

Forgiven of Land Certificate Review from KUHP

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Abstract

Land is something very important for human life. Matters relating to the land necessary to have a legal certainty for rights holders bag ground through a land registration activities as stipulated in Government Regulation No. 24 of 1997 on Land Registration. Based on this research problem formulation is: How is the criminal aspect of the registration of land rights? How is the criminal responsibility of the perpetrators of criminal acts of falsification of documents in the registration of land rights? Criminal aspects in the field of registration of land rights is a forgery of documents in the form of written or printed letters that can be used as evidence such as a death certificate information, genealogy heirs, identity card, family card, certificate of village officials. Criminal liability against criminal falsification of documents in the registration of land rights is accounted for by the parties / people who have forged the document registration of land rights based on the principle of the mistakes made by the applicant for a land registration system in Indonesia is negative, but a positive tendency.

Keywords: *Keywords: Certificate, Falsification of documents*

1. INTRODUCTION

In meeting the needs of life, crime is increasingly prevalent. this cannot be separated from various social, environmental, and other aspects, especially in the economic aspect, so that it is possible that the modus operandi of criminals themselves is growing, both in terms of thought and in terms of technology. In Indonesian law, counterfeiting something is a form of criminal act that has been regulated in the Criminal Code (KUHP) (Chazawi, 2005). Indeed, forgery itself is regulated in CHAPTER XII (Forgery of Letters) Book II of the Criminal Code (Crime), the book states that what includes forgery is only in the form of writings, including forgery of letters as regulated in Article 263 of the Criminal Code up to Article 276 of the Criminal Code. Crimes that often occur are related to Article 263 of the Criminal Code (making fake letters or falsifying letters), and Article 264 of the Criminal Code (falsifying authentic deeds) and Article 266 of the Criminal Code (ordering to enter false information into an authentic deed). Taking into account the provisions of Article 266 paragraph (1) of the Criminal Code, as for the elements, namely: a. Whoever ; b Ordering to put false information into an authentic deed; c. with the intention of using or ordering another person to use the deed as if the statement was in accordance with the truth. Then paying attention to the sound of Article 55 paragraph (1) 1 of the Criminal Code, stipulates that as perpetrators of criminal acts, namely:

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- a. those who do,
 - b. those who ordered to do, and
 - c. those who participate in the act, it can be concluded that the legal elements are:
 1. Whoever ;
 2. Order to put false information into an authentic deed;
 3. With the intention of using or ordering other people to use the deed as if the information is in accordance with the truth;
 4. The culprit:
 - a. Those who do;
 - b. Those who ordered to do;
 - c. Those who do.

The provisions of Article 266 paragraph (1) of the Criminal Code, which is the subject (perpetrator), namely "who ordered to enter false information", and the word "ordered" is a very important part (bestanddeel) of Article 266 paragraph (1) of the Criminal Code. The maker of the deed in this case is a Notary, he (the notary) is not the subject (perpetrator) in Article 266 paragraph (1) of the Criminal Code, but the Parties making the authentic deed are the subjects (actors), because they are the ones who ordered to enter false information.

One of the objectives of the establishment of Law Number 5 of 1960 concerning Basic Agrarian Regulations, hereinafter referred to as the UUPA, is to lay the foundations for providing legal certainty regarding land rights for all Indonesian people.

The constitutional basis for the policy of land development is basically based on Article 33 paragraph (3) of the 1945 Constitution which reads: "Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". Based on the constitutional basis, with the ratification of the LoGA on September 24, 1960, it means that the foundation has been laid for the implementation of Land Administration in order to realize the National Goals.

Through Presidential Decree Number 26 of 1988 concerning the National Land Agency, the National Land Agency was established, hereinafter abbreviated as BPN, as a Non-Departmental Government Institution which is located under and directly responsible to the President. Along with developments in the land sector, the regulation underwent various changes, the latest of which is Presidential Regulation Number: 10 of 2006 concerning the National Land Agency of the Republic of Indonesia, abbreviated as BPN RI, hereinafter referred to as Perpres 10/2006. The task of BPN is stated in Article 2 of Presidential Regulation 10/2006, namely carrying out government duties in the land sector nationally, regionally and sectorally.

Orderly land administration is the target of efforts to obtain legal certainty and certainty of land rights. The UUPA has placed an obligation on the government to carry out the registration of existing lands throughout Indonesia in addition to rights holders to register land rights that exist in them in accordance with applicable provisions (Article 19 of the LoGA). Provisions regarding land registration are further regulated in Government Regulation Number: 24 of 1997 concerning Land Registration in lieu of

Government Regulation Number 10 of 1961 concerning Land Registration, hereinafter referred to as PP 24/1997, which came into effect on October 8, 1997. Provisions for implementation further regulated in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number: 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number: 24 of 1997 concerning Land Registration, hereinafter referred to as PMNA/KBPN 3/1997. The purpose of land registration according to Article 19 of the LoGA is legal certainty, which includes:

1. Certainty regarding the person/legal entity who is the holder of land rights, which is also called certainty of the subject of land rights.
2. Certainty of the location, boundaries, length and width, which is called the certainty of the object of land rights (Soerodjo, 2003)

The holding of land registration will have legal consequences, namely the issuance of a letter of proof of land rights commonly referred to as a land certificate to the holder of the land rights concerned which serves as a strong evidence. The certificate is a certificate of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and the book of land rights concerned (Article 32 paragraph (1) PP 24/1997).

In the issuance of a certificate, a process is needed that involves the applicant, adjacent land owners, the Village Administration and the relevant agencies to obtain an explanation. Both oral and written explanations from related parties have the opportunity for forgery to occur, expire and sometimes are not true or fictitious, resulting in a legally flawed certificate.

Based on the background above, the authors formulate the problems that will be studied further as follows:

1. What are the qualifications for fake certificates and forged certificates according to the Criminal Code?
2. What are the legal sanctions for making forgeries of land certificates?

2. RESEARCH METHOD

1. Research Type

Legal research methods that are carried out by examining library materials or secondary data can be called normative legal research or library research which includes:

1. Research on legal principles
2. Research on legal systematics
3. Researchers, namely the stages of vertical and horizontal synchronization
4. Comparative law
5. Legal history

In this study, the author uses a normative legal approach as a supporting material in the research, namely the research method by reviewing and researching primary legal

materials and finding the truth by using inductive thinking methods and facts used to conduct the induction process and test the strong truth of the sources. .

2. Procedures for Collection of Legal Materials and Data

In this study the data used are primary data sources and relevant applicable regulations consist of:

1. Primary legal materials consist of:

- a. We Act Criminal Law
 - b. Law No. 5 years 1060 concerning Basic Agrarian Regulations (UUPA)
- ### 2. Secondary legal materials, which are sourced from legal science books and legal writings, such as:

- a. Law books
- b. Legal journals
- c. Papers or views of legal experts published in the mass media
- d. Dictionaries and encyclopedias
- e. Internet

3. Processing and Analysis of Legal Materials and Data

Data analysis is a process of organizing and using data in patterns, categories and basic units of description so that themes can be found and a working hypothesis can be formulated as suggested by the data. In normative legal research, the intent essentially means activities to systematize written legal materials, systematization which means to classify the written legal materials to facilitate analysis and construction work. of all data collected. After that all the data will be analyzed and systematized qualitatively.

3. RESULTS AND DISCUSSION

Land Certificate Said to be Fake

Land is one of the vital needs for society. The important role of land can be seen in the regulation of the state constitution of the Republic of Indonesia in Article 33 which emphasizes that the earth, water and natural resources contained therein are used for the greatest prosperity of the people. One of the efforts carried out to realize the goal of the greatest prosperity of the people is to establish Law no. 5 of 1960 concerning Basic Agrarian Provisions (Basic Agrarian Law, hereinafter abbreviated as UUPA)

The purpose of land regulation in the LoGA is to provide legal certainty for land owners and to provide legal certainty, a land registration mechanism is implemented throughout Indonesia. Article 3 Government Regulation no. 24 of 1997 concerning Land Registration. Article 1 Government Regulation no. 24 of 1997 concerning Land Registration, provides a formulation regarding the meaning of land registration. Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units. , including the granting of certificates as proof of rights for plots of land. The purpose of land registration in PP

No. 24 of 1997 is to provide legal certainty and legal protection, to provide information to interested parties and to maintain orderly land administration.

Article 4 PP No. 24 of 1997 further confirms that "to provide legal certainty and protection as referred to in Article 3 letter a to the right holder concerned, a certificate of land rights is granted". So it can be said that efforts to realize certainty of land rights are carried out, among others, by the issuance of a document that has perfect legal force, namely a certificate of land rights. Government Regulation No. 24/1997 stipulates that a certificate is a single sheet of document as a certificate of proof of rights containing physical data and juridical data on objects listed for land rights, management rights, waqf land, property rights to flat units and mortgage rights issued. each recorded in the land book. The existence of a certificate of land rights as a proof of rights has perfect power. This means that as long as it cannot be proven otherwise, the physical data and juridical data contained therein must be accepted as true data.

Parlindungan stated that Article 19 of the UUPA states that the certificate is a strong means of proof, so that everyone can dispute the truth of the land certificate, and if it can be proven that the untruth of the land rights, the certificate can be canceled by the Court and the Head of BPN can order it . The definition of cancellation of land rights as regulated in the Regulation of the Minister of State for Agrarian Affairs/Decree of the Head of the National Land Agency No. 9 of 1999 concerning Granting and Cancellation of Property Rights on State Land can still be used considering the transitional rules in the Regulation of the Head of the National Land Agency (Perkaban) No. 3 of 2011 concerning Management of the Study and Handling of Land Cases, Article 84 stipulates that the provisions of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights, as long as it regulates procedures for cancellation of Land Rights on State Land that is contrary to this Regulation and the definition of cancellation of rights contained in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999; does not conflict with the legal substance contained in the Regulation of the Head of the National Land Agency (Perkaban) No. 3 of 2011. The provisions in the Regulation of the Head of the National Land Agency (Perkaban) No. 3 of 2011 does not specifically regulate the cancellation of land rights, but it is regulated in the provisions regarding the settlement of land cases in Chapter VII by providing a stipulation that there are basically 2 (two) settlements of land cases, namely 1) implementation of court decisions and 2) settlement of land cases in out of court. The implementation of court decisions and the settlement of land cases outside the court can result in legal actions in the form of cancellation of certificates of land rights. 3 of 2011 then the cancellation of land rights can be done in 2 (way) namely 1) based on a court decision and 2) not based on a court decision.

Article 55 Perkaban No. 3 of 2011 confirms that actions to implement court decisions that have permanent legal force can be in the form of implementing all of the decisions, implementing some of the decisions and/or only carrying out orders that are

expressly written in the decisions. Furthermore, in paragraph (2) it is emphasized that court decisions that have permanent legal force, relating to the issuance, transfer and/or cancellation of land rights, include orders to cancel land rights, declare null/illegitimate/no force the law of land rights, stating that proof of rights is invalid/not legally binding, orders for recording or deletion in the land book, orders for the issuance of land rights and amar which have the meaning of causing legal consequences for the issuance, transfer or cancellation of rights.

Furthermore, Paragraph 2 concerning the Process of Land Administration Legal Actions on Decisions/Defects of Administrative Law in Article 64 paragraph (3) states that the application/proposal letter as referred to in paragraph (1) shall be accompanied by supporting data including, among others, certificates of land rights which are found to be defective. administrative law, results of data processing that proves the existence of administrative legal defects, copies of court decisions or judges' considerations in making decisions whose substance declares invalid and/or fake documents used in the process of issuing land rights certificates, other documents that support the reasons cancellation request. Connecting the two articles above, the author concludes that Perkaban No. 3 of 2011 basically provides a stipulation that the cancellation of a certificate of land rights based on a court decision that does not expressly declare the certificate null and void but has a meaning that has a legal effect on the issuance, transfer or cancellation of rights is categorized as cancellation of the certificate of land rights due to administrative defects as referred to in paragraph (1). it can be seen in Article 6 paragraph (3) letter c which provides a stipulation that one of the requirements in submitting a certificate cancellation due to administrative defects is a copy of the court's decision or the judge's consideration in making a decision whose substance states that the documents used in the process are invalid and/or fake. issuance of certificates of land rights;

Regarding the cancellation of land rights certificates due to administrative defects and the cancellation is carried out not through a court decision, the current reality shows that this type of cancellation is very rarely carried out by the National Land Agency even though many people have asked for it through letters of complaint submitted to the National Land Agency. Land offices, Regional Office of the National Land Agency or National Land Agency of the Republic of Indonesia. Many later gave the view that BPN did not have the courage to cancel the certificate of land rights despite knowing that there had been an error in its issuance. The question which is then interesting to observe is what things can be categorized as administrative defects that can be canceled without going through a court decision. This question becomes urgent to be answered because the unclear category of administrative defects that can be canceled by BPN without a court decision raises doubts for BPN to carry out the cancellation even though the regulations in the land sector give the authority to BPN. This question is often asked by the community when their certificates overlap and then they ask BPN to cancel it without a court decision but BPN chooses to advise them to take legal action. If examined, the second certificate issued in a dual certificate is clearly

not issued according to the procedure because the correct procedure is that it is not allowed for a certificate to be issued on land that has been attached by rights. But why did BPN choose not to carry out the cancellation without a court decision. Double certificates are only one example of a form of administrative/procedural error that is clearly committed by BPN but often BPN does not dare to cancel on the basis of administrative defects.

The three points above need to be reviewed in relation to the cancellation of the certificate on the basis of administrative defects as follows:

- (1) If the party submitting is another party who feels aggrieved, then in this case there is a dispute between the right holder and the party submitting it
- (2) If the basis used to apply for the right is proof of land ownership with the status of land that is ex-customary, it means that proof of the truth of the proof of ownership is required, for example the correct location of the land referred to in the evidence submitted.
- (3) the proof of the basic truth and the argument put forward by the applicant for cancellation of course has to deal with the proof of the basic truth and the argument put forward by the right holder in the registration of his rights.

Referring to the three points above, the author is of the opinion that procedural errors in the process of determining and/or registering land rights as a basis for canceling a certificate of land rights without a court decision are difficult to implement if there is a dispute and still requires further evidence regarding the truth of the basis for submitting the cancellation request. and steps taken by BPN in this regard is to suggest to the court. Procedural errors in the process of determining and/or registering rights can only be used as a basis for canceling rights without a court decision if the error does not involve the two disputing parties and the rights holder himself who requests cancellation because he finds an error in the process of determining or registering rights, for example, the right holder finds that the land that he registered was processed for the granting of rights, even though when he applied for the rights, he submitted proof of ownership of the land that was formerly owned by adat. However, the issue that deserves further scrutiny is “if the cancellation of rights is carried out, does this mean that the process of registering rights according to the procedure must be repeated? “What is the responsibility of BPN in this matter, is BPN ready to handle the costs of re-application of rights that will be implemented? Therefore, this category of administrative defects requires further regulation related to the cancellation mechanism and the consequences arising from the cancellation. For administrative defects due to errors in measurement results, the author is of the view that measurement errors do not need to be followed up by canceling the certificate but simply by correcting the data without a cancellation of rights.

The above description according to the author shows that:

- (1) Cancellation of certificate due to administrative defect and implemented if it is obvious that an error was found in the issuance of land rights, for example the certificate was signed not by the Head of the Office who was in office at the time of
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signing, the certificate was signed by an official other than the Head of the Office but not in accordance with the authority determined by the regulations. legislation, for example the Head of the Land Registration and Land Rights Section is given the authority to sign a certificate with an object area of up to 500 square meters but he signs a certificate covering an area of 1000 square meters.

- (2) Cancellation of a certificate due to administrative defects and carried out without going through a court decision can only be carried out if it does not contain a dispute over rights between two parties and if there is a dispute in an application for certificate cancellation, either administrative dispute, rights dispute or indication of a criminal act, BPN cannot carry out cancellation of the certificate because it requires an In kracht Court Decision.
- (3) Cancellation of certificates due to administrative defects is carried out if changes to land registration data are no longer possible. As long as it is still possible to improve land registration data, it is better if the actions taken are only limited to improving land registration data, not canceling certificates.
- (4) The process of canceling a certificate due to an administrative defect requires clearer arrangements, for example regarding the category of administrative defect that can be canceled without going through a court decision, the mechanism for canceling a certificate of right to a certificate containing administrative defects, the consequences that will arise as a result of the cancellation and administrative defects. .

Criminal Provisions in the Land Sector

Settlement of land disputes within the framework of criminal law regulations can be grouped into two parts. The first is the criminal provisions contained in the Criminal Code (KUHP) and the second is the criminal provisions regulated in various laws and regulations outside the Criminal Code. These provisions can be used to arrest perpetrators of criminal acts in the land sector.

Articles in the Criminal Code that can be applied to resolve disputes in the land sector include:

- a. Article 167 concerning forcing entry into a house, room or closed yard is against the law.
- b. Article 263 regarding forgery of letters
- c. Article 264 concerning falsification of letters.
- d. Article 266 concerning ordering to include false information in an authentic deed.
- e. Article 385 concerning the sale, exchange or imposition of land rights against the law
- f. Article 406 concerning destruction or destruction of goods
- g. . Article 407 concerning destruction or destruction of goods.

While the formulation of criminal sanctions contained in various laws and regulations outside the Criminal Code, among others:

- (1) Article 15 of Law Number 5 of 1960 concerning the obligation to maintain land, including increasing its fertility and preventing its damage.

- (2) Article 15 of Law Number 2 of 1960 concerning criminal provisions for violations of agricultural land production sharing agreements.
- (3) Article 6 of Law Number 51 PRP of 1960 concerning the prohibition of using land without a permit from the rightful person or his proxies
- (4) Article 10 of Law Number 56 PRP of 1960 concerning criminal sanctions for violations of the determination of agricultural land area

The provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 regarding the eradication of criminal acts of corruption can be applied as long as it concerns land as state assets and or indications of bribery in land services.

To resolve land disputes that are increasingly complex, a criminal law approach can be carried out within the framework of an *ultimum remidium*. This criminal approach is to provide a deterrent effect as well as a deterrent effect. However, the criminal approach must be carried out integrally with the social approach considering that land issues are closely related to the socio-cultural community. Law enforcers in carrying out criminal law enforcement in the land sector cannot only use a normative juridical approach. The approach used is sociological normative juridical. This is important so that law enforcement can provide justice instead of being a criminogen or victimogen factor.

4. CONCLUSION

1. Every application for cancellation of land rights that contains disputes, both administrative disputes and rights disputes and indications of a criminal act, can only be canceled through the cancellation of a certificate based on a Court Decision.
2. Cancellation of certificates of land rights due to administrative defects can only be carried out if a) it is obvious that errors have been found, b) efforts to improve administrative data are not possible and c) there is no dispute between two or more parties against the certificate or the land.

The author's suggestion related to the description above is that it is necessary to review the regulations in the land sector, especially Perkaban No. 3 of 2011 which contains the cancellation of the certificate of land rights due to administrative defects. This review deals with the definition, categorization and consequences of annulment of rights due to administrative defects

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