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Cancellation of Land Rights Certificates Due to Administrative Law Defects According to the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 9 of 1999

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Abstract:

Law Number 5 of 1960 concerning Basic Agrarian Principles has been given guaranteed of land certificates to the owner. However, in practice there are a; so, find administrative law defects in the making, because there is a flew in administrative law in the issuance, the party who has objection can to file a cancellation of the certificate.

The purpose of this study is to know procedures for cancellation of land tittle certificates due to legal defects of administrative law according to Regulation of the Minister of Agrarian Affairs / Head of BPN Number 9 of 1999.

The method used in this research is normative juridical, namely by reading and collecting and analyzing all of regulations related to the cancellation of land tittle certificate to be able to provide answers to the problems posed.

The results of the research shows that procedures for cancellations of land tittle certificates due to legal defeats of administrative law according to Regulation of the Minister of Agrarian State / Head of BPN Number 9 of 1999, there are three (3) ways to cancel a certificate of land that is: 1. Submit a request to the Minister of Agrarian State, 2. Filed a lawsuit to the District Court, and 3. File a lawsuit to the Administrative State Court.

Keywords: Cancellation, certificate, administrative defect land rights

1. Introduction

The rapid development of physical land has in the importance of security over land by the owner. Moreover, the population continues to increase while the amount of land in constant, then for to get the land all means will be done even though it is against the law. 'For development network of physical land is needed as the medium, without land development cannot be carried out'.

To obtain legal certainty guarantees on land is needed registration on the land which is based on the applicable regulations, especially Law Number 5 of 1060 concerning Basic Agrarian Regulations and Government Regulation Number 24 of 1997 concerning Land Registration.

In the practice, there are still found disputes of land. As for the causes of the disputes on land is due to various factors, one of them is administrative law defects according to Regulation of the Minister of Agrarian Affairs / Head of BPN Number 9 of 1999.

Indonesia is one of the countries with the fourth largest population in the world after the People's Republic of China, India and the United States, it is estimated that the population of Indonesia will be continue to brow and based on results 'Inter-Census Population Survey (SUPAS) 2015 total population Indonesia on 2019 is 267 million inhabitants'. This is in line with the opinion of Bambang Pamudju which said 'that population growth in developing countries include Indonesia in the last 30 years it is quite high and tends to continue to increase if compare with industrial countries'. The high rate of population growth in urban areas in Indonesia that are not controlled, so its need for land also increases in urban areas compared to rural areas. As consequence' everyone will always try to control and get land either as a place of settlement or a place of livelihood in fulfilling their daily needs'.

In order to give guarantee legal certainty and certainty of land rights which owned by everyone in Indonesian State, a law was issued namely Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) on September 24, 1960. With the enactment of this UUPA in Indonesia, the unification of land law was created, which one previously in Indonesia there was a dualism of law in the land sector.

'The enactment of this UUPA is expected to bring legal certainty'. So, this law is intended to provide legal certainty in land ownership for everyone. It must be admitted that prior to the enactment of the UUPA law, there was no legal certainty given to the land owner. In order to legal certainty to be obtained, and registration must be carried out, as

mentioned in Article 19 paragraph 1 which states: To ensure legal certainty by the Government. Land registration is carried out in all regions Republik Indonesia according to Government Regulations.

Hereinafter Article 19 paragraph 2 states that such registration includes:

- Land measurement, mapping and bookkeeping
 - Registration of land rights and transfer of rights.
 - Giving a certificate of proof of rights that is valid as a strong means of proof.
- Based on Article 19, it is clear that in order to guarantee legal certainty to the owner, the land must be registered. Through such registration, the owner will be given a valid certificate as strong evidence.

According to statement A.P. Parlindungan, 'the land registration system adopted by UUPA is the Torrens System adapted to Indonesia soil and the registration has not been every distributed throughout the territory of Indonesia'. For answer this problem, the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia, Sofyan A. Djilil said that 'Ministry of ATR / BPN has a main target namely by 2025 all land in Indonesia will be registered'. Furthermore, it is stated that having a land certificate provides its own benefits for the owner. With certificate of land can minimize the occurrence of land conflicts, because the owner already has evidence of recognition of land rights.

Although a plot of land already has a certificate, the land has not been controlled and cultivated by the owner, so that the person who does not own the land try to control and occupy the land which is empty and has not been used by the owner. Massive land tenure, especially in big city areas, has made it difficult for people to get land and even if there is, the price is very expensive and unreachable for most people, as a result, speculation was carried out by the community in occupying and controlling a plot of land and did not care whether the land had a certificate or not.

If they have been controlling and occupying the land for a long time, they will then make an effort to make a letter which will then be upgraded to a certificate. So on above a plot of land has two certificates, if there are any two certificates on the land, it is certain that one of them has been issued so that it needs to be canceled and the cancellation was filed because in the publication there was a flaw in the administration law.

There have been many cancellations of land certificate due to administrative law, so the Government has issued regulations namely 'Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 9 of 1999' With this regulation is expected to be able to resolve legal issues related to the cancellation of land title certificates due to administrative law defects.

Based on the description above, the authors propose the following problems: What is the procedure for cancellation of land title certificates due to administrative legal defects according to Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 9 of 1999?

2. Literature Review

2.1. Land Registration and Certification

Registration comes from the Latin language 'Capitastrum' which means a register or capita or unit made for land tax in the sense of all lands, the value of land and holders of rights for tax purposes. So, the registration is an appropriate tool that provides a description of the land as well as the basis for the basics of land rights.

Boedi Harsono stated, 'before land registration has made an impression that main object registration land is land, which is done through collection to representation of physical data which is the object registration, namely to ensure their rights, its boundaries, its area in the registration map and presented in the land book'.

Article 1 paragraph 1 Government Regulation Number 24 of 1997, stated, land registration is a series of activities carried out by government continuously and regularly, includes collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data in the form of maps and lists of land parcels and apartment units, including the issuance of certificates of proof of their rights for land parcels which already have rights and ownership rights to apartment units and certain rights that are borne by them.

In order to give guarantee legal certainty and certainty over land rights that have been registered, the Land Office has provided 4 (four) kinds of lists consisting of:

2.1.1. List of Land

This list will be listing all lands directly controlled by the State and kinds that are owned with a right that is contained in one village.

2.1.2. Name List

In this list will be registered the names of the people who have rights to the land.

2.1.3. List of Lands Book

In this list will be list land rights and transition of land.

2.1.4. List of Measuring Letters

This list is a collection of measuring letters. The measuring letter describes the condition of the location and the area of the land which is the object of right that has been registered in the land list.

Based on the description above, the data that is on in the Land Registration Office is grouped into two (2) types, namely:

2.1.5. Juridical Data Group

Collect all data regarding the name of the land title, who owns it, transfer and importer, all of which are compiled in the land book.

2.1.6. Physical Data Group

Collect data about location of land, the length and width of the land as well as the boundaries of the land which are all compiled in the measuring letter.

Efendi Warin states, 'land registration aims to ensure legal certainty and certainty of land rights. Thus, the parties concerned can easily find out the legal status of the land it faces, location, area, boundaries and what burdens there are on it'. Then, 'Article 19 UUPA had stipulates that the administration of land registration is carried out through giving a proof of evidence that is valid as a strong means of proof'.

In more detail the objectives of land registration are described in Article 3 and Article 4 of Government Regulation Number 24 of 1997 as follows:

- To provide legal certainty and legal protection to holders of land rights, apartment units and other registered rights so that they can easily prove themselves as holders of land rights. For this reason, the right holder is given a certificate as proof. Thus, the objective of providing legal certainty is the main objective in land registration as stipulated in Article 19 UUPA Number 5, 1960.
- To prepare information to interested organizations, including the government, so that they can easily obtain the data needed to carry out legal actions regarding land parcels and apartment units had registered. Data presentation was carried out in Land Office Registration by the District or City. Land registration administration shall be carried out in the form of a general list consisting of a registration map, land list, measuring letter, land book and list name. This is in accordance with the principle of openness in land registration.
- For the implementation of an orderly land administration. This is in accordance with 'Land Orderly Chess' as the Land Office's motto is namely: orderly land law, orderly Administration Land, orderly use of the land, and orderly maintenance of the land and the preservation of the living environment.

According to implementation of the motto 'CaturTertibPertanahan', UripSantoso, give states that 'to realize the order of land administration of each plot of land and unit of flats, including the transition, encroachment and abolition of rights to land and ownership rights to units of flats must be registered'.

In order to get a certificate of rights, the procedures stipulated in the regulations must be followed. After the entire land registration process has been passed, at the last stage a land title certificate is given to the owner. The certificate is valid as a strong means of proof and not as absolute evidence. This is caused the land registration system used by the UUPA is negative system with positive tendency and not positive system. In the positive system, the certificate issued is valid as absolute and inviolable evidence. While the issue of a certificate uses the negative system, the certificate acts as strong evidence and the certificate is sued in Court. Both of these land registration systems have weaknesses and strengths in providing guarantees to the certificate.

Land title certificates contain physical data and juridical data that can be known by Everyone, because 'the principle of publicity is used in its issuance'. By using this principle of publicity, everyone will be able to know who owns of the land, about how wide and clearly its boundaries are in detail. If we pay close attention the land title certificate consists of two parts, namely 'a copy of the measuring document and the land book'. A copy of the measuring letter is a copy of the measurement results carried out by the Land Office which is carried out by means of registration land systematic and registration land sporadic which used in registration land. Meanwhile, a land book is a document in the form of a list containing juridical data and physical data on two land registration objects that already have rights.

According to UUPA, the types of certificate which issued by Land Office is variously and depending on the type of rights. The type of certificate given to the owner is based on the types of land rights granted by the government. Example for property rights is given a certificate of ownership rights or for the right to cultivate is given a certificate of cultivation right to the owner. In UUPA ownership rights are strongest and most fulfilled rights to land and can only be loyal to Indonesian citizens and foreign citizens are unable to have ownership rights over the land. This is because Indonesia agrarian law uses 'the principle of nationality' in land ownership. This provision is regulation in Article 9 UUPA which states 'only Indonesian citizens can have a full relationship with earth, water and space'.

A.P. Parlindungan said, this provisions of Article 9 UUPA are compelling and there is no tolerance for this '. The foreign citizens can only have Use Right and have a period of time. This statement is in accordance with Article 33 paragraph 3 of the 1945 Constitution, so that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people.

3. Cancellation of Land Title Certificates Due to Administrative Law Defect

The cause of the cancellation of land title certificates is a dispute between one party and another on the same plot of land, so that the party who feels aggrieved submits cancellation. In Indonesia especially in North Sumatra, land disputes as a result of the issuance of certificates continue to increase. This case as according to the states of YaminLubis 'there are still many problems in owning a plot of land, so the land title certificate that has been issued by the Land Office must be cancelled'.

The increase in land problems is due to the increasing population and on the other hand the amount of the land remains. 'Therefore, in the context of handling and resolving land cases and can provide legal certainty for the disputing

parties in relation to the use, ownership and control of land in Indonesia'. The Land Office is a government institution that is authorized to issue certificates of land rights.

If a more in depth look at land disputes in Indonesia, they can be grouped into 4 (four) groups of problems, namely:

- Recognition of ownership of land rights
- Transfer of land rights
- Assignment of rights, and
- The occupation of ex-particular lands.

The development of the nature and substance of land disputes does not only concern administrative matters which must be resolved according to administrative law, but it has also entered into the political, social and cultural, so that its resolution is also a shared responsibility to solve it comprehensive, fast, precise and does not cause negative consequences.

Cancellation of a land title certificates is 'the cancellation of the decision to cancel land title or land title certificates because the decision contains administrative law defects in its issuance or to implementation court decisions that have obtained permanent legal force'.

So, with the cancellation of the land title certificate, the land rights that are owned will also expire. Can be canceled due to juridical deficiencies is due to understanding, coercion and deception '.

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If review from the legal aspect, then the cancellation of a decision letter, either canceled or Based on the content of Article 1 paragraph (1) PMNA / Ka BPN Number 1 of 1999, it has clearly provided that the cancellation of land title certificates which are in the process of being issued has administrative legal defects. This is consistent with Max Weber's view of 'the rule of law in bringing about change in society is studied more deeply by sociological schools, especially by Roscoe Pound in 1912'.

In PMNA / Ka BPN Number 9 of 1999, has been determined regarding the things that are classified as administrative law defects namely:

- Procedure error
- Misapplication of laws and regulations
- Rights subject error
- Rights object error
- Right type error
- Wide calculation error
- There are overlapping land rights
- Physical data or juridical data is incorrect, and
- Other mistakes of an administrative law nature.

Based on the description above, it can be seen that the administrative law defects in the issuance of certificates are determined by 9 (nine) types of error. Therefore, if there is only one mistake in the issuance of the land title certificate, the party who has objections can file a cancellation of the certificate.

As for the procedure for applying for cancellation of a certificate that is defective in administrative law according to Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 9 of 1999 can be done in three (3) ways, as follows:

- Cancellation of land rights through request by those concerned
- Cancellation of land rights without going through an application made by an authorized official
- Cancellation of land rights based on a court decision which has permanent legal force.

Based on the description above, it can be concluded that the cancellation of a land title certificate can be done by submitting an application to the authorized official and cancellation of the certificate without an application and filing a lawsuit to the court. The following will describe the procedures for cancellation of land title certificates that can be carried out by the applicant, namely:

- Apply for cancellation to the authorized official
- Filed a certificate cancellation lawsuit to the court.

Ad. 1. Apply for cancellation to the authorized official

Application for cancellation of land certificates through applications to the competent official, in this case to the State Minister for Agrarian Affairs, is also known as solving problems without the court or in other terms called 'Non Litigation'. With this way, the settlement process is not long, it is sufficient for the Land Office to do so and it does not take a long time.

The question is whether the application was submitted during the land certificates issuance process at the Land Office or it can be also submitted after the certificate is issued?

To answer this question has been explicitly determined in Article 104 paragraph (1) PMNA / Ka BPN Number 9, 1999 which states: cancellation of rights over land including es a decision to grant rights, as well as rights over land in the framework of regulating land nature.

Furthermore Article 104 paragraph (2) which states: cancellation of issued land rights due to administrative defects in the decision making and /or certificates of land rights or implementing court decisions that have obtained permanent legal force.

Based on the description above, its clear that application of land title certificates can be submitted to the government in this case Minister of Agrarian or the official appointed by him and also through court decision. During the grace period for the certificate issuance process at the Land Office according to Government Regulation Number 24, 1997 must be pre made announcement for 30 days for systematic land registration and during 60 days for sporadic land registration. During this grace period the law provides an opportunity for parties who have objections to submit it to the Land Office or file lawsuit to the court.

If within that time, a party has objected to the issuance of the certificate, the Land Office will make notes regarding the objection. With the submission of the objection whether the Land Office will stop the process of issuing the land title certificate? On this matter there is nothing stipulated in Government Regulation Number 24, 1997, so that in its implementation it gives rise to various interpretations.

In fact, if the Land Office wishes to resolve land issues during the land certificate issuance process the Land Office can do it so by calling both of parties to the dispute. by bringing evidence relating to the disputed parcel of land that is legally accountable and providing a solution to the problems faced which is carried out by means of deliberation resolve to reach an agreement. If the Land Office can resolve the dispute through deliberation, it is no longer necessary to file a lawsuit in court.

In the event of a dispute in the issuance of the certificate during the issuance process at Land Office, To solve this problem, the provisions of Article 30 paragraph 1c Government Regulation Number 24, 1997 which states: which physical data and or judicial data is disputed but the lawsuit is not submitted to the court, the bookkeeping is carried out in the land book with a record of the existence of the dispute and the behavior of the objecting party notified by the Head of the Adjudication Committee for systematic land registration and the Head of the Land Office for sporadic land registration to file a lawsuit in court regarding the disputed data within 60 days for systematic land registration and 90 days for sporadic land registration starting from the submission of the objection.

So, on Article 30 Government Regulation Number 24, 1997 expressly does not authorize to the Land Office to resolve land disputes during the certificate issuance processes and only provides information to the disputing parties to resolve them through the court. The authorized of the Land Office only accept objections and record them in the land book as evidence.

In this regard, The Minister of Agrarian Affairs should issue a decree which contains the authority to grant the Land Office resolves the issue through deliberation to reach an agreement. If agreement is not reached through this deliberation method, then the Land Office recommends that the parties be resolved through the court. So, any authorized which given to Land Office to resolve problems that arise in the process of issuing land title certificates.

Then in Article 106 paragraph (1) PMNA / Ka BPN Number 9, 1999 states: the decision to cancellation land rights due to administrative law defenses in its issuance can be made through an application by an interested party or by an authorized official without a request.

Based on the description above, it is clear that the imitation of the cancellation of land title certificates can come from parties who feel that their interests are disadvantaged by means of an application and can also come from the imitative of an authorized official which is carried out without request.

Likewise, regarding when the administrative law flaw occurs in the issuance of land title certificates, it is necessary to provide an authentic explanation, so that it does not case different interpretations in its application. According to the author, administrative law defects can come from the right applicant and can also come from the Land Office. Administrative law defects originating from the applicant are by providing evidence which is invalid or there is an element of deception in the provision of evidence. Meanwhile, administrative law defects originative come from the Land Office are caused by error mistakes in recording the certificates.

The regulation should be emphasized that the administrative law defects only result from errors or mistakes of the Land Office in issuing the land title certificates. If there is an information in the provision of evidence in the issuance of the certificate and it causes administrative law defects, the Land Office cannot resolve it, but must be processed through a court. So, the source of the error must be distinguished in the regulation.

The procedure for filling an application for the cancellation of a land title certificate due to administrative law defects shall be carried out in writing to the competent official with containing:

Information regarding the applicant:

- If individual includes name, age, nationality, place of residence and profession.
- If a legal entity: name, place of domicile, acta or deed of establishment information about the land include physical data and juridical data:
- Number and kind of land rights
- Location, boundaries and extent (if any measuring letter or drawing the ground situation mentioned date and number measuring letter).
- Kinds of land (agricultural or non-agricultural).

Others that contain about:

- The reasons for the cancellation
- Other information deemed necessary.

After the request is received by The Minister of Agrarian Affairs or the official appointed to do so, then the process is carried out with the following stages:

(1). In the event that an application for the cancellation of a land title is submitted directly to the Minister, the Minister shall order the competent official to:

- Examine and research the completeness of the physical data and juridical data and if not complete, immediately ask the applicant to complete them.
- Record in the form in accordance with the example.

The Minister researching the completeness and correctness of the physical data and juridical data as well as the applicant's eligibility can or cannot be granted in accordance with the law and regulations.

In connection with the reasons used by the Minister in accepting or rejecting request for cancellation of land certificate, the guideline is Article 107 PMNA / Ka BPN Number 9, 1999 such as:

- Import procedure
- Misapplication of laws and regulations
- Rights subject error
- Rights object error
- Rights type error
- Wide calculation error
- There are overlapping land rights
- Physical data or juridical data is incorrect, and
- Other mistakes of an administrative law nature.

Based on reasons above, the Minister of Agrarian Affairs will conduct an examination of the request for cancellation of the certificate and which reasons is most appropriate to be used as the basis for the application. This is important to note because in the petition the facts about the errors or administrative law violations mentioned in the petition have been described in detail.

In connection with the cancellation of a certificate that has an administrative defect, the regulation is also contained in the Permen ATR / BPN Number 11, 2016 which in Article 11 paragraph (3) which has stipulated in detail forms of administrative law defects that fall under the authority of Minister ATR / BPN.

- If physical data and juridical data the cancellation applicant is deemed inadequate. The Minister may order the appointed official to carry out a re-examination of the physical data and juridical data and report the result to the Minister.
- The result of the research is made as a basis for consideration deciding whether or not the cancellation request can be granted in accordance with the prevailing laws and regulations.
- Then the Minister decides on the application by giving a decision to cancel the right or a decision to refuse the application accompanied by the reasons for the rejection.

Ad. 2. Filed a Certificate Cancellation Lawsuit to the Court

The cancellation of the land title certificate can also be carried out through a court decision that has obtained permanent legal force. About the way this cancellation is clearly regulated in the Article 104 paragraph (2) PMNA / BPN Number 9, 1999 which states: cancellation of land title certificates due to administrative law defects can be done by filing a lawsuit with a court that has obtained permanently legal force. This regulation does not state which court has the authority to issue a decision, namely whether it is verdict of a District Court or a verdict of a State Administrative Court.

The author concludes that if what is in problems is the status of ownership of rights over the land, the District Court is the authority to judge it. This statement is based on Article 30 paragraph (1c) Government Regulation Number 24, 1997 which state: for which physical data and or juridical data are disputed but a lawsuit is not filed to the Court, the bookkeeping is carried out in the land book with a record of the existence of the dispute and to the objected party to The Chairperson of the Adjudication Committee for systematic land certification and the Head of The Land Office shall notify for sporadic land registration to file a lawsuit with the court regarding disputed data within 60 days for systematic land registration and 90 days for sporadic land registration since his notification.

So, it is clear that this has been mixed into a civil suit because it concerns the certainty of ownership of land rights whose certificate issuance process is ongoing in the Land Office. If within that grace period the applicant for the certificate cancellation is not fulfilled within that time, then the issuance process will continue to be carried out by the Land Office by including a note regarding the existence of parties who object to the issuance of the certificate.

Furthermore, the record is cleared if:

- Has been obtained an amicable settlement between disputing parties, or
- A court decision has been obtained regarding the related dispute for which a permanent decision has been obtained, or
- After a period of 60 days for systematic land registration and 90 days for sporadic land registration since a written notification is submitted, no claims regarding the dispute shall be filed with the court.

So, the only party that can stop the certificate issuance process on going in Land Office is only the Court. This is because the law adheres to a negative system of land registration so that in event of the dispute over land ownership only the Court has the authority to determine who is the owner. This is where the court plays a very important role in the settlement of land rights.

However, if within the stipulated time a lawsuit is not submitted to the court, the Land Office will continue the certificate issuance process. After the certificate is issued by Land Office, can the party objecting to the issuance of the certificate still file an objection to the Land Office or to the Court

For answer this question is not regulation in PMNA / BPN Number 9, 1999, but must refer to Article 32 paragraph (2) Government Regulation Number 24, 1997 which stated: In the event that a land parcel has been issued a certificate legally in the name of the person or legal entity who acquired the land in good faith and clearly controls it, then the other

party who feels that he has right to the land cannot longer demand the exercise of this right if within 5 (five) year from the issuance of the certificate holder does not submit a written objection to the certificate holder and The Head of the Land Office or not filling lawsuit to the Court about land controls or issuance certificate.

So, if the party requesting the issuance of the certificate has good faith, the law provides him with legal guarantees. This statement is in accordance with what is stipulated in Article 1365 Indonesian Civil Code which States: every act of disobeying the law that bring harm to another person, obliges the person who due to his wrongdoing to issue said loss to compensate for said loss '.

In connection with the content of Article 32 Paragraph (2) Government Regulation Number 24, 1997, A.P. Parlingungan state, 'that the state does not guarantee the absolute correctness of the physical data and juridical data, because agrarian law does not adhere to positive systems or positive publications in land rehabilitation, but still uses negative publications'. So, it is clear that because UUPA Number 5, 1960 adheres to a negative system in land registration, the certificate issued is not absolutely valid but can still be questioned through the Court.

With the cancellation of the land title certificate issued by the Land Office, it is assumed in the community that even though a plot of land already has certificate but this does not provide legal certainty.

Although regulations have been made that determine the land certification process, there are still errors or mistakes in the issuance, so that there are parties who feel disadvantaged. Where is the lawsuit filed by the party who feels that their interest is disadvantaged for the issuance of the certificate? This answer is not found or not regulated in Government Regulation Number 24, 1977 or in PMNA / BPN Number 9, 1999.

In this case which lawsuit is the certificate, because the certificate is a decision of the State Administration Official, the settlement must refer to Laws Number 5, 1986 about the State Administrative Court. This is in accordance with what is regulated in Article 1 paragraph (3) Law Number 5, 1986 which states: A state administrative decision is a written stipulation issued by state administrative agency or official which is based on the prevailing laws and regulations which are concrete, individual and final which give rise to legal consequences for a person or civil legal entity.

Based on description above, the according to Law Number 5 of 1986 a lawsuit was filed at the State Administrative Court, because the object of the lawsuit was a state administrative decision.

Because the one being used is a state administrative decree a state administrative dispute is born. This is contained in Article 1 paragraph (4) of Law Number 5 of 1986 which states: State administrative disputes are disputes that arising in the field of State Administration between individuals or civil legal entities, with State Administrative Bodies or officials both at the central and regional levels as a result of the issuance of state administrative decisions including personnel disputes based on the prevailing laws and regulations,

Who can a certificate be submitted to a State Administrative Court? The answer to this question is clearly stipulated in Article 55 of Law Number 5 of 1986 which states: A lawsuit can be filed only within a grace period of 90 (nineteen) days from the time when the decision on the State Administrative body or Official is announced. This indicates that to file a lawsuit at the State Administrative Court and if within that time the lawsuit is not filed, as a result the right to file a lawsuit will be void.

Because the object of the lawsuit is State Administration Decree, the one being sued is the official who issued the decision. Because which is a report is a certificate of land rights, then the lawsuit is submitted to the Minister of Agrarian Affairs or The Regional Office of BPN or The Head of Land Office in accordance with the official who signed the certificate. Statement above is conformed with Article 125 paragraph (1) PMNA / Ka BPN Number 9 of 1999 which state: application for cancellation of rights due to implementing judicial decisions that have obtained legal force can still be submitted directly to the Minister or Head of Regional Office or Head of The Land Office. So, it is clear that if the request for cancellation of a land title certificate has been granted by the Court, the certificate will be null and void.

With the issuance of the Court decision that has permanent legal force to cancel the land title certificate, in the community also often becomes a question, namely whether the land rights that are owned will also be nullified by the cancellation of the certificate.

Regarding whether the land title is canceled by the cancellation of the title right, it is clearly stated in Article 1 Paragraph (14) PMNA / Ka BPN Number 9 of 1999 which states: Cancellation of land rights is the cancellation of a decision to grant a right to land or a certificate of land title because the decision contains administrative law defects in its issuance or to implementation Court decisions that have permanent legal force.

Regarding this cancellation, by State Administrative Law recognized the existence of the teaching of cancellation, which is what distinguishes the meaning between:

- Absolute cancellation of an act or also called cancellation for the sake of law, namely an act must be considered null and void even though it is not requested by one of the parties or does not need to be prosecuted explicitly (absolute nietigheid).
- Relative cancellation is an action cancellation that occurs when requested by a certain person (relatief nietigheid) ' . With the cancellation of the certificate, the land title will be also canceled or ended and if land rights are canceled due to cancellation, the abolition of land rights must be also registered and refer to Article 131 PMNA / BPN Number 3 of 1997. Furthermore, the recording of the write off of said right shall be carried out by etching it in black ink in the land book and certificate and crossing out the number of the right concerned and then on the amendment page that has been provided it is stated that the right to land is written off based on decision to cancel the right by starting the number and date as well as crossing out the name list, measuring letter and map and the number that has been deleted.

4. Conclusion

PMNA / Ka BPN Number 9 of 1999, has regulated the procedure for cancellation of land title certificates due to administrative law defects by submitting an application for cancellation of land title certificate through the Minister of Agrarian Affairs or The Head of The Regional Office of BPN or The Head of The Land Office with starting clearly the administrative law defects in the lawsuit, example whether the legal record is in the field of physical data, juridical data, wide and boundaries. The application for cancellation is made when the certificate issuance process is in progress at the Land Office, so that it can be resolved by deliberation to reach a consensus.

Cancellation of the land title certificate can also be based on a court decision which has permanent legal force. Application for cancellation of the certificate to the District Court if the object of the lawsuit is regarding disputes over land ownership rights, about physical data and juridical data, and land boundaries. This lawsuit to the District Court was filed both during the certificate issuance process and after the certificate was issued.

Meanwhile a lawsuit for the cancellation of land title certificates to the State Administrative Court is if the object of the lawsuit is a state administrative decree, in this case is a certificate of land rights. Thus, lawsuit can be submitted to the District Court or to State Administrative Court, depending on what is used as the object of the lawsuit in the petition. If the application for cancellation of land rights is through a request to the Minister of Agrarian Affairs or a designated official and the cancellation of the certificate is based on a decision on a court decision which has permanent legal force, then the cancellation includes:

- A decree granting land rights
- A certificate of land rights.

So, it is clear that with the cancellation of the land title certificate, the land rights will automatically also be canceled or the end.

5. References

- i. Abdurrahman.(2011),*Tebaran Pikiran Mengenai Hukum Agraria*. Penerbit: Alumni. Bandung.
- ii. Abdurrahman. (2004). *Masalah Hukum Agraria Dalam Pembangunan di Indonesia*. Penerbit: Rineka Cipta. Bandung.
- iii. Chandra, S. (2005), *Sertifikat Kepemilikan Hak Atas Tanah*. Penerbit: PT. Grafindo. Jakarta.
- iv. Gautama, Sudargo. (2009). *Tafsiran Undang-Undang Pokok Agraria*. Penerbit: Alumni. Bandung.
- v. Harsono, Boedi. (2014). *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria dan Pelaksanaannya*. Penerbit: Djambatan. Jakarta.
- vi. Hutagalung, Arie S. (2002). *Serba Aneka Masalah Tanah Dalam Kegiatan Ekonomi*. Penerbit: Fakultas Hukum Universitas Indonesia. Jakarta.
- vii. Lubis, Mhd.Yamin dan Abd. Rahim Lubis.(2008). *Hukum Pendaftaran Tanah*. Penerbit: Mandar Maju. Bandung.
- viii. Panudju, Banmbang. (2009). *Pengadaan Perumahan Kota Dengan Peran Serta Masyarakat Berpenghasilan Rendah*. Penerbit: Alumni. Bandung.
- ix. Parlindungan, A.P. (2010). *Serba Serbi Hukum Agraria*. Penerbit: Alumni. Bandung.
- x. Parlindungan, A.P. (2009). *Pendaftaran Tanah Di Indonesia*. Penerbit: CV. Mandar Maju. Bandung.
- xi. Perangin, Efendi. (1994). *Hukum Agraria Di Indonesia*. Penerbit: Rajawali Pres. Jakarta
- xii. Rasidi, Lili dan Ira Rasidi. (2009). *Dasar-Dasar Filsafat Dan Teori Hukum*. Penerbit: PT. Citra Aditya Bakti. Bandung.
- xiii. Soekanto, Soerjono dan Sri Mamudji.(2008). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Penerbit: PT. Grafindo Persada. Jakarta.
- xiv. Setiono. (2015). *Pemahaman Terhadap Metodologi Penelitian Hukum*. Penerbit: Pascasarjana Universitas Sebelas Maret. Surakarta.
- xv. Soerodjo.(2009). *Proses Pendaftaran Tanah*, Penerbit: Rineka Cipta. Jakarta
- xvi. Subekti, R. (2007). *Hukum Pembuktian*. Penerbit: Pradnya Paramita. Jakarta.
- xvii. Utrecht, E. (2009). *Pengantar Hukum Administrasi Negara Indonesia*. Penerbit : Pustaka Tinta Mas. Surabaya/
- xviii. Kementerian ATR/BPN Sofian A. Djalil. (2018). *Dalam Acara 'High Level Panel, Global and Forum. Dengan Tema Reformasi Agraria Untuk Keadilan dan Kesejahteraan*. Gedung Merdeka. Bandung.
- xix. Departemen Pendidikan dan Kebudayaan. *Kamus Besar Bahasa Indonesia*. Penerbit: Balai Pusata. Jakarta
- xx. Republik Indonesia, Undang-Undang Nomor 5 Tahun 1960 tentang *Peraturan Dasar Pokok-Pokok Agraria*.
- xxi. -----Undang-Uindang Nomor 5 Tahun 1986 tentang *Peradilan Tata Usdaha Negara*
- xxii. -----Peraturan Pemerintah Nomor 24 Tahun 1997 tentang *Pendaftaran Tanah*
- xxiii. -----Kepres Nomor 10 Tahun 2006 tentang *Badan Pertanahan Nasional*.
- xxiv. -----Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 9 Tahun 1999 tentang *Tatacara Pemberian dan Pembatalan Hak Atas Tanah Negara dan Hak Pengelolaan*.
- xxv. -----Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 tentang *Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah*.
- xxvi. Kitab Undang-Undang Hukum Perdata