

Cancellation of Overlapping Land Rights Certificates Without Judicial Mechanism

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KEYWORD

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ABSTRACT

Land title certificates are administrative state products that serve as strong evidentiary instruments to ensure legal certainty in land law. However, the issuance of overlapping certificates persists in practice, creating disputes and legal uncertainty. This research aims to analyze the authority of the National Land Agency in canceling overlapping land title certificates and to assess the extent to which such cancellations provide legal certainty. It also examines *BPN*'s responsibility arising from such cancellation, particularly in relation to good-faith certificate holders. This research employs a normative legal method using statutory and conceptual approaches, analyzed through interpretative legal reasoning. The findings indicate that the authority to cancel overlapping land title certificates, exercised by the Head of the Regional Land Office and, in certain circumstances, by the Minister of Agrarian Affairs and Spatial Planning/National Land Agency, constitutes a lawful delegation and substitution of authority as an administrative corrective mechanism. Nevertheless, the existence of substantively identical authority across different hierarchical levels without clear limitations, combined with the absence of temporal restrictions on administrative cancellation, results in a form of legal certainty that remains relative and nonfinal, as such decisions may still be subject to judicial review. Furthermore, *BPN*'s authority in the administrative cancellation of overlapping certificates is limited to the administrative domain and lacks adequate compensation mechanisms for good-faith holders, thereby failing to achieve substantive justice. This study recommends clearer delineation of cancellation authority and explicit mechanisms for legal protection and remedies to strengthen legal certainty and justice in land administration.

INTRODUCTION

Land is a resource that has strategic value not only as a basis for social and economic life, but also as a legal object full of interests (de Vries & Voß, 2018; Fuad et al., 2023; Pravdiuk, 2021; Sommer & De Vries, 2023). Along with population growth, increasing space needs, and the rising economic value of land, the potential for land disputes becomes higher. The state, through the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, is given the authority to control the earth, water, and natural resources contained therein for the greatest possible prosperity of the people. This constitutional mandate is then implemented through the national agrarian legal system, which aims to ensure legal certainty, justice, and utility in the possession and use of land (Kalyana & Budidarmo, 2025; Sabdaningtyas & Dewi, 2024).

As the main instrument to realize legal certainty in the land sector, the state organizes land registration as stipulated in Article 19 of the Basic Agrarian Law. Land registration is intended to produce evidence of rights in the form of certificates that have strong evidentiary power so that they can provide a sense of security and legal protection for rights holders. In practice, the land registration system in Indonesia has not been completely free from problems. One of the problems that often arises is the issuance of overlapping land rights certificates, both in whole and in part, which creates legal uncertainty for landowners. The phenomenon of overlapping certificates shows the existence of structural problems in land administration, ranging from limitations in registration map databases and inconsistencies in spatial information to errors or omissions in the land registration process. In addition, the actions of certificate applicants acting in bad faith, such as providing incorrect data or information, as well as the negligence of landowners in maintaining the boundaries of their land, also contribute to the overlap of land rights. This condition puts the state in a dilemmatic position because, on the one hand, it must make administrative corrections to maintain orderly land administration, but on the other hand, these actions have the potential to harm parties who acquire land in good faith. In order to respond to the complexity of land disputes, especially those related to administrative defects in the issuance of certificates, the government issued Government Regulation Number 18 of 2021. Article 64 paragraph (1) of the regulation regulates the mechanism for pembatalan land rights due to administrative defects, including the pembatalan of overlapping certificates. Interestingly, the provisions of Article 64 paragraph (1) letter b open space for the pembatalan of certificates due to overlap without a time limit on issuance, in contrast to the provisions of letter a and paragraph (2), which expressly limit the authority of pembatalan within a period of five years and require settlement through a judicial mechanism.

These differences in regulation raise significant normative problems. Conceptually, overlapping land rights are part of administrative defects in the issuance of certificates. However, when administrative defects in the form of overlap can be dibatalkan without any time limitation, while other administrative defects are limited by a period of five years, a tension arises between the purpose of administrative control and legal protection for certificate holders acting in good faith.

Several previous studies have examined overlapping land certificates and their cancellation. Dhika Tiara Kusuma et al. (2023) found that overlapping certificates occur due to poor integration of old land data with digital systems, with administrative cancellation serving as the state's response to registration disorder; however, the study did not examine the legal certainty implications of cancellations without time limits. Susan Rampengan (2023) revealed that cancellation due to overlap leads to a loss of administrative legitimacy and places rights holders in vulnerable positions, raising issues of legal certainty, but did not extensively analyze BPN's responsibility toward good-faith holders. Agree Deardo Simarmata et al. (2024) examined legal protection for holders whose certificates were canceled by court decisions, finding that cancellation often impacts good-faith holders without adequate protection or compensation mechanisms; however, this study focused on court-ordered rather than administrative cancellations by BPN.

Despite existing research on overlapping certificates, several gaps remain. First, previous studies have not comprehensively analyzed the normative tension arising from the differing time limits for administrative cancellation between overlapping certificates and other

administrative defects. Second, limited research has examined the identical authority of the Minister and Regional Head in canceling certificates without clear limitations on “certain circumstances,” creating potential for multiple interpretations and forum shopping. Third, the issue of BPN’s responsibility and compensation mechanisms for good-faith certificate holders following administrative cancellation has not been adequately addressed. This research offers novelty by examining these gaps through the lens of legal certainty and substantive justice, analyzing the implications of administrative cancellation without judicial mechanisms on the rights of good-faith certificate holders.

Based on this background, this study normatively examines the authority of the National Land Agency in canceling overlapping land rights certificates and analyzes the responsibility of the National Land Agency for the pembatalan of overlapping certificates. This research is expected to make an academic contribution by clarifying the construction of the authority to cancel certificates as well as providing an argumentative basis for strengthening legal protection for parties acting in good faith, and to offer recommendations for clearer delineation of cancellation authority and explicit mechanisms for legal protection and remedies in order to strengthen legal certainty and justice in land administration.

RESEARCH METHODS

This research was a normative legal study that focused on the assessment of legal norms related to the authority and responsibility of the National Land Agency (BPN) in the cancellation of overlapping land rights certificates, with an emphasis on aspects of legal certainty and justice for rights holders. The approach used was a legislative approach and a conceptual approach. The legislative approach was carried out by systematically examining the provisions in Law Number 5 of 1960 concerning the Basic Agrarian Principles, Law Number 30 of 2014 concerning Government Administration, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, and Land Registration, as well as the Regulation of the Minister of Agrarian and Spatial Planning/Head of BPN Number 21 of 2020 concerning the Settlement of Land Cases. Meanwhile, the conceptual approach was used to examine the doctrines and theories of state administrative law, especially the theory of authority, the theory of legal certainty, the theory of accountability, and the theory of justice.

The legal materials used consisted of primary legal materials in the form of laws and regulations, secondary legal materials in the form of relevant books and scientific publications, and tertiary legal materials as supporting materials. The collection of legal materials was carried out through literature study using searching, classifying, and inventory techniques for legal materials that were directly related to the formulation of the research problems. The analysis of legal materials was conducted qualitatively using interpretive methods through authentic, grammatical, and systematic interpretation to assess the consistency of norms, identify legal ambiguities, and examine the juridical implications of the cancellation of administratively overlapping land rights certificates.

RESULTS AND DISCUSSION

The results of the study show that the authority to cancel overlapping land rights certificates by the National Land Agency is a form of legitimate government administrative action and has a clear normative basis. Article 64 paragraph (1) of Law Number 30 of 2014 emphasizes that state administrative decisions can be canceled if there are defects in authority, procedures, or substance. This provision is emphasized in Article 64 paragraph (1) b of Government Regulation Number 18 of 2021 which specifically provides a legal basis for the cancellation of certificates due to overlapping land rights regardless of the period of issuance. Meanwhile, the provisions of Article 34 paragraph 1 of the Regulation of the Minister of ATR/BPN No. 21 of 2020 which places one plot of land with only one land rights certificate. Thus, the cancellation of overlapping certificates is positioned as an instrument for regulating land administration to maintain formal legal certainty over physical data and land juridical data.

From the aspect of authority, the cancellation of certificates is regulated through the mechanism of delegation and substitution of authority as reflected in Article 30 of the Ministerial Regulation of ATR/BPN No. 21 of 2020. The Head of the Regional Office is authorized to cancel legal products issued by the Land Office, while the Minister has the authority to cancel the legal products of the Regional Office and in certain cases, can also cancel legal products issued by the Land Office.

Based on data, the BPN Regional Office of Bali Province has canceled the following certificates:

Table 1. Cancellation of Overlapping Certificates by BPN Regional Office of Bali Province (2023-2025)

Cancellation of Overlapping Certificates					Remarks	
No	Year	Quantity	Administratively	Implementation of Court Decisions	Publication over 5 years	Have switched
1	2023	2	2	-	-	-
2	2024	13	11	2	4	6
3	2025	6	4	2	2	2

Source: BPN Regional Office of Bali Province, processed data (2025)

From the aspect of liability, the cancellation of overlapping certificates, even if carried out based on legitimate authority, still has the potential to cause losses for parties in good faith. Article 71 paragraph (5) of Law No. 30 of 2014 emphasizes that losses due to legitimate government actions are the responsibility of agencies/officials, not officials. However, the mechanism for recovering these losses has not been technically regulated in land law. Normatively, Article 53 paragraph (1) of Law No. 9 of 2004 gives the right to the aggrieved party to file a lawsuit with the competent Court. These findings suggest that legal protection for holders of cancelled certificates still depends on further legal remedies in court, so the cancellation of administratively overlapping certificates does not fully reflect equitable legal certainty.

Discussion

BPN's Authority in the Cancellation of Overlapping Certificates and Its Legal Certainty

The cancellation of administratively overlapping land rights certificates by the National Land Agency is a form of administrative correction to defects in authority, procedures, and substance in the issuance of certificates. Authority is positioned as an instrument for regulating land administration to avoid the continuation of legal errors that have implications for prolonged land conflicts. Administrative cancellation in overlapping cases is the state's response to the disorder of the land registration system, especially due to the lack of optimal integration of old land registration data with the current digital system (Kusuma et al., 2023). In this case, the authority of the BPN is understood as a public authority that aims to maintain the certainty of administrative law, not to determine the correctness of civil rights in a final manner.

The use of administrative revocation authority over certificates that have been issued for a long time raises issues of legal certainty even though certificates are strong evidence, cancellation due to overlap leads to the loss of the administrative legitimacy of the certificate and puts the rightholder in a legally vulnerable position (Rampengan, 2023). The provisions of Article 64 paragraph (1) b of Government Regulation Number 18 of 2021 which do not provide a time limit for cancellation weaken the principle of legal certainty, because it opens up administrative correction spaces without clear time certainty, in contrast to other administrative defects that are limited to five years and must be resolved through the courts. This creates tension between the purpose of administrative control and the protection of good-faith certificate holders.

The cancellation of the certificate granting authority to the Head of the Regional Office and in certain cases by the Minister of ATR/BPN raises the option of using the authority forum. The cancellation of certificates by the Head of the BPN Regional Office is often still sued to the PTUN, which indicates that the decision of administrative cancellation has not been considered final and juridically binding (Jabat et al., 2022). This shows that BPN's administrative authority in canceling certificates functions more as a corrective first step, while substantive legal certainty is still determined through the judicial mechanism. Thus, administrative cancellation has not fully provided a guarantee of legal certainty for the parties to the dispute.

Furthermore, the cancellation of certificates due to overlap often has a direct impact on certificate holders who obtain their rights in good faith, without adequate protection or compensation mechanisms (Simarmata et al., 2024). This situation shows that the administrative legal certainty to be achieved through the cancellation of the certificate has not been balanced with the protection for the holders of the cancelled rights. Therefore, the authority of BPN in canceling overlapping certificates has not realized a balanced legal certainty between the orderly administration of land and legal protection of legitimate rights holders.

BPN's Responsibility in the Cancellation of Overlapping Land Rights Certificates

The cancellation of overlapping land rights certificates by the National Land Agency, even if carried out based on lawful authority, cannot be separated from legal consequences in the form of losses for the holders of the certificate in good faith. Administrative responsibility is basically imposed on the position if the actions of the official are carried out within the scope

of lawful authority and in accordance with procedures, so that the losses incurred are the responsibility of the institution, not the official's personal (Hadjon, 2011). Thus, the cancellation of certificates carried out by BPN as an administrative correction has consequences for institutional accountability.

Article 71 paragraph (5) of Law Number 30 of 2014 concerning Government Administration expressly stipulates that losses arising from the cancellation of decisions are the responsibility of government agencies and/or officials. This provision strengthens that the cancellation of certificates by BPN cannot be separated from the state's obligation to provide recovery to the aggrieved party. The norm is intended to prevent the state from taking refuge behind the mere reason of administrative correction, while the legal consequences are imposed entirely on citizens (Suryawan, 2022). However, the regulation of the form and mechanism of compensation for these losses has not been technically regulated in the land regulations.

In terms of civil liability, losses due to the cancellation of certificates are often associated with Article 1365 of the *Burgerlijk Wetboek* concerning unlawful acts. However, the cancellation of certificates carried out based on the authority of a legitimate delegation is difficult to qualify as an unlawful act, because the element of "unlawful" is not fulfilled. Cancellation is carried out in accordance with administrative law norms, then civil liability cannot be automatically imposed on BPN, unless it is proven that there is an abuse of authority or actions beyond the authority (Lestari, 2022). Therefore, civil liability is more relevant directed to the parties who cause the overlap, such as certificate applicants who are not in good faith. The limitation of BPN's responsibilities which is only in the administrative realm raises the problem that certificate holders in good faith bear the impact in the form of economic and psychological losses due to the cancellation of certificates, even though the fault does not come from it. Legal justice is not enough to be realized through the formal legality of an action, but must be accompanied by a mechanism of proportionate redress for the aggrieved party (Hernoko, 2021). In this case, the cancellation of certificates without compensation creates an imbalance between the state's interest in ordering administration and citizens' rights to legal protection. The absence of a clear compensation mechanism, weakening legal protection for canceled rights holders, the practice of certificate cancellation by BPN tends to be oriented towards restoring administrative order, but ignores the principle of distributive justice for the aggrieved party (Fauzi & Amalia, 2023). This causes parties with good faith to take further legal remedies through the PTUN or District Court to obtain recovery, which is contrary to the principle of simple, fast, and low-cost justice.

BPN's responsibility in canceling overlapping certificates should not be interpreted narrowly as administrative corrective authority, but also includes the obligation to provide a fair recovery mechanism. Without technical arrangements regarding compensation, such responsibility has not fully reflected substantive justice. Therefore, it is necessary to reconstruct the land policy that places the protection of good-faith certificate holders as an integral part of the implementation of administrative cancellation authority.

CONCLUSION

This study concluded that the authority of the National Land Agency (BPN) in canceling overlapping land rights certificates was exercised through the Head of the Regional Office and, in certain cases, by the Minister of Agrarian Affairs and Spatial Planning/National Land Agency

as a form of delegated and substitute authority within the framework of state administrative law. Such authority functioned as an instrument of administrative correction to maintain orderly land administration and to promote legal certainty regarding land rights certificates. However, the identical authority granted to the Minister without clear limitations on “certain circumstances” created multiple interpretations and opened space for subjectivity as well as forum selection by cancellation applicants. Moreover, the possibility of canceling overlapping certificates without a time limit and the fact that cancellation decisions could still be challenged before the State Administrative Court indicated that the legal certainty produced by such administrative actions was not final. Furthermore, BPN’s responsibility in canceling overlapping certificates remained limited to the administrative sphere and did not eliminate the civil rights of certificate holders whose certificates were canceled. The absence of technical regulations concerning compensation or recovery mechanisms for losses resulted in legal protection that did not fully reflect justice, forcing aggrieved certificate holders to pursue further legal remedies through the State Administrative Court and general courts, thereby preventing the realization of a fair, effective, and balanced dispute resolution. Future research is therefore suggested to examine the development of clearer regulatory frameworks regarding the limits of ministerial authority and the establishment of explicit compensation or remedial mechanisms for good-faith certificate holders affected by administrative cancellation.

REFERENCES

- de Vries, W. T., & Voß, W. (2018). Economic versus social values in land and property management: Two sides of the same coin? *Raumforschung und Raumordnung / Spatial Research and Planning*, 76(5), 381–394.
- Fauzi, A., & Amalia, R. (2023). Perlindungan hukum pemegang sertipikat beritikad baik dalam pembatalan administratif. *Jurnal Arena Hukum*, 16(1), 52–71.
- Fuad, F., Tardjono, H., Machmud, A., Rohayah, N., & Maghucu, P. (2023). Ownership of land: Legal philosophy and culture analysis of land property rights. *Jurnal Media Hukum*, 30(2), 98–116.
- Hadjon, P. M. (2011). *Pengantar hukum administrasi Indonesia*. Gadjah Mada University Press.
- Harsono, B. (2008). *Hukum agraria Indonesia: Sejarah pembentukan UUPA, isi dan pelaksanaannya*. Djambatan.
- Hernoko, A. Y. (2021). *Asas keadilan, kepastian, dan kemanfaatan dalam hukum*. Kencana.
- Jabat, R. E. D. Br., Pranoto, H., & Wijaya, A. (2022). Analisis penerapan pembatalan sertipikat hak milik demi kepastian hukum. *Journal of Education, Humaniora and Social Sciences*, 5(2), 785–795.
- Kalyana, L., & Budidarmo, W. (2025). Dynamics of land ownership rights in the perspective of Indonesian agrarian law in the perspective of legal certainty and social justice. *JOSH: Journal of Sharia*, 4(02), 234–243.
- Kusuma, D. T., Prasetyo, A. B., & Nugroho, S. S. (2023). Analysis of cancellation of land rights certificates in certificate overlapping cases. *International Journal of Educational Research & Social Sciences*, 4(2), 308–318.
- Lestari, P. A. (2022). Pembatalan sertipikat hak atas tanah dan tanggung jawab perdata BPN. *Jurnal RechtsVinding*, 11(3), 415–432.
- Mertokusumo, S. (2010). *Mengenal hukum*. Liberty.
- Pravdiuk, A. (2021). Land as an object of land relations: Constitutional and legal aspect. *Traektoriâ Nauki*, 7(06), 1033–1042.

- Rampengan, S. (2023). Akibat hukum pembatalan sertipikat hak atas tanah karena terjadi tumpang tindih. *Civilia: Jurnal Kajian Hukum*, 2(1), 38–51.
- Sabdaningtyas, Y., & Dewi, P. M. (2024). Legal certainty and procedural justice in land management in Indonesia: Ensuring rights protection and effective dispute resolution. *Mimbar Keadilan*, 17(2), 210–222.
- Simarmata, A. D., Purba, R. M., & Sianturi, D. (2024). Legal protection for land rights owners on cancellation of certificates by the court due to overlapping. *Jurnal Hukum*, 7(1), 95–110.
- Sommer, F., & De Vries, W. T. (2023). Values and representations in land registers and their legal, technical, social effects on land rights as an administrative artefact. *Land Use Policy*, 135, 106946.
- Sumardjono, M. S. W. (2008). *Tanah dalam perspektif hak ekonomi, sosial dan budaya*. Kompas.
- Suryawan, I. M. (2022). Tanggung jawab pemerintah atas pembatalan keputusan tata usaha negara. *Jurnal Hukum Administrasi Negara*, 9(2), 145–162.