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## Theoretical Reflection on Authority State Administrative Court and National Land Agency for Administrative Error Certificates

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*Land disputes occur between two people or legal entities that experience overlapping land rights regarding land status and ownership. The existence of a double certificate will make one of the Certificates of Ownership (SHM) owned by the two parties canceled through a court decision. In this case, the Administrative State Court has absolute authority in handling multiple certificate disputes. However, there are restrictions with the National Land Agency in canceling one of the Certificates that is the object of the dispute. This research uses normative legal methods through applicable laws and regulations and literature studies. Analytical descriptive method to reflect the authority of PTUN and BPN to analyze the settlement of multiple certificate disputes, which are flawed in administrative law. BPN is inclined to be flawed in substance. But when it has been observed that there are procedural flaws in the issuance of SHM, then the case is released to the Administrative State Court to issue later an executorial decision against a decision that is declared null and void or does not have binding legal force to be implemented by BPN. Disputes over multiple certificates become the authority of the Administrative State Court by examining the authority and procedural aspects of the formal issuance of Certificates of Ownership (SHM) issued by the BPN. SHM is the object of TUN disputes with concrete, individual, and final characteristics. The legal fact that the expiry of the time for filing administrative efforts by the plaintiffs does not result in the objection of the lawsuit being rejected/ not accepted because the judge is solely based on the principle of a quick, simple, low-cost examination.*

**Keywords:** *administrative court, bpn, double certificate.*

## INTRODUCTION

Judicial power in the rule of law is important and strategic. There is conformity in the material content of the 1945 Constitution of the Republic of Indonesia which explains that the Indonesian state is based on the rule of law (*rechstaat*), not based on more power (*machstaat*). The context of judicial power is interpreted as implementing legal principles through an independent judicial process to administer justice to uphold justice in society. As the rule of law, Indonesia has a foundation of judicial power as a pillar of democracy construction, which is realized by administering four judicial bodies, one of which is the Administrative State Court based on Article 18 of Law Number 4 of 2004 j.o Law Number 48 of 2009 concerning Judicial Power. Indonesia, as the rule of law, has a foundation of judicial power as a pillar of democratic construction which is manifested by the administration of four judicial bodies, one of which is the Administrative State Court (PTUN) based on Article 18 of Law Number 4 of 2004 J.O Law Number 48 of 2009 concerning Power Justice.<sup>1</sup> The existence of PTUN aims to provide justice for all people in resolving Administrative state disputes (TUN).

As a result of the stipulation of an Administrative State Decision (KTUN) including land disputes with the object of the dispute, is a decision (*Beschikking*), namely a certificate issued by the National Land Agency (BPN). This authority, procedure, and mechanism serve as a benchmark for whether TUN officials in carrying out their functions violate the rules, exceed the limits of authority, or take arbitrary actions contrary to applicable regulations.<sup>2</sup>

The competence of the Administrative State Court (Peratun) is an obligation that belongs to the Administrative State Court to decide on a case by looking at the material object or various main disputes submitted by the plaintiff in the field of State Administration between a person or civil

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<sup>1</sup> Farid Wajdi, 'Independensi Dan Akuntabilitas Peradilan' (2018) 23(3) MeluruskanArah Manajemen Kekuasaan Kehakiman <[https://komisiyudisial.go.id/frontend/publication\\_download/54](https://komisiyudisial.go.id/frontend/publication_download/54)> accessed 16 May 2023

<sup>2</sup> Yodi Martono Wahyunadi and M H SH, 'Kompetensi Pengadilan Tata Usaha Negara Dalam Sistem Peradilan Di Indonesia' (2016) 3(2) PTUN Jakarta <[https://ptun-jakarta.go.id/wp-content/uploads/file/berita/daftar\\_artikel/Kompetensi%20Pengadilan%20Tata%20Usaha%20Negara%20Dalam%20Sistem%20Peradilan%20Di%20Indonesia.pdf](https://ptun-jakarta.go.id/wp-content/uploads/file/berita/daftar_artikel/Kompetensi%20Pengadilan%20Tata%20Usaha%20Negara%20Dalam%20Sistem%20Peradilan%20Di%20Indonesia.pdf)> accessed 16 May 2023

legal entity with an Administrative state agency or official (TUN) which issues administrative state decisions in the central and regional domains.<sup>3</sup> Regarding absolute competence, it becomes a court's authority to adjudicate a case based on the material object and the subject matter of the dispute.<sup>4</sup> Land conflicts are primarily brought on by people trying to prove their ownership of a piece of property by using forged documents, such as blank certificates, altered BPN stamps, or documents whose information does not match the land book. For example, when a certificate is issued based on a forged ownership certificate, it is forged because it is not based on the proper provisions. The object listed in the certificate is not data that should belong to someone else. Based on the provisions of Article 77, paragraph (1) of Law Number 30 of 2014 concerning Government Administration reads: *Decisions can be objected to within a maximum period of 21 (twenty-one) working days after the announcement of the decision by the government agency and/or official.*

The Metro National Land Agency (BPN) stipulates that objections to the KTUN be submitted as a certificate as proof of legitimate and authentic rights related to the biological data and legal data contained therein. This is the first step in the PTUN procedure that must be followed to settle land disputes.<sup>5</sup> The National Land Agency (BPN), which has the authority to cancel certificates of ownership (SHM), can be used by the government to settle land disputes involving PTUN decisions that have permanent legal effect or the existence of a legal flaw in the issuance of a certificate of ownership (SHM) on land. TUN officials produce the Certificate of Ownership (SHM) on land to ensure that the Administrative state Laws are followed. Consequently, for the purposes of these legal actions, a person acting as a TUN official may do something that is considered illegal, either accidentally or as a result of negligence in discharging his legal duties.<sup>6</sup>

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<sup>3</sup> Martinus Hadi, 'Tanggung Jawab BPN Terhadap Sertipikat Yang Dibatalkan PTUN' (2014) 2(7) *Lex et Societatis* <<https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/5387>> accessed 16 May 2023

<sup>4</sup> Badriyah Khaleed, *Mekanisme Pengadilan Tata Usaha Negara (PTUN)* (Jakarta: Media Pressindo 2018)

<sup>5</sup> Philipus M Hadjon, 'Peradilan Tata Usaha Negara Dalam Konteks Undang-Undang No. 30 Th. 2014 Tentang Administrasi Pemerintahan' (2015) 4(1) *Jurnal Hukum Dan Peradilan*

<sup>6</sup> Anita Marlin Restu Prahastapa et al., 'Friksi Kewenangan PTUN Dalam Berlakunya Undang-Undang Nomor 30 Tahun 2014 Dan Undang-Undang Nomor 5 Tahun 1986 Berkaitan Dengan Objek Sengketa Tata Usaha Negara (TUN)' (2017) 6(2) *Diponegoro Law Journal*

The incorrect or careless act produced the incorrect certificate legal product, which included errors in the certificate's legal subject and law. It is believed that these mistakes can happen during various land registration procedures, rendering the resulting Land Ownership Certificate void. As a result, the National Land Agency's actions are classified as an administrative, legal defect, and the in question document is a Property Rights Certificate issued by a TUN official. The independence to enact policies in the absence of a specific law (UU) or a vague law that the government owns is the definition of the government's discretionary power.<sup>7</sup> As a result, it is believed that the Administrative Court's jurisdiction, as stated in Law No. 5 of 1986, is no longer relevant because it is too limited to only hear concrete, unique, and final decisions. for the setting of the Administrative state Court, a component of Indonesia's judicial system. However, it is believed that this power is insufficient to protect citizens' rights, some of which are also human rights (HAM). There is a need for a much more specific law that protects citizens' rights and guides state officials when formulating policy. Regarding Government Administration manifests as a phenomenon of reverse flow of regulations policy, resulting in the expansion and affirmation of PTUN's authority in resolving administrative disputes. Additionally, it expands the meaning of procedural and substantive defects, which becomes an allusion to the authority to resolve disputes PTUN with BPN.

## METHODS

The problem approach used in this study was carried out in two (two) different ways: a normative legal approach by studying the applicable laws and regulations relating to the legal issues to be discussed and an empirical legal approach through field research by conducting direct interviews with judges Bandar Lampung Administrative state Court to obtain information and legal facts relating to the legal issues to be discussed. As a result of field research, I obtained information and legal facts from the Bandar Lampung Administrative State Court and the Metro National Land Agency (BPN) Office. Additional primary data was collected through literature reviews of various texts, including those from relevant statutes and

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<sup>7</sup> Muhammad Reza Syariffudin Zaki and Reza Mahendra, ' Analisis Yuridis Pembatalan Hak Atas Sertifikat Tanah Oleh Pengadilan Tata Usaha Negara Akibat Sengketa Kepemilikan Ganda (Studi Analisa Putusan Nomor 103/G/2016/PTUN-BDG)' (2020) 4(2) HERMENEUTIKA: Jurnal Ilmu Hukum

regulations, legal treatises, and other articles. A descriptive analytical approach can be used to analyze the data gathered for this study using the information gathered and processed above.<sup>8</sup>

## RESULT AND DISCUSSION

### **A. Relevance Of The Authorities Of The Administrative State Court And The National Land Agency In The Cancellation Of Land Proprietary Certificates**

The UUAP's existence in its substance explains administrative law errors, including procedural and substantive flaws. For example, "substance errors" refer to mistakes made when the desired information does not follow the formulation in the decisions made, such as when a conflict of interest, fraud, or coercion is involved. While a mistake in the process of making decisions that do not follow the requirements and procedures regulated in the provisions of laws and regulations and/or standard operating procedures is what is meant by "procedural error." Therefore, according to the formal procedural law, the BPN may complete the License of land ownership in one of two ways: either using its authority and the method of administrative efforts or by enforcing a court's ruling that has enduring legal effect. The issue is with how far administrative law flaws are used to review the limitations of the BPN and Administrative Court in trying to solve these conflicts.

Regarding the procedural flaw, issuing the Certificate of Possession (SHM) for the property was not done carefully or went against the procedure. An example of this would be the presence of multiple certificates for the same item that falls under this category, where the issuance of one of the certificates goes against the procedure for doing so or violates The Administrative State Court, an institution with the power to decide on certificate issuance procedures, must be in charge of giving this issue legal certainty to ensure accuracy in releasing it. To comply with an executorial decision, BPN will revoke one of these certificates because decisions whose

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<sup>8</sup> Depri Liber Sonata, 'Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum' (2015) 8(1) Fiat Justitia: Jurnal Ilmu Hukum  
<<https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/283>> accessed 15 May 2023

procedures do not follow the law have substantive flaws, even though not all of them fall under the procedural flaws in the Certificate of Ownership (SHM) for the land.

However, BPN must first determine whether the issue is more likely to be procedural or substantive because, in essence, BPN is responsible for substance defects such as editorial mistakes, preambles, and modifications to the grounds on which decisions are made, and/or the addition of new information. When certificates of land rights are revoked due to administrative errors and the action is not taken as a result of a court order, it may be done so following Minister of Agrarian Regulation Number 21 of 2020, which specifies that administrative efforts must be made first following the requirements of UUAP, with a deadline of 21 days. Work by reports from members of the public who believe that a Certificate of Ownership over land is harmful to them, then followed up with the title of a case by holding an action taken in the context of resolving disputes.<sup>9</sup>

Even up to court hearings, land certificates frequently give rise to conflicts. This is because land serves a crucial purpose in people's lives. As a result, the community must register land to receive a certificate on land that serves as reliable proof of ownership.<sup>10</sup> With the advantages and high land value, many people also use duplicate and false certificates to prove their ownership. The issuance of certificates based on forged documents, the use of other forms, such as stamps from the National Land Agency (BPN), and the manipulation of land records are examples of certificate fraud. Based on Article 2 Paragraph 2 of the Regulation of the Settlement of Land Cases, states that: *'The settlement of land cases aims to provide legal certainty and justice regarding control, ownership, use and utilization of land.'*

Delegation of authority is used to decide to revoke a certificate of ownership rights (SHM) on land based on a PTUN decision that is given permanent legal effect (delegation). Administrative state Law rules apply to the property ownership certificate because it was produced by

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<sup>9</sup> Marbun dan Moh Mahfud, *Pokok-Pokok Hukum Administrasi Negara* (Yogyakarta: Liberty 2011)

<sup>10</sup> Philipus M Hadjon, 'Peradilan Tata Usaha Negara Dalam Konteks Undang-Undang No. 30 Th. 2014 Tentang Administrasi Pemerintahan' (2015) 4(1) *Jurnal Hukum Peradilan*  
<<https://jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/view/74/0>> accessed 15 May 2023

Administrative State Officials (TUN). For the purposes of this legal action, a person acting as a TUN official may do something illegal either accidentally or because he was careless in discharging his legal duties.<sup>11</sup> The erroneous or careless action produced the incorrect certificate legal product, which included errors in the certificate's legal subject and law. It is suspected that these errors can occur in various land registration processes. Therefore, the Certificate of Ownership (SHM) on the land produced can be null and void. According to the authority of each party regarding the cancellation of one of the Certificates of Ownership (SHM) on land, defects in substance and procedures render the agreement null and void and allow for cancellation. Null and void refer to an agreement that is not considered to have existed at all, even though there may have been an engagement. Legally, it is deemed that no agreement or legal engagement ever existed, so there is no basis upon which to demand in Court that one of the parties fulfill certain obligations.<sup>12</sup>

This is based on the formal agreement's provisions not being met, the objective criteria for its legality not being satisfied, the agreement made by someone without the legal authority to do so, or even the fulfillment of void circumstances. So, a PTUN judgment that is null and invalid is one that was first rendered, is considered to have never existed, has no binding legal effect, and lacks the authority to be carried out, such as ordering the BPN to withdraw one of these certificates. This differs from the word 'cancellable', which refers to a request to cancel the SHM by one of the parties.

The Court ruling revokes all land rights, including those definitively granted within the context of land tenure agreements. However, it does not make the request binding for the other party because there is no judge's decision yet. As a result, the PTUN decision, which has permanent legal force against the cancellation of land ownership certificates, has the power of proof and

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<sup>11</sup> Anna Erliyana, 'Judicial Control Terhadap Kewenangan Administrasi Negara' (2017) 28(1) Jurnal Hukum & Pembangunan

<[https://www.researchgate.net/publication/318650666\\_Judicial\\_Control\\_terhadap\\_Kewenangan\\_Administrasi\\_Negara](https://www.researchgate.net/publication/318650666_Judicial_Control_terhadap_Kewenangan_Administrasi_Negara)> accessed 15 May 2023

<sup>12</sup> Elza Syarief, 'Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan' (Jakarta: Kepustakaan Populer Gramedia, 2014)

<<http://repository.uib.ac.id/779/1/Menuntaskan%20Sengketa%20Tanah%20%28Full%29.pdf>> accessed 15 May 2023

executorial law and is binding on all parties (*erga omnes*). Depending on the decisions made by the decisions have executory power. In this instance, rights are made, legal error when issuing a certificate of land rights, a decision to grant land rights, or carrying out a court ruling that has been given permanent legal effect.<sup>13</sup>

### **B. Implementation of the Authority of the Metro City National Land Agency for Defects in the Substance of Land Ownership Certificates**

The current state of affairs demonstrates that this form of cancellation is very infrequently carried out by BPN, leading some to believe that BPN lacks the confidence to revoke land rights certificates even if it is aware that they were issued incorrectly. Although the legislation in the land sector provides the BPN with this jurisdiction, it raises questions about the BPN's ability to cancel due to the ambiguous category of administrative defects that the BPN can annul without a Court judgment. When certificates overlap, the public frequently wonders how to cancel them without a court order, but the BPN advises them to file a lawsuit instead.

Certificates of ownership rights to land by BPN can be completed in two ways: through its authority with the mechanism of administrative efforts or by carrying out court decisions that have permanent legal force. With regard to the cancellation of certificates of land rights due to administrative defects and the cancellation is carried out not through a court decision, that can be done based on the Regulation of the Minister of Agrarian Affairs Number 21 of 2020, namely by starting with administrative efforts according to the procedures a deadline of 21 days of working period by a report from the public who feels that a Certificate of Ownership over the land is detrimental to them, then followed up with the title of a case by holding a case carried out in the context of handling disputes, or carried out by mediation as an effort of peace aimed at resolving the case with a pattern of settlement mutual agreement, of course the National Land Agency (BPN) through such means is required to provide mediation facilities, so that it becomes a manifestation of Article 75 of UUAP, which if not resolved or If you do not receive an answer

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<sup>13</sup> Abdul Kadir Jaelani, 'Implementasi Daluarsa Gugatan Dalam Putusan Peradilan Tata Usaha Negara Di Indonesia' (2020) 18(2) *Pena Justisia: Media Komunikasi Dan Kajian Hukum* <<http://dx.doi.org/10.31941/pj.v18i2.1090>> accessed 15 May 2023



within a period of 10 days at the latest, efforts to resolve the dispute are submitted. The Administrative State Court can review and decide whether to dismiss cases. Thus that is how the conflict resolution endeavor is carried out. Based on the report of the Metro City Land Office's Head of Conflict Dispute Handling and Settlement for the Term of 2021–2022 in Lampung Province. Table 1. Number of Land Dispute Settlements between the National Land Agency and the Administrative State Court 2021-2022

Year	Number of Land Dispute Settlements	
	National Land Agency	Administrative Court
2021	4	5
2022	2	2
<b>Total</b>	13	

**Source: Metro City National Land Agency**

According to the data above, there were 13 cases of land dispute settlement in the previous two years, more of which were settled through the Administrative State Court (Peratun) procedure than by the BPN itself through case titles. Due to the National Land Agency's contention that it lacks the experience necessary to determine whether the certificates at issue are legitimate or not, even though it has the authority to settle land through case titles from the review stage to its conclusion, some disputes can only be resolved through mediation between the two parties. The National Land Agency only resolves disputes in mild cases when there are only minor administrative or technical complaints that can be resolved with a letter of settlement instructions, such as when there are errors in determining boundaries and land area.

Deciding on new information. When it comes to the subject of land disputes, the absolute limit of authority between PTUN and BPN is that PTUN tends to settle procedurally flawed cases. For example, suppose two certificates of ownership rights (SHM) are identical to those registered by BPN. In that case, the validity of each SHM can be checked to see if it has been issued following the procedures for the issuance of land rights. But on the other hand, BPN will revise decisions if there are consideration errors, editorial errors, or modifications to fundamental changes, which comply with Article 63, Paragraph 1 of UUAP.

The subject of land disputes is where PTUN tends to lead to the resolution of cases with procedural flaws. For example, suppose BPN records two identical certificates of ownership rights (SHM). In that case, each SHM's validity can be verified to see if it has been issued following the procedures for issuing land rights. On the other hand, BPN is in the process of concluding a settlement that results in a substantive defect, which is categorized as a decision that has been revised regarding an editorial error that changed the meaning KTUN, or error explanation section, according to Article 63 paragraph 1 of the AP Law. According to Permen No. 21 of 2020's Article 5, the BPN may also decide on moderately and seriously serious matters, including other parties and difficult legal issues such as substance deficiencies. Yet since the BPN frequently refers to these disagreements for adjudication, the outcome may be used as justification for the BPN to issue an accurate new Certificate of Ownership (SHM). Even if Ministerial Regulation Number 11 of 2016 concerning the Settlement of Land Disputes clearly defines the government's legal action that cancels the certificate in Article 56, Paragraph 1 mentions that *"In the case of implementing the court decision as referred to in Article 49, the implementation is carried out following the cancellation authority."*<sup>14</sup>

Based on the provisions of Article 38, paragraph 1 of Ministerial Regulation Number 21 of 2020 concerning the handling and settlement of land cases, it is still possible to implement land administration actions, such as issuing decisions to revoke legal products following the law, in response to requests from interested parties. Suppose the decision is ruled void or lacks the necessary proof to be legally binding. In that case, the cancellation of a legal product due to a

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<sup>14</sup> Land Dispute Resolution 2016, Reg No 11

court decision already having legal force is nevertheless carried out. Land-related issues become an important component of the community when SHM is studied as a manifestation of KTUN that is examined in the area of justice; hence, in daily life, to serve as legal proof of land ownership needs to be accompanied by a solid assurance of legal certainty. As a result, the certificate becomes a prerequisite for the community to register the land object right away to receive reliable ownership documentation.

## CONCLUSION

The Administrative State Court's (PTUN) absolute authority for Double Certificate Disputes by determining the legality of specific, individual, and conclusive KTUNs in the executive, legislative, and judicial domains, and then expanding once more with concrete actions like trying unlawful acts by the government, specifically unlawful acts co The Administrative state Court and the General Court are the two courts with authority to rule on land disputes, thus before deciding how to resolve the conflict, it can be determined whether it involves property rights or administrative state judgments made by government officials. After the passage of Act No. 2 2019, concrete actions or government actions emanating from the Administrative State Court must first be adjudicated before being brought to the General Court. Then, PTUN and BPN have connections that pertain to their areas of expertise, such as resolving disputes through administrative means like title cases brought by BPN with settlement substance flaws or through PTUN with settlement procedural flaws that will give BPN an executory order to revoke the certificate in question.