



## **Analisis Yuridis Pemblokiran Sertifikat Tanah Ditinjau Dari Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional**

### ***Juridical Analysis of Blocking of Land Certificates Reviewed from The Regulation of The Minister of Agraria and Spatial Planning/Head of The National Land Agency***

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#### **Abstrak**

Artikel ini diharapkan dapat memperkenalkan penyelidikan terhadap peraturan Indonesia sehubungan dengan tanggung jawab atas hak istimewa. Penjelajahan dilakukan dengan menggunakan strategi penelitian kepustakaan, khususnya studi kearsipan, dengan mengumpulkan dan memusatkan perhatian pada buku-buku halal, tulisan-tulisan, karya logika, pedoman hukum, dan bacaan-bacaan lain yang terkait dengan penyusunan proposal ini, dan arsip-arsip yang dimaksud merupakan pilihan-pilihan di pengadilan. Pemeriksaan informasi dalam eksplorasi ini dilakukan secara subyektif; Artinya, informasi yang diperoleh kemudian dimasukkan secara sengaja dan kemudian dipecah secara subyektif untuk mencapai kejelasan terhadap permasalahan yang diteliti. Pemeriksaan ini bersifat menarik dan logis, mengungkap pedoman hukum terkait dengan spekulasi sah yang menjadi objek eksplorasi, serta pelaksanaan peraturan tersebut di mata publik. Strategi pemeriksaan informasi digunakan untuk menyampaikan informasi yang menjelaskan secara ilmiah, yaitu apa yang diungkapkan responden yang dicatat dalam bentuk hard copy atau secara lisan dan selanjutnya cara berperilaku mereka yang sebenarnya, seperti yang diselidiki dan dipusatkan pada umumnya. Hasil dari penelitian menjelaskan perlindungan hukum terhadap pemblokiran sertifikat terdiri dari dua bentuk, yaitu preventif dalam bentuk pencegahan dan represif dalam bentuk penyelesaian melalui pengadilan. Inekstensi hukum dari pemblokiran pemegang sertifikat adalah pemegang sertifikat tidak dapat melakukan tindakan hukum berupa pencatatan atau pencatatan sitaan, sedangkan akibat hukum dari pemblokiran sertifikat adalah kegiatan pemeliharaan data dan pendaftaran tanah tidak dapat dilakukan

**Kata Kunci:** Analisis Yuridis; Pemblokiran Sertifikat Tanah; Peraturan Menteri Agraria.

#### **Abstract**

*This article aims to present a study of Indonesian law regarding ownership of land rights. The research was carried out using the library research method, namely document study, by collecting and studying legal books, literature, scientific writings, statutory regulations, and other readings related to the writing of this thesis, and the documents studied were decisions decision in court. Data analysis in this research was carried out qualitatively; that is, the data obtained was then compiled systematically and then analyzed qualitatively to achieve clarity on the problems discussed. This research is descriptive and analytical, revealing statutory regulations related to legal theories that are the object of research, as well as the implementation of these laws in society. The data analysis method is used to produce analytical descriptive data, namely what respondents express in writing or orally and also their real behavior, as researched and studied as a whole. The results of the research explain that legal protection against certificate blocking consists of two forms, namely preventive in the form of prevention and repressive in the form of resolution through the courts. The legal extension of blocking a certificate holder is that the certificate holder cannot take legal action in the form of recording or registering confiscations, while the legal consequence of blocking a certificate is that data maintenance and land registration activities cannot be carried out.*

**Keywords:** Juridical Analysis; Blocking of Land Certificates; Minister of Agrarian Regulations.

**How to Cite:** Rizki,M.A., Purba,H., Sutiarnoto & Agustining (2024). Juridical Analysis of Blocking of Land Certificates Reviewed from The Regulation of The Minister of Agraria and Spatial Planning/Head of The National Land Agency. ARBITER: Jurnal Ilmiah Magister Hukum, 6(1) 2024: 89-97,

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ISSN 2722-1865 (Online)



## **INTRODUCTION**

As humans, of course, we want and hope for certainty regarding any movable or immovable object that we own. Moreover, the certainty in question is the legality of very valuable ownership, such as land (Tampil Anshari Siregar, 2007). The existence of land ownership arises from a natural human personality who has the conscience to continue to survive and to continue living for his descendants, who need to control objects in the world, including land (Ediwarman, 2003). Land plays a very important role in the continuity of human life as well as in development and prosperity. It could be said that almost the majority of human life depends on land because land can be used as a place for settlement, a source of livelihood, and even as a final human resting place. Article 9 paragraph (2) of Basic Agrarian Law Number 5 of 1960 states: "Every Indonesian citizen, both men and women, has the same opportunity to obtain land rights and to benefit from the results, both for himself and his family." Based on the article above, we can see that Indonesian law guarantees legal certainty of ownership of land rights, regardless of gender. This means that anyone can obtain land rights.

In Indonesia, land issues are central and attract attention as the most common problems encountered. This can be seen from the large number of cases submitted to court, whether criminal cases, civil cases, or state administration cases that revolve around land disputes. Disputes in the civil sector, for example regarding inheritance disputes, and debts with land as collateral, are different in the state administration sector, regarding the issuance of land certificates, or related to other unlawful acts. Therefore, problems in the land sector are a very vulnerable problem, not only a question of ownership and law enforcement but also a political problem (Sutedi, 2007).

Due to the impact of dissatisfaction in accepting decisions, treatment, and regulations regarding land, it is possible that land issues could lead to apathy and passivity in society. This apathetic and passive attitude can even trigger an attitude of revenge which can be a factor in the eruption of a conflict. Considering that the use of land has various needs for humans, binding regulations are needed regarding use, exploitation, ownership, and making laws regarding land to avoid land disputes in the future.

To limit land possession debates, land enlistment exercises ought to be done, which is one of a progression of land organization exercises in gathering and handling physical and juridical information (Avivah et al., 2022). Unofficial law Number 24 of 1997 concerning Area Enrollment controls that land enlistment is a progression of exercises completed by the public authority consistently, persistently, and routinely, including gathering, handling, accounting, and introducing and keeping up with actual information and juridical information as guides and rundown, in regards to plots of land and loft units, including the arrangement of testaments of confirmation of title for plots of land to which privileges as of now exist (Kusuma et al., 2017).

As a work to give security to land freedom holders, Regulation Number 5 of 1960 concerning Fundamental Agrarian Standards (UUPA) requires the public authority to do a progression of land enlistment exercises all through Indonesia, which exercises can be completed methodically or inconsistent by presenting a land title endorsement as a compelling method for evidence for the holder (Candra & Yustika, 2020). Issuance of land freedoms declarations is a type of work to give evidence of land privileges that an individual lawfully has freedoms to land Separated from that, land freedoms testaments can be utilized as a mode of verification and assurance of the presence of these freedoms. This utilization is expected to make legitimate requests in the land area.

In light of the clarification in Article 32, section 1, of Unofficial Law Number 24 of 1997 concerning land enrollment, it is expressed that an endorsement is a letter of confirmation of title that is legitimate as areas of strength for verification in regards to the actual information and juridical information contained in that, as long as the actual information and juridical information This is as per the information in the estimation letter and testament of land privileges being referred to. In any case, practically speaking in the field, land enrollment has been completed as per Unofficial law Number 24 of 1997, yet we experience many land questions, which are presently a worry and schoolwork for the public authority. This land question is brought about by the way that the declaration, as a deep method for verification, actually doesn't ensure legitimate sureness for the testament holder. We can find this in Article 32 of Unofficial Law Number 24 of 1997, which gives open doors for however long different gatherings feel they reserve the option to sue the party whose name is recorded on the endorsement in a common way to the general court or sue the top of the BPN/Top of the Land Office to the State Regulatory Court (Sekarsari et al., 2019).

Given the fourth passage of the preface to the 1945 Constitution of the Republic of Indonesia (UUD 1945), the state is obliged to give lawful assurance to Indonesian residents. The term lawful assurance hypothesis comes from English, in particular legitimate security hypothesis, while in Dutch it is called hypothesis van de wettelijke bescherming, and in German it is called hypothesis der rechtliche schutz. Legitimate security is characterized as a type of government activity given to legitimate subjects as per their freedoms and commitments, which are executed in light of positive regulations in Indonesia. Legitimate security emerges due to the presence of a lawful relationship. Legitimate relations are connections between lawful subjects that have lawful significance or have lawful outcomes (the development of privileges and commitments) (Asshiddiqie, 2009).

As per Satjipto Rahardjo, legitimate security is a work to coordinate different interests in the public eye with the goal that there are no conflicts among interests and individuals can partake in every one of the privileges conceded by regulation. Satjipto Raharjo's hypothesis of legitimate assurance was motivated by Fitzgerald's viewpoint about the reason for regulation, in particular, to coordinate and facilitate different interests in the public arena by directing the security and restrictions of these different interests (Satjipto, 2000).

Equity comes from the word fair; as indicated by the Huge Indonesian Word reference, fair isn't erratic, unbiased, or inconsistent. Decency fundamentally implies that choices and activities depend on genuine standards, so it's not emotional, not to mention inconsistent. Equity is fundamentally a relative idea; everybody isn't something very similar, and what is fair for one individual isn't fair for another. At the point when somebody affirms that he is doing equity, this unquestionable requirement is pertinent to public requests where a balance of equity is perceived. The scale is characterized as not entirely settled by society as per the public request of that society (Wijaya, 2022).

For the vast majority, equity is an overall rule that people ought to get what they merit. Some call it legitimate equity, which alludes to the execution of the law as not set in stone in that frame of mind of regulation. There is additionally the term civil rights, which is characterized as broad originations of social solidness or civil rights that could conflict with individual originations of equity or equity overall.

The principal subject of equity is the essential design of society, or all the more exactly, the manners by which the super-friendly foundations disperse basic freedoms and commitments and decide the conveyance of advantages from social participation. Equity in a social plan on a very basic level relies on how central privileges and commitments are applied to monetary open

doors and social circumstances in different areas of society. The hypothesis of equity can be isolated into two fundamental parts, in particular first: the translation of the underlying circumstance and the plan of different rules that can be picked, and second: a contention that states which standards can be utilized (Fadhilah, 2012).

## **RESEARCH METHOD**

The kind of exploration utilized is regularizing lawful examination. Regularizing legitimate examination is a legitimate exploration that involves standardizing contextual analyses as legitimate conduct items, for instance, checking on regulations. The subject of the review is regulation, which is conceptualized as standards or decisions that apply in the public eye and become a reference for everybody's way of behaving. So standardizing legitimate examination centers around certain regulation stock, lawful standards, and teaching, lawful revelation in cases in concreto, legitimate systematics, level of synchronization, lawful correlation, and lawful history (Soekanto, 2007).

Regularizing legitimate exploration techniques endeavors to see regulation conceptualized as what is written in legal guidelines or as decisions or standards that are benchmarks for the human way of behaving that are viewed as proper. capabilities to give juridical contentions when there is a vacuum, vagueness, or struggle of standards. Standardizing lawful examination assumes a part in keeping up with basic parts of legitimate grants as a *sui generis* regulating science (Benuf & Azhar, 2020).

The idea of the examination utilized in this exploration is elucidating investigation. As indicated by Whitney, the expressive technique is a quest for realities with the right translation (Soejono dan Abdurrahman, 1999). Logical engagement implies that this exploration depicts a legitimate guideline about its speculations and execution, as well as cautiously dissecting the realities regarding the utilization of legal guidelines. The point of clear exploration is to precisely portray the singular qualities of a specific peculiarity, circumstance, or gathering and to make a methodical, verifiable, and exact depiction, picture, or painting of current realities, qualities, and connections between the peculiarities being researched. This exploration is distinct and scientific, which uncovers the regulations and guidelines connecting with the legitimate hypotheses that are the object of the analyst, as well as the law's execution in the public eye connecting with the object of the examination (Soejono dan Abdurrahman, 1999).

The information assortment strategy was done utilizing library research, specifically archive study, by gathering and concentrating on lawful books, writing, logical compositions, legal guidelines, and different readings connected with composing this proposition, and the records considered were choices in court. The point of this library research is to get auxiliary information, which incorporates job guidelines, books, magazines, papers, web destinations, and other perusing materials connected with this examination.

Information examination in this exploration was completed subjectively; in particular, the information acquired was then assembled deliberately and afterward dissected subjectively to accomplish clearness on the issues examined. Subjective information examination is an exploration technique that produces distinct logical information, in particular, what respondents state recorded as a hard copy or orally and their genuine way of behaving, as explored and concentrated all in all. The importance of investigation here is planned as a sensible, precise clarification and understanding. After the information examination is finished, the outcomes will be introduced unmistakably, to be specific by telling and depicting what is as per the issue being

contemplated. From these outcomes, an end is then drawn, which is the response to the issues brought up in this examination (Miles & Huberman, 1992).

## **RESULTS AND DISCUSSION**

### **Blocking of Land Rights Certificates**

Conceptually, land blocking is a legal term used to identify land-blocking activities in the territory of the Republic of Indonesia. In the Big Indonesian Dictionary (KBBI), block means to freeze or stop (Kbbi, 2016). Apart from that, in the realm of criminal law, there is also the term blocking, which means temporarily freezing assets for investigation, prosecution, or examination in court to prevent them from being transferred or transferred so that certain people or all people do not deal with assets that have been obtained or may have been obtained from the commission of the crime (Nomor, 1 C.E.).

Based on Article 1 Number 1 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 13 of 2017 concerning Procedures for Blocking and Confiscation, the meaning of blocking is explained, namely: "Recording a block is an administrative action of the Head of the Land Office or an appointed official to determine the status quo (freezing) on temporary land rights regarding legal actions and legal events on the land." The definition of legal events is all events or happenings that can give rise to legal consequences between parties who have a legal relationship. Members of society enter into relationships with each other every day, which gives rise to various social events. These social events that are given consequences by law are called legal events or legal incidents. Meanwhile, a legal act means that a legal act is a legal act if the act is legally given consequences (has legal consequences) and the consequences are desired by the person acting (Purba, 2006).

At the procedural level, Article 1 point 1 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 13 of 2017 stipulates that blocking land title certificates is only permitted to be carried out by the Head of the Land Office or an appointed official to determine the status quo for a plot of land. Furthermore, Article 1, number 2, explains that the status quo is a permanent situation as it is now. Meanwhile, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration regulates the recording of the status quo (freezing), which confirms that the nature of freezing a land right that has been registered (a certificate) at the Office Land is limited and only temporarily limited to the validity of the block (Maufiroh et al., 2021).

Registration of land rights is an activity that has an administrative aspect, so this activity is carried out basically as a form of administering land rights, as an administrative activity, land registration must be able to prevent more complicated problems from arising if a plot of land that has been registered is submitted to an objection or lawsuit by other parties. For this reason, it is necessary to establish a regulation regarding blocking land title certificates. This blocking arrangement has the aim of preventing the transfer of land rights that are the object of dispute, the object of mortgage rights, or the object of criminal, state administrative, or criminal cases (Setiyabudi, 2020).

The juridical basis is a description of the legal provisions that must be used as a reference in the formation of statutory regulations. Juridical foundations can be divided into formal juridical foundations, namely legal provisions that designate or give authority to institutions, organs, or positions to make legal regulations, and material juridical foundations, namely legal provisions that determine the content of statutory regulations that were formed (Ayu, 2019).

The quintessence of a juridical perspective is lawful sureness. Lawful sureness should be visible when a guideline is made and proclaimed with conviction since it directs obviously and

legitimately. It is clear as it doesn't lead to uncertainty (numerous understandings) and consistent as it frames an arrangement of standards with different standards so it doesn't conflict or bring about standard contentions (Zon et al., 2017). Legitimate assurance alludes to the use of regulation that is clear, long-lasting, reliable, and steady, the execution of which can't be impacted by abstract conditions. Sureness and equity are moral requests as well as describing the law. A regulation that is questionable and reluctant to be fair isn't simply terrible (Kansil et al., 2009).

Based on the description of the theory of legal certainty above, it can be said that legal certainty in land registration is essentially a guarantee of protection given to holders of land rights. Land registration, legal protection efforts for parties who submit objections to a plot of land that has been registered are provided legal protection, which is based on efforts to prevent more complicated problems from arising and detrimental to many parties if the blocking is not implemented.

The sociological basis is related to benefits for society, so in this case, the relationship between blocking land rights certificates and benefits for the parties concerned is discussed. The sociological basis must reflect the reality of life in society so that it can be accepted by society, has effective performance, and does not require much institutional or law enforcement direction in implementing it (Setiyabudi, 2020). Submission of a blocking certificate by one party is a space for him to obtain rights to a plot of land that can provide benefits for him and his family, so this becomes one of the grounds for blocking a plot of land. However, the implementation of certificate blocking must be regulated in such a way that it does not cause abuse to land rights holders. Therefore, regulations have been made regarding certificate blocking, which provides limitations and guidelines so that blocking places the interests of all parties on the same opportunity to defend the rights they claim (AT, 2016).

The benefits of blocking are not only for the parties but also for the land institutions themselves because with blocking, the land institutions can anticipate or prevent early legal action on a plot of land that is being sued or confiscated so that it will not cause complications later in following up on the settlement over existing problems (Hayati, 2019).

### **Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency**

The Guideline of the Pastor of Agrarian Issues and Spatial Preparation/Top of the Public Land Organization Number 13 of 2017, manages obstructing techniques as well as seizure strategies, the two of which are unique however are controlled in one guideline, it is controlled in Article 3 to Article 24, then went on with the guidelines in regards to seizure contained in Article 25 to Article 43. In light of Article 1, passage (1), recording a block is a regulatory activity of the Top of the Land Office or a designated official to decide business as usual (freezing) of land privileges that are impermanent according to legitimate activities and lawful occasions in regards to the land. Then, Article 3 makes sense that impeding enlistment is completed ashore privileges because of lawful demonstrations or legitimate occasions, or as a result of land debates or clashes (Indrawati, 2014).

Rather than seizure, the importance of seizure comes from the phrasing *Beslag* (Dutch) and the Indonesian expression "*Beslah*," however the standard term is seizure or seizure. As per M. Yahya Harahap, the reason for taking security (*conservatoire beslag*) as managed in Article 227 HIR is so the merchandise seized is not stolen or estranged by the respondent during the preliminary cycle so that when the choice is executed, the obligation installment requested by the

offended party can be satisfied by selling the seized products. Accordingly, the activity of seizing the respondent's property isn't to be given over to and possessed by the offended party (the candidate for seizure), however to take care of the litigant's obligation to the offended party. In light of Article 1 passage (3) of the Guideline of the Priest of Agrarian Undertakings and Spatial Preparation/Top of the Public Land Organization Number 13 of 2017, it is underlined that recording seizures is a managerial activity of the Top of the Land Office or an authority designated to record seizures from legal establishments, agents, or approved organizations. Besides, Article 25 section (1) makes sense that seizure enrollment is completed ashore privileges with regards to settling cases in court or examinations.

Based on the description above, blocking and confiscation of land are two different things. Blocking is to establish a temporary status quo, the legal consequence of which is that land title certificates containing blocking records cannot carry out temporary land registration data maintenance activities. Meanwhile, confiscation is the confiscation of land rights in the context of resolving cases in court or investigation, the legal consequence of which is that the certificate of land rights containing confiscation records cannot be transferred and/or encumbered with mortgage rights. Therefore, this research only focuses on blocking land title certificates without confiscation (Sihaloho et al., 2019).

### **Legal Protection of Land Rights Certificate Holders in The Event Of Blocking**

Law is essentially the protection of human interests, which is a guideline about how people should act, but law is not just a guideline, decoration, or decoration. However, the law must be obeyed, implemented, maintained, and most definitely enforced (Tutik, 2010). Indonesia, as a legal state, has an interest in regulating legitimate security for land privileges endorsement holders that is lawfully sure, helpful, and fair by answering the necessities and wants of land freedoms declaration holders in open life straightforwardly, without duplicity, terrorizing, or separation, where everybody is equivalent under the watchful eye of the law and with similar legitimate security with no segregation. So truly, the state needs to safeguard land title declaration holders due to the pure intentions of the holder and the state's choice to give a testament as confirmation of land privileges, which ought not to be dropped by the state without remuneration. Hence, it is important to have state regulatory lawful guidelines and their execution that are legitimate, right, and fitting so lawful security ought to be given to holders of land title endorsements (Ramadhani, 2018).

Reviewing the legal protection of certificate holders for various reasons for applying for blocking, legal protection is a discourse that is propagated to guarantee someone's rights. Typically, the system is applied to disputed plots of land; however, weak law enforcement for block registration actions is also a problem that still cannot be resolved (Permadi, 2016). On the one hand, blocking a certificate can guarantee legal certainty and legal protection to interested parties, but on the other hand, it can also be detrimental to the certificate holder. The problems that often occur are related to the reasons for applying for blocking, the basis for blocking, and also to the procedures for blocking and deleting blocking records.

Article 5 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2017 has emphasized that the main requirement for blocking a certificate is that there is a legal relationship that can be proven between the applicant for blocking and the certificate that wants to be blocked. This provision provides an opportunity for anyone who can prove that they have a legal relationship to a certificate, and then they can request to block the certificate. This, of course, becomes a complex problem if the applicant for blocking and the certificate owner do not know each other at all but find that their certificate has

been successfully blocked for reasons and proof of legal relations that the Land Office considers to be legally valid. In practice, various reasons for blocking arise as a basis for block applicants to apply for blocking registration, which, of course, must have a legal relationship to the certificate. Unfortunately, the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2017 does not regulate in detail what reasons are justified for blocking. This means that the opportunity for anyone to apply for a block for various reasons is certainly a concern when discussing how the law implements protection for land title certificate holders in the event of a block.

## CONCLUSION

Legal protection against certificate blocking consists of two forms, namely preventive in the form of prevention and repressive in the form of dispute resolution through the courts. The legal consequence of blocking a certificate holder is that the certificate holder cannot carry out legal actions in the form of transferring or recording encumbrances, while the legal consequence of a blocked certificate is that data maintenance and land registration activities cannot be carried out. The authority of the Land Office to block land title certificates is based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2017 to carry out recording in terms of the authority to accept or reject blocking applications submitted by individuals, legal entities, and law enforcers by procedural requirements and does not conflict with the law.

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