

Juridical Review of Replacement Certificates of Land Rights Due to Loss at the Medan City Land Office

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Abstract

An application for a replacement certificate can only be made by the party whose name appears as the right holder in the land book at the local land office. An application for a replacement certificate cannot be made if the name of the party is different from the name of the right holder in the land book. If the right holder listed in the land book has died, the application can be made by his heirs. The application must be accompanied by valid supporting documents, such as a Certificate of Death from the right holder and a Certificate of Heirs and Heirs. The formulation of the problem in this research is How is the Procedure for the Implementation of the Issuance of Land Rights Substitute Certificates at the Medan City Land Office. How are the obstacles and efforts faced by the Medan City Land Office in the Implementation of the Issuance of Replacement Certificates of Land Rights that are lost. The type of research used in this research is juridical-empirical. Juridical-empirical research is legal research on the enactment or implementation of normative legal provisions directly on each specific legal event that occurs in society. An application for a replacement certificate due to loss can only be submitted by the party whose name is listed as the right holder in the relevant land book or another party who is the recipient of the right based on a PPAT deed or an excerpt of minutes of auction, deed, letter and power of attorney. If the right holder or beneficiary has died, an application for a replacement certificate can be submitted by his heirs by submitting a letter of proof as an heir.

Keywords: Issuance of replacement certificates, land rights, Medan City

INTRODUCTION

Land is a very important factor for human life, because humans and land have a very close relationship, especially for Indonesian people who still depend on the land. Land is also a source of livelihood and livelihood, even land and humans are inseparable from birth to death. The need for land is increasing day by day, due to the increasing population and the number of development activities in all fields. The increasing need for land, the consequences are also increasing. Humans carry out all their activities on land, therefore in its use and utilization it must not harm the public interest, because land has a social function and an economic function.

According to Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia and amendments which reads "the earth water and space including the natural resources contained therein shall be controlled by the State and utilized to the greatest extent for the prosperity of the people". It is intended that Land must be utilized as efficiently as possible and preserved so that it can provide the maximum benefit for human life. This provision is the philosophical basis and juridical basis for the Indonesian state in order to manage natural resources (SDA) while regulating and organizing the allocation, use, supply, and determining legal relationships between people and

legal acts concerning the earth, water and space with the principles of togetherness, efficiency, justice, sustainability and environmental insight. The definition of "land" juridically is the surface of the earth, while land rights are rights to certain parts of the earth's surface that are bounded. Two-dimensional and with length and width. Land called the surface of the earth can be used and utilized by every person and legal entity with the granting of land rights.

To ensure legal certainty and protection of land rights holders, the Government provides a new institution that was previously unknown in customary law, namely the Registration Institution. Land registration is very useful for holders of land rights, especially to obtain proof of ownership of rights with the issuance of certificates of land rights that act as a strong means of proof.

Evidence of rights, namely certificates, is a means of proof that has the strongest legal force, while the intention is that the proof of rights must be considered correct for the physical data and juridical data contained therein as long as it cannot be proven in reverse, certificates also have the same sound between the land book and the measurement letter contained in the land office where the certificate is issued.

Land registration has been implemented in the State administration system based on the definition of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Housing Units, and Land Registration is a series of activities carried out by the Government continuously, continuously and regularly, including collecting, processing, bookkeeping, presenting and maintaining physical data and juridical data in the form of maps and lists, regarding land parcels, and flat housing units including the provision of proof of rights for land parcels that already have rights and ownership rights to flat housing units and certain rights that burden them.

The implementation of land registration by the Government is organized by the National Land Agency, a Non-Departmental Government Institution whose duties include land. The Land Office is a working unit of the National Land Agency in the Regency / City area that conducts registration of land rights and maintenance of the general register of land registration.

Land with its unique dimensions often creates problems that arise in the social, economic, political, legal, or broader and more complex fields covering various human lives. Land issues are an important factor that affects the course of development. The government has taken concrete steps to address these complex problems by issuing Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA). Especially in Article 19 paragraph (1) of the UUPA, it has been emphasized that to ensure legal certainty, the government conducts land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation.

However, in reality, the ownership of land rights holders to land certificates, there are often problems about the certificates they have lost which are not known to exist, even though the land certificate is a strong evidence of ownership of land rights. So that it is very detrimental to the owner of land rights, one form of loss experienced by the owner of the certificate is the owner of the certificate can not make the land they own as collateral in the bank, and the owner can not perform legal actions such as buying and selling, leasing and so forth.

In connection with the above, in this case the Government provides a solution for people who have lost their land rights certificates, namely the existence of a replacement certificate. As stated in Article 57 paragraphs (1) to (4) of Government Regulation No. 24 of 1997 concerning Land Registration, State Sheet of the Republic of Indonesia of 1997 No. 59 promulgated on July 08, 1997.

The Medan City Land Office, in accordance with its authority as stipulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 16 of 2022 on the Delegation of Authority to Determine Land Rights and Land Registration Activities, has also received several reports of lost land certificates from owners or holders, and in response to these reports of lost land certificates, the Medan City Land Office has the technical implementation authority to issue replacement certificates for lost land rights.

An application for a replacement certificate can only be made by the party whose name appears as the right holder in the land book at the local Land Office. An application for a replacement

certificate cannot be made if the name of the party is different from the name of the right holder in the land book. If the right holder listed in the land book has died, the application can be made by his heirs. The application must be accompanied by valid supporting documents, such as a Certificate of Death from the right holder and a Certificate of Heirs and Heirs.

In addition to supporting documents relating to the legitimacy of the applicant, other supporting documents are also required regarding the loss of the land certificate. An application for a replacement certificate should include a statement from the applicant that the land certificate has indeed been lost. In addition to a statement from the applicant, a police report of the loss is also required. Before a replacement certificate is issued, the Land Office will first carry out an examination and announcement.

The examination covers the validity of the applicant. The examination is carried out by scrutinizing the supporting documents attached. An application for a replacement certificate can only be made after the Land Office has made an announcement in a local daily newspaper. If no objection is lodged within 30 days of the announcement, or if an objection is lodged but the objection is not well-founded, the Land Office will issue a replacement certificate. If it turns out that the objection is well-founded, the Land Office will refuse to issue the replacement certificate.

Replacement certificates are very important to holders of land rights, because they are evidence that a person is the right holder of the land. If a land title certificate is lost, the owner can apply to the Land Office for a replacement certificate. The Land Office will take this into consideration before issuing a replacement certificate, because this is to protect rights and avoid the emergence of multiple certificates that will cause problems and losses in the future for the owner or the party concerned and avoid the actions of irresponsible parties.

The definition and function of a replacement certificate is basically not much different from that of a land title certificate. A replacement certificate is also the strongest and fullest evidence, as mentioned in Article 19 paragraph (2) letter c of the UUPA. The owner of a parcel of land can easily be identified if his or her name is clearly indicated on the land certificate. Landowners can easily explain the status of their land without having to measure it to find out the size and boundaries of their ownership because a certificate clearly indicates the condition of the land.

A replacement certificate is an extract from the old certificate. Replacement certificates and certificates are an inseparable part of a copy of the land book and a copy of the previous measurement certificate. The replacement certificate is also derived from the same number. Therefore, it has the same legal force as the previous certificate.

Replacement certificates are reissued by the Land Office at the request of the land rights holder. However, the replacement certificate will first be noted or an explanation given that the certificate is a second replacement certificate by the Land Office. However, the juridical data on the replacement certificate still has the same legal force as the previous certificate.

Therefore, the issuance of the replacement certificate through an announcement made by the Head of the Land Office automatically invalidates the old certificate so that it is no longer valid. If after the issuance of a replacement certificate the old one is found again, it must be handed over to the Land Office for destruction. If this is not done, the certificate cannot be used because all parties who will take legal action against registered land rights must check the certificate first.

In the process of issuing replacement certificates, the Medan City Land Office is very careful about issuing replacement certificates. However, this is not a serious problem. If a person loses his or her certificate and wishes to apply for a replacement certificate, he or she must first be able to prove that the land really belongs to him or her and fulfill all the requirements set out in the law.

The issuance of a land certificate implies that the right holder or the name on the certificate is the legal owner of the piece of land indicated therein. The issuance of a land certificate is not necessarily inviolable. Therefore, a party who feels aggrieved by the issuance of a land certificate can file an objection by submitting a report to the local Land Office in the area where the land is located by bringing and showing proof of true and reliable control, so that if there is a true error in the certificate

registered and issued by the local Land Office there is an administrative defect or legal defect then an effort can be made to cancel the certificate that has been issued. This is done solely to provide protection for holders of rights who are not entitled to a piece of land obtained by improper means and falsity or with the aim of avoiding multiple certificates.

Given the importance of land rights certificates, it is very important to always maintain and keep them in a safe place so that they are not lost. The loss of land certificates is not a rare occurrence in the Medan City Land Office. Negligence in safeguarding or storing land certificates can result in their loss, so care and caution in safeguarding land certificates is essential to anticipate loss. Basically, however, the certificate held by the owner is a copy of the land book kept in the Land Office building, and in the event of loss a replacement certificate can be issued.

METHOD

The type of research used in this research is juridical-empirical. Juridical-empirical research is legal research regarding the enactment or implementation of normative legal provisions directly on each specific legal event that occurs in society. Empirical legal research is research or observation in the field or field research whose research focuses on collecting empirical data in the field.

The analysis carried out in the field on a / each problem found has a qualitative nature which is from a search or research that produces descriptive data, namely in writing or orally from individuals and behavior.

Qualitative research makes observations and combines the data obtained from research by linking each data obtained with guidelines or legal principles related to the author's problem. Qualitative research departs from assumptions about social realities or phenomena that are unique and complex.

In this study the authors used descriptive research specifications. According to Soerjono Soekanto, this descriptive research is intended to provide data that is as accurate as possible about humans, circumstances or other symptoms. The intention is to reinforce hypotheses in order to assist in strengthening old theories or in the framework of new theories.

Basically, this type of research aims to provide a clear and complete picture by collecting, compiling, clarifying and analyzing the data obtained in order to solve the problems faced in this case, especially regarding the process of implementing the issuance of replacement certificates of land ownership rights due to loss at the Medan City Land Office.

The types of data used in this research are primary data and secondary data. Primary data is data obtained directly from the source, either through interviews, observations or reports in the form of unofficial documents and then processed by researchers. Meanwhile, secondary data is data obtained from official documents, books related to the object of research, research results in the form of reports, theses, theses, dissertations, and laws and regulations. Meanwhile, secondary data will be taken from documents, observations, photos, data and relevant previous research.

The data analysis technique is a technique used to describe the simple characteristics of the object under study to then draw a conclusion from the data analysis using the descriptive nature of the analysis, that the researcher in analyzing wishes to provide a description or explanation of the subject and object of research. While the data analysis technique used is qualitative analysis, the data obtained is then arranged systematically which is then analyzed qualitatively.

Qualitative method is a procedure to produce descriptive data in the form of oral data and written data from the community. This qualitative approach is centered on the general principles that underlie the realization of units of socio-cultural symptoms, so that a complete picture of the research results, the information conveyed appears to be alive which is grounded based on an existing reality, in accordance with actual events.

RESULT & DISCUSSION

The issuance of replacement certificates due to loss is regulated in Article 57 to Article 59 of Government Regulation Number 24 of 1997 concerning Land Registration. In the implementation of the issuance of a replacement certificate of land rights due to loss, an application for the issuance of a replacement certificate must be submitted immediately to the Medan City Land Office.

An application for a replacement certificate due to loss can only be submitted by the party whose name is listed as the right holder in the relevant land book or another party who is the recipient of the right based on a PPAT deed or an excerpt of minutes of auction, deed, letter, and power of attorney. If the right holder or beneficiary has died, an application for a replacement certificate can be submitted by his heirs by submitting a letter of proof as an heir. The procedure for issuing replacement certificates due to loss at the Medan City Land Office is based on the SOP determined by the Medan City Land Office.

A Land Registration Certificate (SKPT) is a letter issued by the Land Office that contains detailed information on the status of land history. Although issued by the Land Office, a land registration certificate is not a proof of ownership of land rights by individuals or legal entities that can represent the function of a land certificate.

The SKPT is used to examine physical and juridical data on a particular parcel of land. What is meant by physical data is information about the location, boundaries and area of the land parcel and apartment unit being registered, including information about the existence of a building or part of a building on it. Meanwhile, juridical data includes information regarding the legal status of the land parcel and apartment unit being registered, the right holder and other parties as well as other burdens that burden it.

The requirements that must be met in applying for a Land Registration Certificate are as follows:

- a. An application form that has been filled in and signed by the applicant or his/her proxy on stamp duty.
- b. Power of attorney if authorized.
- c. Photocopy of the applicant's identity (KTP/KK) and power of attorney if authorized, which has been matched with the original with the counter officer.
- d. Proof of legal relationship between the subject and object of the right.

The second step is to report the loss of the land certificate to the appropriate authority, the police. In some areas, a report to the Polsek is sufficient, but there are areas that require at least a report to the Polres. When reporting, mention the certificate number, the location of the land and in whose name the land is held.

Usually the officer will ask for a cover letter from the local Kelurahan as the basis for the report. The police may also request that the lost certificate be publicized in the print and electronic media. However, this step is usually carried out by the Land Office, at the applicant's expense. After this, a Berita Acara Pemeriksaan (BAP) will be issued, which will be taken to the Medan City Land Office.

The third step is to submit an application for re-measurement for the issuance of a field map to the Medan City Land Office. The completion of the re-measurement for the issuance of the field map is conducted within 31 Working Days. The rates/fees to be paid are as follows:

- a) Land area up to 10 hectares = $(L/500 \times \text{HSBKu}) + \text{Rp. } 100,000$
- b) Land area of more than 10 hectares up to 1,000 hectares = $(L/400 \times \text{HSBKu}) + \text{Rp. } 14,000,000$
- c) Land area of more than 1,000 hectares = $(L/10,000 \times \text{HSBKu}) + \text{Rp. } 134,000,000$

In the case of applying for re-measurement for the issuance of a field map, the following requirements must be met:

- a) An application form that has been filled in and signed by the applicant or his/her proxy on stamp duty.
- b) A power of attorney if it is granted.
- c) Photocopy of the applicant's identity (KTP, KK) and power of attorney if authorized, which has been matched with the original by the counter officer.

- d) A photocopy of the deed of establishment and legalization of the legal entity which has been matched with the original by the counter officer.
- e) A photocopy of the certificate.
- f) A copy of the current year's PBB.

The complainant then applies to the Medan City Land Office for a replacement certificate or a second certificate. To obtain a replacement certificate the applicant must bring the following requirements:

- a) A completed application form signed by the applicant or his/her proxy on sufficient stamp duty.
- b) A power of attorney if authorized.
- c) Photocopy of the applicant's identity (KTP, KK).
- d) Copy of the current PBB.
- e) Copy of certificate (if any).
- f) Police report of loss.
- g) Land registration certificate.
- h) A statement of physical possession of the land plot and witness ID cards.

Officers from the Medan City Land Office will conduct a field check of the location of the land for which a replacement certificate will be issued. This is done so that there are no changes between the old measurement letter and the physical condition of the land and there are no changes to existing buildings.

After all the requirements have been met, the Medan City Land Office will contact the interested party, in this case the landowner, to take the oath of the certificate owner in front of the Head of the Medan City Land Office and a clergyman according to the religion of the party concerned, then the Medan City Land Office will make an Oath Report.

The Medan City Land Office will then publish the Minutes of the Oath-taking of the loss of the land certificate in the print media for 30 days. This announcement is made to give time for those who object to the process of issuing a replacement certificate, or if there are objections or lawsuits from other parties.

If within 30 (thirty) days of the announcement in the print media no party files an objection or lawsuit to the production of the replacement certificate, or if a party files an objection but, in the opinion of the Head of the Medan City Land Office, the objection is unreasonable or unfounded, the Medan City Land Office shall issue a replacement certificate of the land right.

A replacement certificate of land rights due to loss shall be issued on the basis of a report of the loss of the land certificate by the owner of the certificate to the local Land Office by first paying a replacement certificate fee of:

1. A Land Registration Certificate of Rp. 50,000.
2. Re-measurement of the area $\times 100,000/500 = \text{result} + 100,000$
3. Issuance of a replacement certificate and oath at Rp. 350,000

In issuing a replacement certificate, the Medan City Land Office will reconfirm it by conducting a site visit and checking the field. The purpose of this is to ensure that the land for which a lost certificate is reported is still the same as the juridical and physical data contained in the land book at the Medan City Land Office. In the event that a certificate that has been reported lost is subsequently recovered, it is necessary to immediately report to the Medan City Land Office to cancel the closing of the file.

The process of issuing replacement certificates due to loss at the Medan City Land Office is the responsibility and authority of the Medan City Land Office as a form of service to the community and also as the owner or keeper of juridical and physical data on a land certificate. The participation of the Medan City Land Office in the issuance of replacement certificates due to loss is realized by providing information and services necessary for landowners to obtain the replacement certificates they need, namely by providing a Land Registration Certificate.

In addition to providing information and services to the public, the Medan City Land Office also plays an important role in educating the public on the importance of safeguarding land certificates and urging them to photocopy certificates. The time required to issue a replacement certificate is 40 working days. Applications submitted by applicants for replacement certificates have been handled in accordance with the mechanisms and processes of the applicable legal provisions.

The issuance of a replacement certificate because of loss is within the Land Office's authority. The effect of a replacement certificate issued by the Land Office is that the old land title certificate is no longer valid. Cancellation of the previous certificate is done to anticipate misuse of the old land title certificate by irresponsible persons.

The replacement certificate has the same legal force and function as the previous certificate. A replacement certificate is simply a second copy of a previously lost land certificate. A replacement certificate is issued in accordance with an application submitted by the owner. The Land Office will then note that the certificate is a replacement or second certificate, and that the contents of the replacement certificate remain the same as the old certificate as stipulated in Article 57 of Government Regulation No. 24 of 1997 concerning Land Registration.

The issuance of a replacement certificate is not much different from an application for a first-time certificate. The applicant must first complete the requirements that have been determined for the issuance of a replacement certificate, as stipulated in Government Regulation No. 24 of 1997 concerning Land Registration.

In practice, the process of issuing a replacement certificate because it is lost does not necessarily run smoothly as regulated or stipulated by the Legislation concerning replacement certificates. In its implementation there are sometimes various kinds of obstacles encountered.

In the implementation of the issuance of replacement certificates at the Medan City Land Office, several obstacles have been raised, including: The applicant's number cannot be contacted Very often when contacted by Medan City Land Office staff the applicant's number cannot be contacted so that the process of implementing a replacement certificate becomes long, the applicant is out of town When Medan City Land Office staff contacted the applicant to sign one of the important files related to the issuance of a replacement certificate because it was lost but the applicant was out of town so that it could hamper the implementation process, The certificate was not actually lost. During the process of making a replacement certificate it turned out that the applicant's certificate was not actually lost but was pledged to the bank or the bank collateral was paid off but Roya had not been recorded. So that the process of applying for a lost certificate is stopped and entered into the Minutes of the Implementation of the Issuance of a Replacement Certificate, Replacement Certificate in Process But Lost Certificate Found In the process of making a replacement certificate has been found lost certificate then the applicant immediately reported to the Medan City Land Office to cancel the closing of the file, The schedule for taking the oath is not clear. The implementation of the issuance of replacement certificates of land rights at the Medan City Land Office can sometimes be said to take a long time, this is because the taking of the oath with DG III or the Section of Determination of Rights and Land Registration of the Medan City Land Office is not clearly scheduled, The time required for the Medan City Land Office to process a lost certificate is very long and costs a lot of money, In submitting an application for the issuance of a replacement certificate of land rights due to loss, it often happens that the documents owned by the applicant for the issuance of a replacement certificate of land rights due to loss are incomplete, so in this case it can make it difficult for the applicant to be able to meet the requirements of the completeness of the documents that have been requested by the Medan City Land Office. And with incomplete documents owned by the applicant, the Medan City Land Office cannot carry out the issuance of a replacement certificate of land rights because of the loss applied for.

In the process of issuing replacement certificates due to loss, the Medan City Land Office has provided efforts that must be made to overcome the obstacles to the issuance of replacement certificates due to loss by the Medan City Land Office. The efforts of the Medan City Land Office,

namely: Appealing to the Public to Maintain the Certificate The Medan City Land Office gives an appeal and education to the public to always maintain their land rights certificates. The aim is that the certificate is not lost and misused by irresponsible people. If people do not know or do not understand how to take care of land certificates or what the rules are, they can ask the Medan City Land Office. Land certificates are very important as a guarantee of legal certainty for people who own land. Land certificates are government products that are born because of the law and are concrete because they are submitted for subjects and objects that can be determined.

Land certificates are individual and final because they are not intended for the general public, but only for those whose names are listed on the certificate and do not require the approval of other agencies, the legal consequences arising from the ownership of land certificates give rise to new legal circumstances or can be referred to as *constitutieve beschikking* so that new rights and obligations are born to certain persons or legal entities that already have a certificate of land rights.

Considering the value of land certificates as proof, holders of land rights are expected to keep land certificates in good condition, not damaged or lost, the Land Office must be more careful in issuing replacement certificates replacement certificates are very important for holders of land rights, because the certificate is evidence that shows that someone is the right holder of the land.

Technically, the Land Office has the authority to issue replacement certificates for lost land rights. In issuing a replacement certificate, the Medan City Land Office usually conducts a site visit (*verlap*) and re-measures to ensure that the land is still as shown in the land book. An application for a replacement certificate should include a statement from the applicant that the land title certificate has indeed been lost. In addition to a statement from the applicant, a police report of the loss is also required.

Before a replacement certificate is issued, the Land Office will first carry out an examination and announcement. The examination involves the validity of the applicant. In issuing a replacement certificate, the Land Office is very careful about issuing a replacement certificate, but it is not a serious problem if a person who has lost his or her certificate wants to apply for a replacement certificate as long as the applicant is able to prove that the land really belongs to him or her and fulfill all the conditions set out in the law.

CONCLUSION

From the results of the research described in the previous chapter, it can be concluded that the Procedure for the implementation of the issuance of replacement certificates due to loss at the Medan City Land Office based on the SOP determined by the Medan City Land Office is, Make a Certificate of Land Registration at the Medan City Land Office, Make a Certificate of Loss from the Police, Apply for Re-measurement for the Issuance of Field Maps, Apply for Replacement Certificate Services Due to Loss, Field Check of Land Location, Oath Taking, Newspaper Announcement for 30 Working Days, Issuance of Replacement Certificates Due to Loss. The implementation of the issuance of replacement certificates at the Medan City Land Office has several obstacles and efforts. The obstacles are that the applicant's number cannot be contacted, the applicant is out of town, the certificate is not really lost, the replacement certificate is in process but the lost certificate has been found, the schedule for taking the oath is not clear, the time required in the processing of lost certificates by the Medan City Land Office is very long and requires a lot of money, the documents owned by the applicant are incomplete. While the efforts are to educate the public to protect their certificates, the Medan City Land Office must be more careful in issuing replacement certificates.

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