

Implementation of the Administrative Court's Decision Execution State, In Case of Cancellation of Certificate of Land Rights at National Land Agency.

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Abstract: *There are many land cases that are still in dispute and those that have entered the court. That shows there are still many problems with land issues, especially regarding land ownership rights. Even though the court ruling has been inkraht, sometimes the decision is still not executable. For the government, the basis for committing public law is the existence of authority relating to a position. Therefore. the lawsuit in the state administrative dispute is addressed to the official who makes the decision which will then be followed up by the state administration official who has issued the state administration decision. In this case in the form of certificate of land rights, either in the form of cancellation, revocation of ownership decree or other legal actions in accordance with the decision. The results of this study explain that: (1) Not all decisions of the State Administrative Court for cases of cancellation of a certificate of ownership rights on land that has permanent legal force (inkracht van gewijsde) can be executed by the National Land Agency. Although it is normatively regulated that the Court Decision which has permanent legal force, especially concerning the cancellation of land rights, MUST be carried out by officials of the Indonesian National Land Agency. (2) The factors that caused the postponement of the execution of the cancellation of certificates of ownership on land were, among others, the existence of juridical factors and non-juridical factors. Juridical factors, among others, can be seen in article 54 paragraph (2) of the Regulation of the Head of the National Land Agency of the Republic of Indonesia No.3 of 2011 which stipulates that the National Land Agency can refuse or postpone the issuance of the cancellation of land title certificates in the framework of the implementation of court decisions. who has obtained permanent legal force in the following matters: (a) On the object of the decision there are other conflicting decisions; (b) The object of the decision is being placed on a guarantee bail; (c) The object of the decision is being the object of a lawsuit in another case; (d) Other reasons stipulated in the legislation. While the non-juridical factors include: Result from the decision of the Court does not explicitly state that the invalid is invalid or does not have the legal force of the property rights certificate of the disputed object. (3) There is doubt from the State Administration official to issue a cancellation decision on the land title certificate on the grounds that there is no strict order to implement the cancellation in the decision.*

Keywords: *State Administrative Court, National Land Agency, Cancellation of Certificates, Non-Executable, Legal Force.*

1. INTRODUCTION:

Land for human life does not only have economic value and welfare alone, but also about the social, political, cultural, psychological and even also contains aspects of defense and national security [1]. General policy of land management is a translation of the article 33 paragraph (3) of the 1945 Constitution which stipulates that "the earth, water, space and natural resources therein shall be controlled by the state for the greatest prosperity of the people". In the field of land provisions of Article 33 paragraph (3) 1945 is then implemented in the form of Right to Control State loaded in Article 2 paragraph (2) of Law No. 5 of 1960 on Basic Regulation of Agrarian, known as the Basic Law Agrarian (UUPA) However, there is an imbalance between the supply of land is limited by the need for land is very high due to the increasing number of people from year to year. However, these increases in contrast with the land conditions due to extensive land is impossible to increase or expansion. Therefore, the conditions that these contradictions often lead to friction interest relating to the use and utilization of land resulting in the emergence of disputes in the land sector [2].

Land disputes arise when the authority (right to control the state) are confronted with citizens' rights, especially property rights of individual and communal rights (communal land) [3]. Observing disputes and conflicts over land in Indonesia continues to increase, most of the root of the problem lies in the collision of the right to control the state (HMN) with the rights of citizens (HAM), which has sole authority very large to manage the distribution, possession, use and allocation of land should be dealing with human rights inherent in their own people.

The task of dispute resolution law of the land is essentially a part of the task of the National Land Agency in order to provide legal certainty in land tenure and ownership (See Chapter II, Article 2, paragraph (2) Head of BPN Regulation No. 3 of 2011 on the Management Assessment and Handling of Cases land), therefore the performance of the National land Agency in the resolution of problems and disputes of land is very important because the expectations of society seeking justice, especially in terms of control and ownership of land rights [4]. However, the fact in the field today is that there are still gaps between *das sein* and *das sollen* in terms of the execution of the cancellation of land rights certificates as a follow up to the decision of the State Administrative Court which has permanent legal force (*inkracht van gewisjde*).

On the other hand there is no higher position in the Homeland, other than Court decision that has to have binding legal force, but it also normative, legal rule was already very clearly and unequivocally provide that it is obligatory for officials of BPN RI to implement the decision court does have binding legal force, especially concerning the cancellation of the decision to issue the order to land ownership certificate, however there are still a lot of request for cancellation of certificates of land titles to the base have been court decision that has had legal force remain unfulfilled or carried out executions unlocks. That is why the authors were interested in studying it in an article with the title: "Implementation of the Administrative Court's Decision Execution State In Case of Cancellation of Certificate of Land Rights At the National Land Agency".

2. LITERATURE REVIEW:

In the doctrine of *Trias Politica*, Montesquieu divides power into three forms, namely the legislative, executive and judiciary powers. Judicial power is emphasized by Montesquieu because at this point that the location of individual freedom and human rights are guaranteed. Montesquieu emphasizes the freedom of the judiciary because he wants to give protection to human rights of citizens who at this time are victims of despotic kings [5].

In this doctrine, both in terms of the separation of powers and the division of powers, the principle that should be held is the judiciary in the State laws should be free from interference by the executive body. It is intended that the judiciary can function appropriately for the sake of law enforcement and justice and guarantee human rights. Through the principle of freedom of the judiciary are expected decisions impartially and solely guided by the norms of law, justice and conscience of the judge can be realized [4]. Lawrence M. Friedman explains the legal system is a factory. Then she also said the legal system consisted of three elements, namely [6]

1. Legal Structure, which government officials consisting of executive, judicial and legislative. Then the structure is also referred to as "the machine".
2. Substance, that product legislation issued by government officials, including MPR, Law, Government Regulation (PP), Presidential Decree (Decree), a Presidential Instruction (PI), Decree and Circular Minister, etc. It is also called "machine product"
3. Legal Culture, which is how the public perception of the law. This is also called "the turn on the machine".

In connection with the concept of a constitutional state, Indonesia is a country that adheres to the rule of law, this can be seen in the provisions of Article 1 (3) of the Act of 1945 which determines the "Indonesia is a State of Law". The concept of the State of Law in Indonesia, according to Muhammad Yamin, said: "Indonesia is a country of law (*rechstaat*, government of law) where justice written into force, not a police state or a military state, where police and soldiers holding the government and justice, not also state power (*machstaat*)."[7]

Disputes over land rights is a case that is contentious, the matter which form of dispute or matter which is the party (party) so that the end of the settlement or the dispute will be issued in the form of a ruling. The judges' verdict is a statement that is given the authority to judge it, uttered in the hearing and aims to end or settle a problem or dispute between the parties , [8]. In decision theory, there are three kinds of power inherent in the judge's decision: [8]

1. Binding Strength

In order to implement the right to forcibly required a court judgment or authentic act which establishes it. A court decision is intended to resolve a problem or dispute and determine its rights or laws. If the parties concerned submit and entrust the dispute to the court or a judge for questioning or trial, then it implies that the parties concerned will be subject to and comply with the decision handed down.

2. Strength of Evidence.

The verdict stated in writing that the certificate is authentic, the other is not intended to be used as evidence for the parties, who might need to appeal, appeal or implementation of execution. Although the decision does not have the binding force against the third party, but has the strength of evidence to third parties.

3. Executorial Power.

The judges' verdict has an executorial power that is the power for the implementation of what is stipulated in the decision forcibly by the state apparatus.

According to Benjamin Mankodilaga, implementation of administrative court ruling execution depends on the awareness of the officials themselves. If officials do not have a high sense of legal awareness. Weaknesses in executing

that later behind the enactment of Law No. 5 of 1986 Jis, Law No. 9 of 2004 Jis, Law No. 51 of 2009 on the Administrative Court. These laws can strengthen the execution of all assigned administrative court decision[9].

3. RESEARCH METHODS:

This research includes juridical-normative research is explanatory of a study that aims to clarify, strengthen or test and even reject a theory or hypotheses and research results that already exist. By using the approach of legislation, a comparative approach, the approach and the approach of the case. Legal materials have been collected were analyzed qualitatively analyzed with descriptive content analysis method or using hermeneutics based on the teachings of the law or views of legal experts. Having obtained a clear picture, it will be concluded by the method of induction and deduction

4. DISCUSSION:

Under the terms of Article 1 (9) of Regulation BPN Decree No. 3 of 2011 stipulates that the National Land Agency of the Republic of Indonesia, hereinafter in short BPN RI is a Non-Government Institutions Ministry under and responsible to the President who has the task of government carry out government duties in the land sector of national, regional, and sectoral [10]. Furthermore, the provisions of Article 1 (10), which essentially stipulates that the Head of BPN RI is the supreme leader who led BPN RI [11].

As set out in the provisions of Articles 58, 73, 74 and 75 Regulation of the Head of BPN Decree No. 3 of 2011 on the Management Assessment and Handling of Cases of Land, that in order to issue a decision on cancellation of the certificate of title for the land as the implementation of has their judicial decisions have binding legal force (inkracht van gewijsde) Head of BPN RI may delegate authority to the head of the regional office of the BPN.

A. Implementation of the decision of the State Administrative Court which has had permanent legal force (inkracht van gewijsde) in the case of cancellation of the certificate of land rights by the National Land Agency.

Certificate is a proof of ownership of land rights as stipulated in Article 19 paragraph 2 (c) of Law No. 5 of 1960, the certificate as proof of land ownership implies that the certificate is evidence of land rights that are strong and not absolute. Therefore, if there are those who feel harmed by a certificate issued rights to land, then that party may sue in court along can prove otherwise.

A Certificate of Land including the Certificate of Ownership on Land when it contains legal flaws in the publication can be a cancellation of the certificate without having no court decisions that have inraht and if in the event of a court decision that inkracht which caused the cancellation of the certificate of land rights, the certificate of the land rights including the certificate of Ownership on land does not automatically become void, due to the cancellation of certificate of land rights is an administrative action of the government, so that the cancellation of the certificate shall be conducted by an organ or agency authorized to cancel the certificate of land intended. It can be seen in the Supreme Court Decision No. 350 K / Sip / 1968 dated March 3, 1969, namely: To declare null and title deed (certificate) issued by the institution of agrarian legally not within the mandate of Court, but merely authority administration, so that the parties by the court was won obliged to request the cancellation of title deed (certificate) that the agency Agrarian based it obtained a court ruling.

B. Factors that could hinder / delay the implementation of judicial decisions have binding legal force.

In the legal principle has always been known exceptions, as well as the principles of execution of court decisions. As noted in the previous section, that not all court decisions that have acquired legal force remains (inkracht van gewijsde), especially concerning the case of cancellation certificate of title for the land can be obeyed or enforced by the National Land Agency as an institution or organ of state that normative was given the authority to carry out the cancellation of the land ownership certificate as a follow-up to have their judicial decisions have binding legal force (inkracht van gewijsde).

There are several reasons that valid as a basis for not doing or as a base for their "right to rebel" in this case to not take legal actions in the form of the issuance of the decision on cancellation certificate of title for the land although it has indeed decided by the courts or by word others have their judicial decisions have binding legal force. This can be shown in article 54 paragraph (2) Regulation of the National Land Agency of the Republic of Indonesia No.3 of 2011.

There are several things that must be considered and fulfilled in assessing whether a court decision can be implemented or not, namely:

1. Decisions to be implemented already have permanent legal force (inkracht van gewisjde)
2. Condemnatory decisions
3. Decision of the Administrative Court verdict granted in the form of a lawsuit

In addition to the juridical factors as mentioned above, there are also several factors that constrain the implementation of the court decision, especially regarding the case of cancellation of certificate of land titles among other things:

- a. Result of the Court's decision does not expressly mention the void is not valid or does not have the legal force of certificate of property rights the object of dispute, although sometimes the legal considerations in a real and clearly states that the procedures for issuance of the certificate object of the dispute is not true and has no legal force so it is worth to cancelled.
- b. There is still some kind of fear or doubt of official Administration of the Country in this case from the Head Office of the local BPN normatively as stipulated in article 58 paragraph (2) and Article 73 paragraph (2) Regulation of the National Land Agency of Indonesia No. 3 2011 received the delegation of authority to issue a decision on cancellation of the certificate of the right milk on the ground in order to enforce judicial decisions have binding legal force in the form of the issuance of the decision on cancellation of the certificate of title for the land in question by reason of the absence of strict instructions to carry out the cancellation in the decision. Even though the legal considerations in a real and explicitly states that the procedures for issuance of the certificate object of the dispute is not true therefore deserves to be cancelled, but it is also true judges who have examined the case is already considering that the certificate object of dispute does not have the force of law that ought to cancelled. Although the plaintiff only asked petitem letters dipunyainya land are declared valid and valuable, because the judges were deciding the case should not be cut off in excess of what is required (*ultra petita*).
- c. The parties are still pursuing a Judicial Review.
Although the actual normative still their efforts to PK by the parties are not satisfied with the decision of the court is no impediment to the implementation of judicial decisions have binding legal force, but in practice, the Head of BPN Regional Office in general is still delaying to execute the cancellation of certificates as follow-up to have their judicial decisions have binding legal force specifically ordered to issue a decision on the cancellation of the certificate of title for the land in question before the verdict of Submission (PK) filed by the parties.

C. Responsibilities of the Head Office of the National Land Agency in connection with the authority to issue the Decree of Cancellation of Certificate of Property Rights to Land and efforts that can be undertaken by the National Land Agency if there are factors that can prevent / delay the execution of the decision of the State Administrative Court in case of certificate cancellation of land rights.

Cancellation Decision Certificate of Ownership on Land is one form of legal acts governing bodies in the form of legal acts published the decision by the Government that the National Land Agency. Issuance Cancellation Decisions should be based on legitimate authority and should not be done without the basic rules of Legislation. Government action must be "Rechmatig", which is a government action must comply with the limits or size. The size of "rechmatigheid" rather than the actions of the authorities is:

1. Laws and regulations applicable formal.
2. Decency in a society that must be complied with by the authorities.[12]

Decree of Cancellation of Certificate of Rights to land an obligation for personnel of National Land Agency in providing a public service to the community, this can be seen in Article 80 paragraph (1) of the National Land Agency of the Republic of Indonesia Number 3 of 2011, which stipulates that: " decision to take legal actions of land in the form of the issuance, transfer and cancellation of certificate of land rights, registration / deletion in the land Book and the General Register of others as well as the legal act more to implement a court decision that has the force of law remains a legal act which must be carried out by officials of BPN authorized". With the existence of such obligations, resulting in the emergence of a legal act of responsibility due to be implemented in the form of cancellation of Decree on Land Property Rights.

Responsibility when seen from the side of the body or institution where accountability was given, it can be divided into two types, namely:

- 1) External responsibility; and
- 2) Internal responsibility [13]

Internal Responsibility may be the responsibility of subordinates to superiors, basically happens in regular relationships between superiors and subordinates. While the external responsibility is a responsibility to the other party in this instance in the form of accountability external responsibilities. The accountability arises when there is a specific individual or legal entity who feel aggrieved with the services provided by the government. related to accountability, addressed to the government, according to the Tribunal de Conflicts in 1873, establishes three principles, namely:

- The principle of state accountability for the mistakes of its officials.

- Accountability subject to regulations that separates and distinguishes it from private law.
- The principle that accountability is the jurisdiction of the judicial administration.
- The principle of state liability for mistakes officials.[14]

Accountability of the government after the enactment of Law No. 5 of 1986 as it has undergone two changes and the latter is Law No. 51 of 2009 concerning the State Administrative Court, there are two types, namely: accountability as a consequence of losses due to the implementation of KTUN and accountability for government actions contrary to the law [13]. Responsibility in public law is known as personal responsibility and job responsibility. Personal responsibility is called mal administration, where responsibility is due to the personal mistakes carried out by the officials or organs of government in providing a public service such as lack of care or negligence causing losses to individuals or legal entities specified. Someone is legally responsible for a particular act is that he/she may be imposed a sanction in the case of the opposite actions [15]. In relation to the responsibility of the state, because there are elements of their personal mistakes, then people who feel harmed can sue government officials or organs concerned in general courts. Thus, in terms of personal responsibility is not visible from the source of authority-the power of the organ or government officials, both obtained attribution, delegation or mandate, if there has been a mal administration or personal mistakes in providing public services, then responsible is the person or organ of government officials concerned. In a personal responsibility does not recognize the principle who states that the employer responsible for the acts of his/her subordinates.

5. CONCLUSION:

Based on the description in the previous section, it can be concluded as follows:

- Not all of the State Administrative Court judgment which has had permanent legal force (inkracht van gewijsde), especially concerning the case of cancellation of certificate of land ownership rights can be exercised (carried out) by the National Land Agency although normatively as the provisions of Article 54 paragraph (1) and article 57 paragraph (1) of the National Land Agency of the Republic of Indonesia No. 3 The year 2011 has been firmly set that against Court decision that has had permanent legal force, especially concerning cancellation of land rights MANDATORY carried out by officials of BPN RI.
- Factors causing the postponement of the execution of the cancellation of the certificate still own the land among other factors juridical and non-juridical factors. Juridical factors, among others, can be seen in Article 54 paragraph (2) Regulation of the National Land Agency of the Republic of Indonesia No.3 of 2011 which stipulates that the National Land Agency may refuse or delay the issuance of the certificate of cancellation of land titles in the framework of the implementation of the court's decision who has obtained permanent legal force in terms of:
 - a. Against the decision object are other decisions to the contrary.
 - b. The object of the decision being put sequestration.
 - c. The object of the decision is becoming the object of a lawsuit in the other cases.
 - d. Other reasons set out in the legislation.

While the non-juridical factors, among others:

- a. Result of the Court's decision does not expressly mention the void is not valid or does not have the legal force of certificate of property rights the object of dispute, although sometimes the legal considerations in a real and clearly states that the procedures for issuance of the certificate object of the dispute is not true and has no legal force so it is worth to canceled.
- b. Related to the responsibilities of the Head Office of the National Land Agency in this case to get the delegation of authority directly from the National Land Agency in the issuance of the decision on cancellation of the certificate of title for the land for the implementation of the judicial decisions have binding legal force (inkracht van gewijsde) either civilly or in administration it is often the case there is still some kind of fear or doubt of official Administration of the Country in this case from the Head Office of the local BPN normatively as diataur in article 58 paragraph (2) and article 73 paragraph (2) Regulation of the Head of the Indonesian National Land Agency No. 3 of 2011, Although the plaintiff only asked petitum land papers which had just declared valid and valuable, because the judges were deciding the case should not be cut off in excess of what is required (ultra petita). Regarding this factor is closely related to them.
- c. The parties are still pursuing a Judicial Review.
Although spreading normatively still their efforts to PK by the parties are not satisfied with the decision of the court is no impediment to the implementation of judicial decisions have binding legal force, but in practice, the Head of BPN Regional Office in general is not dare to execute the cancellation of certificates as follow-up to have their judicial decisions have binding legal force specifically ordered to issue a decision on the cancellation of the certificate of title for the land in question before the verdict of Submission (PK) filed by the parties.

6. SUGGESTION:

- It should be in the form of a specific law in this case the position is in the Regulation which regulates explicitly the forceful measures that can be applied to the Administrative Officer in this case the National Land Agency normatively was given the authority to issue a decision in the form of cancellation of certificate of Ownership on Land as the implementation of the court's ruling state Administrative already have binding legal force (inkracht van gewijsde) particularly concerning the case of cancellation of certificate, so there will be a clear legal umbrella for all the officials of Administration of the state in this case Land Agency national to carry out any State Administrative Court verdict which had inkracht so there is no excuse either judicial or non yuridis reason for BPN officials not to delay the administrative court ruling or who have inkracht order to create legal certainty for all seekers of justice in this country.
- There should be some repairs or revisions to the material of the articles contained in the Regulation of the head of the National Land Agency No. 3 of 2011 on the Management Assessment and Handling of Cases of Land in particular on Article concerning exceptions to the obligation of BPN in legal actions in the form of the issuance of the cancellation of the certificate of ownership of land in the framework of the implementation of judicial decisions have binding legal force, namely Article 54 paragraph (2) and provisions regarding the form of liability and legal protection that can be given to the Head Office of the National Land Agency as the official who received the delegation of authority from the National Land Agency of the Republic of Indonesia in the issuance of the decision on cancellation of certificate of ownership of the land in order to carry out a court decision already have permanent legal force, so as to perform its obligations there would be no more fears or hesitations of the Head of BPN Regional Office of the interests of justice and the rule of law.

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