution This is necessary in the event that the case decision requires the execution

### b. Cancellation Land Certificate Land At Land Office Based on Court Decision

1. Research the Application File  
Dispute Handling Subsection, Land Conflict checks the files that have been received from the service / receipt section of the document, if the documents are incomplete and deemed necessary to attach, or the documents still do not meet the requirements, then notification will be made through administrative services to the applicant, if documents are complete, then the next process can be done.
2. Research and Processing of Court Decision Data  
At this stage the court decision data is processed such as a statement made by the court, such as a Minutes of Land Execution from the Court and also a Certificate that the decision has permanent legal force, the letter given is in official or original form, so that the document is the basis to carry out the continuation that the court decision which has legal force remains as the basis for the cancellation of
3. Field check in case needed  
Field checks are carried out if necessary, that the land execution process has been carried out in the field based on a court decision that has permanent legal force. But at this stage, if deemed necessary and this activity needs to be coordinated in advance to the Section of Problem Handling and Control of disputes, so that at this stage it is done if it is necessary to carry out field checks.
4. Mediation degree

At this stage the Land Agency has the role to mediate to achieve peace before the ruling is overturned at the National Land Office, at this stage, the Land Office tries to mediate between the applicant and the losing party in the lawsuit, so that before the cancellation of the certificate, the purpose of peace work first, and the Land Office looks for a solution behind the name of the certificate or the resolution of the certificate to be canceled.

The mediation stage is a dispute resolution that is outside the procedures in the National Land Agency, meaning that the parties agree not to proceed with the cancellation of the certificate of ownership, because other solutions other than cancellation can be made by the applicant so that the status of the certificate does not have to be canceled, because peace is more better than having to proceed with a dispute.

5. Compilation of Minutes and Data Processing

Preparation of Minutes and data processing that is related to the preparation of attachments that will be used as data that will be canceled, before the analysis of the court decision, so that the results of the preparation of the minutes and processing of this data will be submitted to the Problem Handling and Dispute Control Section.

6. Making a Case Resolution

At this stage, it will be determined whether the settlement of the case by conducting a mediation method or by continuing to cancel the submission submitted by the applicant who has attached a court decision that has permanent legal force. if the parties agree by way of mediation, the land office will call on the parties, and the parties agree to make peace before the certificate is canceled, so that the outcome of the peace is made a statement, that will revoke the cancellation request that has been done, if by mediation cannot be taken, the decision must be continued by the land office until finally the cancellation decision is issued

*Legal Status of the Land certificate If It Has Not Been Canceled Based on the Court Decision*

Based on the above understanding, that the State Administration Decree contains a decision specifically addressed to individuals, where the decision has a legal effect on the intended individual, in this case can be in the form of granting rights and authorities or revocation of rights and authorities, and all of these are actions conducted by state administrative officials, one of which is the Land Office which has the authority to issue certificates of land rights. and this can be known as *beschikking*.<sup>7</sup>

Regarding *beschikking*, according to H.D van Wijk / Willem Konijnenbelt, explaining that *beschikking* is a government decision in which matters contained in it are concrete and individual (not intended for the public) and has always been used as the main juridical instrument of government. This means that a State Administration Decree has not been canceled, then the Decree is considered to be still valid in a formal legal manner before there is a cancellation and an attempt to prove that the product of a state administrative officer is invalid. Then the cancellation of the product from the administrative officer needs to be done, otherwise the product will legally remain in force and is considered valid.<sup>8</sup>

With this understanding, the products of the National Land Agency constitute the State Administration Decree, in which the products of the National Land Agency consist of certificates of land rights, such as certificates of ownership, certificates of land use rights, certificates of use rights, and certificates of use rights, certificates of flat units. The nature of the certificate of land rights itself is in accordance with the nature of the State Administrative Decree namely concrete and final as described in Article 1 number 9 of Law Number 51 Year 2009 Amendment of Law Number 9 of 2004 concerning the

<sup>7</sup> Adrian Sutedi, *Certificate of Land Rights*, Sinar Grafika, Second Printing, Jakarta 2012, page 43

<sup>8</sup> Muh. Ikhsan Saleh and Hamzah Halim, *Politics of Land Law*, Makassar, Pukap Indonesia, 2009, page 63

State Administrative Court.<sup>9</sup> Likewise also in terms of the strength of the certificate of ownership which has perfect legal force, and is placed as the most powerful land rights, hereditary as stipulated in Article 20 of the Basic Agrarian Law. Certificate of ownership rights as a strength of proof that shows who has the right to land.<sup>10</sup>

In connection with the cancellation of the certificate, that the cancellation of the certificate of land rights is not enough through a court decision only, because the court decision which has legal force still does not necessarily cancel the certificate of land rights, so it is necessary to cancel it administratively at the Land Office, because the certificate of land rights is a product of the National Land Agency. This means that the certificate which has not been canceled through the Land Office is still in the name of the party that is legally defeated in a formal manner. Therefore, as a result of the law having not been revoked from the certificate of ownership in this case, then the certificate of the object of the case legally can still be transferred rights to other parties.

Then the legal consequences arising if the certificate is canceled based on a court decision that has permanent legal force is, the certificate is deemed to be non-existent, and the juridical data of the canceled certificate will also change. This is in accordance with the information given by the Kasubsi of the Conflict and Land Dispute Case Solok Regency which said that the certificate which was revoked based on a court decision that had permanent legal force, was considered to have no certificate on the land, so, the juridical data from the certificate also changed, and decisions that have permanent legal force can be used as a basis for the right to register land.<sup>11</sup>

Efforts made by the Land Office after the certificate is canceled based on a court decision that has permanent legal force, the Land Office will notify to give the title certificate of land that has been canceled to the parties to the defendant, because the certificate is no longer valid and this is a form of administrative order. In this regard, the revocation of certificates of land rights based on decisions that have legal force can still cause legal consequences, where the certificates are deemed no longer exist and the revocation of certificates of land rights based on court decisions that have permanent legal force, where the cancellation is carried out in Authorized Land Office.

## **Conclusion**

1. The procedure the Land Office is an administrative process to carry out legal certainty from the decision of the legal court. It must still be processed by taking into account the qualifications of Article 49 paragraph 2 Law No. 11 of 2016 concerning Settlement of Land Cases.
2. The court decision which has legal force still does not immediately cancel the certificate of land rights, if the certificate has not been canceled at the Land Office, then the certificate is still legally on behalf of the party whose name is recorded in the certificate, based on the principle of *presumptio ius causa*, or the principle of legal presumption, a state administrative decision is still considered valid before there is a cancellation of the decision.

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<sup>9</sup> Djenal Hoesno Koesomahatmadja, *Principles of State Administration Law Volume 1*, Alumni, Bandung, 2009, page 74

<sup>10</sup> Munir Fuady, *Contemporary Sociology, Interaction of Power, and Society*. Citra Aditya Bakti, Bandung, 2007, page 73

<sup>11</sup> Eddy Ruchiyat, *National Land Politics Until the New Order*, Bandung, PT Alumni, 2006, page 51

### **Suggestion**

1. The Land Office must always pay attention to provisions in Regulation Number 11 of 2016 concerning Settlements of Land Cases, especially in the case of revocation of certificates of ownership based on court decisions that have permanent legal force by taking into account the provisions of Article 49 paragraph 2 of Regulation Number 11 of 2016 concerning Settlement of Cases The land. So that the cancellation process can later be quality and based on applicable rules.
2. To the party who wins in the case it is better to request a decision to be made to the court first, bearing in mind that the ruling of the decision is not firm and is not qualified Article 49 paragraph 2 Law No. 11 of 2016 concerning Settlement of Land Cases, so that the cancellation process at the Land Office will not occur later.

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