

A Legal Analysis of Judges' Legal Considerations in State Administrative Disputes Relating to the Cancellation of Building use Rights Certificates (Case Study of Decision Number 124 PK/TUN/2024 in Conjunction with Decision Number 281 K/TUN/2023)

Riska Ayu Khusnul Laila¹, Siti Marwiyah², Sri Sukmana Damayanti³

^{1,2,3}Universitas Dr. Soetomo Surabaya
Email: riskaayukhusnullaila@gmail.com

Overlapping land rights disputes between historical evidence claims and modern administrative registration trigger complex legal uncertainty in Indonesia. This study aims to analyze the implementation of the *rechtmatigheid* principle by the Supreme Court in Decision Number 281 K/TUN/2023 regarding the cancellation of Building Use Rights Certificates based on Article 30 paragraph (1) letter c of PP No. 24 of 1997, as well as to dissect the judge's considerations in rejecting the Judicial Review in Decision Number 124 PK/TUN/2024. The research method used is normative legal research with a statute approach and a case approach. The results of the study indicate that the Supreme Court prioritizes the value of procedural legal certainty (*Rechtssicherheit*) over the material claims of individuals who neglect to use the 90-day deadline for filing a lawsuit after a deadlocked mediation, in line with the doctrine of *vigilantibus non dormientibus iura subveniunt*. The definitive rejection of the application for Judicial Review is based on the failure to fulfill the criteria of *decisive novum* (new, decisive evidence) as regulated in a restrictive manner in SEMA Number 2 of 2019. The conclusion of the study confirms that the validity of certificates in the land administration system is highly dependent on the integration between compliance with official procedures and the vigilance of legal subjects in defending their rights.

Keywords: Legal Certainty, Novum, Certificate Cancellation.

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Corresponding Author:

Riska Ayu Khusnul Laila
Universitas Dr. Soetomo Surabaya
riskaayukhusnullaila@gmail.com

1. Introduction

As a legal state (*rechtstaat*), Indonesia emphasizes the principle of legality in government policies, particularly in the agrarian sector. This is outlined in Article 33, paragraph (3) of the 1945 Constitution, which states that the state controls land, water, and natural resources for the welfare of the people. Land registration functions as a key instrument to ensure legal certainty and protection of property rights for citizens [1], [2]. The goal is to provide landowners with the ability to easily prove ownership and receive protection from third-party claims. However, in practice, there is often a discrepancy between the normative ideals and the reality of land registration, particularly with the negative publication system.

The negative publication system in Indonesia means that land certificates are considered valid but not absolute (*non-irrebuttable*). This allows certificates to be canceled if there are valid claims or procedural defects, creating legal uncertainty for landowners and investors. A significant case highlighting this issue is the dispute between Fajar Firmansyah and PT Bukit Asam, Tbk., which involves conflicting ownership claims based on historical documents such as the Land Use Rights Certificate (SKHUAT) from 1964 and the Situation Map (GS) from 1983, compared to the newly issued Building Use Rights Certificate (HGB) in

2021. This case illustrates the complex legal dynamics of overlapping claims and land documentation [3], [4].

Legal tensions further escalated due to differences of opinion between the State Administrative Court of Appeal and the Supreme Court. The State Administrative Court of Appeal annulled the HGB Certificate of PT Bukit Asam, citing the negligence of the National Land Agency (BPN) in issuing the certificate despite an ongoing ownership dispute. This decision was based on the principle of material accuracy, which requires public officials to thoroughly evaluate all facts before making decisions that affect civil rights. However, the Supreme Court overturned this ruling, asserting that BPN had the right to continue land registration, as long as the aggrieved party failed to file a lawsuit within 90 days after being notified of the dispute or the failure of mediation[5], [6]. This study aims to explore how the Supreme Court balances the application of administrative law with technical agrarian law, focusing on the interpretation of Article 30, paragraph (1)(c) of Government Regulation No. 24/1997 and the formal requirements for Judicial Review after the issuance of Supreme Court Circular Letter (SEMA) No. 2/2019. By examining these rulings, this study seeks to clarify the standards of accuracy required from BPN officials in handling overlapping land claims and the legal consequences for landowners who do not actively pursue formal dispute resolution [7], [8]

2. Literature Review

Land registration in Indonesia plays a key role in ensuring legal certainty in the agrarian sector. According to research by Erizal [1], although the land publication system in Indonesia aims to provide legal protection to landowners, the negative publication system implemented by the National Land Agency (BPN) actually increases legal uncertainty because the issued certificates are not guaranteed to be absolutely valid. This system allows for the possibility of land disputes arising from valid third-party claims [2]. Research by Kurniati [5] also shows that this negative publication system does not align with the goal of providing definitive legal protection, as it opens space for third parties to challenge the status of land already recorded in certificates. Research by Syukur [9] highlights that one of the main issues is the weakness in data verification by BPN officials, leading to the emergence of overlapping land certificates. This is in line with findings by Utami [10], who critiques the implementation of Article 32, paragraph (2) of Government Regulation No. 24/1997, which allows land disputes to persist even after certificates are issued, if no objections are filed within a certain period. Other scholars, such as Setiawan [7], argue that despite this system's aim to ensure legal certainty, its implementation often falls short of expectations due to differing legal perspectives between the courts and BPN regarding the validity of land certificates.

Research by Kurniati [5] underscores the importance of improving the verification system in land registration to create stronger legal certainty. Although Article 30 of Government Regulation No. 24/1997 establishes that land certificates must be considered valid, previous studies have shown that there is still much ambiguity regarding the dispute resolution procedures involving land certificates already issued by BPN, which opens room for conflicting claims by other parties [9], [11]. This indicates that although the basic principles of land registration have been regulated, improper implementation can lead to persistent uncertainty.

Based on the existing literature, despite the objective of land registration in Indonesia to provide legal certainty through land certificates, the implementation of the negative publication system applied by BPN results in legal uncertainty, especially in relation to overlapping claims and dual certificates. This system allows valid third-party claims to invalidate the issued certificates, thus creating the potential for disputes. In this context, the Supreme Court plays a crucial role in interpreting and applying the provisions of Article

30 of Government Regulation No. 24/1997 concerning land registration and the Judicial Review procedure based on Supreme Court Circular Letter No. 2/2019. Therefore, this study aims to examine how the Supreme Court balances the application of administrative and agrarian law in handling land disputes involving overlapping certificates, as well as to identify the accuracy standards required from BPN officials in data verification and its impact on landowners who do not actively pursue formal dispute resolution.

3. Research Methodology

This legal research employs a normative legal approach, focusing on document study and analyzing law as a coherent system of norms. This approach serves as a procedural framework for systematically addressing legal issues, starting from the identification of research subjects to the final analysis, which aims to uncover accountable legal truths [12]. Specifically, this study explores the legal reasoning behind the annulment of the Building Use Rights Certificate (HGB), as well as analyzing the consistency between legal norms and facts in the context of land ownership disputes. Using a normative method, this research delves into the interpretation of Article 30 paragraph (1)(c) of Government Regulation No. 24/1997 and the criteria for new evidence (*novum*) in the decision of the State Administrative Court, particularly after the issuance of Supreme Court Circular Letter No. 2/2019 [13]. This method aims to uncover relevant legal principles and doctrines related to the issue, while offering prescriptive solutions to the dispute between Fajar Firmansyah and the Head of the Banyuasin Land Office. Through various approaches—legal, case study, and conceptual—this study carefully analyzes legal materials and jurisprudence to understand procedural accuracy and legal certainty in the practice of land registration in Indonesia [14], [15]

4. Results and Discussion

Implementation of the Principle of *Rechtmatigheid* and Legal Certainty in Decision No. 281 K/TUN/2023 Based on Article 30 Paragraph (1) Letter c of PP 24/1997

a. Case Overview

This administrative dispute centers on the legality of the Building Use Rights Certificate (SHGB) No. 64/Desa Perajen, issued by the Banyuasin Land Office on June 10, 2021. The conflict arose from overlapping claims between FF (the Plaintiff), who claims rights to approximately 38.2 hectares of land, and PT BA, which was granted rights to the land through a certificate issued for 31.22 hectares. FF claims ownership based on historical documents from 1983, while PT BA acquired the land through a land procurement process between 2009 and 2013 for the construction of a coal terminal. Despite the ongoing administrative procedures, FF failed to follow up with a civil lawsuit for more than two years, from 2018 to 2020, thus allowing the Banyuasin Land Office to proceed with issuing the certificate to PT BA. [5], [7]

b. Parties Involved in the Dispute

The key parties in this case are: FF (the Plaintiff), who claims ownership based on historical documents from 1964 and 1983; the Banyuasin Land Office (the Defendant), which issued the certificate in accordance with the land registration procedures under Government Regulation No. 24/1997; and PT BA (the Intervening Defendant), which acquired the land through a legitimate land procurement process for a national strategic project [9].

c. Core Dispute

The object of the dispute is the Building Use Rights Certificate (SHGB) No. 64/Desa Perajen, which was issued to PT BA, granted through the sporadic land registration process in accordance with the regulations set forth in Article 1, paragraph 9 of the Administrative Court Law. This certificate meets the criteria for legal validity, both substantively and procedurally [2].

Judicial Considerations

1. First Instance (Decision No. 152/G/2022/PTUN.PLG):
The Palembang Administrative Court (PTUN) at the first instance evaluated whether the Banyuasin Land Office followed the correct registration procedure and whether FF could prove their ownership claim. The court found that the administrative procedure for land registration was valid but questioned the evidence provided by FF [5].
 2. Appeal (Decision No. 12/B/2023/PT.TUN.PLG):
The Palembang State Administrative Court of Appeal (PTTUN) annulled the first-instance decision, concluding that the Land Office was negligent in continuing the issuance of the certificate despite knowing of an ongoing dispute [7].
 3. Cassation (Decision No. 281 K/TUN/2023):
The Supreme Court overturned the appellate decision, emphasizing that procedural certainty should be prioritized over material claims not filed within the specified time by FF. The Court found that the actions of the Land Office were legally valid, as they continued the registration process after FF failed to file a lawsuit within the time frame set by law [3]
- d. Status of the Land Certificate as an Administrative Court Decision (KTUN)
The land certificate in question is an official decision made by a public official that carries binding legal force. According to Article 1, paragraph 9 of the Administrative Court Law, KTUN is an administrative decision that is final, concrete, and individual. This certificate meets these requirements, and its issuance is considered legally valid unless proven otherwise by a court decision [3]
- e. *Rechtmatigheid* Principle in the General Principles of Good Governance (AAUPB)
The principle of *rechtmatigheid* (legality) is crucial in assessing the legality of administrative decisions. The land registration process must adhere to three core pillars: authority, procedure, and substance. The Supreme Court ruled that the Land Office acted in accordance with the principle of caution by ensuring that all procedural steps were followed before issuing the certificate [9]
- f. Application of Article 30, Paragraph (1)(c) of Government Regulation No. 24/1997
The Supreme Court applied Article 30, Paragraph (1)(c) of Government Regulation No. 24/1997, which states that the Land Office is allowed to continue registration even in the presence of a dispute, as FF failed to file a lawsuit within 90 days. This provision is crucial for ensuring legal certainty in the land registration process [15]
- g. Synthesis of the *Rechtmatigheid* Principle and the Validity of Certificates in the Land Administration System
In Indonesia's land administration system, each land certificate issued by the Land Office must meet the requirements of legal authority, proper procedure, and factual accuracy. The principle of *rechtmatigheid* ensures that the land registration process is stable and legally valid, protecting the rights of legitimate landowners while maintaining procedural transparency [3], [7].

Judicial Considerations of the Supreme Court in Rejecting Judicial Review

The Supreme Court reviewed the request for judicial review filed by FF, focusing on whether the reasons provided met the criteria outlined in Article 67 of the Supreme Court Law. The Court found that no new evidence (*novum*) was presented that would alter the case's outcome, and therefore, rejected the request [13]

- a. Ratio Decidendi of Decision No. 281 K/TUN/2023
The main reason for the Supreme Court's decision was FF's failure to take legal action within the required time frame. The Court emphasized that the Land Office's actions were legally valid because

FF was given sufficient opportunity to challenge the certificate in court but failed to act within the statutory period [14].

b. Novum Doctrine and Decision No. 124 PK/TUN/2024

The Supreme Court examined whether new evidence was presented in the request for judicial review. The Court found that the documents submitted by FF were not new evidence and did not significantly alter the facts of the case. Therefore, the request for judicial review was deemed baseless (Marzuki, 2005).

c. Application of SEMA No. 2 of 2019

The Supreme Court applied the guidelines set forth in SEMA No. 2 of 2019, emphasizing that judicial review should only be granted if there is convincing new evidence. In this case, FF failed to provide such evidence, and the court adhered to the principle of maintaining legal stability and upholding the original decision [15].

d. Implementation of the Doctrine of *Vigilantibus Non Dormientibus lura Subveniunt*

The rejection of judicial review was based on the doctrine that the law protects those who are vigilant, not those who are passive in asserting their rights. The Court stressed that FF, as a notary, should have been aware of the legal consequences of neglect, and thus the decision to uphold the registration was justified [3]

e. Role of Administrative Courts in Ensuring Legal Certainty in Land Administration

Administrative courts play a crucial role in ensuring that actions taken by public officials are in line with the principles of legality and the General Principles of Good Governance. In land disputes, the courts ensure that the actions of the Land Office align with legal standards and protect the rights of legitimate landowners (Suharyono, 2021).

5. Conclusion

This study provides insights into the application of the principle of *rechtmatigheid* (legality) and legal certainty in the issuance of the Building Use Rights Certificate (SHGB) No. 64/Desa Perajen, with a focus on the dispute between FF, the Banyuasin Land Office, and PT Bukit Asam. The findings indicate that the Land Office adhered to the correct administrative procedures in accordance with Government Regulation No. 24/1997 on land registration, and the issuance of the certificate was legally valid despite the overlapping land claims. However, there are several limitations in this study, such as its focus on a single land dispute case and the absence of consideration for socio-economic factors that influence land dispute resolution. Therefore, the findings cannot be generalized to the entire land registration system in Indonesia, and legal decisions should also be viewed from the perspective of their broader impact on local communities and investors.

Further research should expand the scope of case studies to include various types of land disputes across different regions of Indonesia, while also comparing the application of the *rechtmatigheid* principle in different contexts. Additionally, future studies could deepen the understanding of external factors influencing land dispute resolution, including the roles of the government, society, and the private sector. An exploration of the socio-economic impacts of legal decisions related to land registration would offer a more comprehensive perspective, opening opportunities for more thorough research on how the land registration system can be improved to ensure greater legal certainty for all stakeholders involved.

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