

RESPONSIBILITY OF THE HEAD OF THE NATIONAL LAND AGENCY FOR THE ISSUANCE OF LAND OWNERSHIP CERTIFICATES WITH ADMINISTRATIVE LEGAL DEFECTS

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Abstract

This paper delves into the responsibility of the head of the national land agency in handling administrative defects in Land Ownership Certificates (SHM) within the purview of administrative law. Employing a normative juridical research method, the study discerns that deficiencies in SHMs arise from various factors, whether intentional or unintentional. Such shortcomings may manifest in the data supplied by applicants during the certificate creation process or result from errors, both intentional and unintentional, in the identification of objects and subjects. Object-related discrepancies include inaccuracies in land mapping and measurement, while subject-related errors involve misinformation provided by applicants. This research aims to elucidate the origins of administrative defects in SHMs and underscores the pivotal role of the head of the national land agency in rectifying and preventing such issues. By understanding these factors, this study contributes to the broader discourse on enhancing the efficacy and reliability of land ownership certification processes, emphasizing the need for proactive measures to address and mitigate administrative defects.

Keywords: Certificate of Ownership, Legal Defects, Responsibility

1. INTRODUCTION

Land is an essential need for every individual, extending beyond their lifetime as even in death, individuals require a plot of land. Functioning as a source of life, the significance of land in existence is dual-fold, serving as both a social asset and a capital asset. As a social asset, land acts as a binding element within Indonesian society, fostering cohesion among its members. As a capital asset, land is a pivotal factor in development, and its utilization should be maximized for the equitable welfare of the population while ensuring its sustainability (Setiabudi, 2013).

The land policy in Indonesia is rooted in Article 33, Paragraph (3) of the 1945 Constitution, stating that "land, water, and natural resources contained therein are controlled by the State and used to the maximum for the prosperity of the people." In line with this, the Basic Agrarian Law, Law Number 5 of 1960 (UUPA), was enacted as positive law, forming the basis for land regulations in Indonesia.

Various regulations derived from the UUPA were subsequently enacted, including Government Regulation Number 10 of 1960, which was later replaced by Government Regulation Number 24 of 1997 concerning Land Registration. Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 3 of 1997 outlines the Implementation Provisions of Government Regulation Number 24 of 1997 on Land Registration to establish legal certainty in land matters. Land registration serves not only to protect the owner but also to determine the status, ownership, rights, and usage of a parcel of land. The clarity of registered rights, the subject of rights, and the object of rights are legal certainties sought through land registration, resulting in the issuance of a certificate as proof of ownership (Mujiburohman, 2018).

Article 19, Paragraphs (1) and (2) of the UUPA stipulate that the consequence of registering land rights is the issuance of a certificate, commonly known as a land certificate. Land certificates play a crucial role in establishing legal order in land matters and facilitating economic activities within society. These certificates are official evidence of land ownership, duly registered by authorized institutions in accordance with the law (Lubis & Lubis, 2008).

According to Andrian Sutedi, land registration involves a series of planned and continuous activities by the government, including the collection, processing, bookkeeping, and presentation of physical and juridical data related to land parcels (Adrian Sutedi, 2023). The primary objective of this registration process is to ensure legal certainty and meet the needs of both society and the government.

A Certificate of Land Ownership (SHM) may suffer from administrative defects due to various factors, whether intentional or unintentional. Errors can arise from inaccurate information provided by the applicant during the certificate issuance process or from mistakes in both intentional and unintentional subjects and objects. Object-related errors may involve inaccuracies in land mapping and measurement, while subject-related errors may pertain to inaccurate statements provided by the applicant (Gayatri et al., 2021).

Administrative defect is the presence of shortcomings or flaws due to non-compliance with procedures. A certificate with administrative defects is considered problematic, and its annulment can be pursued by the applicant or anyone adversely affected by its issuance. Since a certificate represents a decision of state administration (government administrative decision), the applicant can formally raise objections in writing to the relevant Government Agency and/or Official responsible for the decision, as stipulated in Article 77 Paragraph (2) of the Administrative Law. This procedural step aims to ensure legal certainty regarding land ownership (Gayatri et al., 2021). Recognizing land rights as a fundamental and significant entitlement for individuals' dignity and freedom, it is also the state's obligation to provide legal certainty for these rights, even while acknowledging limitations imposed by others, society, and the state itself. This must be handled with precision to prevent land disputes (Handayani, 2019).

In the case outlined in Decision Number: 181/B/2022/PT.TUN.JKT, the dispute concerns Certificate of Ownership No. 01612, dated December 17, 2017, Survey Letter No: 1210/JK/2017, dated November 28, 2017, located in Juata Kerikil Village Rt.06, North Tarakan District, Tarakan City, North Kalimantan Province, with an area of 1,445 m², owned by Yoseph Jalaq. Upon learning of the issuance of Certificate of Ownership No. 01612 on December 17, 2017, Survey Letter No: 1210/JK/2017, dated November 28, 2017, in Juata Kerikil Village Rt.06, North Tarakan District, Tarakan City, North Kalimantan Province, covering an area of 1,445 m², owned by Yoseph Jalaq, the plaintiff sent multiple letters to the Head of the Tarakan Land Office, but received no response. On January 31, 2022, the plaintiff attempted to formally object to the issuance of the certificate through written correspondence, as evidenced by the receipt of the letter. However, as of the filing of this lawsuit, there has been no response from the defendant. Despite efforts, the plaintiff has not received any acknowledgment or response, leading them to believe that Certificate of Ownership No. 01612, dated December 17, 2017, Survey Letter No: 1210/JK/2017, dated November 28, 2017, in Juata Kerikil Village Rt.06, North Tarakan District, Tarakan City, North Kalimantan Province, covering an area of 1,445 m², owned by Yoseph Jalaq, has indeed been issued.

The objective of this study is to examine and analyze the responsibilities and authorities of the Head of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Atr/Bpn). The study aims to gain an in-depth understanding of the roles and duties undertaken by the head of this office within the framework of land regulations in Indonesia. The analysis is expected to provide insights into key aspects related to the responsibilities and authorities of the Head of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. The specific case presented, as exemplified in Decision Number: 181/B/2022/PT.TUN.JKT, involves investigating administrative defects in Certificate of Ownership No. 01612, dated December 17, 2017, and Survey Letter No: 1210/JK/2017, dated November 28, 2017, in Juata Kerikil Village, North Tarakan District, Tarakan City, North Kalimantan Province, owned by Yoseph Jalaq. The study further explores the plaintiff's attempts to address the administrative defects and seek resolution through official channels, emphasizing the importance of legal certainty in land ownership.

2. RESEARCH METHODS

The research conducted adopts a normative legal approach, a methodology focused on the examination of literature and secondary data, commonly known as legal literature research. Employing multiple research approaches, namely the Statute Approach, Conceptual Approach, Analytical Approach, and Case Approach, this study draws on primary, secondary, and tertiary legal sources. The data collection technique involves the identification and inventorying of relevant positive legal norms. The analysis of legal materials employs grammatical, historical, and systematic interpretation.

3. DISCUSSION

3.1. Responsibility and Authority of the Head of the Ministry of Agrarian Affairs Spatial Planning/National Land Agency (ATR/BPN)

Land registration in the administrative order in the District/Tarakan is the authority carried out by the Land Office to create legal certainty and protection, as well as to reduce land disputes in the District/City of Tarakan. The activities of land registration formalize land ownership based on ownership evidence or control over the land. In addition to legal and technical aspects, land registration implementation is also related to administrative tasks. In other words, land registration activities involve administrative tasks such as determining land rights and registering land transfer.

It can be said that activities involving legal aspects or the collection of legal data until the issuance of land books, certificates, and other general registers, as well as recording changes in the future, mostly involve administrative tasks. The limited amount of land that can be owned by humans, coupled with the increasing population, results in an increase in land value and various land issues, especially regarding land ownership.

The government, in Article 5 paragraph (1) point c of People's Consultative Assembly Decree Number IX of 2001, formulated a policy of agrarian reform, namely "Conducting land data through comprehensive and systematic inventory and registration of possession, ownership, use, and utilization of land in the implementation of land reform." Administrative land disputes arise as a result of the land administration system. Ideally, land administration accountability clarifies land ownership through evidence issued by the land office, namely land certificates.

The issuance of land certificates stems from the existence of underlying rights, such as maps or deeds in the field of land as a result of legal actions such as buying and selling, exchanging, donating, inheriting, and so on. The lack of accountability in land administration results in various issues regarding proof of land ownership, such as the issue of duplicate certificates. The lack of accountability in land administration impacts the lack of transparency in land administration, preventing the public from obtaining information about a piece of land. The absence of accountability and transparency in land administration also leads to issues with proof of land ownership, including underlying rights, ultimately causing land disputes within society.

Discussing land administration as described above inevitably touches on the government's actions to achieve good governance. Therefore, the focus on land administration issues related to proof of land ownership is on the principles of accountability, transparency, and responsibility. Article 4 paragraph (2) of Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA) states that land rights not only grant the authority to use a certain part of the earth's surface, called "land," but also the body of the earth beneath it, water, and the space above it (Widodo, 2001). Thus, the definition of "land" includes the earth's surface on land and underwater, including the sea (Harsono, 2015).

Agrarian law, when viewed from the content of legal regulations, is the law that governs matters related to land. This not only concerns the legal relationship between humans and land but also regulates the provision, use, and maintenance of land (Ali, 1996). Every activity of a state body or official in regulating and organizing the provision, use, and maintenance of land constitutes land administration activities. Therefore, the definition of land administration can be stated as efforts and activities related to the organization of policies concerning everything related to land and land rights with the aim of ensuring legal certainty and land order. The scope of land administration activities is as follows:

a. Land Allocation and Use

Land allocation and use are related to land-use planning. Land-use planning can be interpreted as the optimization of the productivity of land, water, space, and the natural resources it contains, carried out in an integrated and balanced manner for various development activities. This is based on capability maps issued by the National Land Agency (BPN) regulated within a spatial planning plan, aiming to benefit the current and future generations. In this context, the term land-use planning is emphasized in the context of spatial arrangement (Zaidar & HUM, 2014). The legal provisions governing spatial planning are stipulated in Law Number 26 of 2007 concerning Spatial Planning. The implementation of spatial planning includes regulation, guidance, implementation, and supervision of spatial arrangement. Administrative activities in spatial planning are mainly applied to spatial planning implementation. The tasks of spatial planning implementation include spatial planning, land use, and control of land use.

b. Land Provision

Land provision activities are related to land acquisition policies. The legal basis for land acquisition policy is Law Number 2 of 2012 concerning Land Acquisition for Development Purposes for the Public Interest. Land acquisition procedures closely related to land administration tasks include location determination, approval of location determination, submission of applications to initiate land acquisition to the

Land Acquisition Committee, determination of land location boundaries, issuance of Price Determination Decree by the Land Acquisition Committee, relinquishment of rights, and application for land rights (Lubis & Lubis, 2011).

c. Land Maintenance

Article 15 of the Basic Agrarian Law states that land maintenance, including its fertility and prevention of damage, is the obligation of every individual, legal entity, or institution with a legal relationship with the land. This provision implies that land maintenance is related to the legal relationship with the land. In other words, land maintenance also involves the regulation of land rights. The administrative aspect of land administration in regulating land rights is about land registration. According to Government Regulation Number 24 of 1997, the administrative aspect is referred to as juridical data, while the technical aspect is physical data. Juridical data refers to information about the legal status of land areas and registered housing units, their rights holders, other involved parties, and other encumbrances.

If it is stated as the registered legal status of the land, it means there is evidence indicating a legal relationship between individuals and their land. This evidence of the legal relationship is then formalized through land registration activities. Land registration activities that formalize land ownership, based on ownership evidence or control over the land, involve both juridical and technical aspects. In addition to legal and technical aspects, land registration implementation is also related to administrative tasks. In other words, land registration activities involve administrative tasks such as determining land rights and registering land transfer. It can be said that activities involving legal aspects or the collection of legal data until the issuance of land books, certificates, and other general registers, as well as recording changes in the future, mostly involve administrative tasks.

The following are the regulations related to administrative activities in land registration (Fahmal & Malian, 2006):

- Land registration activities before the issuance of land certificates, such as the determination of land rights, including land conversion, recognition and affirmation of land rights, granting land rights, rejection of land rights, land redistribution and consolidation, and land trust.
- Administrative activities after the issuance of land certificates due to changes in juridical data (subject of rights, type of rights, and duration of land rights), including land rights transfer, land rights transfer, extension of land rights duration, land rights renewal, land rights change, land rights cancellation, land rights revocation, land rights encumbrance, data changes due to court decisions, data changes due to name changes, land rights deletion, and certificate replacement.
- Administrative activities after the issuance of land certificates due to changes in physical data or the object of land rights, including land division, land separation, and land merging. As a law-based state, in relation to the issuance of land certificates, the government must provide legal certainty. Legal certainty can be achieved when government actions are carried out accountably.

The discourse underscores the fundamental necessity of good governance in the organizational framework of governmental authority. It posits that legal frameworks should encapsulate procedural equity, system transparency, disclosure of work outcomes, public accountability, and a commitment to public openness, aligning with the General

Principles of Good Governance (AAUPB). The AAUPB is depicted as a guiding norm, steering the government towards establishing accountability within the National Land Agency.

The collaborative interplay between the National Land Agency and AAUPB is heralded as a conduit for a government characterized by cleanliness and authority. The delineation of AAUPB principles within Law Number 28 of 1999, focusing on a corruption-free state administration, elucidates the significance of legal certainty, orderly state administration, public interest, transparency, proportionality, professionalism, and accountability (Urip Santoso, 2019).

In relation to land administration, the principle of Publicity is recognized in land registration, stating that everyone has the right to access information about registered land. According to Morico (2007) this information is grounded in the principles of:

- a. Transparency, as a fundamental democratic principle, encompasses the entitlement of individuals to comprehensive information regarding all facets of decision-making within the governmental apparatus, which, in turn, exerts a direct or indirect influence on the community at large. These imperative mandates governmental entities to engage the public in a participatory manner, affording them an unimpeded platform to overtly articulate their collective aspirations.
- b. Openness, as a cognitive disposition, underscores the imperative of acknowledging the public's entitlement to receive information that is both precise and veracious concerning government activities. This mental attitude is predicated upon an unwavering commitment to furnishing accurate, honest, and non-discriminatory information, all while carefully navigating the delicate balance between public disclosure and the safeguarding of personal rights, group interests, and state secrets. Such an ethos of openness buttresses the overarching framework of transparent governance, wherein governmental entities willingly provide accurate information and remain receptive to external input or requests from various stakeholders.

Transparency in land registration is crucial for the procedures and services provided by the Land Office to meet the expectations of the community, especially applicants registering land. By consistently implementing the transparency principle, information related to the process up to certificate issuance is expected to be accessible to all parties. This accessibility enables prompt corrections by the Land Office if any information is deemed inaccurate.

It is clear that issues related to certificates are quite complex, such as the occurrence of duplicate certificates. Ideally, for the same property, there should not be two certificates issued. The process leading to certificate issuance must emphasize transparency to enable accurate cross-checking with the local community or all stakeholders. Neglecting the principle of transparency has led to problems regarding duplicate certificates. On the other hand, certificates are strong evidence of one's ownership rights to land, making their existence valuable and crucial. Additionally, prioritizing the responsive principle, outlined in the National Land Agency's Performance, is essential. A fundamental principle towards the agency's goals is responsiveness, meaning the government must be sensitive and promptly responsive to societal issues, formulating policies that address all social groups within their cultural characteristics. In realizing the responsive principle, strategic efforts are required to

provide humane treatment to various societal groups impartially. The government should not be passive but responsive to all aspects of society, including land administration services. The responsive principle emphasizes that every institution and its processes should be directed towards serving various stakeholders. There is concern that the government's passive or less responsive attitude in service, including in public administration, will result in land administration services that fail to meet the needs of the community.

In accordance with the principle of responsiveness, each element of the government is required to adhere to two ethical dimensions, namely individual ethics and social ethics. Individual ethical qualifications demand that government bureaucracy practitioners possess criteria for professional capabilities and loyalty (Wibowo, 2022). Conversely, social ethics necessitate their sensitivity to various public needs. The implementation of the principles of transparency and responsiveness in public service is expected to engender accountable government actions, denoting actions that can be justified to the public.

The case example of Decision Number 181/B/2022/PT.TUN.JKT is presented, wherein the judge's acceptance of the appeal and reinforcement of the State Administrative Court's decision is explicated. The decision, announced through an open electronic trial, highlights the procedural aspects of the judicial process, with specific details pertaining to the Panel of Judges involved and the absence of disputing parties or their legal representatives during the announcement.

A mandate does not result in any change in authority, as it only pertains to internal relations, such as the Minister's relationship with employees to make specific decisions on behalf of the Minister. Juridically, authority and responsibility remain with the ministry organ. Employees decide technically, while ministers decide juridically (Ridwan, 2006). Attribution is considered a normal way to acquire government authority. The entity authorized by legislation can form authority. Positive administrative law contains various provisions on attribution. Delegation, on the other hand, is defined as the transfer of authority (to make "decisions") by government officials (State Administrative officials) to another party, and that authority becomes the responsibility of the other party.

Thus, government accountability in issuing land ownership certificates can be realized by conducting the process transparently and prioritizing strong responsiveness to all stakeholders. Based on the outlined concepts, the normative assessment of transparency, responsiveness, and accountability in government administration, especially in the issuance of certificates, can be examined first based on the operational standards held by the Land Office. Factual observations suggest that one factor leading to land disputes in society is the passive stance of the Land Office during the land registration process, merely accepting documents submitted by applicants. It can be argued that there is no effort from the Land Office to ascertain whether the requested land registration is subject to disputes or has potential disputes, creating a lack of legal certainty in land registration.

The lack of transparency in land ownership is attributed to limited data and information on land possession. This limitation can lead to land disputes and concentration of land ownership in rural areas and/or a small portion of the urban population. In response to these challenges, regulatory measures, exemplified by Chief of the National Land Agency of the Republic of Indonesia Regulation Number 6 of 2013 on Public Information Services in the National Land Agency environment, have been

promulgated. This regulation serves as a sequel to Article 7, paragraph (3) of Law Number 14 of 2008 concerning Public Information Transparency.

Concerning the responsibility of the Land Office in land administration, in instances of deliberate or unintentional negligence, the community retains the right to demand accountability from the Tarakan Regency/City Land Office. This can be pursued through legal avenues, such as filing a lawsuit, with the aim of annulling administratively flawed certificates and restoring the rights of the rightful landowner. In the provision of public services by the government, including within the realm of land affairs, it is imperative that the government displays responsiveness to complaints, addresses demand, and fulfills the needs of the community. This approach ensures that the issuance of certificates is executed in an effective and accountable manner. The integration of transparency and responsiveness into public services is anticipated to yield government actions that are accountable, denoting actions that can be substantiated and justified to the public.

According to Mukhopadhyay's Accountability Theory, accountability is an integral part of an institution's actions (policies/services) in the public sector. The greater the accountability, the better the service provided because accountability contributes to the efficiency of resource utilization and prevents employees from acting improperly (non-feasance) or engaging in misconduct (malfeasance) (Patarai, 2015). Thus, government accountability in issuing land ownership certificates can be achieved through transparent processes and a strong emphasis on responsiveness to all stakeholders.

4. CONCLUSION

The allocation of responsibilities and authorities to the Head of the National Land Agency Office/Agency for Agrarian and Spatial Planning (ATR/BPN) signifies a significant institutional decision. Specifically, this decision designates the Chief of the Land Office in Tarakan as the recipient of delegated responsibilities. The assigned responsibilities to the Chief of the Land Office primarily pertain to administrative matters related to a specific property. This property is identified by Land Certificate Number 01612, issued on December 17, 2017, and Survey Letter Number 1210/JK/2017, dated November 28, 2017. Located in Juata Kerikil Village, RT 06, North Tarakan Sub-District, Tarakan City, North Kalimantan Province, the property spans 1,445 square meters and is registered under the ownership of YOSEPH JALAQ. These administrative responsibilities, delegated by the Head of the National Land Agency Office/Agency for Agrarian and Spatial Planning (ATR/BPN) in Tarakan, underscore the intricate nature of land governance and the importance of meticulous attention to detail in land administration.

In essence, the delegation of responsibilities underscores the nuanced responsibilities entrusted to the Chief of the Land Office. This involves overseeing the administrative facets of a specific landholding, encompassing the issuance and verification of land certificates and survey documents. The detailed geographical and ownership particulars further highlight the specificity and gravity of the Chief's responsibilities. This institutional decision reflects a commitment to effective land governance, emphasizing the role of administrative precision in upholding transparency, legal certainty, and accountability in the realm of land administration within the jurisdiction of Tarakan City, North Kalimantan Province.

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