

# Ratio Decidendi of The Judges in Deciding a Case of Certificate Submission After the Expiration of 5 (Five) Years Pursuant to Article 32 Paragraph 2 Government Regulations Number 24 of 1997 concerning Land Registration

Hendrasta Pijar Ramadhan<sup>1</sup>, I Gusti Ayu Ketut Rachmi Handayani<sup>2</sup>, Lego Karjoko<sup>3</sup>, Widyo Pramono<sup>4</sup>

<sup>1, 2, 3, 4</sup>*Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia*

***Abstract:*** *One of the aims of land registration is to ensure legal certainty for the holder of a certificate of land rights. However, in reality, people with sufficient evidence and data can still decide the legality of a certificate of land rights although they have met the cumulative elements in Article 32 paragraph (2) PP No. 24 of 1997 concerning land registration through the State Administrative Court. This article aimed to determine the ratio decidendi judges in deciding a case of certificate submission after the expiration of 5 (five) years pursuant to Article 32 paragraph (2) PP No. 24 of 1997 concerning land registration. The research method used by the writer was normative juridical. The results of this study indicate the ratio decidendi of the Panel of judges in deciding a case of certificate submission after the expiration of 5 (five) years pursuant with Article 32 paragraph (2) PP No. 24 of 1997 concerning land registration.*

***Keywords:*** *Ratio Decidendi, Publication System, Expiration, Land Rights.*

## 1. INTRODUCTION:

Normatively, the territory of the Republic of Indonesia with all its potential is a gift from God provided to the Indonesian people as a living facility which is also known as national wealth.(Karjoko, Jaelani, et al., 2019) In terms of the implementation of land agrarian politics, the development of national land law has given an essential contribution to the welfare of the Indonesian people, even though it is not optimal yet because most of the natural resources including land remain controlled by large capital owners.(Wibowo, Sulistiyono, & Karjoko, 2019) Indonesia as a rule of law has a primary task which does not only lie in implementing the law but also in achieving social justice (sociale gerechtigheid) for all Indonesian people.(Nurhayati & Karjoko, 2019) Land rights involve rights over particular parts that are limited on the surface of the earth. The 1945 Constitution (hereinafter referred to as the UUD 1945) describes property rights in terms of controlling land in accordance with the Indonesian

constitutional mandate, which is contained in Article 33 paragraph (3), stating that the land, the waters, and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.(Candrasari & Karjoko, 2018)

Agrarian regulations are regulated in Law No. 5 of 1960 concerning the Basic Agrarian Act (hereinafter referred to as UUPA). Article 19 of the UUPA explicitly mandates the government to implement land registration throughout the whole territory of the Republic of Indonesia, aiming of achieving legal certainty.(Karjoko, Santosa, & Rachmi Handayani, 2019) The implementation of these provisions is regulated in Government Regulation No. 24 of 1997 concerning Land Registration (hereinafter referred to as PP No. 24 of 1997) which uses a negative publication system with a positive tendency.(Leonard, Pakpahan, Heriyati, Karjoko, & Handayani, 2020) It is embedded in Article 32 Paragraph (2) as can be observed that a certificate of land rights shall serve as a strong instrument of proof of rights which is absolute if it meets the cumulative requirements or elements, including: a. A certificate has been legally issued on behalf of a certain individual or a corporate body; b. The land parcel in question is obtained in good faith; c. The land is controlled in real terms; d. within five (5) years following the issuance of the said certificate, they never raised their objections in writing to the holder of the certificate and the Head of the relevant Land Office and never filed a lawsuit with the court over the possession of the land parcel in question or the issuance of the said certificate. The improvements made by PP. 24 of 1997 against the negative publication system adopted by the UUPA means that when a certificate of land rights is legally issued on behalf of a person, at that time, the right for the real land owner to deny/sue is still granted until the certificate is 5 (five) years old. However, once the landowner does not exercise their rights after 5 (five) years or more, then their lawsuit will be nullified, and the certificate will have inviolable and absolute strength of evidence.(Karjoko, Sulitiyono, & Handayani, 2017)

In the field, although Article 32 paragraph 2 of Government Regulation No. 24 of 1997 concerning Land Registration eliminates the right to sue after the expiration of 5 (five) years, several cases have canceled certificates issued although they have fulfilled the elements contained in Article 32 paragraph 2 PP No. 24 of 1997 concerning Land Registration. For instance, several cases in court disputes become evidence, including the Decision of the State Administrative Court (PTUN) of Pekanbaru Number: 41/G/2010/PTUN.Pbr, the Decision of the State Administrative Court of Makasar Number: 04/G.TUN/2011/P.TUN.Mks. 2011, the Decision of the State Administrative Court (PTUN) of Bandung Number: 64/G/2010/PTUN-BDG. Although after the expiration of 5 (five) years, if the basis of the lawsuit is the issue of the validity of the certificate issuance, the five-year time limit is set aside because of the correctness of the plaintiff's argument regarding the invalidity of the certificate issuance must be proven.(Subekti, Karjoko, & Astuti, 2013) There are pros and cons in Article 32 paragraph (2) PP. 24 of 1997 concerning Land Registration regarding legal certainty guarantees. The author of this study takes the title of "Ratio Decidendi in Deciding a Case of Certificate Submission After the Expiration of 5 (Five) Years Pursuant to Article 32 Paragraph 2 PP No. 24 of 1997 concerning Land Registration".

## 2. RESEARCH METHODS

This research was legal research. Morris L. Cohen stated that in legal research, several approaches are used, including the statuta approach, conceptual approach, analytical approach, comparative approach, historical approach, philosophical approach, and case approach. (Karjoko, Gunawan, et al., 2020) Referring to these approaches, the writing of this article used the statuta approach, a conceptual approach, and a case approach. In this study, the author used secondary data with primary and secondary sources of legal materials. Primary legal materials mean authoritative legal materials, while secondary legal materials refer to all publications about the law that are not official documents including books, texts, legal journals, and comments on court decisions. (Sukmoro, Sulistiyono, & Karjoko, 2019)

## 3. RESULTS OR FINDING

Registration according to PP No. 24 of 1997 concerning Land Registration is a series of activities performed by the government continuously, sustainably, and regularly including the collection, processing, bookkeeping, presentation, and maintenance of juridical data in the form of maps. It includes a list of land parcels and apartment units, including the issuance of proof of rights for land parcels for which the rights and ownership rights to apartment units and particular rights that impose them are available. (Wicaksono, Handayani, & Karjoko, 2019) The principles of land registration are contained in PP Number 24 of 1997 concerning Land Registration of Article 2 states that "Land registration shall be implemented on the basis of the following principles: simplicity, safety, affordability, currency, and transparency." (Wicaksono et al., 2019)

There are two publication systems in land registration, including the negative and positive publication systems. According to Sudikno Mertokusumo, in the negative publication system, a certificate issued is a strong proof of land rights, indicating that all information contained in the certificate has legal force and must be accepted as true information by the judge, as long as it is not proven otherwise by other means of evidence. (Prasetyo, Handayani, Sulistiyono, & Karjoko, 2019) The primary feature of the negative system is that registration of land rights is not a guarantee that the person registered in the land book is the owner of the land rights. Alternatively stated, the land book may change as long as the objecting party can prove that he/she is the true owner through a court decision which has permanent legal force (certainly). (Ahmadi, Handayani, & Karjoko, 2019)

It often occurs in a country using a negative publication system in its land registration. In this publication system, the state does not guarantee the correctness of the land data presented so that people cannot believe the correctness of the data. (Ahmadi et al., 2019) According to Effendi Perangin, the positive publication system in land registration is what is contained in the land book and the certificates issued proof of rights constitute an absolute means of proof. It means that the third-party acts on the evidence mentioned above obtain absolute protection, although in the future the information contained in it is not true. Those who suffer losses will receive compensation in other forms. (Karjoko, Winarno, Rosidah, & Handayani, 2020) Land given to and owned by people with the rights provided by the UUPA is to be used or utilized. The granting of land with these rights will be meaningless if its use is limited to land as the

surface of the earth. Land is important for human life so that it is not surprising that every human being wants to own/control it, which results in land issues that often cause disputes. (Karjoko, Winarno, et al., 2020)

The improvements made by PP. 24 of 1997 against the negative publication system adopted by the UUPA means that when a certificate of land rights is legally issued on behalf of a person, at that time, the right for the real land owner to deny/sue is still granted until the certificate is 5 (five) years old. However, once the landowner does not exercise their rights after 5 (five) years or more, then their lawsuit will be nullified, and the certificate will have inviolable and absolute strength of evidence. The provisions of Article 32 Paragraph (2) PP No. 24 of 1997 which regulates absolute legal protection for the owner of a certificate of land rights and regulates the loss of someone's right to land rights certified by others has a juridical problem. (Jaelani, Handayani, & Karjoko, 2020)

The elements in Article 32 Paragraph (2) Government Regulation No. 24 of 1997 are fulfilled cumulatively, then the right to sue for people who feel aggrieved by the issuance of the certificate does not disappear although the elements in Article 32 Paragraph (2) of Government Regulation No. 24 of 1997 is fulfilled. Therefore, the person who feels aggrieved by the issuance of the certificate of land rights by the Regency/City Land Office can file a lawsuit to the State Administrative Court (PTUN). The existence of a certificate as a State Administrative Decree (KTUN) becomes the object of a State Administrative disputes. According to Article 1 point 4 of Law No. 5 of 1986, State Administrative Disputes is a dispute arising in the field of State Administration between an individual or civil legal entity and a State Administrative Agency/ Official, both central and regional, as a result of the issuance of a State Administrative Decree, including personnel disputes according to statutory regulations applies. (Jaelani, Handayani, & Karjoko, 2020)

Several decisions by the State Administrative Court (PTUN) cancel certificates that have been issued for more than 5 years. The ratio decidendi in deciding cases for certificate applications after 5 (five) years in accordance with article 32 paragraph 2 PP no. 24 of 1997 regarding land registration is as follows: (Wibowo et al., 2019) Ratio Decidendi of the Decision of the State Administrative Court (PTUN) of Pekanbaru Number : 41/G/2010/PTUN.Pbr dated 07 February 2011, which in essence is as follows: The answers of the defendant in the exception which in essence are:

1. The 1st (first) exception regarding the authority to judge (absolute competence);
2. The 2nd (second) exception regarding the vague lawsuit (obscure libel);

Regarding the 1st (first) exception about the authority to judge (absolute competence), the Assembly gives considerations, which in essence are as follows:

1. Whereas the object of the dispute is a quo State Administrative Agency / Official which is concrete, individual, and final as the authority of the State Administrative Court to examine it.
2. Whereas the defendant's legal reasons about his/her authority to judge based on jurisprudence in the decision of the Supreme Court Number: 88/K/TUN-1983, dated September 7, 1984, argued that it had to be submitted to the General Court first because it was a civil dispute. However, the Panel of Judges believed that the jurisprudence argued by the defendant is no longer relevant as a legal basis as the Panel of Judges in considering the object of a quo dispute has considered the ex nunc principle where the decision made as

jurisprudence is no longer relevant. It is because according to the Panel of Judges, when it is linked to Law Number 5 of 1986 concerning State Administrative Courts, then it is the authority of the State Administrative Court to examine, adjudicate, and resolve state administrative disputes (*beschikking*) or except the object of disputes decided by the statutory regulations mentioned above. In essence, the consideration of the Panel of Judges in the State Administrative Court must be guided by Article 53 paragraph 2, whether the actions of the state administrative agency/ officials have violated the prevailing laws and regulations and the General Principles of Good Governance (AAUPB) and the object of dispute *a quo* also must meet the formal requirements determined by the legislation.

Regarding the second exception about the obscure lawsuit (*obscuur libel*), the Panel provided consideration in the subject matter. Regarding the expiration, as stated in Article 32 paragraph 2 Government Regulation No. 24 of 1997, the Panel of Judges in this matter gave considerations to put this matter aside, which in essence are as follows: The Panel of Judges believed that since it is known in Article 55 of Law Number 5 of 1986 in conjunction with Law Number 9 of 2004 in conjunction with Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning State Administrative Regulation is not merely since the announcement or issuance of a state administrative decision by the Agency or Official as it is very unfair if the individual or legal entity that is not the object of the dispute of *a quo* is being addressed by only considering the grace period (expiration) of the lawsuit, the interested party cannot defend their rights over losses, in which the individual or legal entity did not know before.

The Panel of Judges believed that the issuance of a certificate of the object of the dispute is legally disabled (contrary to statutory regulations) at trial and the rest by the Panel of Judges is also considered that the issuance of a certificate for the object of the dispute is contrary to the General Principles of Good Governance, particularly the principle of accuracy. Regarding the decision, one judge set up an opinion who argued that the authority to examine and the judge was in the District Court, not the State Administrative Court in accordance with the Decision of the Supreme Court of the Republic of Indonesia Number 88/K/TUN-1983 dated September 7, 1984. Because of the differences of opinion in the Panel of Judges, according to the provisions of Article 97 paragraph (3), (8), and (9), Law Number 5 of 1986 in conjunction with Law Number 9 of 2004 in conjunction with Law Number 51 of 2009 concerning the second amendment to the Law Number 5 of 1986 concerning State Administrative Courts, the opinion of the majority of judges was used as described in the considerations. The panel of judges rejected the defendant's exception and granted the plaintiff's claim entirely, and declared null and void the certificate issued by the defendant in this case. The panel of judges also ordered the defendant to revoke the certificate mentioned above and pay the court fee. Ratio Decidendi of the Decision of the State Administrative Court (PTUN) of Makassar Number: 04/G.TUN/2011/P.TUN.Mks. dated 26 May 2011, which in essence is as follows: The answers of the defendant in the exception which in essence are:

1. The plaintiff's Lawsuit Has Expired (*Verjaring*)
2. The plaintiff was wrong in filing the lawsuit
3. Not in accordance with Article 32 paragraph 2 Government Regulation No. 24 of 1997 concerning land registration.

Regarding the first exception that the Plaintiff's Lawsuit has Expired (Verjaring), the Panel gave a consideration, which the Plaintiff only became aware of the Property Rights Certificate of the Dispute Object on November 5, 2011, and since then he/she felt that his/her interests had been harmed. The Plaintiff's claim was registered at The Registrar's Office of the State Administrative Court of Makassar, on January 8, 2010, was still within a grace period of 90 (ninety) days as referred to in Article 55 of UU PTUN.(Jaelani, Rachmi Handayani, & Karjoko, 2019)

Regarding the Absolute Competence of the Court, the Panel of Judges provided considerations which in principle, based on the provisions of Article 1 number 9 of Law No. 51 of 2009, a State Administrative Decree is a written stipulation issued by a State Administrative Agency or official containing State Administrative legal actions based on applicable laws and regulations, which are concrete, individual, and final, which has legal consequences for a civil person or a legal entity. It becomes the authority of the state administrative court to examine legal actions of State Administration performed by State Administrative Agencies/ Officials in the form of a written stipulation as intended in Article 1 number 9 Law No. 51 of 2009 PTUN, in this matter regarding the examination on the procedure for issuing the object of dispute, not examining whose property or whose land parcel is as part of the certificate of objekum litis.(Kuncoro, Handayani, Muryanto, & Karjoko, 2019)

Regarding the third exception arguing that Article 32 paragraph (2) PP No. 24 of 1997 concerning Land Registration, The Panel of Judges provided a consideration that the law of land administration in Indonesia as regulated in the UUPA adheres to the negative publication principle with a positive tendency. It means that the Government as the organizer of land registration must try so that as long as possible, the correct data can be presented in the land book and registration map. As it does not adopt a positive system, so long as there is a party that can prove the existence of another land right over a certified land, then the certificate can always be filed for a lawsuit in court. Whereas Article 32 paragraph (2) and Government Regulation No. 24 of 1997 concerning Land Registration are government regulations that are hierarchically under the UUPA and the UUPA is promulgated before the UU PTUN. Therefore, to apply the grace period for a lawsuit, the Panel of Judges had guidelines other than land law principles that adhere to the principle of negative publication with a positive tendency as considered above. It is also guided by the legal principle stating that the higher legal provisions set aside the lower legal provisions and the legal principle stating that the new legal provisions set aside the old legal provisions.(Akhmaddhian, Hartiwiningsih, & Handayani, 2017)

In this case, the Panel of Judges judged, by rejecting the exception of the defendant and the intervening defendant entirely, granting the plaintiff's claim entirely, declaring that the State Administrative decision issued by the Defendant (Head of the Land Office of Makassar City) was in the form of a Certificate of Ownership in the case and ordered the Defendant (Head of the Land Office of Makassar City) to revoke and at the same time write off the State Administrative Decree in the form of the certificate, and to punish the intervening defendant and defendant II jointly and severally to pay the cost of the case in dispute. Ratio Decidendi of the Decision of the State Administrative Court (PTUN) of Bandung Number:

64/G/2010/PTUN-BDG dated March 22, 2011, which in essence is as follows:(Prasetyo, Handayani, Sulistyono, & Karjoko, 2019)

Regarding the exceptions of the defendant, the Panel of Judges provided concurrent consideration about the exceptions which and with the same objectives consider containing the same aims and objectives, which in essence are as follows : Regarding the authority to judge, which is civil, according to the opinion of the Panel of Judges in the dispute of a quo, it does not question the registration of a land right to the defendant, but regarding the issuance process performed by the defendant before the object of the dispute was issued. That if it was linked to the provisions of Article 1 point 9 of Law No. 51 of 2009 concerning the second amendment to Law No. 5 of 1986 concerning the State Administrative Court, stating that a State Administrative Decree is a written stipulation issued by a State Administrative Agency or Official containing legal actions for State Administration according to applicable laws and regulations, which are concrete, individual, and final. The Panel of Judges concluded that several Decisions issued by the Defendant had met the criteria.(Leonard et al., 2020)

Regarding the expiration of the Plaintiff's claim, the Plaintiff argued that he/she only knew that the object of the dispute of a quo had been published and felt that his/her interests were being harmed since the Plaintiff met Defendant in June 2010. Article 55 of Law Number 5 of 1986 concerning the State Administrative Court states that the lawsuit can be filed only within a grace period of 90 (ninety) days when the decision or State Administrative Official is received or announced. Since the Plaintiff was a third party to whom the Decree on the object of the dispute was not directly addressed, in the opinion of the Panel of Judges, the calculation of the grace period for filing a lawsuit for the Plaintiff was not calculated from the receipt or announcement of the State Administrative Decree, but since the moment the decision of State Administration known that become objekum litis and felt his/her interests were being harmed were in accordance with the Permanent Jurisprudence of the Decision of the Supreme Court of the Republic of Indonesia Number 41 K/TUN/1994 dated November 10, 1994. Furthermore, regarding expiration according to the provisions of Article 32 paragraph (2), PP No. 24 of 1997 concerning Land Registration, This provision limits the time limit for a lawsuit if a certificate has legally issued the claim, the Panel of Judges shall give considerations based on the contrario interpretation. It can be concluded regarding a grace period of 5 years, if what is doubtful in the claim is the legality of the certificate, then limitation (year) can as regulated in Article 32 paragraph (2) above, not in a quo case.(Karjoko, Santosa, et al., 2019)

Regarding the premature lawsuit, the Panel of Judges considered that the 62 (sixty-two) objects of the dispute had been issued and overlapped with some of the land parcels owned by the Plaintiff. Regarding the improper lawsuit filed to the State Administration, the Panel of Judges would consider using the regulations that were in effect at the time of issuance of the object of dispute that was issued after the enactment of the regulations of the land registration. In this case, the Panel of Judges judged by rejecting the defendant's exception, intervening Defendant IV, and intervening Defendant IX, granted the plaintiff's claim entirely and declared the decision of the 62 certificates canceled in the lawsuit filed by the plaintiff of the case.(Handayani, Sulistyono, Leonard, Gunardi, & Najicha, 2018)

#### 4. CONCLUSIONS

Article 32 paragraph (2) PP No. 24 of 1997 regarding land registration has not been able to guarantee legal certainty for the holder of the certificate of land rights. Although all the elements in Article 32 paragraph (2) PP No. 24 of 1997 concerning Land Registration is fulfilled, there is a gap to take legal action through the State Administrative Court. Ratio decidendi of the Panel of Judges in handling cases of dispute over the issuance of certificates of land rights argues that the dispute over the issuance of a certificate is a product of a State Administrative Agency/Official is the authority of the PTUN. Article 55 of Law Number 5 of 1986 concerning the State Administrative Court states that a lawsuit can be filed only within a grace period of 90 (ninety) days. Article 32 paragraph (2) PP. 24 of 1997 concerning Land Registration is side aside and accept a lawsuit because Indonesia uses a negative publication system, the belief of judges, and a hierarchy of laws and regulations.

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