

Legal Analysis Of Cancellation Of Certificate Of Property Rights On Land Of Individual In The City Of Makassar City Office

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Abstract: *The Purpose Of This Research Is To Know The Implementation Of The Cancellation Of Land Ownership Certificate In The Scope Of Land Office Of Makassar City, And To Know And Explain The Legal Status Of Property Rights On Land Whose Certificate Is Canceled By The Land Agency Of Makassar City. His Type Of Research Is Sociological Or Empirical Juridical, Data Obtained By The Author Of The Study Documents And Interviews With Interested Parties In This Case The Regional Office Of Land Agency, Administrative Court Of Makassar City And Then Conducted A Qualitative Descriptive Analysis. The Result Of The Research Indicates That The Decision Of Cancellation Of Land Ownership Certificate Becomes The Authority Of The Land Board Either Based On Procedure Cache Or By Court Decision Which Has Permanent Legal Force. The Legal Status Of The Land With Which The Certificate Is Canceled Due To The Procedural Procedure And Based On The Decision Of The Court That Has Had Permanent Legal Power Over Its Ownership Rights Does Not Necessarily Be Abolished By The Issuance Of The Decision On The Cancellation Of The Land Title Certificate Due To A Defect In The Procedure. The Author Suggests The Need For Clear Technical Guidance On The Process Of Cancellation Of Certificate Of Ownership Of Land That Is Supporting In The Regulation Of The Minister Of Agrarian Affairs.*

Keyword: *Land Registration, Certificate Cancellation*

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I. Introduction

The Land Is A Gift Of God Almighty Who Has An Important Function To Realize A Just And Prosperous Society. Seeing That Urgenitas It Is Proper That It Needs To Be Incorporated Into The Constitution Of A State Based On The Lordship Of The Supreme As Indonesia As Stipulated In The Law Of The Unitary State Of The Republic Of Indonesia Year 1945 As The Basis Of The State. In The 1945 Constitution In Article 33 Paragraph (3) Regulated On The Use Of Land Which States That "The Earth, Water, Space And Natural Resources Contained Therein Are Controlled By The State And Used For The Greatest Prosperity Of The People". Where It Is The Ideals Of The State And With The Existence Of These Basic Provisions Can Be A Reference In The Regulation Of The Utilization Of Earth Function, Water, And Space And Natural Wealth.

To Achieve The Ideals Of The Aforementioned State, The Agrarian Field Needs A Plan For The Allocation, Use And Supply Of Earth, Water And Space For Various Purposes Of Life Of The People And The State. A National Plan Covering All Parts Of Indonesia, Which Is Then Detailed Into Regional Plans From Each Region. With The Existence Of The Planning Then The Use Of Land Can Be Done In A Guided And Orderly So As To Underestimate The Benefits As Much As Possible For The State And The People.

In Order To Ensure Legal Certainty Of Land Rights And Certainty, The Uupa Has Outlined The Necessity To Carry Out Land Registration Throughout Indonesia, As Mandated By Article 19 Of The Bal. The Provisions In Article 19 Paragraph (1) Of The Bal Are Provisions Aimed At The Government To Carry Out Land Registration Throughout Indonesia, Which Is Also A Legal Basis For The Implementation Of Land Registration In Order To Obtain A Valid Land Title As A Powerful Evidentiary Instrument.

As Defined In Article 23 Paragraph (1) Of The Loga, The Property Rights As Well As Any Transition And Abolition Of Other Rights Must Be Registered In Accordance With The Provisions Referred To In Article 19 And Article 32 Paragraph (1) Of The Loga, On "Hak Guna The Undertaking, Including The Terms Of Its Grant, That Each Transition And The Abolition Of That Right Shall Be Registered In Accordance With The Provisions Referred To In The Foregoing Article.

To Follow Up The Above Matter, Government Regulation No. 24 Of 1997 On Land Registration Has Been Issued As A Refinement Of Government Regulation No. 10 Of 1961. The Implementation Of Land Registration In The Community Is A Government Duty Organized By The Government For The Interest Of The People, In Order To Grant The Right Status On Land In Indonesia.

The Purpose Of Land Registration Under Government Regulation No. 24/1997 In Article 3 Is To Provide Legal Certainty And Protection To Rights Holders Of A Plot Of Land, Apartment Units And Other

Registered Rights So As To Easily Prove Themselves As The Right Holder And To Provide Information To Interested Parties Including The Government In Order To Easily Obtain The Necessary Data In Establishing Legal Acts Concerning The Listed Land And Apartment Units. The Explanation Of The Purpose Of Land Registration As Stated In Letter A Is The Main Purpose Of Land Registration As Mandated By Article 19 Of The Basic Agrarian Law.

Besides, With The Implementation Of Land Registration Also Referred To The Creation Of An Information Center On The Plots Of Land So That The Interested Parties Referred To The Government Can Easily Obtain The Necessary Data In Conducting Legal Acts Concerning The Land Plots And Apartment Units That Have Been Listed. The Implementation Of Good Land Registration Is The Basis And The Realization Of The Orderly Administration In The Field Of Land.

So It Is Clear That This Government Regulation Number 24 Of 1997 Has Enriched The Provisions Of Article 19 Of The Basic Law Of Agrarian Namely:

1. Whereas With The Issuance Of Certificate Of Land Rights, The Owners Are Bound By Legal Certainty And Legal Protection.
2. In This Age Of Information The Land Office As The Frontline Office Must Be Well Maintained Any Information Necessary For A Plot Of Land, Both For The Government Itself So As To Plan The Development Of The Country As Well As For The Community Itself, The Information Is Important To Be Able To Decide What Is Needed Where The Land Is Involved, Ie Physical And Juridical Data Intended For Apartment Units. The Information Is Open To The Public, Meaning That It Can Be Given What Information Is Needed On An Existing Piece Of Land.
3. So, For That Matter, The Orderly Administration Of Land Is Made A Natural Thing.

Based On The Provisions Of Land Registration, The Land Parcels That Have Been Through A Series Of Land Registration Process Held By The Government Then Issued A Certificate Of Land Rights. Such Certificate Of Land Rights Is The Proof Of The Strongest And Most Fulfilled Right In Accordance With The Provisions Of Article 32 Of Government Regulation No. 24 Of 1997. It Means That The Certificate Is A Valid Proof Of Right As A Strong Proof Of The Physical Data And Juridical Data Contained Therein In Accordance With The Data Contained In The Land Measurement And Books.

For The Right Holder, The Land Title Certificate Serves As A Powerful And Easy Evidence To Prove That The Land Belongs To Him, So He Freely Removes His Rights And Assigns The Burden Of The Rights Or Benefits Of The Third Party Who Uses Them. Similarly For Third Parties Or Who Will Be Interested In The Land Concerned Will Be Easier To Obtain Reliable Information.

However, In Reality Today To Obtain A Land Title Certificate Is Still A Fairly Complicated Issue. This Is Due To The Complicated Administrative System And Management That Takes A Long Time And The Cost Is High Enough To Make People Lazy To Register The Land. In Addition, The Difficulty In Managing The Certificate Is That There Are Still Certificates Containing Administrative Legal Defects Such As Procedural Errors, Errors In The Application Of Legislation, Rights Subject Errors, Object Rights Errors, Right Type Errors, Widespread Miscalculations, Overlapping Rights, Errors Of Physical Data And Juridical Data, And Other Administrative Errors.

Certificates Containing Administrative Legal Defects Do Not Provide Legal Protection For Rights Holders As Intended By Government Regulation No. Law No. 24 Of 1997 Regarding Land Registration Is A Guarantee Of Legal Certainty Of Land Rights So That It May Harm The Holder Of Such Rights, For Example If There Is A Complicated Legal Issue When There Are Other Parties Who Know There Is A Gap To Exploit The Defective Rights By Issuing Other False Rights. Certificates With Administrative Legal Defects Have Legal Implications Not Only Against Rights Holders Of Good Faith In Obtaining The Land, But Also For Third Parties Or Interested Parties With Good Faith In The Land Concerned.

By Looking At The Possible Impacts On The Birth Certificate Of Land Rights That Contain Administrative Law Deeds, The Government Needs To Provide Legal Protection For The Parties, Namely By Issuing Regulation Of The Minister Of Agrarian Affairs / Head Of National Land Agency Number 9 Of 1999 On Procedures For The Granting And Cancellation Of Rights Land And Management Rights .

In Article 1 Number 14 Determines The Definition Of The Cancellation Of Rights As The Annulment Of A Decision On The Granting Of A Right Or Title To A Land Title Certificate Because The Decision Contains A Defect In Administrative Law In Its Issuance Or To Execute A Court Decision That Has Obtained Permanent Legal Force. Furthermore Article 106 Shall Be Determined By This Cancellation Either Because Of The Request Concerned Or By The Competent Authority Without Any Prior Application.

In Article 104 Paragraph (1) The Cancellation Of Land Rights Involves The Annulment Of The Decision On The Granting Of The Right, The Certificate Of Right To Land, The Decision Of Granting The Right In The Framework Of The Regulation Of Land Tenure. The Cancellation Of Such Land Rights Is Issued Due To A Defect In Administrative Law In The Issuance Of A Decision On The Purchase And / Or Certificate Of Its Land Rights Or Enforces A Court Decision Which Has Obtained Permanent Legal Force. The Cancellation Of Land Rights Is Done By A Decision Of The Minister Responsible For Agrarian / Land Affairs,

In Which The Minister May Delegate To The Head Of The Regional Office Of The National Land Agency, Namely The National Land Office At The Provincial Level.

The Practice Of Cancellation Of Land Rights As Applied By The National Land Agency As One Of Its Duties And Authorities Can Only Be Done If The Cancellation Of The Land Rights By Reason Of The Defect Of Administrative Law. But It Can Not Directly End A Dispute, Because The Decision Of The National Land Agency To Resolve Land Disputes Can Still Be Filed By The State Administrative Court By Citizens Who Are Dissatisfied With The Verdict And This Dispute Is Called An Administrative Dispute.

A. Formulation Of The Problem

Based On The Description On The Background Mentioned Above Then Formulated The Problem As Follows:

1. In Case Of Cancellation Of Land Title Certificate In The Scope Of The Makassar City Land Office?
2. What Is The Legal Status Of Property Rights On Land Whose Certificate Is Canceled By The Makassar Land Agency?

B. Theoretical Framework

The Rule Of Law

In The Framework Of Research Of Legal Analysis Against Cancellation Of Issuance Of Individual Ownership Certificate On Individual Land In Scope Of Land Office Of Makassar City (Viewed From Agrarian Ensignant No. 9 Year 1999). In Need Of Theory, Principles And Concepts That Can Be Used As A Theoretical Basis In Discussing The Problems That Have Been Formulated, As For Theories, Principles And Concepts Used Are Theories Of Authority, Theories, Principles Of Legal Certainty And The Concept Of Government Responsibility.

The Concept Of A State Of Law Has Been Spawned Since The 17th And 18th Centuries To Oppose The Unlimited Power Of The Ruler. Thinkers Try To Answer Issues Related To The Nature, Origin And Purpose Of The State. Particularly Relates To Where The State Came To Power, Hence Emerged Two Great Theories About The State And Law Of The Souvenirate Theory And The Origin Of The Origin Of The State, Which Produced Two Patterns Of States: The State Of Power (Machstaats) And The State Of Law (Rechtstaat). The Development Of The Concept Of The Modern Law State Occurred Around The 20th Century, Where There Has Been A Shift In The Status Of The State As A Guardian Of Security And Order Into A State That Prioritizes And Organizes The Welfare Of Its People. According To Opinion Bagir Manan As Quoted By Irfan Fachruddin States, "That The Conception Of A Modern Legal State Is A Blend Of Concepts Of State Law And Welfare State". So In The Concept Of This Legal State, The State Is Not Solely As A Guardian Of Security And Order, But Has The Responsibility In Realizing And Organizing Social Justice And The Welfare Of Its People. Konsep Negara Hukum Modern Dikenal Dengan Istilah "*Rechtstaat*".

The Use Of Legal State Terms Other Than *Rechtstaat* Is Also Known As The Rule Of Law In The UK And Government Of Law, But Not Of Man.¹ The Concept Of The State Of Law In Continental Europe Was Developed Among Others By Immanuel Kant, Paul Laband, Julius Stahl, Fichte, And Others Using The German Term "*Rechtsstaat*". While In The Anglo American Tradition, The Concept Of The State Of Law Was Developed Over The Pioneering A.V. Dicey With The Title "The Rule Of Law". The Concept Of A Legal State Called "The Rule Of Law", Can Be Seen From The Opinion Of Hilaire Barnett States That "The Essence Of The Rule Of Law Is That Of The Sovereignty Or Supremacy Of Law Over Man".² (The Essence Of The Rule Of Law Is The Sovereignty Or Supremacy Of The Law Over Man)

According To German Jurist Friedrich Julius Stahl (1802-1861) States That The Principles Of A Legal State Must Be Met, Namely: (1) The Existence Of Recognition Of Human Rights; (2) There Is A Separation Of Powers; (3) The Government Shall Be Governed By Law (Written Law); (4) The Existence Of An Administrative Court. Rule Of Law Elements, As Proposed By A.V. Dicey In The Introduction To The Law Of The Costitution Includes, (A) The Supremacy Of The Rule Of Law (Supremacy Of The Law); The Absence Of Arbitrary Power, In The Sense That One Can Only Be Punished For Breaking The Law, (B) Equality Before The Law. This Argument Applies To Both Ordinary People And To Officials, And (C). Human Rights Violations By The Law (In Other Countries By The Constitution) As Well As Court Decisions.³

According To Opinion Prof. Sudargo Gautama, Sh As Quoted By Abdul Azis Hakim, Suggests Three Features Or Elements Of The State Of Law, Namely: There Are Restrictions On The Power Of The State

¹ Ni Matul Huda, *Hukum Tata Negara Indonesia*, Jakarta, Raja Grafindo Persada, 2006, hlm 73.

² Hilaire Barnett, *Constitutional & Administrative Law*, Routledge, London and New York, Eight Edition, 2011, hlm. 52.

³ Miriam Budiardjo, *Dasar-dasar Ilmu Politik*, Jakarta, PT. Gramedia Pustaka Utama, 2007, hlm. 58.

Against Individuals, ie The State Can Not Act Arbitrarily, The State Act Is Limited By Law, The Individual Have The Right To The State Or The People Have The Right To The Authorities. Principle Of Legality, Any State Action Must Be Based On The Law That Has Been Held In Advance Which Must Be Obeyed Also By The Government Or Apparatus, And The Separation Of Power.

In Relation To The Concept Of The Rule Of Law, Indonesia Is A Country That Adheres To The Rule Of Law, This Can Be Seen In The Provisions Of Article 1 Paragraph (3) Of The 1945 Constitution Which Determines "The State Of Indonesia Is A State Of Law. The Concept Of The State Of Law In Indonesia, According To Muhammad Yamin, States: "Indonesia Is A State Of Law (Rechtsstaat, Government Of Law) Where Written Justice Applies, Not A Police State Or Military State, Where Police And Soldiers Hold Government And Justice, Machstaat) Where Weapons And Armed Forces Perform Arbitrarily".

Based On The Description Of The Concept Of The Legal State, It Can Be Seen That Basically In The Concept Of A Legal State Related To The Principle Of Legality (Legal Certainty). The Principle Of Legality Is One Of The Main Elements Of The Rule Of Law, Because A Country Is Not Governed By People But Governed By Law. According To Montesquieu, "State Is A Legal Tool" (Rechtsapparaat), Not A Tool Of Power / Strength (Machtsspreker). Thus It Can Be Concluded That The Principle Of Legality Is The Power Of The State Based On The Applicable Law, Which On The Basis Of This Legality Can Provide A Legitimacy For Government Action In The Sense That Government Legal Action Must Be Based On The Authority Given By A Written Rule Of Law. If It Is Associated With The Proposal Of This Research, Then The Organ Of The Government, In This Case Is The Head Of Regional Office Of The National Land Agency In Establishing And Issuing The Decision Of The Issuance Of Decision On The Cancellation Of The Land Ownership Certificate Based On The Applicable Law. So That With The Authority Based On The Applicable Law, It Will Be Accompanied With The Responsibility Arising From The Authority In Issuing The Decree.

Authority Theory

The Term Authority And Authority In The Law Of State Administration There Are Different Views Of Some Existing Literature. Conceptually The Term Authority Is Often Called Authority, Gezag Or Jurisdiction And The Term Authority Is Called Competence Or Bevoegdheid. According To Juanda Who States That "Authority Is A Formal Power Derived From Or Given By The Law Such As Legislative Power, Executive Power, Judicial Power. Thus In Authority There Is Power And In Authority Is Born The Authority". While The Authority (Competence, Bevoegdheid) Only Concerning A Certain Spare Parts Or Certain Fields Only. Meanwhile, According To Opinion Philipus M. Hadjon As Quoted By Lukman Hakim, Using The Term Authority That Can Be Exchanged With The Term Authority, The Two Terms Are Often Paralleled With The Term Bevoegdheid In Dutch. According To Atmosudirdjo Between Authority (Authority, Gezag) And Authority (Competence, Bevoegdheid) Needs To Be Distinguished, Although In Practice The Distinction Is Not Always Felt Necessary. Authority Has An Important Position In Running The Wheels Of Government, Where Within The Authority Contains Rights And Obligations In A Public Legal Relationship. According To H. Stout Who Says That, *Bevoegdheid Is Een Begrip Uit Het Bestuurlijke Organisatierecht, Wat Kan Worden Omschreven Als Het Geheel Van Regels Dat Betrekking Heeft Op De Verkrijging En Uitoefening Van Bestuursrechtelijke Bevoegdheden Door Publiekrechtelijke Rechtssubjecten In Het Bestuursrechtelijke Rechtsverkeer*.⁴

Authority Is A Notion Derived From A Governmental Organization, Which Can Be Described As The Whole Of The Rules Concerning The Acquisition And Use Of Governmental Authority By The Subject Of Public Law In Public Law Relations ". The Government In Taking An Action Must Be Made Aware Of The Applicable Law, Therefore In Order For An Act Of Government To Be Declared Legitimate, The Law Gives An Authority To The Government To Act Or Not. According To Philipus M. Hadjon, The Authority To Make Decisions Can Only Be Obtained In Two Ways, Namely By Attribution Or By Delegation. Similarly, In Fam Stroink's Opinion And Jg Steenbeek Quoted By Sajidjono, There Are Only Two Ways In Which Government Organs Acquire The Authority Of Attribution With Respect To The Surrender Of A New Authority, While The Delegation Is Concerned With The Delegation Of Existing Powers, To The Mandate's Mandate No Change Of Authority Whatsoever, There Is Only An Internal Relationship.⁵ Theoretically, However, The Government Derives Authority From Three Sources Namely, Attribution, Delegation And Mandate.

⁴ Ridwan HR, *Hukum Administrasi Negara*, Jakarta, PT. Raja Grafindo Persada, 2006, Hlm.101

⁵ Lihat Pendapat Stroink dan Steenbeek dalam H.Sadjijono, *Bab- Bab Pokok Hukum Administrasi*, Yogyakarta, Cetakan II, Edisi II, Laksbang Pressindo, 2011, Hlm. 65.

According To H.D Van Wijk / Willem Konijnenbelt Defines The Following: (A) Atribusi: Toekenning Van Een Bestuursbevoegheid Door Een Wetgever Aan Een Bestuursorgaan, (Attribution Is The Granting Of Government Authority By Lawmakers To Government Organs). (B) Delegatie: Overdracht Van Een Bevoegheid Van Het Ene Het Bestuursorgaan Aan Een Ander, (Delegation Is The Delegation Of Government Authority To Other Organs Of Government) (C) Mandaat: Een Bestuursorgaan; Aat Zijn Bevoegheid Namens Hem Uitoefenen Door Een Ander, (Mandate Occurs When The Organ Of Government Allows Its Authority To Be Run By Other Organs).⁶

The Authority Obtained By Attribution Indicates To The Original Authority That There Is A Grant Of Authority By The Legislator To A Government Organ. An Attribution Is An Authority To Make A Decision (Besluit) Which Is Directly Sourced To A Legislation. Delegation Can Be Interpreted As A Delegation Of Authority By A Government Official (Delegans) To Another Party Who Receives The Authority (Delegatoris). And The Authority Obtained By The Mandate Does Not Occur A Shift In Competence Between The Mandator And The Mandate Recipient.

In The Study Of The Law Of The State Administration, The Source Of Authority For The Government In Administering A Government Is Very Important. This Is Because In The Use Of Such Authority Is Always Associated With Legal Liability. In Giving Authority To Any Organ Or Certain Government Officials Can Not Be Separated From The Liability Generated. In The Case Of Attribution, The Competent Authority May Create New Powers Or Extend The Existing Powers With The Internal Internal Responsibility Of The Exercise Of Authority Attributed Entirely To The Recipient Of Authority (Attributes).⁷

The Theory Of Legal Certainty

Legal Objectives Can Be Studied From Three Perspectives, Namely From The Point Of View Of Positive Normative Legal Science (Dogmatic Jurisdiction), From The Point Of View Of Legal Philosophy And The Sociology Of Law. If The Law Is Examined From The Perspective Of Positive Normative Law Science Then The Purpose Of Law Will Be Focused On The Aspect Of Legal Certainty And If The Law Is Viewed From The Point Of View Of Legal Philosophy Then The Purpose Of Law Is Focused On The Aspect Of Justice. Certainty Is A Feature That Can Not Be Separated From The Law, Especially For Written Legal Norms. The Law Without A Certainty Value Will Lose Meaning Because It Can No Longer Be Used As A Behavioral Guide For Everyone. Certainty Itself Is Referred To As One Of The Goals Of The Law. Historically, The Discussion Of Legal Certainty Is A Conversation That Has Arisen Since The Idea Of A Separation Of Powers From Montesquieu.

The Order Of Society Is Closely Related To The Certainty Of The Law, Since Order Is At The Core Of The Certainty Itself. Regularity Causes People To Live In A Way That Can Perform Activities Necessary In Community Life. In Order To Clearly Understand The Legal Certainty Itself, The Following Will Describe The Notion Of Legal Certainty From Some Experts.

The Theory Developed By Hans Kelsen About Law Encompasses Two Important Aspects Of The Static Aspect (Nomostatics) Which See Actions Governed By The Law And The Dynamic (Nomodynamic) Aspect Which Sees The Law Governing Certain Acts. Hans Kelsen Separates The Law And Morality And Also Between Law And Reality.

II. Discussion

The National Land Agency (Bpn) Is A Non-Departmental Government Institution Which Is Under And Responsible To The President, And Headed By A Head, As Regulated In The Provision Of Article 1 Of Presidential Regulation Number 10 Year 2006 Concerning The National Land Agency (Badan Pertanahan Nasional). Furthermore, In Article 2 Stipulates That "National Land Agency Has The Duty To Carry Out Government Duties In The Field Of Land On A National, Regional, And Sectoral Basis. Based On The Provisions Of The Article, Then Matters Relating To Land Are The Authority Possessed By The National Land Agency, Whose Authority Is Obtained From The Delegation Of Authority. So Also Related To The Legal Products Produced By The National Land Agency Is In The Form Of Regulation, Namely One In The Form Of Head Of Body Regulation. The Function Of Executive Power Regulation Can Be Seen From; (A) Delegation Of The Act; (B) The Rules Of Discretion.⁸

Based On This, The Regulation Of The Head Of The Agency Is One Form Of The Policy Regulation, In Which Case The Authority To Make The Regulation Of The Regulation Of The Head Of The Agency Is Obtained Based On The Existence Of The Delegation Of Authority. The Issuance Of The Regulation Of The

⁶ Ridwan HR, *Op.cit*, Hlm. 104-105.

⁷ Ridwan HR, *Op.cit*, h.108.

⁸ Yudhi Setiawan, *Instrumen Hukum campuran (gemeenschapelijkrecht) dalam Konsolidasi Tanah*, Jakarta, PT. Raja Grafindo Persada, Jakarta, 2009, Hlm. 25.

Head Of The Land Agency Concerning The Review And Handling Of Land Disputes And Conflicts, One Of Which Regulates The Implementation Of The Cancellation Of The Land Rights Of Its Substance Contains Items Relating To The Responsibility Of The National Land Agency Which Is Regulatory. With The Establishment Of The Regulation Of The Head Of National Land Agency Number 3 Year 2011 Relating To The Cancellation Of Land Rights Shall Be The Basis Of The Authority Of The Head Of The Regional Office Of The National Land Agency In Issuing The Decision Of Revocation Of The Land Ownership Certificate Accompanied By The Responsibility Internally And Externally In The Matter Of Issuing Decision The Cancellation Of The Land Ownership Certificate.

The Head Of The National Land Agency In Carrying Out His Tuff And His Wisdom Always Holds The Principle Of Government Accountability. In This Connection The Law Is A Guide For The Organizers Of The State And Citizens And Citizens Act, Therefore The Law Must Be Able To Bring About Justice For Society. However, If Legal Subjects Feel Aggrieved Or Have Been Infringed On Their Rights By Other Legal Subjects, Then To Legal Subjects Who Commit Actions That Cause Harm To Other Legal Subjects Is Liable To A Responsibility.

The National Land Agency Is The Organizer Of Government Officials, The Responsibility Is Attached To The Position Which Has Also Been Attached With Authority. In The Perspective Of Public Law, It Is This Authority That Gives Rise To Accountability, In Line With The General Principle: "Geen Bevegdheid Zonder Verantwoordelijkheid; There Is No Authority Without Responsibility; La Sulthota Bi La Mas-Uliyat "(No Authority Without Accountability). It Shows That The Authority Possessed By An Organ Or Government Body Is Always Accompanied By Responsibility. Bagir Manan Stated That "One Important Element In Governance Is Accountability."⁹

Suwoto Mentions That: The Definition Of Responsibility Contains Two Aspects, Namely, Internal And External Aspects, Accountability That Contains Internal Aspects Only Realized In The Form Of Reports Of The Implementation Of Power. Responsibility With External Aspects Is The Accountability Of Third Parties If In Carrying Out The Power It Causes A Suffering Or Loss.¹⁰ Personal Responsibility Can Be A Criminal Responsibility, Because In Essence The Committing Of A Criminal Act Is His / Her Human Being As An Official Not His / Her Position. While The Job Title Taggung Can Be Civil Liability And Accountability Of State Administration, Because Basically A Civil Law Suit Or Person Who Feels Aggrieved Over The Legal Action Of The Government Filed A Lawsuit Is A Position As A State Administration Agency, Not Against Human As An Official.¹¹

As A Follow Up Of The Provisions Of Article 19 Of The Basic Agrarian Law, The Government Issued Government Regulation No. 24/1997 As A Substitute Or Perfecting Of Government Regulation No. 10/1961. While The Definition Of Land Registration Pursuant To Article 1 Paragraph (1) Of Government Regulation Number 24 Year 1997 On Land Registration Is: "Land Registration Is A Series Of Activities Undertaken By The Government Continuously, Continuously And Regularly Includes The Collection, Bookkeeping And Presentation Of Physical Data And Juridical Data In The Form Of Maps And Lists On The Plots Of Land And Apartment Units In The Sense Of Giving The Proof Of Their Right To Land Areas Of Their Right And Ownership Of The Property Land And Certain Rights That Have Borne Them. "

Cancellation Of A Land Title Certificate By An Authorized Official

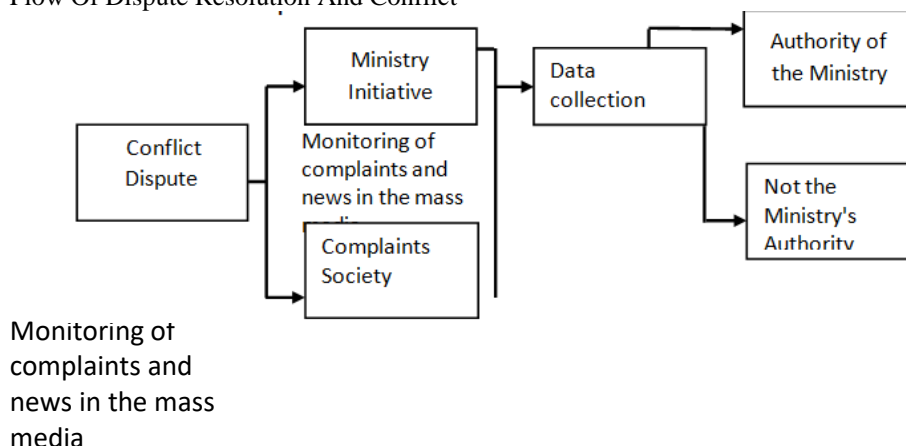
Authority Is A Formal Power Derived From Or Granted By The Law Such As Legislative Power, Executive Power, Judicial Power. Thus In Authority There Is Power And In Authority Is Born The Authority. In The Execution Of Cancellation Of Land Title Certificate Of Land Of National Land Agency Is Non Departmental Government Institution Under And Responsible To President. Land Agency Has The Task Of Carrying Out Government Duties In The Field Of Land, Especially In The Formulation And Implementation Of Policies In The Field Of Control And Handling Disputes And Land Affairs. In Implementing The Authority Of The Handling Of Disputes And Cases, A New Regulation On The Mechanism Of Cancellation Of The Land Rights Certificate Has Been Stipulated By Regulation Of The Minister Of Agrarian Affairs And Spatial / Head Of Land Agency Number 11 Year 2016 On Settlement Of Land Cases (Hereinafter Referred To As Agrarian Regulation Number 11 Year 2016). Enactment Of Agrarian Regulation Number 11 Year 2016 On The Settlement Of Land Cases. The Authority Of The Land Agency Related To The Cancellation Of The Land Rights Certificate Is Not As Much As In The Regulation Of The Head Of The Land Agency Number 3 Of 2011. In The Agrarian Regulation Number 11 Of 2016 The Classification Of The Cancellation Of The Land Ownership Certificate Is Divided Into Two Namely The Cancellation Of The Related Certificate Of Dispute, Conflict And Based On Court Decisions.

⁹ Bagir Manan, *Lembaga Kepresidenan*, Yogyakarta, FH UII Press, 2003, Hlm. 106

¹⁰ HR. Ridwan, *Op. cit*, h. 353

¹¹ Yudhi Setiawan (I), *Op.cit*, h. 96

Flow Of Dispute Resolution And Conflict



Implementation Of Certificate Of Land Ownership Certificate Based On Decision Of Land Agency In Makassar City.

The Certificate Is A Certificate Of Title To The Land Where The Holder Of The Certificate Is Considered The Owner Of The Land Rights. Regarding The Power Of The Law Of The Certificate As A Proof Of Right, The Provision Of Article 32 Paragraph 1 Of The Government Regulation On Land Registration States That The Certificate Is A Proof Of Right As A Strong Proof Of The Physical Data And Juridical Data Contained Therein, As Long As The Physical Data And Data Juridical In Accordance With The Data Contained In The Corresponding Measurements And Land Titles.

In The Right To A Plot Of Land Issued A Legal Certificate On Behalf Of A Person Or Legal Entity, The Person Obtaining The Land In Good Faith And In Real Control Over It, The Other Party Who Feels The Right To The Land Can No Longer Demand The Exercise Of That Right If In Time 5 Years Since The Issuance Of The Certificate Shall Not Submit A Written Objection To The Holder Of The Certificate And / Or The Head Of The Regency / City Land Office Concerned Nor To File A Lawsuit To The Court Regarding Land Tenure Or The Issuance Of Such Certificate.

In The Regulation Of The Minister Of Agrarian Affairs / Head Of The National Land Agency Number 9 Of 1999, Article 1 Point (14) Stipulates The Formulation Of The Cancellation Of Land Rights, Namely The Cancellation Of The Right To Land Or The Certificate Of Land Rights Because The Decision Contains Corrupt Administrative Law In Its Publication Or To Enforce A Court Decision That Has Obtained Permanent Legal Force. Regulation Of The Minister Of Agrarian Affairs / Head Of National Land Agency Number 9 Of 1999 On Procedures For The Granting And Revocation Of Land Rights And Rights Of Processing Is Still In Force In Relation To The Procedure Of Land Rights Granting, While Those Related To The Revocation Procedure Are Revoked Based On The Regulation Of The Head Of The National Land Agency Of The Republic Indonesia Number 3 Year 2011 On The Management Of The Assessment And Handling Of Land Cases, In The Framework Of The Settlement Of Land Cases Carried Out A Legal Action From The National Land Agency In The Form Of The Cancellation Of The Land Rights Certificate As Well As The Cancellation Of Land Ownership Certificate.

The Cancellation Of A Land Title Certificate Is A Form Of Settlement Of Land Title Disputes Caused By A Land Ownership Certificate Which Constitutes A Decision (Beshickking) Causing A Loss Of A Particular Party, In Which The Cancellation Of The Land Title Certificate Aims To Decide, Terminate Or Terminate The Legal Relationship Between The Subject Of Land Rights And The Object Of Land Rights. In Relation To The Above Explanation, The Two Regulations Are Not Effective In Handling The Cancellation Of The Land Title Certificate, So That The Minister Of Agrarian Affairs And Spatial / Head Of Land Agency Shall Issue Regulation Of The Minister Of Agrarian Affairs And Spatial / Head Of The National Land Agency Number 11 Year 2016 On The Settlement Of Land Cases.

In The Regulation Of The Minister Of Agrarian Affairs And Spatial / Head Of The National Land Agency Number 11 Of 2016 Hereinafter Referred To Article 1 Point 1 Formulates The Settlement Of Land Cases Namely Land Cases Are Disputes, Conflict Or Land Case To Obtain Settlement Handling In Accordance With The Provisions Of Legislation And / Or Land Policy. In This Case Related To The Handling Of The Cancellation Of The Certificate Of Property To The Land Referred To In The Land Dispute, Namely Land Dispute, Hereinafter Referred To As Dispute, Is A Land Dispute Between An Individual, A Legal Entity, Or An Institution With No Wide Impact, Article 1 Point 2. As Described Above In Agrarian Regulation No. 11 Of 2016 On The Settlement Of Land Cases, It Can Be Concluded That The Case Of Land Itself Distinguishes The Names Of Disputes, Conflicts, And Land Affairs. The Land Dispute Itself Is A Dispute Between An Individual,

A Legal Entity, Or A Non-impacting Agency. While Land Conflicts Are Land Disputes Whether People, Groups, Organizations, Legal Entities That Have A Tendency Or Have A Wide Impact. Meanwhile, The Land Case Itself Is A Land Dispute Which Handles Cases And Settlement Through The Judiciary.

Based On This Rule Differentiated Handling Of Dispute Resolution And Conflict Based On The Coming Of Report. Article 4 Agrarian Mint No. 11 Of 2016 Distinguishes The Type Of Report Based On Two Ways, Namely The Initiative Of The Ministry And The Public Complaints. Where, Against The Two Mechanisms Of The Report Was Distinguished Each Administrative Process And Recording Incoming Complaints Handling. However, The Next Mechanism Is No Different After The Findings And Complaints Are Registered.

In This Study Specifically Discusses The Certification Of Ownership Certificates Of Individual Land Due To Procedure Defects. Article 106 Paragraph (1) Of The Decision On The Cancellation Of Land Rights Due To The Administrative Legal Defect In Its Publication May Be Made Because Of An Interested Petition Or By An Authorized Official Without A Request. Administrative Law As Meant In Article 106 Paragraph (1), Namely: Procedural Errors, Misappropriation Of Laws And Regulations, Rights Subject Errors, Object Rights Errors, Rights Type Errors, Miscalculation Of Land, Overlapping Rights Of Land, Juridical Data Or Incorrect Physical Data, Or Other Errors Of An Administrative Nature. According To Article 62 Paragraph (1) Of Bank No. 3 Of 2011, The Certificate Of Land Ownership Containing Administrative Legal Deeds Shall Be Canceled Or An Order Of Registration Of Changes In The Maintenance Of Land Registration Data According To The Laws And Regulations. Cacad Administrative Law In Question Include:

- a. Error Of Procedure In The Process Of Stipulation And / Or Registration Of Land Rights.
- b. Error Of Procedure In The Process Of Registration Of Transfer Of Rights And / Or Substitute Certificate.
- c. Procedural Errors In The Registration Process Of Affirmation And / Or Recognition Of Customary Land Rights.
- d. Procedural Errors In Measurement, Mapping And / Or Widespread Calculations.
- e. Overlapping Rights Or Titles Of Land Rights.
- f. Error Subject And / Or Object Rights, And
- g. Other Errors In The Application Of Legislation.

In Agrarian Regulation Number 11 Of 2016 The Cancellation Of The Land Title Certificate Is Canceled Due To Procedure Defect. Cacad Procedure Is A Procedural Error In The Process Of Measurement, Penataan And / Or Widespread Calculation, Registration Process Of Legalization And / Or Recognition Of Customary Land Rights And Procedural Errors In The Process Of Land Titling And / Or Registration. Complaints Entered Into The Land Agency Office Are Handled By Officials Responsible For The Cancellation Of Land Title Certificates (In This Case Called Disputes) Conducting Data Collection Activities.

III. Conclusion.

1. The Enactment Of Regulation Of The Minister Of Agrarian Affairs / Head Of Land Affairs Agency No. 11 Of 2016 Concerning The Settlement Of Land Cases, The Relevant Legislation Regulating In The History Of The Cancellation Of The Land Rights Certificate Due To The Defect Of Administrative Law Has Been Revoked Based On Regulation Of The Minister Of Agrarian Affairs / Head Of Land Agency Number 11 Of 2016 In The Regulation Of The Minister Of Agrarian Affairs / Head Of Land Affairs Agency No. 11 Of 2016 Concerning The Settlement Of The Related Land Cases Concerning The Handling Of The Cancellation Of The Land Title Certificate Of Land To The Land Dispute. Handling Of Land Dispute Is Based On Cacad Procedure On Certificate Of Land Rights Which In The Provision Of Regulation Of Minister / Head Of Land Agency Number 11 Year 2016 Description Of Cancellation Of Certificate Of Land Ownership Become Land Agency Authority Both Based On Cacad Procedure And Based On Court Decision Which Have Power Fixed Law.
2. The Legal Status Of The Land With Which The Certificate Is Canceled Due To The Procedural Procedure And Based On The Decision Of The Court That Has Had Permanent Legal Power Over Its Ownership Rights Does Not Necessarily Be Abolished By The Issuance Of The Decision On The Cancellation Of The Land Title Certificate Due To A Defect In The Procedure. This Indicates That The Decision Of Cancellation Of Certificate Due To Defect Procedure Issued By Land Agency Only Cancellation Of Certificate Whose Object There Is Procedure Cacad.

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