

LEGAL REVIEW OF THE MECHANISM OF ISSUANCE OF REPLACEMENT CERTIFICATES FOR DAMAGED LAND RIGHTS BASED ON GOVERNMENT REGULATION NUMBER 24 OF 1997 CONCERNING LAND REGISTRATION

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Abstract A replacement certificate is a copy of a damaged or lost certificate in terms of meaning and the contents contained therein are not much different from a land title certificate. The results of this study are (1) The mechanism for issuing replacement certificates due to loss, damage and old forms. This replacement certificate is intended for people who have lost their certificates, damaged, torn or missing parts and for those who have certificates with old and obsolete forms so that they need to register a replacement Land Title Certificate, that the mechanism for issuing replacement certificates has been regulated in Chapter IV Article 57-60 of Government Regulation Number 24 of 1997. (2) Implementation of Issuance of Replacement Land Title Certificates Due to Damage. An application can be submitted to the Land Office in its jurisdiction and with the requirements that have been determined by laws and regulations. (3) Legal Protection for Holders of Replacement Land Title Certificates. Legal protection for holders of replacement land title certificates is basically the same as legal protection for land titles in general, where the certificates are both proof of rights, which serve as strong evidence. This is regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles, Article 19.

Keywords Review, Mechanism, Replacement Certificate.

I. INTRODUCTION

Every human being in an effort to fulfill their needs and interests always interacts with or makes direct contact with other humans, as social beings it is their basic nature that humans always need each other. In addition, humans also make contact with each other, where the relationship sometimes becomes a pleasant relationship or even causes conflict (conflict of human interest) considering the many interests, it is not impossible for conflicts or clashes to occur between humans because their interests conflict. Conflicts of interest occur when in carrying out or pursuing their interests someone harms others. In community life or society, conflict is unavoidable. ¹

For land rights holders, having a land certificate has more value, because compared to other written evidence, a certificate is a strong and legally recognized evidence. ⁴ Moreover, according to Article 31 paragraph (3) of PP Number 24 of 1997 concerning Land Registration, it has been firmly stated that "Certificates may only be submitted to the party whose name is listed in the relevant land book as the rights holder or another party authorized by him, so that it can be said that the owner of the land rights certificate is the legal owner of the land object as stated in the land rights certificate.

Considering the importance of a land rights certificate, it is very important to always maintain and maintain its existence in a safe place so that it does not get lost. ⁵ However, in reality, there are still cases of loss of land rights certificates from the hands of their owners, loss of land rights certificates from the hands of their owners, loss of land rights certificates as evidence for the owner of the land, must be addressed carefully by the Land Office where the land object is registered through a report of loss from the landowner, the person concerned in order to avoid irresponsible parties who can take advantage of this situation.

The issuance of this replacement certificate is very important for the land rights holder, because with this certificate is proof that he is the owner of the land. In connection with this, in this case the government provides a solution or way out for people who experience damage or loss of land rights certificates, namely by having a replacement certificate.

From the description above and various reasons, the author is interested in writing a law with the title: Legal Review of the Mechanism for Issuing Replacement Certificates for Damaged Land Rights.

II. METHOD

Based on the case to be analyzed, this research is included in the category of normative legal research that examines and analyzes document studies using various secondary legal materials such as laws and regulations, court decisions, legal theories, jurisprudence and can be in the form of opinions of scholars. This normative legal research uses a qualitative type of analysis, namely by explaining existing data with words or statements rather than numbers. According to Peter Mahmud Marzuki, normative legal research is a process of finding a legal rule, legal principle, or legal doctrine in order to answer the legal issues faced.

A. Research Approach

In legal research itself, there are several types of research approaches. Based on the existing research approach, the author can get information from various aspects regarding the case being discussed. The research approach that the author uses is as follows:

B. Statute Approach

According to Syamsudin, the statute approach is carried out by reviewing all laws and regulations related to the legal issue being discussed. For research for practical activities, this statutory approach will provide an opportunity for researchers to study whether there is a conformity between a law and another law or between a law and the Constitution.

The author will later use several legal bases for land regulations and Law Number 5 of 1960 concerning Basic Agrarian Principles. From these laws, it will later be adjusted to what happens in the mechanism, implementation and legal protection in the field.

C. Case Approach

This approach is carried out by analyzing cases related to the issues faced and have become problems or issues for the community.

The author will later take cases that are related and relevant to this research, both in terms of mechanism, implementation and legal protection. After that, it will be adjusted to what happens in the field so that it can be known how the mechanism, implementation and legal protection are.

D. Source of Legal Material

Primary Legal Material

Peter Mahmud Marzuki is of the opinion that primary legal material is legal material that is authoritative, namely having authority consisting of; legislation, official records or minutes in the making of legislation and judges' decisions. In this study refers to land/agrarian legislation. The author will later use several legal materials in the form of:

1. Regulation of the Minister of Agrarian Affairs/Head of BPN Number 3 of 1997 concerning the provisions for the implementation of government regulation Number 24 of 1997 concerning Land Registration.
2. Government Regulation Number 10 of 1961 concerning Land Registration.
3. Law Number 5 of 1960 concerning Basic Agrarian Principles.

Secondary Legal Materials

Secondary legal materials are legal materials consisting of law books, legal journals containing basic principles (legal principles), and the views of legal experts (doctrines). Then the secondary legal materials are then searched for in scientific journals that are relevant to this study regarding the mechanism for issuing replacement certificates for land rights.

E. Collection of Legal Materials

The technique of collecting legal materials in this study uses the document study technique and is then grouped according to each problem formulation. The technique of collecting legal materials in normative legal research is carried out by reviewing legal materials, both primary legal materials and secondary legal materials, tertiary legal materials and non-legal materials. The study of these legal materials can be done by reading, viewing, listening, or tracing legal materials through scientific articles and legislation.

F. Research Analysis

The analysis of legal materials in this study uses a qualitative method. Namely by interpreting the legal materials that have been studied. Qualitative research is a research stage that goes beyond various stages of scientific critical thinking, where research is carried out deductively, namely by using a reasoning method to draw conclusions from general statements to specific statements to obtain logically correct conclusions.

III.RESULT AND DISCUSSION

1. Mechanism for Issuing Replacement Certificates for Land Rights

The mechanism for issuing replacement certificates for land rights is generally when the certificate of land rights owned is lost, damaged, or still using the old form. In submitting an application for a replacement certificate, the person entitled to submit the application is the owner of the land and can also be with his/her attorney by attaching a power of attorney, which power of attorney can be made under hand or before a notary, however, in submitting an application for the issuance of a replacement certificate for land rights, it is also necessary to understand the meaning of land registration, which in the land registration will produce a land rights certificate as proof of legal ownership of rights regulated by law.

So basically the original certificate issued by the national land agency for the first time with the replacement certificate for land rights, which is held by the owner of the land rights, both have the same legal force or permanent legal force. This is regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles and Government Regulation Number 24 of 1997 Article 32 paragraph (1).

However, if a land plot has been requested to issue a replacement certificate of land rights, the first certificate of the previously issued land plot will be canceled. This is done to prevent the possibility of misuse of the previous land certificate by other parties which could harm the rights holder. In addition to the above, the Kediri Regency Land Office also issues other replacement certificates, which are requested by the applicant himself, namely because the land title certificate owned has changed the area of the land, changes in which area can be due to government or private projects, so that the land owned by the applicant is affected by these projects, these impacts can be said to be some of his houses evicted for the widening of provincial, city or district roads, the construction of hospitals so that some of his houses are affected by the construction of the hospital and so on. In carrying out all procedures related to the issuance of replacement certificates for land rights, the Kediri Regency Land Office is guided by Law Number 5 of 1960 concerning Basic Agrarian Principles, and in particular all regulations concerning replacement certificates, namely in accordance with Articles 57 to 60 of Government Regulation Number 24 of 1997 concerning Land Registration and Articles 137 to 139 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997. So in essence, the Kediri Regency Land Office in issuing replacement certificates for land rights at the request of the community has complied with the laws and regulations issued by the government.

A lost certificate can be interpreted as being due to a reason, in the sense that the land title certificate is out of physical control of the rights holder. And the reasons can vary, namely being scattered, stolen by someone, burned, entrusted to someone and never returned.

After the requirements are met by the applicant for a replacement certificate for land rights, the applicant can apply for the issuance of a replacement certificate for land rights at the Kediri Regency Land Office in the following manner:

1. The applicant for a replacement certificate for land rights comes to the Kediri Regency Land Office with the documents that have been explained in the requirements points above, then submitted to the counter.
2. The technical officer at the counter will conduct research on the documents, and if they are complete, a document receipt will be given.
3. After the documents are recorded, they will be forwarded to the Rights Registration Sub-section.
4. The Rights Registration Sub-section will study, dispose of and submit to the implementing officer.
5. And then the implementing officer makes a draft announcement based on the documents from the rights registration sub-section, and is submitted back to the rights registration sub-section.
6. Furthermore, after examining the rights registration sub-section, the rights registration sub-section initials the announcement concept and submits it to the survey, measurement and mapping section.
7. Furthermore, the head of the survey, measurement and mapping section, examines the announcement concept and provides initials, then it is sent to the head of the office.
8. After being examined by the head of the office, the head of the office signs the draft announcement, then the draft announcement is announced in the local mass media, the sub-district office, and at the land office itself. And if within 30 working days of the announcement there is a conflict or claims to have rights to the land, and the reason is reasonable after being examined in the field by land office officers, then the application for a replacement certificate is postponed until there is a settlement through a local district court decision.

And these reasons include:

- a) The certificate is not lost, but is in someone's hands, usually this happens if the certificate is at the Bank or lender because the rights holder has bad intentions to report to the police that the certificate is lost and then he asks for a replacement.
- b) Actually the rights holder has sold the land, but the buyer has not changed the name (registered the sale and purchase at the Land Office), the rights holder registered in the certificate knows about it, and he intends to use the opportunity for his benefit.

c) The applicant has actually given absolute power of attorney to another person from the certificate has been submitted to the attorney. And if within 30 working days no one files an objection to the announcement of the issuance of a replacement certificate for land rights, the Land Agency Office can continue making a replacement certificate for land rights through the implementing officer.

d) The implementing officer will borrow the original document, then examine the document, make a concept, a copy of the measurement letter, make a new certificate, make a report, make notes on the land book and the documents and then submit them to the Head of Rights Registration Sub-Section.

e) The Head of Rights Registration Sub-Section examines and initials the concept of the certificate, land book, report and copy of the measurement letter, then the documents are submitted to the survey, measurement and mapping section.

f) The head of the survey, measurement and mapping section initials the concept of the certificate, land book and copy of the measurement letter/situation drawing, then the documents are submitted to the head of the office.

g) The head of the office signs the certificate, land book, report and copy of the measurement letter/situation drawing.

h) Then the implementing officer will do the bookkeeping and the documents will be sent to counter IV (Administrative Officer) and recorded in a special certificate receipt book, then provide a replacement certificate for the land rights to the applicant or a person authorized by the applicant.

2. Implementation of Issuance of Replacement Certificates for Land Rights Due to Damage

A damaged certificate means that the certificate has physically changed in such a way that the rights holder feels the need to replace it. For example, torn, dirty with ink or paint, exposed to rain so that it rots, eaten by rats in some parts and so on.

A damaged certificate is also usually interpreted as meaning that the certificate still has some remaining but the subject of the certificate still exists or its contents can still be known.

A damaged certificate is different from a lost certificate where the certificate is physically lost, the certificate is not controlled by the rights holder, but if the certificate is physically damaged, it is still controlled by the rights holder. Only because of the circumstances the rights holder feels the need to replace it.

So in this case, in submitting an application for a replacement certificate for land rights due to damage, there is no need to make an announcement, upon the request of the rights holder, the Land Office can issue a replacement certificate for land rights, and the old land rights certificate is submitted to the Land Office to be destroyed, in order to prevent unwanted things from happening.

Basically, the requirements for submitting an application for a replacement certificate due to damage are not much different from the requirements for submitting an application for a replacement certificate due to loss, only in submitting an application for the issuance of a certificate due to damage there is no oath before the Head of the Land Office, and there is no police report of loss and no statement of no dispute and statement of being guaranteed to a third party.

The requirements that must be met by the applicant:

1. Applicant's Identity Card (KTP) which is still valid.
2. Latest Land and Building Tax (PBB).
3. Original Damaged Certificate
4. Statement Letter for the Land from the Applicant.
5. Measurement Letter, if the land needs to be re-measured.

Application for issuance of replacement certificate of land rights due to certificate being damaged in Kediri Regency Land Office, as follows:

1. Applicant for replacement certificate of land rights comes to Kediri Regency Land Office with the documents explained in the requirements above, then submitted to the counter (Technical Officer).

2. Technical officer at counter II will conduct research on the documents, and if complete will be given a receipt for the documents.

3. After the documents are recorded, they will be forwarded to the Rights Registration Sub-section.

4. The Rights Registration Sub-section will study, dispose of the required documents to the archive officer/rights registration sub-section, study the documents, make land book records, make measurement letters or copies of them, and make a draft of a new certificate or replacement certificate.

5. The Rights Registration Sub-section initials the draft of the new certificate or replacement certificate, land book records, and a copy of the measurement letter which is then sent to the Rights Registration Head.

6. Next, the head of the land registration section and the head of the survey, measurement and mapping section initial the concept of the new certificate or replacement certificate, land book notes, and a copy of the measurement letter, then sent to the head of the office.

7. The head of the office will examine the documents and sign the new certificate or replacement certificate, notes on the land book and measurement letter, then the documents are submitted to the implementing officer.

8. The implementing officer will record and submit it to the counter (Administrative Officer), will record the date of receipt in the special certificate receipt book, and submit the replacement certificate to the applicant, or the attorney appointed by the applicant, and the documents are sent to the archive officer of the rights registration subsidy to be archived.

3. Legal Protection for Holders of Replacement Certificates for Land Rights

In general, legal protection for holders of replacement certificates for land rights is basically the same as legal protection for land rights in general, where the certificates are both proof of rights, which serve as strong evidence. This is regulated in Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law, Article 19, which reads:

1. To guarantee legal certainty, the government shall conduct land registration throughout the territory of the Republic of Indonesia according to the provisions stipulated in Government Regulations.

2. Land registration in paragraph (1) of this Article includes:

- a. Land measurement, mapping and bookkeeping;
- b. Registration of land rights and the transfer of such rights;
- c. Provision of certificates of proof of rights, which shall serve as strong evidence.

Article 32 paragraph (1) of Government Regulation No. 24 of 1997 which states:

"A certificate is a valid proof of rights as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the measurement letter and the relevant land book"

So with the Articles of Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law and Government Regulation Number 24 of 1997 concerning Land Registration, then for holders of land rights certificates or holders of replacement certificates of land rights clearly have permanent legal protection or certainty, because in the ownership of a land right there will be a proof of rights in the form of a certificate, as well as holders of replacement certificates of land rights.

Legal protection for holders of land rights certificates and holders of replacement certificates of land rights in the jurisdiction of the Kediri Regency Land Office, is in accordance with the laws in force in Indonesia. namely one of them is land registration by the Kediri district land office, namely to ensure legal certainty for land rights holders, who will later receive a land rights certificate as proof of ownership of rights. Based on the results of interviews with employees of the Kediri District Land Office at the Kediri District Land Office, the letters of proof of rights are valid as evidence, which means that the statements are considered correct as long as there is no other evidence that proves otherwise. In this case, if a dispute occurs between land rights holders, the district court will decide which evidence is correct and the land rights certificate that is considered incorrect will be canceled.

The guarantee of certainty or legal protection for land rights owners is closely related to the publication system adopted by the Indonesian Basic Agrarian Law, namely a negative publication system that contains positive elements, because the system is not purely negative, as stated in Article 19 paragraph (2) letter c, that registration of land rights will produce proof of rights, which serve as strong evidence.

So in this system, the guarantee of legal certainty still considers the provision that the rights holder can still defend his rights against lawsuits from other parties if the lawsuit is not proven, and vice versa for the party who sues can also have rights to the land as long as the lawsuit is well-founded and the court decides that the land is proven to belong to the plaintiff. From the above, it is easy to understand that the guarantee of legal certainty for the rights to the land can be given to the party decided by the court as well as at the Kediri Regency Land Office.

Although the publication system used is a negative publication system, all activities carried out regarding the creation of evidence or land title certificates, the Kediri district land office carries out its activities carefully and precisely, so that the data presented can be accounted for as far as possible for its truth.

IV. CONCLUSION

From the results of the author's research that has been described in the previous chapter, the author draws the following conclusions:

1. Mechanism for issuing replacement certificates for Land Rights.

The mechanism for issuing replacement certificates for land rights is generally when the certificate of land rights owned is lost, damaged, still using the old form. In submitting an application for a replacement certificate, the person entitled to submit the application is the owner of the land and can also be with his attorney by attaching a power of attorney, which power of attorney can be made under hand or before a notary, however, in submitting an application for the issuance of a replacement certificate for land rights, it is also necessary to understand the meaning of land registration, which in the land registration will produce a land rights certificate as proof of legal ownership of rights regulated by law.

So basically the original certificate issued by the national land agency for the first time with a replacement certificate for land rights, which is held by the owner of the land rights, both have the same legal force or permanent legal force. This is regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles and Government Regulation Number 24 of 1997 Article 32 paragraph (1).

However, if a land plot has been requested to issue a replacement certificate for land rights, the first certificate of the previously issued land plot will be canceled. This is done to prevent the possibility of misuse of the previous land certificate by other parties which could harm the rights holder.

2. Implementation of Issuance of Replacement Certificates for Land Rights Due to Damage.

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So in this case, in submitting an application for a replacement certificate for land rights due to damage, there is no need to make an announcement, upon the request of the rights holder, the Land Office can issue a replacement certificate for land rights, and the old land rights certificate is submitted to the Land Office to be destroyed, in order to prevent unwanted things from happening. Basically, the requirements for submitting an application for a replacement certificate due to damage are not much different from the requirements for submitting an application for a replacement certificate due to loss, only in submitting an application for the issuance of a certificate due to damage, there is no oath before the Head of the Land Office, and there is no police report of loss and there is no statement of no dispute and statement that it is being guaranteed to a third party.

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Legal protection for holders of replacement certificates for land rights is basically the same as legal protection for land rights in general, where the certificates are both proof of rights, which serve as strong evidence. This is regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles, Article 19, which reads:

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2. Land registration in paragraph (1) of this Article includes:

- a) Land measurement, mapping and bookkeeping;
- b) Registration of land rights and the transfer of such rights;
- c) Provision of certificates of proof of rights, which serve as strong evidence.

Article 32 paragraph (1) of Government Regulation No. 24 of 1997, which reads:

“A certificate is a certificate of proof of rights which serves as strong evidence regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data contained in the relevant measurement letter and land book.”

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