

THE EFFECTIVENESS OF CANCELLING LAND CERTIFICATES THROUGH THE NON-LITIGATION PROCESS

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ABSTRACT

The cancellation of land certificates is an important issue in Indonesia's land system, given the high number of land disputes arising from administrative errors, overlapping rights and abuse of authority. This article examines the effectiveness of non-litigation mechanisms for cancelling certificates by the National Land Agency (BPN) compared with litigation through the courts. The research uses normative legal methods with a statutory and conceptual approach, and examines primary and secondary legal sources. The results of the analysis show that the non-litigation mechanism through the BPN has advantages in terms of time efficiency, cost, and the potential for amicable settlement, especially for administrative cases. However, there are limits to its authority and challenges in maintaining the principle of legality and the protection of community rights. Thus, nonlitigation cancellation of land certificates is effective in administrative contexts, but requires synergy with litigation to resolve complex land conflicts.

Keywords: *Certificate Cancellation, National Land Agency, Non-Litigation, Land Dispute, Administrative Authority*

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INTRODUCTION

The cancellation of land certificates in Indonesia is a complex and crucial issue in the national land system. According to Article 32 of Government Regulation Number 24 of 1997, it is explained that a certificate is a proof of rights that serves as a strong means of proof regarding the physical and legal data contained therein, as long as the physical and legal data are in accordance with the data contained in the measurement letter and the land book of the relevant rights. The problem of cancellation of land certificates arises along with the high volume of land disputes involving not only individuals, but also legal entities and state institutions. These disputes can arise for various reasons, such as overlapping land rights, administrative defects in the registration process, or abuse of authority in issuing certificates. In practice, there are two main paths that can be taken to resolve this problem,

namely through litigation (court) and non-litigation channels managed by the National Land Agency (BPN).¹

Quoting Mudjono's opinion, it is stated that there are several factors that cause land disputes. First, incomplete regulations; Second, inconsistencies in regulations; third, land officials who are less responsive to the need and amount of land available; fourth, inaccurate and incomplete data; fifth, erroneous land data; Sixth, limited human resources tasked with resolving land disputes; seventh, erroneous land transactions; and eighth, the existence of settlements from other agencies, resulting in overlapping authorities.²

In addition to the factors that cause land settlements, there are several factors that cause the cancellation of land ownership certificates, including:³ First, the elimination of the rights of the actual owner to the land he owns, resulting in legal consequences for the actual land owner, because a new certificate is issued on the land of the actual owner by another person. Second, there are many administrative defects in the object that are detrimental to the actual owner.

According to Adiansah et al. (2021), agrarian conflict in Indonesia is still a complex and protracted problem⁴. Most of these conflicts stem from land administration problems, such as overlapping ownership, land utilisation that is not in accordance with the designation, and the issuance of certificates without a valid legal basis. In addition, weak monitoring of illegal land tenure practices has exacerbated the situation. The mismatch between practices in the field and the applicable legal provisions has resulted in a rise in land disputes, which often lead to demands for cancellation of certificates in an attempt to restore the land rights of the aggrieved.

To resolve these disputes, litigation is one option available to the public. Litigation is a dispute resolution process conducted in court, where judges have the authority to regulate and decide cases.⁵ This pathway is considered to have formal legal force because it produces a final and binding decision (*inkracht van gewijsde*). However, the judicial process in Indonesia is known to pose a number of challenges, such as lengthy and complicated procedures, high costs, and the potential for widespread social tension, particularly in areas with a long history of agrarian conflict. In many cases, the litigation process actually exacerbates the conflict by pitting the two disputing parties against each other in the formal legal arena.

¹ A Grey, "Proses Pembatalan Sertipikat Hak Milik Atas Tanah Karena Akta Jual Beli Yang Cacat Hukum (Studi Kasus Putusan Nomor 72/G/2018/PTUN. BDG)," *Indonesian Notary* 2, no. 2 (2020).

² Mudjono, "Alternatif Penyelesaian Sengketa Pertanahan di Indonesia melalui Revitalisasi Fungsi Badan Peradilan," *Jurnal Hukum*, Vol.14 No. 3, (14 Juli 2007), hal. 464.

³ Asrullah, Kairuddin Karim, Muh Darwis, & Muh. Akbar Fhad Syahril. *Dinamika Pembatalan ak Atas Tanah: Sebuah Tinjauan Yuridis Komprehensif*, *JULIA: Jurnal Litigasi Amsir*, Vol. 11, No. 3, (2024), hlm 339.

⁴ Wandu Adiansah, Soni Akhmad Nulhaqim, and Gigin Ginanjar Kamil Basyar, "Resolusi Konflik Berbasis Komunitas Melalui Pengembangan Masyarakat Sebagai Upaya Alternatif Resolusi Konflik Agraria," *Share : Social Work Journal* 10, no. 2 (2021): 163.

⁵ Hidayat, M. R., & Komarudin, P. (2020). *Penyelesaian Sengketa Wakaf Melalui Jalur Litigasi Dan Non-Litigasi*. *Al-Adl: Jurnal Hukum*, Vol. 11, No. (2), (2020), hlm 184- 196

As an alternative to lengthy and expensive litigation, non-litigation through the National Land Agency (BPN) offers a more efficient and expeditious solution, particularly for administrative disputes. Dispute resolution through non-litigation is known as Alternative Dispute Resolution (ADR), which, based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, is a dispute resolution institution outside the courts based on an agreement between the parties.⁶ The BPN, as the state institution authorized in the field of land administration, can conduct audits of the land certificate issuance process. If strong evidence is found that a certificate has been issued illegally, for example due to document falsification, abuse of authority, or failure to meet administrative requirements, the BPN has the authority to revoke the certificate. This is confirmed by Wibawa (2019), which states that the BPN, in its capacity as administrative authority, has a mandate to create administrative order and ensure legal certainty in the land sector. Thus, the non-litigation mechanism through BPN is not only a more time- and cost-friendly alternative route, but also plays an important role in preventing wider social conflicts⁷. The existence of the BPN as an administrative institution provides hope for the community to obtain substantive justice without having to take the long judicial route. However, the effectiveness of this route still depends on the integrity of BPN officials and transparency in the dispute resolution process, so as not to create new distrust among communities seeking justice for their neglected rights.

However, the authority of the National Land Agency (BPN) to cancel land certificates cannot be exercised absolutely and without obstacles. In practice, polemics often arise over the limits of the BPN's administrative authority, in particular over whether the cancellation action is in accordance with the principle of *due process of law*, the principle of legality and the principle of protecting people's civil rights. This problem becomes more complex when the cancellation is carried out against certificates that have been held for a long time by certain parties in good faith⁸. The BPN as an administrative body has the authority to cancel certificates under the provisions of Regulation of the Minister of Agrarian Affairs/Head of the BPN No. 9/1999 and other derivative regulations, especially if it finds procedural defects, falsification of documents or overlapping rights. However, there is still a juridical debate as to whether the BPN has the authority to cancel certificates unilaterally in the absence of a court decision with permanent legal force (*inkracht van gewijsde*), given that certificates are strong evidence of ownership rights protected by law.

It is therefore important to examine further the form and scope of the BPN's authority to cancel certificates, including the legal instruments and administrative procedures used, and how this is implemented in practice. This review also needs to consider aspects of

⁶ Dewi, N. M. T., Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata. *Jurnal Analisis Hukum*, Vol. 5, No.1, (2022), hlm 81-89.

⁷ Kadek Cahya Susila Wibawa, "Menakar Kewenangan Dan Tanggung Jawab Pejabat Pembuat Akta Tanah (Ppat) Dalam Perspektif Bestuurs Bevoegdheid," *Credito* 1, no. 1 (2019): 40-51.

⁸ Robyatul Adawiyah and Gunarto Gunarto, "Analysis of National Land Board Authority on Land Dispute Which Have Not Been Registered in The Land Office of Samarinda," *Jurnal Akta* 5, no. 4 (2018): 897.

effectiveness and efficiency, especially when compared with the mechanism of cancellation through litigation in the courts.

This paper will examine two main areas of focus. First, a normative and empirical analysis of the form, legal basis and limits of the BPN's authority to cancel land certificates, including the potential for normative conflict between administrative and judicial jurisdiction. Second, an evaluation of the effectiveness of cancelling certificates through the BPN's non-litigation mechanism compared with litigation through the courts, in terms of speed of process, legal certainty, cost efficiency and the social impact on the parties to the dispute

METHOD

The research methodology used in this writing is normative legal research or a qualitative research approach aimed at exploring the underlying meanings of the phenomenon under study⁹, which is research that relies on literature studies to analyse applicable positive legal norms. This research does not involve field observations or direct interviews, but rather focuses on written legal materials. The main focus of this approach is to understand how the law should apply in the context of the cancellation of land certificates, particularly through non-litigation mechanisms by the National Land Agency (BPN).

The approaches used in this research include a statutory approach and a conceptual approach. The statutory approach is used to examine the various regulations that form the legal basis for cancelling certificates, such as Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), Government Regulations, and Regulations of the Minister of Agrarian Affairs and Spatial Planning/BPN¹⁰. Meanwhile, a conceptual approach is used to understand important concepts in land law, such as the principle of legal certainty, the principle of justice, and administrative authority in the context of cancellation authority.

The sources of data in this research consist of two types, namely primary and secondary legal sources. Primary legal sources include relevant legislation and court decisions with permanent legal force relating to the cancellation of land certificates. Secondary legal sources were obtained through a literature review of scientific articles, law journals, legal textbooks and other official documents that discuss the theoretical and practical aspects of non-litigation mechanisms for cancelling land certificates. It is hoped that this approach will provide a comprehensive understanding of the effectiveness of the BPN's cancellation of land certificates in comparison with court proceedings.

DISCUSSION

BPN's Authority in Cancelling Land Certificates

Cancellation of a land title certificate is a form of land title conflict resolution that arises due to defects or deficiencies in the land title granting decree and/or land title certificate. This decree takes the form of a "beschiking," or decision issued by a state

⁹ Ahmad Ahmad et.al Degdo Suprayitno, *Metodologi Penelitian Kualitatif: Teori Komprehensif Dan Referensi Wajib Bagi Peneliti*, 1st ed. (Jambi: Sonpedia Publishing, 2024).

¹⁰ Government The Republic Of Indonesia, "Law of Republic of Indonesia Number 5 of 1960 Concerning Basic Regulation for Agrarian Principle (Basic Agrarian Law)," no. 5 (1960): 1–34.

administrative official, namely the Head of the National Land Agency or the Head of the Regency/City Land Office.¹¹

According to Article 1, point 14 of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases (Regulation Number 21 of 2020), a cancellation is a decision that annuls a legal product due to administrative and/or legal defects in its issuance, or to enforce a court decision that has obtained permanent legal force.¹²

The reasons for the cancellation of land title certificates, which are legal products, are regulated in Article 35 of the Head of the Land Agency Regulation Number 21 of 2020, which states that the cancellation of legal products due to administrative and/or legal defects is caused by:¹³

- a. Errors in the process/procedure for issuing land titles, registering titles, and maintaining land registration data;
- b. Errors in the measurement process/procedure;
- c. Errors in the process/procedure for issuing replacement certificates;
- d. Errors in the process/procedure for issuing mortgage certificates;
- e. Errors in the application of laws and regulations;
- f. Errors in the subject of rights;
- g. Errors in the object of rights;
- h. Errors in the type of rights;
- i. Overlapping land rights;
- j. Overlapping with forest areas;
- k. Errors in determining land consolidation;
- l. Errors in confirming land as the object of land reform;
- m. Errors in the process of granting rights transfer permits;
- n. Errors in the process of issuing the cancellation decision;
- o. There is a final and binding criminal court decision proving the existence of a criminal act of forgery, fraud, embezzlement, and/or other criminal acts;
- p. There are documents or data used in the certificate issuance process that are not products of the agency in question, based on a statement from the relevant agency;
- q. There is a court decision that, in its legal considerations, proves that there are facts that are flawed in the issuance of the Ministry's legal products and/or flawed in the legal act of transferring rights, but this is not explicitly stated in the decision.

The National Land Agency (BPN) as a technical government agency in the land sector in Indonesia has an important role not only in the administration of land registration,

¹¹ Farah Diba Maharani & Teddy Anggoro, Pembatalan Sertifikat Tanah Oleh Kantor Pertanahan Tanpa Adanya Putusan Pengadilan Yang Telah Berkekuatan Hukum Tetap, *Jurnal Ilmiah Galuh Justisi*, Vol 12, No. 2 (2024), hlm 227.

¹² Pasal 1 angka 14 Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nomor 21 Tahun 2020 tentang Penanganan dan Penyelesaian Kasus Pertanahan.

¹³ Pasal 35 Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nomor 21 Tahun 2020 tentang Penanganan dan Penyelesaian Kasus Pertanahan.

but also in resolving disputes relating to the legal status of land. One of the most crucial forms of BPN authority is the power to cancel land certificates. This can be done if the issuance of a certificate is found to contain administrative defects, procedural errors, or elements of manipulation and falsification of data that have the potential to harm other parties and undermine the principle of legal certainty in land¹⁴.

The BPN's authority to cancel certificates derives from two main forms of authority, namely authority by attribution and authority by delegation. Authority of attribution is the authority given directly by law to the BPN to carry out certain functions, as set out in Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA). Within this legal framework, BPN has the responsibility to create legal certainty and legal protection for the community in the land sector. On the other hand, delegated authority is provided through implementing regulations and technical regulations, such as BPN Head Regulation No. 11/2016 on Land Case Settlement, which provide the operational legal basis for administrative actions such as cancellation of certificates¹⁵.

According to Sahnan et al. (2019), this authority makes the BPN act not only as an administrative body, but also as a mediator and decision-maker in the non-judicial settlement of land disputes¹⁶. This allows the BPN to respond to public reports by conducting administrative investigations, examining documents and clarifying with relevant parties before issuing a decision to cancel a certificate. The cancellation process usually begins with freezing or blocking the certificate, then if an administrative violation or legal defect is proven, the BPN issues a decree cancelling the certificate and restoring the land to its original status. These steps are a concrete form of applying the principles of legal certainty, order and justice in land management¹⁷.

Effectiveness of Non-Litigation Mechanisms by BPN

The word effective comes from the English word "effective," meaning successful. Something done successfully. Effectiveness comes from the English word "effectiveness," meaning effectiveness, efficacy, efficacy, and potency. Effectiveness comes from the root word "effective." According to the Big Indonesian Dictionary, the word "effective" means effect, influence, consequence, or the ability to produce results. According to Sondang P. Siagian, effectiveness is defined as the consciously predetermined utilization of resources, facilities, and infrastructure to produce a certain amount of goods or services for the

¹⁴ David Agam, "Kewenangan Badan Pertanahan Nasional Dalam Pembatalan Dan Penerbitan Sertipikat Hak Atas Tanah Berdasarkan Putusan Pengadilan Yang Tidak Terdapat Perintah Eksekutorial Dalam Pasal 49 Peraturan Menteri Agraria Nomor. 11 Tahun 2016 Tentang Penyelesaian Kasus" (Universitas Pakuan, 2020).

¹⁵ Brandon Ridle Julio Tumanduk, Anna S Wahongan, and Sarah D L Roeroe, "Kewenangan Badan Pertanahan Nasional (BPN) Terhadap Penyelesaian Perkara Pertanahan Ditinjau Dari Peraturan Menteri Agraria Dam Tata Ruang/Badan Pertanahan Nasional Nomor 11 Tahun 2016 Tentang Penyelesaian Kasus Pertanahan," *Lex Administratum* 9, no. 2 (2021): 1–11.

¹⁶ Sahnan, M. Arba, and L. Wira Pria Suhartana, "Authority of the National Land Agency in Settlement of Land Disputes," *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 3 (2019): 436–450.

¹⁷ M Riska Anandya Putri P and Widyarini Indriasti Wardani, "Upaya Penyelesaian Sengketa Kepemilikan Pendaftaran Hak Atas Tanah Melalui PTSL," *Jurnal Akta Notaris* 3, no. 1 (2024): 115–130.

activities carried out. Effectiveness indicates success in terms of achieving predetermined targets. The closer the results of an activity are to the target, the higher its effectiveness.¹⁸

When associated with the form of land dispute resolution which consists of two paths, the non-litigation mechanism implemented by the National Land Agency (BPN) offers various advantages that make it the main choice in resolving land disputes, especially for people who want a fast and cost-effective solution. One of the biggest advantages of administrative dispute resolution is the time and cost efficiency, which is much more affordable than litigation in court. The process is simpler and does not require long formal stages, such as filing a lawsuit, examining witnesses, open hearings, and appeals and cassations, making it a very favourable alternative¹⁹. In addition, in many cases, dispute resolution through BPN can be completed in a relatively short period of time, namely in a matter of months or even weeks, depending on the completeness of the documents submitted and the level of complexity of the case at hand, so that the parties can immediately obtain legal certainty without having to wait protracted, which usually occurs in court procedures that take a long time and higher costs.

Research by Yanti and Djajaputera (2024) shows that the effectiveness of land dispute resolution through non-litigation mechanisms at the National Land Agency (BPN) depends on a number of interrelated strategic factors²⁰. First, the level of compliance by the parties with administrative decisions issued by the BPN is a key determinant, since without good faith on the part of the parties, decisions to cancel or amend certificates are often factually ineffective in the field. Secondly, the existence of valid evidence and documents, such as original land certificates, deeds of sale, proof of payment of land and building tax (PBB), and declarations of inheritance or grant, is crucial to support the verification and clarification of rights. Third, the commitment and integrity of the land apparatus in carrying out their duties in a transparent, accountable and intervention-free manner is a major driving factor in the realisation of administrative justice in dispute resolution. In addition, the quality of communication and mediation processes facilitated by BPN also plays an important role in building trust and reducing conflict escalation. In many cases, mediation conducted with a participatory and professional approach has proven capable of bridging conflicting interests and producing a win-win solution for the disputing parties, thus not only resolving legal issues but also restoring social relations that had been disrupted by the land dispute.

In addition, non-litigation mechanisms are considered more inclusive as they allow parties without legal capacity or technical knowledge of the justice system to still obtain justice. This is particularly important given that most people in Indonesia, especially in rural areas, are not familiar with formal legal processes and are often constrained in terms of access to information and legal support. The presence of the BPN as an administrative body that can take complaints, investigate cases and decide on the cancellation of certificates

¹⁸ Sondang P. Siagian, *Kiat Meningkatkan Produktivitas kerja*, (Jakarta:PT Rineka Cipta, 2002)

¹⁹ Rosiana and Junaidi, "Analisis Yuridis Penyelesaian Sengketa Tanah Melalui Mediasi," *Jurnal Rechten : Riset Hukum dan Hak Asasi Manusia* 4, no. 2 (2022): 32–40.

²⁰ Cinda Yanti and Gunawan Djajaputera, "Analisis Efektifitas Non-Litigasi Dalam Penyelesaian Sengketa Tanah," *Jurnal Ilmu Hukum, Humaniora dan Politik* 5, no. 1 (2024): 418–427.

directly is therefore a muchneeded practical solution to the complexity of agrarian problems in Indonesia.

Weaknesses of the Litigation Track and Comparison with Non-Litigation

On the other hand, litigation through the courts remains an important option that cannot be ignored, especially in land disputes involving substantive ownership conflicts or when the parties involved cannot reach agreement through the BPN's administrative mechanisms. The courts have a stronger legal authority, with their judgements being final and binding once they are inkrecht, thus providing greater legal certainty for the parties involved. The judicial process also provides greater room for evidence, including the presentation of witnesses, experts, and forensic evidence that can strengthen each party's legal arguments. This is especially important in complex cases or where the BPN does not have the authority to substantively decide the dispute, making litigation the only legitimate and necessary solution to resolve the dispute on a sound legal basis. However, litigation in the courts is also not free from various weaknesses that make it less than ideal as a quick and efficient dispute resolution mechanism.

One of the most prominent weaknesses is the very long duration of settlement time. In practice, many land cases last for years because they have to go through various levels of court, starting from the district court, then appeal at the high court, to cassation at the Supreme Court, which often extends the process significantly. In addition, the litigation process also requires relatively high costs, including lawyer fees, case administration costs, as well as other unforeseen costs that can be burdensome for the parties. Furthermore, the final outcome of a court judgement often faces obstacles to execution on the ground, especially if the losing party is unwilling to accept the judgement and fights back, either through legal channels or even physically at the site of the dispute. The litigation process also often leads to prolonged social tensions, which can trigger horizontal conflicts in the community²¹, especially if the dispute involves inherited land or customary land involving more than one family or customary group. In this context, the role of the BPN in resolving disputes non-litigatively becomes increasingly important, as it can serve as a counterweight to the more formal legal system and as a guardian of social stability, particularly in the highly sensitive agrarian context in Indonesia.

CONCLUSION

The National Land Agency (BPN) as a government agency mandated by law has a strong and strategic authority to cancel land certificates through nonlitigation channels. This authority is not only derived from Law No. 5/1960 on Basic Agrarian Principles (UUPA), but is also strengthened by a number of implementing regulations such as the Regulation of the Minister of Agrarian and Spatial Planning/Head of BPN

²¹ Rusman et al., "Kepastian Hukum Pembatalan Sertifikat Hak Milik Atas Tanah Yang Dibebankan Hak Tanggungan," *Journal Sultra Research of Law* 6, no. 2 (2024): 51–60.

and regulations of the Head of BPN that technically regulate the mechanism of administrative settlement of land disputes.

Through the non litigation method, the BPN can carry out administrative actions such as document examination, clarification of the disputing parties, and issue a decision to cancel the certificate if there is evidence of legal defects in the issuance process, such as data falsification, abuse of authority, or overlapping ownership. This process is considered more efficient than litigation in court, as it does not require formal stages such as the reading of a lawsuit, proof before the court, and examination of witnesses, which often takes a long time and incurs high costs.

However, for this mechanism to work effectively and fairly, it is important for all parties involved, both the community as rights holders and land officials as decision makers, to fully understand the limits of BPN's authority, the applicable procedures, and the principles of state administrative law that underlie them. With a good understanding, non-litigation settlement of land conflicts is expected to not only reduce the burden of cases in the courts, but also provide legal certainty and substantive justice for the wider community.

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