



Fakultas Hukum Universitas Riau, Jalan Pattimura Nomor 9 Gobah, Kel. Cinta Raja, Kec. Sail, Pekanbaru, Riau,
Kode Pos 28127. Telp: (+62761)-22539, Fax : (+62761)-21695
E-mail: melayunesialaw@lecturer.unri.ac.id
Website: <https://myl.ejournal.unri.ac.id>

Cancellation of a Certificate of Ownership Based on a District Court Decision in Tanah Datar District

Intan Mariska Aretra^a, Zefrizal Nurdin^b, Anton Rosari^c

^a Faculty of Law, Andalas University, Indonesia, E-mail: intanmariska.aretra@gmail.com

^b Faculty of Law, Andalas University, Indonesia, E-mail: zefrizalnurdin@gmail.com

^c Faculty of Law, Andalas University, Indonesia, E-mail: antonrosari@gmail.com

Article Info

Article History:

Received : 06-06-2023

Revised : 06-12-2023

Accepted : 13-12-2023

Published : 31-12-2023

Keywords:

Cancellation

Certificate

Property Rights

Court Decision

Abstract

The problem formulations in this research are: the reason why the plaintiff did not submit a request for annulment to the BPN, the process of canceling a land title certificate based on a district court decision in Tanah Datar Regency, the status of the sale and purchase of land objects whose certificates are not valid but have not been canceled by the BPN, This research uses normative-empirical juridical methods. The reasons why the plaintiff did not submit an application for cancellation to the BPN were due to the plaintiff's ignorance of the cancellation procedure, physical control and certificates that were still controlled by the defendant, the length of the physical execution process due to resistance and the many requirements for submitting a cancellation to the BPN. 2. The process of canceling a certificate based on a court decision in Tanah Datar District begins with a request from an interested parties and then the file will be analyzed by the Land Office and then sent to the Regional Office, where the Regional Office will issue a decree of cancellation. 3. With the transfer of land rights by a person who is not the actual owner of the transferred land, his actions have clearly violated the principles that apply to land registration activities, namely the Nemo Plus Juris Principle and also the provisions of Article 1320 of the Civil Code, namely a lawful cause. Because the point of a lawful cause is violated, the agreement made by the parties becomes null and void.

INTRODUCTION

Land is an important factor for human survival not only as a place to live, build a house, a place to do business or a place where their bodies are buried, but also a source of power and a guarantee of life for a nation. Maria R. Ruwiasuti argues that there are two functions of land, namely economic potential and cultural potential. Economic potential is the potential that can increase the income of the people who are on the land. Meanwhile, cultural potential is the meeting of two or more cultures in a society, so that at that time they make transactions with each other.¹

¹ Arba, *Hukum Agraria Indonesia*, (Jakarta: Sinar Grafika, 2015), 9-10.

One of the objectives of the establishment of Law Number 5/1960 on Basic Agrarian Principles (hereinafter referred to as UUPA) is to lay the foundations to provide legal certainty and protection regarding land rights for all Indonesian people. As stipulated in Article 19 section (1) and section (2) of the UUPA, the provisions of Article 19 of the UUPA state that:

“To ensure legal certainty, the Government shall conduct land registration throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by government regulations.”

The legal basis for the provision of land rights as stipulated in Article 4 section (1) and section (2) of the UUPA, states that there are various kinds of land rights that can be granted and owned by someone or received by individuals or legal entities. According to the provisions of Article 16 paragraph (1) of the UUPA, land rights consist of:

- a. Freehold Title;
- b. Cultivation Rights Title;
- c. Building Rights Title;
- d. Right of Use;
- e. Right of Lease;
- f. Right to open land;
- g. Right to Collect Forest Products;
- h. other rights are not included in the aforementioned rights which will be stipulated by law as well as temporary rights as mentioned in Article 53.

The land registration system in Indonesia still raises polemics, one of which is the existence of civil disputes about the ownership of a plot of land. An example is during the process of transferring land rights, where the parties who will transfer land rights (land sale and purchase) come to the PPAT office to make a Sale and Purchase Deed (AJB), after all the required documents are complete, the PPAT will conduct an examination / check on the authenticity of the certificate to ensure the suitability of technical and juridical data between the land certificate and the land book at the Land Office. Checking the land title certificate is also done by the PPAT to ensure that the land is not in a legal dispute, is not being pledged, or is not under seizure by the authorities. Before the signing of the Sale and Purchase Deed (AJB), a certificate check is usually carried out first by the Land Deed Official (PPAT) at the local Land Office. The results of checking the certificate must be declared in accordance with the data contained in the Land Office land book or with the term "safe and clean" from disputes

and not being pledged, so that the PPAT continues to the process of signing the Sale and Purchase Deed (AJB).

The problem occurred was related to the ownership of land that had been certified in the name of Zahedy (here in the buyer), where the certificate he got after he bought the land from Syafril Gelar Malano (here in the seller) with the basis of rights in the form of a certificate of ownership in the name of the seller himself. Where after the sale and purchase was carried out based on the Deed of Sale and Purchase Number: 160/JB/LBP/2009 dated March 23, 2009, which was made before the PPAT of Tanah Datar Regency, then based on the deed of sale and purchase, the process of changing the name of the certificate was registered with the Land Office of Tanah Datar Regency so that the certificate turned into the buyer's property. Two years after the certificate was transferred to the buyer's name, it turned out that the object of the sale and purchase was the object of a case in civil case number 14/Pdt.G/1999/PN.BSK which had also reached the Supreme Court decision number 862/K/Pdt/2001 and would be executed by the Batusangkar District Court. Based on the minutes of notification of the Supreme Court decision from the Batusangkar District Court to the seller on April 29, 2011.

It was only because of this notification that the buyer found out that the land he was buying was the object of a civil case between the seller and the original owner or in that case the plaintiff. Although the plaintiff has won based on the decision and certificate number 24 of 1994 has been declared legally invalid, in reality the physical control over the land is still controlled by the defendant (seller) who lost. In 2009 the respondent sold the land to the purchaser under Sale and Purchase Deed No. 160/JB/LBP/2009 dated March 23, 2009, which was drawn up before a PPAT in Tanah Datar District, then based on the sale and purchase deed the title deed was registered with the Land Office of Tanah Datar District, so that the title deed was transferred to the purchaser. This is certainly detrimental to the plaintiff who has been declared the legal owner of the land but there was a transfer through sale and purchase to a third parties, namely the buyer.

Due to the execution, the buyer filed a lawsuit against the Batusangkar District Court which was then decided by decision Number 17/Pdt.Plw/2011/PN.BS dated February 29, 2012, which was confirmed by the Padang High Court Decision Number 81/PDT/2012/PT.PDG dated October 17, 2012 jo Supreme Court Decision Number; 844 K/Pdt/2013 dated June 27, 2013 jo Supreme Court Decision Review Number 546 PK/Pdt/2015 dated February 25, 2016. Based on the background description above, this research aims to know, understand and analyze,

especially regarding the sale and purchase of land rights carried out with procedures in accordance with the provisions of laws and regulations but it turns out that the object of sale and purchase is an object of dispute in court where the ownership of land rights has been canceled and the certificate has been declared legally invalid.

The method of problem approach used in this research is a combined method between normative juridical and empirical juridical. Jonaedi Efendi argues that method is a scientific activity related to a systematic way of working to understand a subject or object of research to find answers that can be scientifically accounted for and including their validity. According to Elisabeth Nurhaini Butarbutar, method can also be interpreted as a procedure or way to know or carry out something systematic steps. According to Salim HS, a method is an organized and well-thought-out way to achieve certain goals. According to Irwansyah, research can be understood as a series of systematic studies to increase a certain amount of knowledge, as well as a systematic and organized effort to investigate certain problems that require answers.²

THE REASON WHY THE PLAINTIFF DID NOT INITIATED A REQUEST FOR CANCELLATION OF THE CERTIFICATE TO BPN

The beginning of the dispute that occurred between John Trizal (plaintiff) and Syafril Gelar Malano (defendant) was because the defendant certified the land by forging the signatures of the plaintiffs. Based on an interview with the plaintiff, John Trizal, he said that the defendant forged the signatures of 8 people to produce the certificate. Then the defendant also made a ranji that did not match or could be said to have been forged by the plaintiff, where the making of the ranji was known and signed by the KAN. However, there was a mistake made by KAN, namely not calling all the parties contained in the pledge so that the signatures were forged.³

Based on the position of the case, after the plaintiff was declared the winning parties by the court, it turned out that the plaintiff did not submit an application for cancellation of the certificate that had been declared to have no legal force by the court based on the decision to the Land Office of Tanah Datar Regency. After the author conducted an interview with the plaintiff, the author found several reasons why the plaintiff did not submit an application to cancel the certificate to the Land Office of Tanah Datar Regency, namely as follows:

² Irwansyah, *Penelitian Hukum Pilihan Metodeman Praktik Penulisan Artikel*, (Yogyakarta: Mitra Buana Media, 2021), 29.

³ Hasil Wawancara dengan Penggugat yang dinyatakan sebagai pemilik asal tanah, John Trizal DT. Majo Indo pada hari Minggu tanggal 3 Juni 2023 pada pukul 19.00 WIB.

1. The plaintiff's ignorance of the procedure for canceling the certificate
2. The possession of the certificate and the physical object of the dispute which is still controlled by the defendant
3. The duration of the physical execution process carried out due to the resistance of the defendant
4. The number of requirements for submitting an application to cancel a certificate

The actions taken by John Trizal (the plaintiff who was declared the legal owner) by not submitting an application to cancel the certificate resulted in the certificate still valid administratively and recorded at the BPN. When there is a transfer of land rights through sale and purchase, the legal action must be carried out through a PPAT deed. Before signing the AJB, of course the PPAT checks the certificate concerned to the BPN, so that when the PPAT checks the certificate at the BPN it is declared clean and safe and not in dispute. This is certainly the basis for the transfer of land rights, namely buying and selling.

The issuance of a certificate of ownership of land is certainly through a series of processes that are not easy where in its implementation it requires security, accuracy, accuracy, and caution involving BPN institutions as institutions authorized to issue it. The issuance of the certificate will provide things to individuals and institutions whose names are listed in it to be able to maintain their ownership of the land, therefore the journey after the issuance process is certainly not easier than the issuance process.⁴ If before the issuance of a land title certificate, the land concerned is already in dispute, then based on the provisions of PP No. 24 of 1997 the land cannot be issued a certificate until there is a court decision stating who is the rightful owner of the disputed land. This is as stated in Article 30 and Article 31 of Government Regulation No. 24 of 1997, which states that if land is in dispute, whether it is submitted to the court or not, a note must be made in the land book that the land is in dispute and the issuance of the certificate is suspended until the note is removed.

In terms of the strength of the land title certificate, a certificate issued by the BPN after fulfilling all the procedures specified in Government Regulation No. 24 of 1997 has legal force as an authentic deed as long as it is not proven otherwise. If the certificate has been proven otherwise before a court session and declared to have no legal force based on a court decision

⁴ Adi Dian Permana, "Pembatalan Sertifikat Hak Milik Yang Ditingkatkan Dari Hak Guna Bangunan (Contoh Kasus: Putusan Pengadilan Tata Usaha Negara Serang Nomor 58/G/2019/PTUN-SRG)", *Jurnal Hukum Adigama* 5, no. 1 (Juni, 2022): 825.

with permanent legal force, then the certificate no longer has the power as an authentic deed even though it has not been canceled by the BPN. Another consequence of this decision is that legal actions can no longer be carried out based on the certificate. As for legal actions that are still carried out either when the land is in dispute or after a court decision causes the legal actions to be null and void.

In the explanation of Government Regulation No. 24/1997 on Land Registration, it is emphasized that land registration in Indonesia adopts a negative publication system, but also contains elements of a positive system. The positive stelsel is outlined in terms of the intervention of the Land Deed Official and the Land Office towards the transfer of land rights which provides assurance that the name of the registered person is really the rightful one without closing the opportunity to the actual rightful one to still be able to defend it. So, although the certificate is a strong evidence, its validity can still be challenged by other parties supported by strong evidence that can prove otherwise.⁵ Urip Santoso argued that to ensure legal certainty and legal protection, the relevant right holder is given a certificate of land rights.⁶ As a sufficient evidential tool, the certificate must guarantee legal certainty regarding the person who holds the land title, legal certainty regarding the location of the land, the boundaries and area of the land plot, and legal certainty regarding the land rights owned.

The Land Office must be able to constantly update its data, both the registration of the transfer of rights or other juridical data in the land book as a data bank. Urip Santoso argues that with the registration of transfer of rights to the Land Office, the principle of publicity of land registration is realized, namely that everyone can find out the physical data in the form of location, size, land boundaries, and juridical data in the form of the subject of rights, the status of rights and the transfer of rights to the land concerned to the local land agency.⁷

It is recognized that the cancellation of land rights certificates must certainly be reapplied by interested parties to the local BPN and not only enough with the cancellation by the court alone because the act of canceling the Land Rights Certificate is an administrative action of government organ officials in accordance with the jurisprudence of the Supreme Court's decision.⁸ That of interest to fulfill the principle of land registration in which by

⁵ Muchtar Wahid, *Memaknai Kepastian Hukum Hak Milik Atas Tanah (suatu analisis dengan pendekatan terpadu secara normative dan sosiologis)*, (Jakarta: Republika, 2008), 86.

⁶ Urip Santoso, *Perolehan Hak Atas Tanah*, (Jakarta: Kencana, 2015), 161.

⁷ Urip Santoso, *Op. Cit.*, 372.

⁸ Untung Leksono, "Pembatalan Hak Milik Atas Tanah", *Jurnal Spektrum Hukum* 16, no. 1 (2019): 102

submitting the cancellation, other interested parties will know about the juridical data of the land rights so that the objectives of land registration will be created, namely to ensure legal certainty, for orderly administration and to provide information to interested parties.

Registration of transfers of land rights due to transfers is a land registration in the context of data maintenance carried out by the land office. This registration aims to fulfill the principles of being up-to-date, meaning that the data in the land book and the field reality must be the same. The stages in the registration of transfer of land rights through sale and purchase to the district/city land agency office are as follows:

1. The preparation of the deed is regulated in Articles 97 to 100 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency (Permen Agraria/Head of BPN) No. 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration. Urip Santoso said that before making a Sale and Purchase Deed, the PPAT will conduct an examination and check the authenticity of the certificate at the local district/city land office.⁹
2. Implementation of Deed Making, according to Urip Santoso, the making of AJB must be attended by the seller and the buyer (husband and wife if married) or a person authorized by a written power of attorney in accordance with the provisions of the applicable law. The making of AJB by PPAT must be witnessed by at least two witnesses who, according to the provisions of the law, meet the requirements to act as witnesses to a legal action (Article 38 PP No. 24 of 1997).¹⁰
3. After the production of the AJB has finished, the PPAT submits the AJB file to the Land Office for the transfer of title. According to Article 40 of Government Regulation No. 24/1997, an attempt to transfer the name of a certificate based on a sale and purchase deed must be made no later than seven working days after it is duly signed by the parties involved.
4. Handover of the certificate, the certificate of land rights that has changed the name of the right holder from the old right holder as the seller to the new right holder as the buyer by the Head of the local District / City Land Office, then handed over to the applicant for registration of transfer of land rights through the buyer or his attorney.¹¹

⁹ Urip Santoso, *Op. Cit.*, 372.

¹⁰ *Ibid.*, 376.

¹¹ Lihat Urip Santoso, *Op. Cit.*, hlm. 378.

THE PROCESS OF CANCELING A CERTIFICATE OF OWNERSHIP BASED ON A DISTRICT COURT DECISION IN TANAH DATAR REGENCY

In the laws and regulations governing land rights, one of the factors that cause land rights to lapse is a court decision that has permanent legal force. The National Land Agency (BPN) is an institution authorized to issue and cancel land rights certificates. Cancellation is basically an act that intends to break, stop, or abolish a legal relationship. Article 1 point 14 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases states that the cancellation of land rights is:

“to cancel the decision to grant land rights or land rights certificates because the decision contains administrative law defects in its issuance or to implement a court decision that has obtained permanent legal force.”

Mhd Yamin Lubis argues that the cancellation of land rights is one of the causes of the nullification of a right. Cancellation of land rights legal products according to Article 29 Paragraph (1) of Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases, issued if there are:

1. Administrative legal defect.
2. Implementing a court decision that has permanent legal force.

Administrative defects relate to the formal aspects of the process of issuing a right, while juridical defects relate to the validity of the right base underlying the legal relationship arising from the existence of the land rights concerned. In this case, juridical defects relate to the procedure of the process, the authority and the formal form of the related product. Juridical defects relate to the material aspects, namely the legality of the evidence and the correctness of the legal relationship. Objects of cancellation of land rights include:

- a. decree on the granting of land rights;
- b. land rights certificate; and
- c. decree on the granting of land rights in the context of land tenure arrangements.

Based on Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases, the decision to cancel land rights due to the implementation of a court decision that has obtained permanent legal force is issues at the request of an interested parties. So the parties themselves must apply

for annulment. The ruling of a court decision that has obtained permanent legal force includes that it is declared null or has no legal force or essentially the same thing.

Sudikno Mertokusumo said that the cancellation of a certificate of ownership issued by the Agrarian Agency (BPN) legally does not include the authority of the courts, but merely includes administrative authorities. The cancellation of the certificate must be asked by the parties who won the court to the BPN based on the court decision obtained. Based on Sudikno's opinion, it shows that the court decision here is not executorial. The authority of the court is only up to the statement of a certificate has no legal force and appoints the winning parties as the legitimate parties over the disputed land area. The provision that shows the authority to cancel land rights certificates is in the BPN and does not indicate that the BPN can arbitrarily ignore the Court's decision. Court decisions still have binding force for the parties to comply with the decision.¹²

In terms of the strength of the land title certificate, a certificate issued by the BPN after fulfilling all the procedures specified in Government Regulation No. 24 of 1997 has legal force as an authentic deed as long as it is not proven otherwise. If the certificate has been proven otherwise before a court session and declared to have no legal force based on a court decision with permanent legal force, then the certificate no longer has the power as an authentic deed even though it has not been canceled by the BPN. Another consequence of this decision is that legal actions can no longer be carried out based on the certificate. As for legal actions that are still carried out either when the land is in dispute or after a court decision causes the legal actions to be null and void.

Furthermore, it is also stated in the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases that the cancellation application submitted by the parties by attaching a court decision will first be considered by the minister to be canceled or not. The minister's approval to consider a court decision that has permanent legal force can be followed up or not shows that the Court as a judicial institution in carrying out its duties to resolve various problems so as to provide legal certainty for the community is not realized. If there is a court decision that has obtained permanent legal force, which is a follow-up to the Court Decision that has obtained permanent legal force, namely the issuance of a cancellation decision because

¹² Maya Sartika, "Kedudukan Putusan Pengadilan Yang Sudah Berkekuatan Hukum tetap Dalam Pembatalan Sertifikat Hak Atas Tanah", *Jurnal Sosial Humaniora (JSH)* 2, no. 1 (2019): 76.

the judge cannot directly cancel a decision, the consequences of issuing a cancellation decision are seen from the ruling of the court decision that has obtained permanent legal force (inkracht).¹³

THE STATUS OF SALE AND PURCHASE OF LAND OBJECTS WHOSE CERTIFICATES ARE INVALID BUT HAVE NOT BEEN CANCELED BY BPN

Examination of the land title certificate is necessary to ensure that the technical and juridical data between the land certificate and the Land Book at the Land Office are consistent. An examination of the land title certificate is also carried out by a PPAT to ensure that the land is not currently involved in a legal dispute, is not being pledged, or is not under seizure by the authorities. After the sale and purchase takes place, a Sale and Purchase Deed is made to serve as the basis for land registration and the transfer of land rights. The land rights are realized in the form of a certificate. Certificate as proof of ownership of land according to the provisions in Article 32 Paragraph 1 of Government Regulation Number 24 of 1997, namely:

“The certificate is an evidence of rights that applies as a valid proof tool regarding the physical data and juridical data contained therein, as long as the Physical data and juridical data are in accordance with the data available in the measurement certificate and land book of the rights concerned.”

Certificates are evidence that has the power but other parties can also challenge the certificate by using other strong evidence so that it can be proven otherwise. Because of its strength as evidence, a certificate can provide legal certainty to the individual who owns it, where certainty includes boundary points, area, and location under the measurement letter so that it can prove that the land is its ownership. Other parties can challenge the ownership of land rights certificates if there is an interest and there is a feeling that a parties is disadvantaged. Thus, there will be an uncertainty and overlap regarding the parties having the right to the land ownership. For this reason, legal protection arises as an effort given by the State regarding the certainty of the parties who have the ownership of land rights that have been made certificate. Only a judge can cancel a land certificate, where it can be implemented repressively and preventively.¹⁴

¹³ Richart Alva Edison Runtuwene, “Kajian Hukum Terhadap Pembatalan Sertifikat Hak Milik Atas Tanah”, *Lex Et Societatis* 7, no. 4 (2019): 115.

¹⁴ Adi Dian Permana, *Op. Cit.*, 828..

The implementation of land registration in Indonesia is carried out by the National Land Agency (BPN), assisted by PPAT and other officials assigned to carry out certain activities regulated in government regulations and other relevant laws and regulations. The National Land Agency plays a role in assisting and serving the community in obtaining their rights in the land sector, as well as in helping the community to be able to find a way of settlement if there is a dispute between communities regarding their rights in the land sector.

In the case of land that is the object of a dispute in court, it is not allowed for any reason to carry out any legal action on the land even though there is consent from the relevant landowner and prospective land purchasers, because the object that is in dispute in court has not yet been legally binding or *inkracht*. It is very high-risk if any legal action is taken on the land that is the object of the dispute.

For objects that have been declared bail confiscation in court, previously the Judge will give orders to several people to check the location or field conditions and whether the object indeed exists in fact. If it has been agreed to do a bail confiscation, it will be notified through a notification letter so that no one can take legal action on the object until there is an *inkracht* decision on the object. Basically, the sale and purchase of land is carried out based on an agreement. The agreement in question must fulfill 4 (four) conditions according to the provisions of Article 1320 of the Civil Code:

1. agreement of those who bind themselves;
2. capacity to make an agreement;
3. a certain subject matter;
4. a cause that is not prohibited.

The four conditions above must be met by the parties, but it must be remembered that it is on the basis of an agreement that the sale and purchase agreement occurs. With the fulfillment of the four conditions for the legality of an agreement, an agreement becomes valid and legally binding for the parties who make it.¹⁵ Therefore, which parties makes the Sale and Purchase Deed is determined on the basis of the agreement. Sale and Purchase at PPAT has been agreed upon. It can be that one parties bears the entire cost or both parties can agree to pay the cost of making the AJB together. In the case studied, there was a dispute over the ownership of land rights caused by the transfer of rights by a person who was not the actual owner of the

¹⁵ Suharnoko, *Hukum Perjanjian, Teori dan Analisa Kasus*, (Jakarta: Kencana Prenada Media Group, 2007), 1.

land. Where the land title certificate has been declared legally invalid by the court. However, it turns out that there is a transfer through the sale and purchase of land rights whose certificates do not have legal force.

This problem becomes more difficult when the Land Office has issued a Certificate of Transfer of Land Rights. With the transfer of land rights by a person who is not the actual owner of the transferred land, his actions have violated the principles that apply to land registration activities, namely the *Nemo Plus Juris* Principle. Based on the problems that occur above, a discussion may be carried out in accordance with the provisions of Article 1320 of the Civil Code relating to the validity of the agreement. The act of transferring rights to land that is not his right is in violation of the provisions of Article 1320 of the Civil Code, namely a lawful cause. Because the point of a lawful cause is violated, the agreement made by the parties becomes null and void, which means that from the beginning it is considered that there has never been an obligation or agreement. This will lead to the invalidity of the registration of the transfer of land rights.¹⁶

Registration of land rights transfers aims to maintain land data at the local Land Office. In a series of land registration activities in Indonesia, a land registration publication system is recognized. Based on the UUPA and Government Regulation No. 24 of 1997, the publication system used is a negative system that contains positive elements. The acquisition of a certificate of ownership comes from the registration of objects owned by legal subjects to the BPN. Land registration systems in various countries are affected by the legal principles used, there are two principles, namely:

1. The principle of *nemo plus juris*, is the principle that a person has no more rights than he has in the conveyance of land rights. In other words, a person without the right to a particular parcel of land cannot automatically perform a legal act of registering the land, let alone transferring it to another person.
2. The principle of good faith is the principle that a person is truly the owner of the rights based on juridical and physical evidence that does not violate the law in the transfer of land rights.

The Sale and Purchase Agreement of this case should be null and void because the seller, in that case Syafril, sold goods that did not belong to him, so the consequence of the null and void agreement is that the conditions must be restored as before. Thus, the Sale and

¹⁶ Fanny Amelia Legianty, "Perjanjian Jual Beli Tanah Yang Melanggar Asas *Nemo Plus Juris* Pada Pendaftaran Tanah", *Notarius* 12, no. 2 (2019): 1035.

Purchase Agreement becomes void because the contract is considered the same as selling someone else's land, in accordance with Article 1471 of the Civil Code which states:

“The sale of another's property is void, and may provide grounds for reimbursement of costs, damages and interest, if the purchaser did not know that the property belonged to another.”

Because the agreement is null and void, the condition must be restored to what it was before there was an agreement, so that all clauses are not applicable and the consequences of default are destroyed. Although the land sale and purchase procedure has been carried out in accordance with statutory provisions, namely Article 37 paragraph (1) of Government Regulation No. 24 of 1997, in which the certificate checking and registration have been carried out before a PPAT and the transfer was registered at the National Land Agency, but because the seller obtained the right to the land in bad faith as stipulated in Article 532 of the Civil Code, then based on the provisions of Article 1471 of the Civil Code the sale and purchase agreement is null and void because the object being bought and sold is not the seller's property. So that the Deed of Sale and Purchase between the seller and the buyer should be declared null and void, and the certificate of Title Number 24 of 1994 which has been renamed into the name of the buyer must be abolished or canceled because from the beginning of the sale and purchase process the certificate has been declared to have no legal force and land ownership rights must be returned to the original owner. And based on Article 1499 and Article 1508 of the Civil Code, the seller who has bad faith is obliged to return the amount of land purchase price he has received and is also obliged to reimburse all costs of losses and interest to the buyer.

CONCLUSION

The reasons why the plaintiff did not apply to cancel the land certificate to the BPN were: Ignorance of the plaintiff about the procedure for canceling the certificate; The possession of the certificate and the physical object of the dispute which is still controlled by the defendant; The length of the physical execution process carried out because of the resistance of the defendant; The number of requirements for applying to cancellation of the certificate. The process of canceling a certificate based on a court decision in Tanah Datar Regency begins with an application from an interested person, after all the requirements are completed, the file will be analyzed by the Land Office and will be sent to the Regional Office, the Regional Office will issue a decree canceling a certificate and the Kantah will carry out in accordance with the

provisions of the SK, because the official who has the authority to issue a decree canceling land rights is only the head of the BPN based on attributive authority.

With the transfer of land rights by a person who is not the legal owner of the transferred land, his actions have clearly violated the principle that applies to land registration activities, namely the *Nemo Plus Juris* Principle. The act of transferring rights to land that is not his right is in violation of the provisions of Article 1320 of the Civil Code, namely a lawful cause. Because the point of a legitimate cause is violated, the agreement made by the parties becomes null and void, which means that from the beginning it is considered that there has never been an obligation or agreement. This will lead to the invalidity of the registration of the transfer of land rights. This will also certainly result in the validity of the agreement made between the parties. Therefore, all actions based on the certificate are null and void.

The Tanah Datar District Land Office needs to educate the local community on the importance of knowledge of land service procedures, especially the procedures for canceling land rights, and to increase cooperation between the community, the land office and the courts. The plaintiff should report the dispute and request the blocking of the disputed certificate to the Land Office of Tanah Datar Regency and the Land Office of Tanah Datar Regency should record it in the land book, so that when checking and transferring land rights on the disputed certificate is rejected by the Land Office of Tanah Datar Regency. For the community so that in carrying out the transfer of rights to a certificate is not carried out in bad faith and committed unlawful acts by falsifying letters in order to obtain a certificate, as it will cause losses to all parties involved.

BIBLIOGRAPHY

Arba. *Hukum Agraria Indonesia*. Jakarta: Sinar Grafika, 2015.

Basyarudin. *Perlindungan Hukum Terhadap Pembeli Pihak Ketiga Yang Membeli Tanah Dan Bangunan Yang Telah Dibebeani Hak Tanggungan*. Surabaya: CV. Jakad Media Publishing, 2021.

Butarbutar, Elisabeth Nurhaini. *Metode Penelitian Hukum Langkah-Langkah Unuk Menemukan Kebenaran Dalam Ilmu Hukum*. Bandung: PT Refika Aditama, 2018.

Efendi, Jonaedi. *Metode Penelitian Hukum Normatif Dan Empiris*. Depok: Prenamedia Group, 2018.

- HS, Salim. *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*. Jakarta: Rajawali Pers, 2018.
- Irwansyah. *Penelitian Hukum Pilihan Metodologi dan Praktik Penulisan Artikel*. Yogyakarta: Mitra Buana Media, 2021.
- Legianty, Fanny Amelia. “Perjanjian Jual Beli Tanah Yang Melanggar Asas Nemo Plus Juris Pada Pendaftaran Tanah”, *Notarius* 12, no. 2 (2019): 1027-1039.
- Leksono, Untung. “Pembatalan Hak Milik Atas Tanah”. *Jurnal Spektrum Hukum* 16, no. 1 (2019): 94-118.
- Lubis, Mhd Yamin. *Hukum Pendaftaran Tanah*. Bandung: CV. Mandar Maju, 2010.
- Peraturan Menteri Agraria/Kepala Badan Pertanahan Nasional (Permen Agraria/ Kepala BPN) No. 3 Tahun 1997 tentang ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah.
- Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 21 Tahun 2020 tentang Penanganan Dan Penyelesaian Kasus Pertanahan.
- Peraturan Pemerintah Nomor 24 tahun 1997 tentang Pendaftaran Tanah.
- Permana, Adi Dian. “Pembatalan Sertifikat Hak Milik Yang Ditingkatkan Dari Hak Guna Bangunan (Contoh Kasus: Putusan Pengadilan Tata Usaha Negara Serang Nomor 58/G/2019/PTUN-SRG)”. *Jurnal Hukum Adigama* 5, no. 1 (Juni, 2022): 820-839.
- Runtuwene, Richart Alva Edison. “Kajian Hukum Terhadap Pembatalan Sertifikat Hak Milik Atas Tanah”. *Lex Et Societatis* 7, no. 4 (2019): 111-118.
- Santoso, Urip. *Perolehan Hak Atas Tanah*. Jakarta: Kencana, 2015.
- Sartika, Maya. “Kedudukan Putusan Pengadilan Yang Sudah Berkekuatan Hukum tetap Dalam Pembatalan Sertifikat Hak Atas Tanah”. *Jurnal Sosial Humaniora (JSH)* 2, no. 1 (2019): 71-78.
- Suharnoko. *Hukum Perjanjian, Teori dan Analisa Kasus*. Jakarta: Kencana Prenada Media Group, 2007.
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.
- Wahid, Muchtar. *Memaknai Kepastian Hukum Hak Milik Atas Tanah (suatu analisis dengan pendekatan terpadu secara normative dan sosiologis)*. Jakarta: Republika, 2008.
- Windari, Ratna Artha. *Pengantar Hukum Indonesia*. Depok: Rajawali Pers, 2017.

Wirawan, Vani, dkk. “Rekonstruksi Politik Hukum Sistem Pendaftaran Tanah Sebagai Upaya Pencegahan Mafia Tanah”. *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 13, no. 2 (2022): 185-207.