



The implementation of replacement certificate issuance with administrative defects (A case study at the Banda Aceh municipality land office)

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Abstract

Every land rights holder must possess a certificate as proof of ownership. If the certificate is lost, the Land Office (Kantah) will issue a replacement certificate. However, issues such as administrative defects are still encountered during the issuance process. One case related to this matter can be found in the Banda Aceh Administrative Court Decision No. 14/G/2023/PTUN.BNA. This study aims to examine and analyze the implementation of issuing replacement certificates that are administratively defective. The research findings indicate that, first, the elements required in the issuance of replacement certificates have not been fully met. The Banda Aceh Municipality Land Office has not fulfilled the principles of Good Governance (AUPB) and the principles of land registration, namely the principle of security and the principle of accuracy. This is evidenced by discrepancies between the data submitted in the documents and the actual facts.

Keywords: Replacement certificate, administrative defect, land office

Introduction

Article 19 of the Law No. 5 of 1960 (UUPA) explains that in order to guarantee legal certainty, the Government shall conduct land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations. This article is a reference for the registration and implementation of land registration activities which include measurement, mapping, land bookkeeping, registration of land rights, transfer of land rights and granting of certificates^[1].

Every person who has land rights must have a certificate, because with a certificate a person can sell, mortgage, grant or inherit their land rights to another person either by buying or selling or granting and inheriting the rights^[2]. A certificate is a strong authentic evidence which includes data and boundaries of a plot of land both in terms of physical data and legal data of the land^[3].

The issuance of land certificates aims to serve the interests of the rights holder, as ownership of a certificate carries significant value for the land rights holder and must be considered valid until proven otherwise in court with other evidence^[4]. This aligns with the provisions of Article 32 (1) of Government Regulation No. 24 of 1997, which states: "A certificate constitutes valid proof of ownership and serves as strong evidence regarding the physical and juridical data contained therein, as long as such data corresponds to the data in the survey map and land register of the relevant land right."

A land rights certificate is crucial and must be safeguarded and stored securely. However, in practice, cases of lost land certificates still frequently occur, necessitating the issuance of replacement certificates by the Land Office (Kantah). This is intended to prevent misuse by irresponsible parties.

The function of a replacement certificate is essentially similar to that of the original land rights certificate. However, a replacement certificate can be issued by the Land Office upon the applicant's request. In issuing the replacement, the Land Office will include a statement indicating that the certificate is a replacement, and its

contents will remain the same as the original, provided that there are no changes to the physical or juridical data submitted by the applicant^[5].

The issuance of replacement certificates is regulated under Article 57 (1) of Government Regulation No. 24 of 1997, which states: "Upon the request of the rights holder, a new certificate may be issued to replace one that is damaged, lost, still uses an outdated certificate form, or was not handed over to the auction buyer in an execution auction."

Based on this article, the Land Office cannot arbitrarily issue a replacement certificate for a parcel of land that already has one. There are several requirements that must be fulfilled to reclaim land rights certificates, due to concerns about the potential for duplicate certificates on the same land or opportunities for land mafia to acquire land illegally. One issue in the process of issuing replacement certificates is the occurrence of administrative defects, particularly in cases of lost certificates. This can lead to legal uncertainty for the rightful landholder. In the case of replacement certificates issued due to loss, administrative defects can have a major impact, as they relate to ownership rights and legal protection for the rightful owner.

Certificates with administrative defects may arise due to incorrect data submitted by the applicant during the certificate application process, such as errors related to the object or subject of the land, or may result from procedural errors in the issuance process^[6]. One case of administrative defect in the issuance of a certificate can be found in the Banda Aceh Administrative Court Decision Number 14/G/2023/PTUN.BNA.

The chronology of the administrative defect in the issuance of the replacement land certificate began when the land owned by ADG, with Certificate Number: 02087 dated December 21, 2022, located in Lampeut Village, Banda Raya Subdistrict, Banda Aceh Municipality, as per the survey map dated June 16, 2010, Number: 00008/2010, with an area of 369 m², was issued a replacement certificate due to loss, and the ownership was transferred to MS based on a statement of inheritance and a death certificate.

According to the Banda Aceh Municipality Land Office (Kantah), MS came to the office and applied for a replacement certificate in the name of ADG, claiming the original was lost. MS declared herself the lawful heir of ADG, her biological mother, who she claimed had passed away, and submitted a statement of inheritance and a death certificate. In reality, however, the original land certificate of ADG still existed and had not been lost, and ADG is, in fact, a living male with only one underage child.

The action of the Head of the Banda Aceh Municipality Land Office in transferring the ownership of Certificate of Ownership Number: 02087/Lampeut, measuring 369 m² and located in Lampeut Village, Banda Raya Subdistrict, Banda Aceh Municipality, to MS clearly caused harm to ADG as the rightful landowner. The issuance of this land certificate violated Article 57 (3) of Government Regulation No. 24 of 1997, which states: "In the event that the rights holder or the recipient of the rights referred to in paragraph (2) has passed away, the application for a replacement certificate may be submitted by the heir by providing proof of heirship."

This article clearly stipulates that an application for a replacement certificate cannot be made by someone whose name differs from the registered rights holder in the land book. If the rights holder has passed away, only a legitimate heir may apply, supported by valid documentation. In this case, an error clearly occurred, as MS is not the original landowner, and ADG, the rightful owner, is still alive. The issuance of the replacement certificate resulted in an administrative defect because the information provided by MS was false or did not reflect the actual facts.

Issuing a land certificate with administrative defects can lead to legal uncertainty regarding land ownership^[7]. In the Banda Aceh Administrative Court Decision Number 14/G/2023/PTUN.BNA, it is evident that there were errors in the registration and issuance process of the replacement certificate, which resulted in losses for the rightful landowner. This is in accordance with Article 62 (2) letters b and f of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 3 of 2011 on the Management, Review, and Handling of Land Cases.

Based on the above background, further research is needed on "The Implementation of Issuing Replacement Certificates with Administrative Defects (A Study at the Banda Aceh Municipality Land Office)."

Research Methods

The type of research used in this study is empirical legal research. Empirical legal studies examine the law by integrating it with facts and social behavior. Empirical legal research is a legal research method that seeks to observe the law in a real-world context, or in other words, to study how the law actually operates in society^[8].

Empirical legal research is also known as sociological legal research. In this type of research, the task of the researcher is to examine "what lies behind the visible application of laws and regulations" (something behind the law)^[9]. In other words, empirical legal research is conducted to investigate actual conditions or real-life situations within society, aiming to discover and identify facts and data. Once the necessary data is collected, the process moves toward identifying the core issues, eventually leading to problem-solving^[10].

This study employs several approaches: the statute approach, the conceptual approach, and the case approach^[11].

The research uses both field research and library research methods. The field research was conducted at the Banda Aceh Municipality Land Office (Kantah Kota Banda Aceh)^[12]. The population serving as the basis for sampling consists of: the Banda Aceh Municipality Land Office and legal scholars from the Faculty of Law at Syiah Kuala University. Therefore, the respondents include: (1) the Head of the Banda Aceh Municipality Land Office (1 person); (2) the Head of Section II (Registration Section) of the Banda Aceh Municipality Land Office (1 person); and (3) the Head of Section V (Control and Dispute Resolution Section) of the Banda Aceh Municipality Land Office (1 person). Meanwhile, the informant is one academic from the Faculty of Law, Syiah Kuala University.

After collecting both primary and secondary data, the data was analyzed using a qualitative approach. The study presents the findings from field research (primary data) and links them to the results of library research (secondary data). The research findings were compiled using a descriptive method, aiming to provide a clear and factual depiction of the realities discovered during the field study.

Result and Discussion

Implementation of the Issuance of Replacement Certificates with Administrative Defects

The issuance of replacement certificates is regulated in Article 57 of Government Regulation No. 24 of 1997 concerning Land Registration, which states:

1. Upon the request of the rights holder, a new certificate may be issued to replace one that is damaged, lost, still uses an outdated certificate form, or was not handed over to the auction buyer in an execution auction.
2. The application for a replacement certificate as referred to in paragraph (1) may only be submitted by the person whose name is listed as the rights holder in the relevant land register, or by another party who has acquired the right through a deed of the Land Deed Official (PPAT), an excerpt of an auction minutes as referred to in Articles 37 and 41, a deed as referred to in Article 43 paragraph (1), a document as referred to in Article 53, or through a power of attorney.
3. In the event that the rights holder or recipient of the right as referred to in paragraph (2) has passed away, the application for a replacement certificate may be submitted by the heir by submitting proof of heirship.
4. The issuance of the replacement certificate as referred to in paragraph (1) shall be recorded in the relevant land register.

This article implies that an application for a replacement certificate may only be submitted by the person listed as the rights holder in the land register, or by another party who has received rights through a PPAT deed, an excerpt of auction minutes, a deed of rights transfers due to a merger or consolidation of a company or cooperative, or a document proving the transfer of receivables in a mortgage. If the rights holder or recipient of the right has passed away, then the replacement certificate application may be submitted by the heir, provided that they submit official documentation proving their status as an heir. This is a mandatory requirement when the application is submitted by

an heir. The replacement certificate that is issued will be recorded in the corresponding land register. For lost certificates, the original certificate will be retained and destroyed by the Land Office to minimize the risk of forgery. Additionally, certificate holders may choose to replace their certificates with a new version using the updated certificate form if desired ^[13].

This is further emphasized in Article 34 (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 21 of 2020 concerning the Handling and Resolution of Land Cases, which states:

"In principle, only one land rights certificate may be issued for a single parcel of land, unless otherwise specified by legislation."

Based on this article, it is evident that every element of the provision reflects the interaction within a legal system in which legal structure and legal substance must be harmonized as one unit to establish legal certainty and reduce land disputes. The legal culture in Indonesian society regarding land is still influenced by both customary law and national law systems. The principle of "one certificate per parcel of land" reflects an effort to create uniformity in the land registration system.

This article regulates that, in principle, only one land rights certificate may be issued for each parcel of land. This means that a single plot of land may have only one certificate documenting the right over that land, which serves as valid proof of ownership or control. This is intended to ensure that the land rights are clearly recorded and that there is no ambiguity regarding who holds legal rights over the land.

The issuance of a replacement certificate, whether due to damage, loss, or the use of outdated certificate forms, does not result in duplicate land rights certificates. This is because the original certificate will be destroyed by the Land Office (Kantah), and if the certificate is lost, a police report confirming the loss must be obtained and published in a local newspaper ^[14]. However, this regulation also provides exceptions. If other laws stipulate different provisions, multiple certificates may be issued under specific circumstances, such as land rights division or status changes. These exceptions allow flexibility in applying the rules to accommodate legal developments and specific needs.

Discussing the elements involved in issuing replacement certificates pertains to the legal system ^[15]. A legal system comprises interconnected elements that function as an organized whole, working collaboratively toward a unified goal. Each part's significance lies in its systemic connection with other legal rules ^[16]. According to Sudikno Mertokusumo, a system enables the identification and resolution of legal gaps simply. When a specific event lacks a legal provision, solutions should align with the legislative system ^[17].

Lawrence M. Friedman asserts that the effectiveness and success of law enforcement depend on three components of the legal system: legal structure, legal substance, and legal culture ^[18]. Therefore, to assess the fulfillment of elements in issuing replacement certificates for lost certificates at the Banda Aceh Land Office, the following legal system components should be considered:

1. Legal Structure

Article 5 of Government Regulation (PP) No. 24 of 1997 stipulates that "Land registration is organized by the

National Land Agency." Subsequently, Article 6 (1) of PP No. 24 of 1997 states:

"In the implementation of land registration as referred to in Article 5, the task of carrying out land registration is assigned to the Head of the Land Office, except for certain activities assigned to other officials by this Government Regulation or related laws."

This implies that all land registration activities must be organized by the government, specifically the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Kemen ATR/BPN), with implementation carried out by the Head of the Land Office. The issuance of replacement certificates is part of the Land Office's responsibility to maintain and update existing land registration data. This duty aligns with the government's efforts to ensure land data remains valid and legally accountable.

The issuance of replacement certificates for lost certificates at the Banda Aceh Land Office complies with the provisions in PP No. 24 of 1997 concerning land registration and the Head of BPN Regulation No. 1 of 2010 ^[19]. Applicants, as land rights holders requesting replacement certificates, are required to fulfill all requirements set by the Land Office and follow each stage conducted by the Land Office.

However, practical challenges may arise. For instance, a lawsuit filed by ADG against the Banda Aceh Land Office due to the issuance of a replacement certificate and the transfer of ownership from MS to another individual. In reality, ADG, the actual landowner, claimed that the certificate was never lost and that he was still alive. This situation is critical because the Banda Aceh Land Office issued a replacement certificate in the same name but to a different person with no connection to the actual landowner. The Banda Aceh Land Office had requested the party claiming to be the heir and applying for a replacement certificate due to the loss to submit all required documents and had followed all necessary procedures, including newspaper announcements and administering an oath before issuing the replacement certificate.

Upon closer examination, ADG, the actual landowner, is male and still alive, whereas MS, the applicant, is female and deceased, making MS the heir of ADG.

The administrative error in the replacement certificate issuance occurred when MS, as the applicant for the replacement certificate due to the original certificate being lost, met the requirements set by the Banda Aceh Land Office, including the application form, ID card (KTP), family card (KK), power of attorney (if applicable), and a police report confirming the loss. However, the counter staff did not verify the photocopies of the applicant's identity documents (KTP, KK) against the originals, leading to human error.

Indeed, the role and function of the Land Agency in the land registration application process are passive, serving merely as an administrative body without the authority to verify the authenticity or truthfulness of documents. Therefore, forensic examination by the Criminalistics Laboratory of the Regional Police is necessary concerning document forgery. Nevertheless, the Land Office should still verify the accuracy and consistency of the identity data provided by the replacement certificate applicant with the identity data in the land book. The authenticity of documents such as

names, dates of birth, and National Identity Numbers (NIK) can be visually compared directly without the need for in-depth research.

Therefore, fundamentally, from a legal structure perspective, the issuance of a replacement certificate for a lost certificate is administratively flawed because the Banda Aceh Land Office should not have issued the replacement certificate due to errors concerning the land rights subject.

2. Legal Substance

Article 57 (3) and (4) of PP No. 24 of 1997 stipulate

"(3) If the rights holder or recipient of rights as referred to in paragraph (2) has passed away, the replacement certificate application may be submitted by the heir by submitting proof as an heir.

"(4) The replacement of the certificate as referred to in paragraph (1) is recorded in the land book concerned."

This means that if the land rights holder passes away, the heir may apply for a replacement certificate with valid proof, and the change must be recorded in the land book. Valid and acceptable evidence for the Banda Aceh Land Office to prove that the applicant is the heir of the original certificate holder includes a death certificate, heir certificate, or inheritance deed from a notary. After issuing the replacement certificate, the Banda Aceh Land Office must record the change and ensure all data in the land book for the land object with the issued replacement certificate is updated.

In the case of issuing a replacement certificate for a lost certificate with administrative flaws at the Banda Aceh Land Office, the elements of both paragraphs are not fulfilled. The Land Office issued a replacement certificate for a lost certificate to an heir who was not the rightful heir of the land rights holder. The discrepancy between the documents submitted by the applicant and the actual identity indicates a substantial deviation, where the Land Office failed to adhere to the provisions in Article 57 (3) of PP No. 24 of 1997.

This negligence occurred because the applicant for the replacement certificate had falsified all of their identity documents, making it appear as though they were the rightful owner of the land. Such negligence could have been prevented if the Land Office (Kantah) in Banda Aceh had been more meticulous and thorough in verifying each document submitted by the applicant.

The act of creating a false document involves producing a document that did not previously exist, with all or part of its content being false. This constitutes a crime of document forgery, which infringes upon the legal interests related to the truthfulness of the content of four types of documents, namely:

a. Documents that establish a right; b. Documents that create an obligation; c. Documents that effectuate a debt release; and d. Documents created to prove a specific right or condition.

The prohibited acts concerning these documents include creating a false document and falsifying an existing document. The definition of the criminal act of document forgery is outlined in Article 263 of the Indonesian Penal Code (KUHP), which states:

"Anyone who creates a false document or falsifies a document that can establish a right, an obligation, or a debt release, or that is intended as evidence of a certain matter, with the intent to use or instruct someone else to use the

document as if its content were true and not falsified, and if its use can cause harm, shall be punished for document forgery with imprisonment for a maximum of six years."

Creating a false document involves producing a document that did not exist before, with all or part of its content being false. In contrast, falsifying a document refers to acts directed at an existing document, such as erasing, replacing, or altering part of its content, making it different from the original document.

Such issues may arise due to weak oversight and verification processes in the issuance of land certificates. The lack of strict law enforcement and sanctions against document forgery perpetrators has led to an increase in such cases. Additionally, the public's limited understanding of the correct procedures for land transactions often provides opportunities for certain individuals to forge certificates.

This problem is highly detrimental to the legitimate landowners and renders the replacement certificates issued for lost documents administratively flawed. In this case, the Land Office has violated principles outlined in the General Principles of Good Governance (AUPB) and the Land Registration Principles.

The violated AUPB principle is the Principle of Carefulness and Prudence. This principle means that a decision and/or action must be based on complete information and documents to support the legality of the determination and/or implementation of the decision and/or action, ensuring that the decision and/or action is prepared carefully before being established and/or carried out.

Violating the Principle of Carefulness makes the process difficult to account for properly. When this principle is disregarded in issuing a replacement certificate, the consequences can be highly detrimental to various parties. Carelessness in verifying documents, inaccuracies in matching ownership data, or neglecting applicable legal procedures can lead to administrative flaws and even prolonged legal disputes.

Furthermore, violating the Principle of Carefulness can impede accountability in governance. When an administrative decision, such as the issuance of a land certificate, is made without thorough preparation and examination, it becomes challenging to justify legally. In the context of issuing a replacement certificate for a lost document, if the process is not conducted with due diligence, it can result in administrative flaws leading to the certificate's annulment.

Additionally, the violated land registration principle in issuing a flawed replacement certificate is the Principle of Security. This principle is not upheld due to the lack of meticulousness and care, evidenced by discrepancies in the submitted documents. These discrepancies include differences between the submitted documents and actual facts, incomplete or invalid documents, and procedural inconsistencies in the replacement certificate issuance process. This indicates that the administrative procedures meant to ensure the validity and security of certificates or land books were not properly executed.

The Principle of Security implies that every administrative action taken by land officials must guarantee legal certainty and protection, providing a sense of security for land rights holders and other interested parties. Violating this principle occurs when the replacement certificate issuance process is not conducted with full attention and care, leading to administrative flaws. The consequences of violating this

principle can be highly detrimental to various parties, including legitimate landowners, the government, and the general public.

If administrative processes are not conducted carefully and thoroughly, the issued certificate may be annulled in court, leading to legal uncertainty for the rights holder. Moreover, violations of the Principle of Security in land administration can diminish public trust in the Land Office. Land registration security should ensure that every registered land right receives strong legal protection. However, when this principle is not properly implemented, the public may feel insecure about their land ownership, especially in cases where replacement certificates are issued.

3. Legal Culture

Legal culture pertains to society, including the beliefs, values, and expectations they hold regarding law and the legal system. It reflects the attitudes and behaviors of society towards the law and various factors influencing the extent to which the legal system is accepted and functions within the community's cultural framework.

The higher the public's legal awareness, the better the legal culture that develops, thereby influencing the community's mindset. Simply put, the level of public compliance with the law serves as an indicator of the law's effectiveness.

The research conducted at the Land Office (Kantah) of Banda Aceh Municipality shows that the legal culture of the community, particularly in terms of legal awareness related to land issues, has developed quite well. The community actively reports various legal problems related to the land they own or control. This awareness is reflected in their proactive attitude in seeking legal clarity and protection of their land rights, especially when they feel harmed by a legal action involving their land rights.

In response to this growing legal awareness, the Kantah of Banda Aceh Municipality has made maximum efforts to address various emerging land issues and disputes. These efforts include resolving disputes involving the parties directly, as well as addressing issues related to the issuance of state administrative decisions (KTUN) by the Land Office—for example, the issuance of a replacement certificate due to loss, which contained administrative defects^[20].

In addition to the awareness in reporting land-related issues, the community's concern for maintaining land registration also shows significant improvement. The people of Banda Aceh Municipality actively engage in various forms of land administration, whether for initial land registration, updating land registration data, or applying for replacement certificates. This active participation reflects that the public's understanding and legal culture concerning land ownership rights has been well-implemented.

Conclusion

In the issuance of a replacement land certificate due to loss at the Banda Aceh Municipality Land Office, the legal elements have not been fully met. The Banda Aceh Land Office violated two principles: the principle of land registration and the AUPB. The violated land registration principle is the principle of security, as the issuance was not carried out carefully and thoroughly, evidenced by inconsistencies in the submitted documents. These inconsistencies include discrepancies between submitted

data and actual facts, incomplete documents, or procedural invalidity in the stages of issuing the replacement certificate. The violated AUPB principle is the principle of accuracy and prudence, referring to carelessness in verifying documents, failure to match ownership data, or neglect of legal procedures in the issuance process. The administrative flaw in issuing the replacement certificate at the Banda Aceh Land Office was primarily due to human error—specifically carelessness and a lack of thoroughness on the part of the staff, as well as inadequate training provided to employees of the Banda Aceh Land Office.

Suggestion

Based on the conclusions, the following suggestions are made:

The Banda Aceh Municipality Land Office is advised to develop stricter Standard Operating Procedures (SOPs) to ensure the accuracy of subject data and the proper procedure for issuing replacement certificates. This can include the use of digital technology for data recording and verification to reduce the risk of administrative defects in the certificate issuance process. In addition, the Land Office should provide specialized and periodic training and socialization for its staff in order to minimize administrative errors.

Such training and outreach are expected not only to prevent the recurrence of administrative defects in certificate issuance but also to enhance transparency, accountability, and the overall quality of land services for the public.

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