

Legal remedies for land rights affected by acquisition to the construction of permanent housing fulfilling the need for post-earthquake shelter in Palu

Remédios legais para direitos à terra afetados pela aquisição para construção de moradias permanentes que atendam à necessidade de abrigo pós-terremoto em Palu

Remedios legales para los derechos a la tierra afectados por la adquisición para la construcción de viviendas permanentes que satisfagan la necesidad de un refugio después del terremoto en Palu

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Abstract

Basically, the state has the authority to regulate the use of land rights in the territory of Indonesia. However, the problem that often occurs is the disagreement between the Land Acquisition Committee and the holders of land rights in determining the amount of compensation, resulting in problems such as what happened in Palu after the earthquake which flattened housing buildings and required a plot of land for housing construction. Therefore, the aim of this research is to explore legal efforts for land rights that are affected by the acquisition for the construction of permanent housing to meet housing needs after the earthquake in Palu. The research method that used is legal research, while the approach that used in this research is statute approach. The results of data analysis shows the legal action of land rights holders that are affected by land acquisition for the construction of permanent housing by means of certificate cancellation, the cancellation of the certificate is based on law. Land acquisition for the public interest, including the interests of the nation and the State as well as the common interest of the people, can revoke land rights by giving compensation.

Keywords: Legal land rights, Construction of permanent housing; Post-earthquake housing.

Resumo

Basicamente, o estado tem autoridade para regular o uso dos direitos à terra no território da Indonésia. No entanto, o problema que frequentemente ocorre é a discordância entre o Comitê de Aquisição de Terras e os titulares dos direitos fundiários na determinação do valor da indenização, resultando em problemas como o que aconteceu em Palu após o terremoto que destruiu edifícios residenciais e exigiu um terreno para construção de moradias. Portanto, o objetivo desta pesquisa é explorar os esforços legais para os direitos fundiários que são afetados pela aquisição para a construção de moradias permanentes para atender às necessidades de habitação após o terremoto em Palu. O método de pesquisa utilizado é a pesquisa jurídica, enquanto a abordagem utilizada nesta pesquisa é a abordagem estatutária. O resultado da análise dos dados evidencia a ação judicial dos titulares de direitos fundiários que são afetados pela aquisição de terrenos para a construção de moradias permanentes por meio de cancelamento de certificado, o cancelamento do certificado tem base legal. A aquisição de terras para o interesse público, incluindo os interesses da nação e do Estado, bem como o interesse comum do povo, pode revogar os direitos à terra mediante a compensação.

Palavras-chave: Direitos legais à terra, Construção de moradias permanentes; Habitações pós-terremoto.

Resumen

Básicamente, el estado tiene la autoridad para regular el uso de los derechos sobre la tierra en el territorio de Indonesia. Sin embargo, el problema que ocurre a menudo es el desacuerdo entre el Comité de Adquisición de Tierras y los titulares de los derechos territoriales en la determinación del monto de la indemnización, lo que genera problemas como lo sucedido en Palu después del terremoto que arrasó edificios de viviendas y requirió un terreno para la construcción de viviendas. Por lo tanto, el objetivo de esta investigación es explorar los esfuerzos legales por los derechos territoriales que se ven afectados por la adquisición para la construcción de viviendas permanentes para satisfacer las necesidades de vivienda después del terremoto en Palu. El método de investigación que se utilizó es la

investigación legal, mientras que el enfoque que se utilizó en esta investigación es el enfoque de estatutos. Los resultados del análisis de datos muestran la acción legal de los titulares de los derechos territoriales que se ven afectados por la adquisición de terrenos para la construcción de vivienda permanente mediante cancelación de certificado, la cancelación del certificado se basa en ley. La adquisición de tierras para el interés público, incluidos los intereses de la nación y el Estado, así como el interés común de la gente, puede revocar los derechos sobre la tierra al otorgar una compensación.

Palabras clave: Derecho legal a la tierra, Construcción de vivienda permanente; Vivienda post-terremoto.

1. Introduction

According to (Weiler, 2013) state has the authority especially in making the regulation, planning with control over tenure and ownership of land rights. This authority is contained in Article 2 of the UUPA (Basic Agrarian Law Act) that the state's authority to control land rights is obtained because not all land problems can be resolved by the community, so the right of state power to land are complementary on the land rights controlled by the community (Ocheje, 2007). The authority right from state based on the Article 16 Paragraph (1) UUPA, includes property rights, right to cultivate, right to build, right to use, right to lease, right to open land and other rights. The authority right gives authority to use the land in the boundary in accordance to the laws and other higher legal regulations (Ismail, 2019).

In carrying out a takeover of a company, there are several main things that must be taken into account by the acquirer, such as: the selection of the form of acquisition to be carried out by looking at the characteristics of the existing acquisition characteristics, the selection of the form and source of acquisition spending, the assessment of the target company and also the legal aspects of the plan (Farlianto, 2014). Acquisition is an alternative strategy compared to building a new company, because the construction of a new company does not only require large funds and takes a long time but also a significant failure factor (Utami, 2015).

Based on the research that conducted by (Syaichu, 2006) mergers and acquisitions will result in shareholder welfare by obtaining a positive abnormal return for both the acquirer and the acquired company, if both companies have specialized strategic value resources. To meet the gap in resources and capabilities, companies can select factor markets, internal developments, cooperation, mergers and acquisitions (Capron, L., Dussauge, P. and Mitchell, 1998). The research have been conducted by (Arief & Putra, 2018) state the research presents a systematic analysis using the normative-empirical method for various cases of land acquisition by reviewing it based on a conceptual approach, which is seen from the viewpoint of the Law Number 5 Year 1960 and of the concept of the Theory of Justice from Rawls. The result states that the research analysis lead researchers to Compulsory Rehabilitation and Resettlement as a solution that is considered to be able o realize justice as fairness in the concept of humanitarian and equitable land acquisition, so it can be a concrete effort to realize social welfare for all Indonesian people.

Regarding the limits on the use of rights between the holders of land rights and the land parcels, in the Article 18 UUPA called that for the public interest including the interest of citizen and state with the common interests of the people, the land right can be repealed with giving the compensation that is appropriate and according to a manner regulated by law. The regulation inside the Article 18 UUPA including third things which is: 1) the public interest is including the citizen and state interest with common interests of the people, 2) the land right can be repealed, 3) with giving the appropriate compensation and according to the way which is regulated by law.

According to (Zhai, 2019) land acquisition for public interest is never succeed. As it desired by the formation of laws and regulations, and the last one was published is Constitution No. 2 of 2012 which implementation regulation stipulated with the PP (Presidential Decree) No. 71 of 2012 concerning with Implementation of Land Acquisition for Development for Public Interest (Article 59 Constitution No. 2 of 2012) which determine the further provisions concerning the land acquisition

implementation for the public interest development is regulated by a Presidential Regulation. The promulgation of several laws and regulations on land acquisition as the proof that the problem is the appropriate compensation, there is no agreement between the right holders with the land institution which acts as the organizer of land acquisition (Sari et al., 2020).

Land acquisition process for the public interest based on Law No 2 of 2012 is one of the development efforts within the national development framework held by the government at this time by organizing land acquisition for public interest whose purpose is to provide land for the implementation of development to improve welfare and the prosperity of the nation, state and society. Land acquisition is an activity of providing land by giving proper and fair compensation to the rightful party (Nebula et al., 2019).

The other problem which is the land acquisition for development for public interest is often experienced the obstacle especially related with the determination of the amount of compensation, because related to the determination from amount of land acquisition compensation for development in order to public interest, although several regulation of law has made, but the fact is not giving the solutions. In determining the amount of compensation, there is a lot of disagreement between the Land Acquisition Committee of the Land Agency and the holders of land rights, resulting in problems as happened in Palu after the earthquake which flattened housing buildings requiring land parcels for housing construction.

For this reason, land acquisition, of course, the community must have a sense of sincerity if the land has been included in development activities. However, the government must provide compensation for communities affected by regional development (Utomo, 2020).

According the research that have been conducted by (Endy Agustian, 2017) stated that local governments sometimes help the developers, but the developers have difficulty in particular section permits the acquisition of development principles at a location due to government bureaucracy and complex rule. Based on the economic aspect, land prices are cheap and profitable and they become the reasons for choosing the location of residential developers.

The fact occurs in the Sigi, Donggala and Palu districts province of Central Sulawesi Province on 28th September last year affected by natural disasters in the form of earthquakes and liquefaction. The disaster has taken life and property of citizen who lives on there. After the disaster, the government implemented the reconstruction and rehabilitation on the condition of citizen life which affected the disaster. The first step that must implement is ensuring the communities which become the victims of the natural disasters get their living through the construction of permanent housing (hunatap).

There are 591,6 Ha land which handed over to the land owner to Kanwil BPN (Regional Office BPN) of Central Sulawesi Province through a land supply scheme. 591,6 Hectares land allocated to 4 locations which is Tondo District in the Palu city as much as 150 Hectares, Talise Village in Palu City as many as 38,6 Hectares, Duyu Village in Palu City as many as 41 hectares and Pombewe-Olobuju Village in Sigi Regency as many as 362 Hectares. Head of Regional Office of the National Land Agency (KaKanwil BPN) of Central Sulawesi Province added the permanent housing of community will get the certificate from right of ownership. Most of the land plot is HGB land status owned by the developer by Kanwil BPN with published the Decision of Head of Regional Office of the National Land Agency from Central Sulawesi Province No. 94/SK-72.MP.01.03/X/2019 related to the Cancellation of Rights Certificate.

Referred to the Article 18 UUPA, compensation are the rights of each holder of land that is subject to release, linked to the Preamble of Law no. 2 of 2012 namely creating fair and prosperous society, implemented by prioritizing humanitarian principles, Democratic and Fair. This means that an expropriation of land rights under the pretext of land acquisition in order development for the public interest (Azis, 2013).

2. Methodology

This research is legal research, the legal research is an process to find the regulation of law, law principal, or law doctrines in order to answer the law issue that faced which is the legal protection of land holder causes the publication of due to the issuance of a certificate on behalf of the developer. The approach that used in this research is statute approach implemented with review all laws and regulations which concerning with the law issue that is being handled. Between the law and regulation: 1) UUPA, 2) PP No. 24 of 1997, 3) PP No. 37 of 1998, 4) the Law of Head of Regional Office of the National Land Agency No. 1 of 2006 concerning the Provisions for the Implementation of Government Regulations No. 37 of 1998 related to the Regulations on the Position of Land Deed Making Official. Next, Table 1. Shows the legal material:

Table 1. Primary and Secondary of Legal Material.

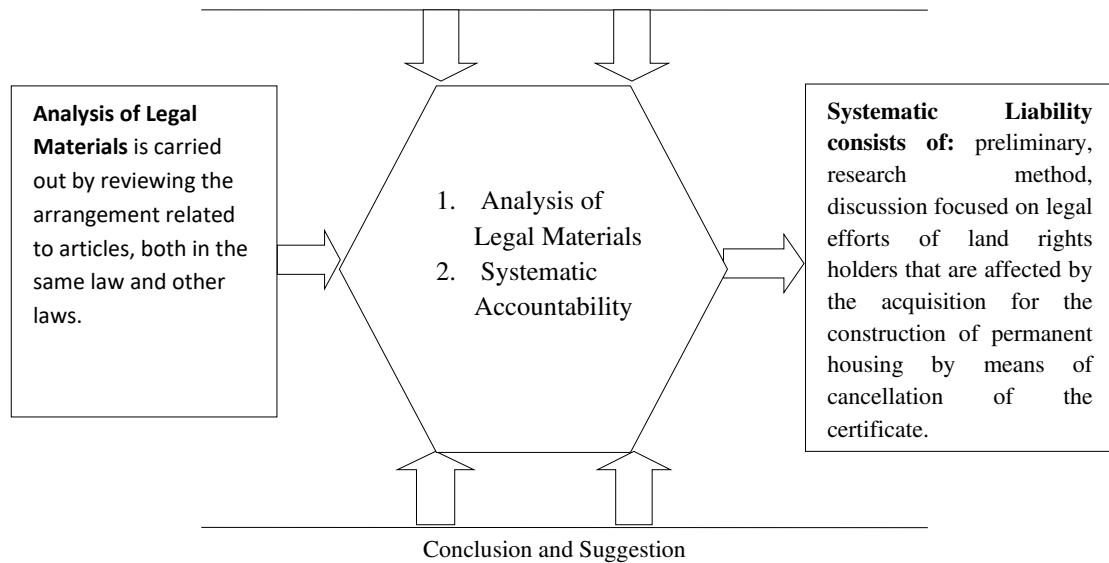
No	Legal Material	Consist of
1	Primary Legal Materials	<ol style="list-style-type: none"> 1. UUPA (Basic Agrarian Law Act) 2. PP No. 24 of 1997 concerning Land Registration. 3. PP No. 37 of 1998 concerning the Position Regulations for Land Deed Making Officials. 4. Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration. 5. Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Position Regulation of Land Deed Making Officials.
2	Secondary Legal Materials	All publications on law that are not official documents which include text books, legal dictionaries, legal journals, and comments on court decisions.

Source: Authors.

The legal material collected through study laws and regulations or literarture related to the analyzed material. Then, in the Table 1 shows the procedure of data collection.

Figure 1. Data Collection Procedure.

Data Collection Procedures Carried Out By Researchers



Source: Authors.

In the Figure 1 shows that the explanation which focuses to the legal remedies by the holders of land rights that are subject to liberation for the construction of permanent housing with the steps of certificate cancellation. This is aimed to answer the problem of the legal effort which implemented by the land right ownership holder which affected the exemption for the construction of permanent housing by means of cancellation of the certificate.

3. Results and Discussion

3.1 Land Acquisition for Public Interest and Compensation

The land plot with the status of Building rights (HGB) among them belongs to Duta Dharma Bakti Company status of 79.3 hectares of HGB land, ends 8–8–2019, belong to Sinar Putra Murni Company status of 83,8 hectares of HGB ending 25-8-2019, belong to Sinar Waloyo Company status of 45,6 hectares HGB land ends 24-8-2019, belong to Lembah Palu Company status of 80,8 hectares HGB land ends 24-9-2025, belong to Palu Buana Sentosa Company status of 45,3 hectares HGB Land ends 11-12-2042, belong to Bangun Citra Palu Company status of 7,5 hectares of HGB land ends 29-1-2043, belong to Aces Propertindo Sentosa Company status of 20,4 hectares of HGB land ends 8-3-2044, belong to Hasfarm Holtikultura Company status of 805,8 hectares of HGB land ends 26-6-2018, especially the deadline is not yet ends, the government of Central Sulawesi Province in the effort to faced the necessity of land for housing construction for victims of the Palu disaster, published the Decree of Governor of Central Sulawesi Province No. 369/516/DIS.BMPR-G-ST/2018 on 28th December 2018 concerning the determine the location of recovery relocation land caused disaster in the Central Sulawesi Province, Ministry of Agrarian and Spatial Planning/BPN published the decision of Head of Regional Office of BPN, Central Sulawesi Province No. 94/SK-72.MP.01.03/X/2019 concerning the Cancellation of Rights Certificate, the land parcel has the certificate canceled.

The cancellation of certificate concerning the certificate as the proof of rights as it stated in the Article 19 Paragraph (2) point (c) UUPA, that guaranteed of the legal certainty by the Government implements the land registration in the entire area of the territory of the Republic of Indonesia according to the provisions stipulated by the Government Regulation. The registration is including the giving of letter of right proof sign, which are valid as strong of proof tools. The certificate that

means according in the Article 1 Point 20 PP No. 24 of 1997 is Certificate of proof of rights to land rights, management rights, waqf land, ownership rights to apartment units and security rights; each has been recorded in the relevant land book. The certificate is the letter of proof of rights which is valid as a strong means of proof related the physical and juridical data contain as long as the physical data and juridical data are in accordance with the data contains in the measurement letter and the relevant land title book (Friedman, 1975) (Friedman, 1975).

Accordance with the explanation above, if a land plot which has been published the official certificate on the name of people or law firm which obtained of the land with good attitude and factually is authorized, then other parties who feel they have rights to the land can no longer demand the exercise of these rights if within 5 (five) years from the issuance of the certificate they do not submit written objections to the certificate holder. The head of National Land Agency which concerning or not filed a lawsuit to the court related the land or published the certificate as it stipulated in the Article 32 PP No. 24 of 1997. Based on the Article 32 Paragraph (1) PP (Governmental Regulations) No. 24 of 1997, then the land registration publication system adopted is a negative publication system, i.e. the certificate is only a strong proof of right and not an absolute proof of right.

The certificate inside concluded the physical data and juridical data including in the certificate has the legal strength and must accepted by judge as the correct information during and as long as there is no other evidence to prove otherwise. Thus, the court has authority to decide which evidence is correct and if it is proven that the certificate is not correct, changes and corrections shall be made accordingly. The physical data as it stated in the Article 1 point 6 PP (Governmental Regulations) No. 24 of 1997 is the information related the location, boundary and area of land parcels and apartment units which registered, including the information related about the building or part of the building on it. The juridical data according to the Article 1 point 7 PP (Governmental Regulations) No. 24 of 1997 is information regarding the legal status of the land parcels and apartment units that are registered, the rights holders and the rights of other parties as well as other burdens that burden them (Friedmann, 1972).

When observed, the provisions of Article 32 paragraph (1) PP (Governmental Regulations) No. 24 of 1997 there are some weaknesses, namely the state does not guarantee the accuracy of the physical data, juridical data presented and there is no guarantee for the certificate owner because at any time he will get a lawsuit from other parties who feel aggrieved for the issuance of the certificate. However, from the start it seems that the founders have realized it, and finally equipped with Article 32 paragraph (2) which states that: In the event that a land parcel has been issued a certificate legally in the name of the person or legal entity that acquires the land in good faith and actually controls it, then the other party who feels that he has rights to the land can no longer demand the exercise of that right if within a period of time. 5 (five) years after the issuance of the certificate, there is no written objection to the certificate holder and the Head of the Land Office concerned or does not file a lawsuit to the court regarding land control or the issuance of the certificate. It can be analyzed that from the regulation above the elements is: 1) the certificate is issued legally in the name of a person or legal entity; 2) land is acquired in good faith; 3) the land is controlled in real terms; 4) Within five years of the issuance of the certificate, no one has submitted a written objection to the certificate holder and the Head of the local Regency or City Land Office or to the Court regarding land control or the issuance of the certificate.

If the land dispute in Indonesia, especially dispute in vertical which is between community with government so the policy or regulation which made by government are the important factor in the effort to solve the dispute which often on behalf of the community or the public interest which neglects the private rights of the community itself. The other problem is competency of justice which has task to solve the claim for cancellation of the land rights, what will be become the competency of District Court or the State Administrative Court (hereinafter referred to PTUN).

Notice to the dispute and provision of land for residential construction after the earthquake in Palu through the issuance of a decree of Governor of Central Sulawesi No. 369/516/DIS.BMPPR-G-ST/2018 on 28th December 2018 concerning to the determination of location (Penlok) of Relocation Land for Disaster Recovery in Central Sulawesi Province, then the determination of location of relocation land for disaster recovery in Central Sulawesi Province, ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) published the decision of Decree of the Head of Regional Office of BPN of Central Sulawesi Province No. 94/SK-72.MP.01.03/X/2019 regarding the Cancellation of Rights Certificates, that the cancellation of land title certificates is only through a cancellation lawsuit to the State Administrative Court or in accordance with Article 66 of Law no. 30 of 2014 concerning Government Administration, that a decision can only be overturned if there is a defect in authority; procedure; and/or substance. In cancellation decision must stipulated the new decree with states the legal basis for the cancellation and notice AUPB. A decision to cancel can be made by a government official who makes a decision; Supervisors Officials who make decisions; or on the Court's decision.

Land acquisition for development in the public interest through the provision of appropriate compensation is in accordance with statutory regulations. The land acquisition process will never be separated with compensation problems, it is necessary to conduct research in advance of all information and data submitted in assessing the provision of compensation. If it has reaches an agreement related to the form and the compensation, so it needed to implement the compensation then with acquisition and transfer of land rights which concerned.

The assessment of compensation which causes from the land procurement, (Ghatak & Mookherjee, 2014) stated that the term of compensation has the meaning of multi-interpretation. Some interpret it as a form of compensation for all losses arising from land acquisition activities, including loss of enjoyment of life (*gemis van levens vreugde*). The action of Governor of Central Sulawesi Province and Kanwil BPN of Central Sulawesi Province is not based on the law because it has deviated from the provisions in the Article 18 UUPA, with which clearly states that in the public interest, land rights can be revoked, and the provision of appropriate compensation and in accordance with statutory regulations.

3.2 Legal Efforts of Rights Holders on the Issuance of Decree of the Head of Regional Office of BPN of Central Sulawesi Province No. 94/SK-72.MP.01.03/X/2019 concerning Cancellation of Rights Certificates

The certificate of land right as the authentic proof because it is published by authorized officials by Governor of Central Sulawesi Province which published 28 Decree of the Governor of Central Sulawesi No. 369/516/DIS.BMPPR-G-ST/2018 on December 2018 concerning Determination of Location (Penlok) of Relocation for Disaster Recovery in Central Sulawesi Province and Head of Regional Office of BPN of Central Sulawesi Province No. 94/SK-72.MP.01.03/X/2019 concerning the cancellation of right certification. Both officials are not having the authorization to cancel the land right certification, although intended for Disaster Relocation Recovery in Central Sulawesi Province.

The Decree of the Governor of Central Sulawesi No. 369/516/DIS.BMPPR-G-ST/2018 Kanwil BPN Central Sulawesi Province No. 94/SK-72.MP.01.03/X/2019 concerning the right certificate cancellation is a written decision referred to the right holders which is individually, there is no appellate agency which means it is final and as a result of the issuance of the administrative decision, developers whose certificates are canceled suffer losses, resulting in a state administrative dispute. Governor and Head of Kanwil BPN of Central Sulawesi has no authority for cancellation of land right certificate, the decision of land certificate cancellation as the decision of institutions or Tata Usaha Negara (State Administration Officer) referred to the regulation in the Article 87 Constitution No.30 of 2014 that with the application Constitutions No. 30 of 2014, the Decree of TUN as it stipulated in the Constitutions No. 30 of 2004 must understood as: a. written stipulation which also includes factual actions; b. Decisions of State Administrative Bodies and / or Officials within the executive, legislative, judiciary and

other state administrators; c. based on statutory provisions and AUPB; d. is the final in a broader sense; e. Decisions with potential legal consequences; and f. Decisions that apply to Citizens.

Concrete means that the object has decided in the decision is not abstract, but tangible, certain or determinable. In the other words, the form of decision can seem visible. The element is individual means that Decree of TUN is not intended for the public, but certain both the address and the destination. If the destination is more than one so each individual must written the name in the decision. The element is final means that the decision has definitive, the decision is no more needed the permission from superior agencies or other agencies, because this decision may have legal consequences.

Related with the originality of the relationship with the authority of governor and Head of Kanwil BPN Central Sulawesi Province as the official's government, there are the relationship with the authority of Government acts (*bestuur handelingen*), the scope of validity includes: Every Government acts is required must rely on the official authority which obtained in attribution, delegation and mandate, with limited by content (*materiae*), area (*locus*) and time (*temporis*). The procedure based on the principle of rule of law which is in the form of legal protection for community: democracy principle is the government must be open, so there is community participation (*inspraak*): instrumental principle which is efficiency and effectiveness means not convoluted and needed to de-regulation. The substitution is regulated and controlled what (arbitrary/external legality) and for what (abuse of authority, violating laws/internal legality).

The authority that means namely the attribution authority is authority which attached to a position. The attribution is the government authority in implementing the acts sources from the constitution in material which means which means that in fact the authority is attached to the position. The authority of the delegation is the delegation of authority. Delegation means as the handover of authority (to make *besluit*) by officials government (State Administration Officer) to other party and authority become obligation of the other party. Parties that give/delegate authority are called delegates and those who receive the delegation of authority are called delegators. The mandate authority is the intern work relationship between rulers and employees, in the certain thing the employee gets the authority on the name of the ruler. A mandate is a delegation to subordinates. The delegation means to give the authority to the subordinate to make the decision on the name of State Administration Officer who gives the mandate. Thus, the responsibility and accountability rests with the mandate (Ghatak & Ghosh, 2011).

Basically, the official decision can be cancelled if there is disability of authority; procedure; and/or substitution, one of the decisions can be cancelled if there are not fulfilled procedural defects. In the cancellation decision must be stipulated the new decision with noted basic law of cancellation and notice AUPB (Asas-Asas Umum Pemerintahan Yang Baik/General Principles of Good Governance), the decision of cancellation can be implemented by the government officials which stipulated the decision; the superior officials which stipulated the decision; or on the Court Decision. Decisions made by Government Officials and Superior Officials are made within 5 (five) working days from the discovery of the reasons for cancellation and take effect from the date the cancellation decision is determined. The decision to revoke by order of the Court is made no later than 21 (twenty one) working days from the order of the Court, and is effective from the date of stipulation of the decision to revoke. Cancellation of Decisions relating to the public interest must be announced through the mass media as referred to in Article 66 of Law no. 30 of 2014.

The decision of the state administration official can be canceled if there is a procedural error. Procedural error is an error in the procedure for making a decision that is not in accordance with the requirements and procedures stipulated in the provisions of laws and regulations and/or standard operating procedures, as in Article 71 of Law No. 30 of 2014.

Taking into account the description as mentioned above, it can be explained that the validity of a decision, one of which is made in accordance with the procedure as referred to in Article 52 paragraph (1) of Law no. 30 of 2014. The state

administrative decision can be revoked, one of which is if there is a procedural defect as referred to in Article 64 of Law no. 30 of 2014. One of the state administrative decisions can be canceled due to defects in procedures as Article 66 of Law no. 30 of 2014. Decisions and/or Actions can be canceled if there are procedural errors, namely errors in the procedures for making decisions that are not in accordance with the requirements and procedures regulated in the provisions of laws and regulations and/or standard operating procedures as referred to in Article 71 UU no. 30 of 2014.

In connection with an illegal act, it is known that there is an illegal act committed by the authorities, which results in a claim for compensation. This narrow definition of illegal acts is influenced by the teachings of legism, namely that there is no law outside the law. This is consistent with what (Ding, 2007) Ding (2007) states that acts against the law before the year are defined "narrowly, namely violating statutory regulations". The Governor and the Regional Office of the Central Sulawesi BPN that canceled the certificate, even though it was for development of the public interest, was not accompanied by compensation as stated in Article 18 of the UUPA, so that the element of having to violate the law had been fulfilled.

- 1) There must be an error. Regarding mistakes in acts against the law, Article 1366 of the Civil Code, determines as follows: "Everyone is responsible, not only for losses caused by actions, but also for losses caused by negligence or carelessness". The Civil Law does not distinguish between "deliberate errors and inadvertent errors". This is in accordance with (Leonora & Ghansham, 2018) that "mistakes are stated as a general meaning, can include intentional or negligent". Mistake, whether done on purpose or because of negligence, have the same weight by considering that both the mistake and the intention are fulfilled that there is an error committed by one of the parties. The Governor and Regional Office of BPN Central Sulawesi canceled land title certificates by issuing Central Sulawesi Governor Decree No. 369/516/DIS.BMPR-G-ST/2018 on 28 December 2018 concerning the Determination of Location (Penlok) for Disaster Recovery Relocation Land in Central Sulawesi Province, and the Minister of ATR/BPN issued a Decree of the Head of Regional Office of BPN for Central Sulawesi Province No. 94/SK-72.MP.01.03/X/2019 concerning Cancellation of Rights Certificates, which means that the cancellation of the certificate is intentional, so that the element must have an error has been met.
- 2) There must be a loss element. Regarding the loss of (Leonora & Ghansham, 2018) that "different from losses due to default which are only about material losses, the losses in illegal acts in addition to material losses, as well as immaterial losses, which can be valued in money". Material and immaterial losses are described in acts against the law, "can be in the form of material losses and can be in the form of immaterial losses". Losses in material form, namely losses whose amount can be calculated, while immaterial losses, the amount cannot be calculated. The cancellation of the land title certificate, without being accompanied by compensation as referred to in Article 18 of the UUPA, means that the elements that must have losses incurred have been fulfilled.
- 3) There is a causal relationship between actions and losses. The existence of a causal relationship or causal relationship means that the loss suffered is caused from an illegal act committed by the perpetrator. Regarding the element of a causal relationship between illegal acts and losses, (Leonora & Ghansham, 2018) argue that "the problem of causal relationships must be based on the teaching of "adequate". According to this theory, "there is a causal relationship if loss according to proper experience is a result that can be expected to arise from the act against the law". Regarding the adequate theory, it is further explained as follows: "A new thing can be called the cause of an effect, if according to community experience it can be assumed, that cause will be followed by the effect". This means that if there is a cause but does not cause a loss, or a loss occurs but is not caused by the perpetrator, then it cannot be said that there is a causal relationship between the act and the loss incurred. Losses suffered by holders of land rights whose certificates

were cancelled without compensation, as a result of the issuance of the Decree of the Governor of Central Sulawesi No. 369/516 /DIS.BMPPR-G-ST/2018 dated 28 December 2018 concerning the Determination of Location (Penlok) for Disaster Recovery Relocation Land in Central Sulawesi Province, and the Minister of ATR/BPN issued a Decree of the Head of Regional Office of BPN for Central Sulawesi Province No.94/SK-72.MP.01.03/X/2019 concerning Cancellation of Rights Certificates, which means that the element of a causal relationship between actions and losses has been fulfilled.

Based on the explanation above, related to the land right legal protection of land rights holders whose land has been taken by the government without compensation can be explained that based on the provisions of Article 18 of the UUPA, land acquisition although for development for public interest must be accompanied by compensation. The reality of land acquisition for post-disaster housing development in Palu, including for the public interest, the Governor has published the Central Sulawesi Governor Decree No. 369/516/DIS.BMPPR-G-ST/2018 on 28th December 2018 related to the stipulation Determination of Location (Penlok) of Land for Relocation for Disaster Recovery in Central Sulawesi Province, and the Minister of ATR/BPN issued Decree of the Head of Regional Office of BPN for Central Sulawesi Province No.94/SK-72.MP.01.03/X/2019 concerning the Cancellation of Rights Certificate, the cancellation of the certificate is not based on law. Moreover, the land rights holder whose certificate is canceled without compensation, can defend their rights by suing the cancellation of the state administrative decision to the State Administrative Court, or can also sue for compensation on the basis that the authorities have committed an unlawful act as referred to in Article 1365 of the Civil Code.

4. Conclusion

The decision of this research can be explained as follows:

a. The action of Kanwil BPN No. 94/SK-72.MP.01.03/X/2019 concerning to the cancellation of Rights Certificates in accordance with the principle of land acquisition for development in the public interest, that the act of cancelling land title certificates on the grounds of public interest is contrary to Article 18 of the UUPA, because even though it is for the public interest, including the interests of the nation and the State as well as the public interests of the people, land rights can be revoked, by providing appropriate compensation and according to the manner regulated by law.

b. The effort from law of the holder of land rights that is subject to liberation for permanent residential development by means of cancellation of the certificate, that the cancellation of the certificate is based on law. Land acquisition for the public interest, including the interests of the nation and the State as well as the public interest of the people, can revoke land rights by giving compensation. Land acquisition without compensation, the right holder can defend his rights by suing the cancellation of the state administrative decision to the State Administrative Court, or can also sue for compensation on the basis that the authorities have committed an unlawful act as referred to in Article 1365 of the Civil Code.

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