

Juridical Analysis of The Decision of The Maros State Court of The Legal Sure of The Right to The Land

A Muhajir¹ A.M. Fahmal and S. Rahman²

¹ Student of the Master of Law Study Program, Graduate Program Indonesian Muslim University Makassar Jl. Urip Sumoharjo No.225, Sinrijala, Panakkukang district Makassar City, South Sulawesi 90144

² Universitas Muslim Indonesia Makassar Jl. Urip Sumoharjo No.225, Sinrijala, Panakkukang district Makassar City, South Sulawesi 90144

E-mail: Ahmuhajir413@gmail.com

Abstract. This study aims: 1). To review the basis for the consideration of the panel of judges in deciding the case Number: 17Pdt.G/2015.PN.MRS. 2). To study the legal consequences of the Maros District Court Decision Number: 17 Pdt.G/2015.PN.MRS. This research uses normative legal research methods, using primary and secondary legal materials. The collection of legal materials is carried out by reviewing the relevant regulations and laws and then processing it with a qualitative analysis analysis. The results showed that: 1) Legal Basis for Consideration of the Judge of the Maros District Court Number: 17 Pdt.G/2015.MRS Implementation of Actions The Head of the Maros Regency National Land Agency Office in issuing Freehold Certificate Number 00007/Desa Abbulosibatang on behalf of Rukaya has acted is not accurate and has contradicts the general principles of good governance, especially the principles of legal accuracy and certainty. 2) The legal consequence of the decision of the Panel of Judges Number: 17 Pdt.G/2015 The suitability of MRS of the Minister of Agrarian Affairs 11 of 2016 concerning the Settlement of Land Cases on the verdict is to cancel the certificate of land rights, which states that they do not have legal power over the certificate of land rights the. So it is necessary to process land registration for the first time again at the local National Land Agency Office by submitting an application letter and the necessary attachments.

Keywords: Jurisdiction, Legal Sure of Land Rights

1. Introduction

Soil is an important aspect of human life. However, land and land management in Indonesia is not good enough and often causes social unrest in the community. A number of these fluctuations can be resolved by stakeholders at the local level, but some have not been resolved at the central level.

Each problem has a different degree of importance and cannot be ignored. Each party needs to understand every problem that exists in order to avoid the same repetition from year to year. The issue of overlapping land ownership is a common problem found in regions. For example, in a plot of land there are five

(5) parties who claim to be the legal owners. Each party has a certificate for the land.

This condition indicates that there is document forgery or double certificates. Why did this happen and what the consequences were, it happened because individuals within the National Land Agency colluded with parties or someone close to the authorities. So, all certificates that are in the hands of the parties are issued by the National Land Agency.

Because the National Land Agency does not have the authority to materially examine the status of the land, the National Land Agency cannot cancel or issue a new certificate of land or land if the court has not decided that one of the parties is the winner.

So, collusion between investors, rulers, and elements in the National Land Agency itself has created problems over the status of a piece of land or land. Such conditions certainly have an impact on social, political and economic security, so that the amount and type of investment in an area also has an effect. Realizing this, the local government mediates so that each party can show proof of legal ownership.

However, if there is no common ground regarding land ownership claims, then the way out that must be taken is through legal channels. However, it turns out that the law cannot be used as a barometer to enforce the truth of land status. Finally, overlapping land ownership between communities will require a long resolution involving local governments and various parties. Not surprisingly, investment runs wobbly because investors only want legal certainty on land in order to sustain their business. This overlapping situation shows negligence in implementing Article 19 paragraphs (1) and (2) of the Basic Agrarian Law (BAL) as well as a legal vacuum to impose sanctions on state officials of the National Land Agency who have issued false documents on a parcel of land.

A land certificate is legal evidence of land ownership. However, the process of obtaining land certificates in Indonesia is quite complicated. The National Land Agency even admits that it is only capable of targeting that all land in the Republic will be certified entirely in 2028. This means that the National Land Agency will need another 18 years to legalize all land in this country. Meanwhile, until now, only 49% of land owned by the Indonesian people has been certified, this situation is of course very sad for an agrarian country.

The mechanism for obtaining a certificate, which appears to be convoluted, has created complex conditions. Every day there are many people who want to take care of certificates but the services of the National Land Agency are always protracted and long. Such complexity is used by individuals to get a windfall. There is famous for adagium, if you want it fast then finish it in the customary way. People who do not want to be busy with obtaining a certificate like this will quickly spend a certain amount of money, but people who follow these simple but complicated procedures are forced to wait a long time, even years or not take care of it at all.

Why this happens, even though Article 19 of the BAL states that certificates are held through land registration throughout Indonesia to ensure legal certainty which includes measuring land mappings and bookkeeping, registration of land

rights and transfer of these rights and issuing documents of evidence. rights, which serve as a powerful means of proof. The difficulty of the community in obtaining a certificate of land rights shows the reality that: (a) the government does not have good intentions to take action against elements in the National Land Agency who try to seek profit in land certification services, given the complaints against land cases involving land mafia and elements. -num of the National Land Agency has never been resolved, (b) the government does not yet have a standard procedure for land certification services properly, (c) the government tends to appear to create a situation of legal uncertainty in cases of land. laws that regulate the relationship between humans and land.

So that researchers are interested in examining one of the decisions of the Maros District court regarding disputes over land rights and also based on geographic considerations because the Maros district area is 1619.11 KM² which consists of 14 sub-districts which oversees 103 villages / wards, Maros Regency is an area directly adjacent to the provincial capital. South Sulawesi, in this case is Makassar City, with a distance of 30 km from the two cities and is integrated in the development of the Mamminasata Metropolitan Area. In its position, Maros Regency plays an important role in the development of Makassar City because as a crossing area which is also the gateway to the northern part of the Mamminasata Area which in itself provides a very big opportunity for development in Maros Regency with an area of 1,619.12 km² and is divided into 14 regions. sub-district.

Over time, population growth has increased and the need for land to build a place to live has increased, leading to conflicts, one of which is the conflict over land rights, including in Maros district.

Based on the description of the background above, the author would like to examine more deeply related to the issue of land ownership rights entitled "Juridical Analysis of Maros Court Decision on The Legal Sure of The Right to Land (Case Study of District Court Decision Number: 17 Pdt.G./2015.PN. MRS)

Based on the background description of the problem above, the authors formulate the following problem formulations: (1) What is the basis for the consideration of the panel of judges in deciding the case Number: 17Pdt.G/2015.PN.MRS? (2) What is the legal effect of the Maros District Court Decision Number: 17 Pdt.G/2015.PN.MRS? The objectives the researcher wants to achieve are: (1) To review the basis for the consideration of the panel of judges in deciding a case Number: 17Pdt.G/2015.PN.MRS. (2) To study the legal consequences of the Maros District Court Decision Number: 17 Pdt.G/2015.PN.MRS.

2. Literature Review

2.1. Legal certainty

Certainty is a matter of certain conditions, provisions or provisions. The law must in essence be sure and fair. Certainly as a code of conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty can the law carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically [1].

Legal certainty is a value that in principle provides legal protection for every citizen from arbitrary actions by the state or other parties other than the state, so that the law gives responsibility to the state and every person or party to carry it out. To understand the value of legal certainty, it must be linked to positive legal instruments and the role of the state to actualize positive law, so that the state has the responsibility to carry out and enforce it. Therefore, legal certainty cannot be separated from the rule of law [2].

Legal certainty that the law that can satisfy all parties is responsive law and responsive law is only born if there is legislation democratization. Without democracy (public participation) in the legislative process the result will never give birth to an independent law. The law is only as a legitimacy for the will of the government, in such conditions, government actions are considered contrary to the law. The interests of the community are neglected because the law is independent because its meanings refer to itself (justice, certainty, benefit) [3].

Legal certainty will guarantee a person to behave in accordance with applicable legal provisions, on the other hand, without legal certainty, someone does not have standard provisions in carrying out behavior. Thus, it is not wrong for Gustav Radbruch to put forward certainty as one of the goals of law. In the order of community life is closely related to certainty in law. Legal certainty is in accordance with the normative nature of both the provisions and judges' decisions. Legal certainty refers to the implementation of an order of life which in its implementation is clear, orderly, consistent, and consequent and cannot be influenced by subjective conditions in people's lives [4].

2.2. Principles of Legal Certainty

The elements of legal certainty as expressed by Scheltemayaitu: The principle of legality; The existence of laws that regulate the actions of the authorities in such a way that citizens can know what is expected, Laws should not be retroactive, Control that is free from the influence of other powers [5].

2.3. Overview of Property Rights

Argues that in the BAL, the definition of property rights is formulated in Article 20 of the BAL, namely: Property rights are hereditary, strongest and fullest rights that can be owned by people over land, by binding to the provisions of Article 6. Property rights can be transferred and transferred to another party [6].

There are 4 ways to obtain property rights, namely by way of transition:

1. To transfer (for the sake of the law), because the owner of the Property Rights has passed away, the right automatically becomes the right of the heir (the transfer of this right is not due to an act but because of the law);
2. Transferred, a transfer of rights that is carried out on purpose so that these rights are released from the original holder and become the rights of other parties (transfer of these rights through legal actions such as buying and selling, exchanges, grants, and wills) [7].

There are 3 ways in which ownership rights to land occur, namely:

- a. Land rights occur according to Customary Law.

Land rights that occur according to customary law are freehold rights. The occurrence of ownership rights through land clearing and land plots (Aanslibbing). What is meant by land clearing is forest clearing carried out jointly by customary law communities led by a customary head/chairman. Furthermore, the head/customary leader distributes the cleared forest for agriculture or non-agriculture to the customary law community. What is meant by the tongue of land (Aanslibbing) is the growth of land on the banks of rivers, lakes, or the sea. The land that grows in this way belongs to the person who owns the land that is adjacent, because the growth of the land has more or less occurred because of his efforts. Naturally, ownership rights in this way also went through a time-consuming growth process.

b. Land rights occur because of government determination.

Land rights that occur here are originally derived from land directly controlled by the state. This land title occurs through an application for granting rights to state land. According to Article 1 paragraph (8) Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency No. 9 of 1999, what is meant by granting rights to land is a government determination that gives a right to state land, extension of the term of the right, renewal of rights, change of rights, including granting of rights over Management Rights. The occurrence of land rights due to government determination is preceded by an application for granting land rights to state land to the Head of the National Land Agency of the Republic of Indonesia through the Head of the local Regency/City National Land Agency Office. If all the requirements stipulated in the application for granting land rights are fulfilled by the applicant, then the Head of the National Land Agency of the Republic of Indonesia, or officials of the National Land Agency of the Republic of Indonesia who are delegated the authority to issue a Decree on the Grant of Rights (DGR). DGR is submitted to the applicant and then registered by the applicant to the Head of the local Regency/City Land Office to be recorded in the Land Book and issued a certificate. SKPH registration marks the birth of land rights.

c. Land rights occur because of the provisions of the law. These land rights occur because the law creates them. This land title occurs because the provisions of the law are regulated in the provisions on the Conversion of the BAL. The occurrence of this land right is based on the provisions of conversion (change in title status) according to the BAL. Since the enactment of the BAL on September 24, 1960, all existing land rights have been converted into land rights regulated in the BAL [8].

2.4. Revocation of Land Rights

Revocation of land rights is a means provided by the Government to take rights to citizens' land for the public interest, in which there are common interests of the people, the interests of the nation and the state, and the interests of development. In Article 1 of Law Number 20 of 1961 it is stated that: for the public interest, including the interests of the nation and the state as well as the common interests of the people, as well as the interests of development, the President is in a compelling state after hearing the Minister of Agrarian Affairs,

Minister of Justice and the minister concerned and revoke rights over land and objects on it [9].

2.5. Judge's verdict

The verdict as a court product is actually born from a process that is full of care and care. Judges in deciding a case are always required to make full use of their potential to constrict (find legal facts), qualify (find and classify laws and regulations relating to the subject matter), and constituent (determine the law of the case). The judge's decision must contain sufficient and relevant legal considerations as the basis for the conclusion and judgment of the judge (ground of judgment) so that it does not qualify as an *onvoldoendegemotiveerd* (lack of legal considerations) which causes the decision to be overturned by a higher court [10].

2.6. Conceptual Diagram

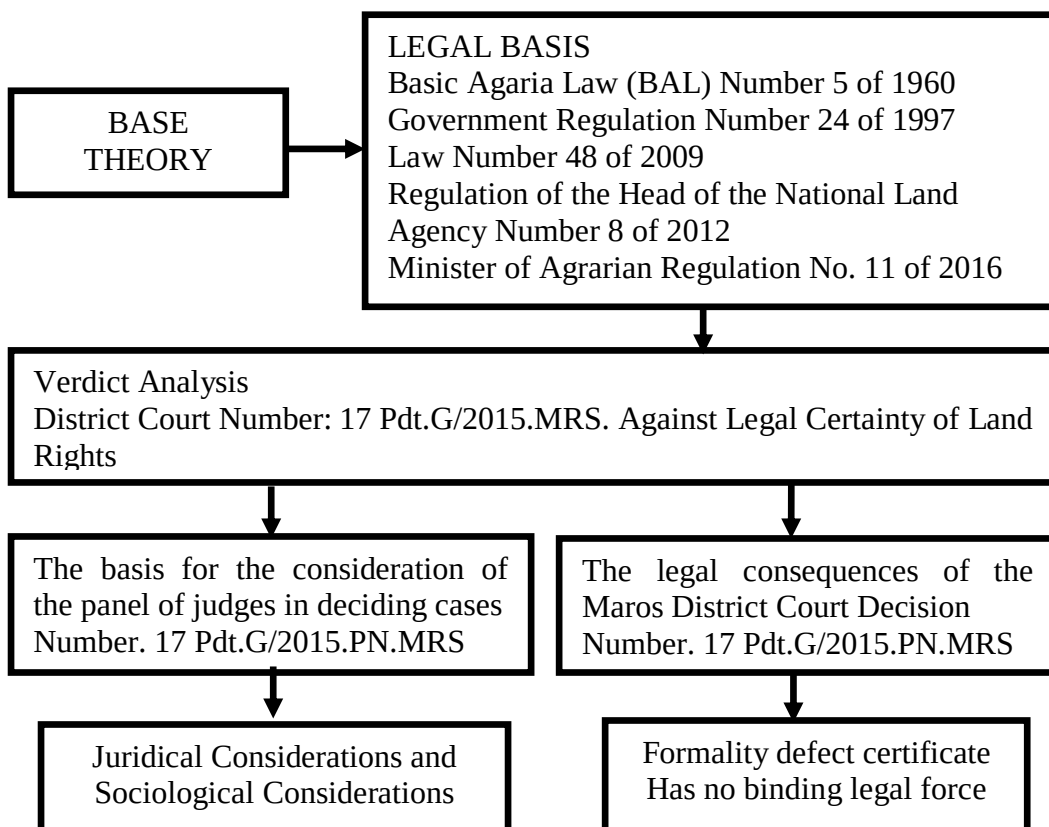


Figure 1. Conceptual Diagram

2.7. Hypothesis

Based on the above problems that have been put forward by researchers in the formulation of the problem, the hypothesis is as follows:

1. The judge has several reasons for deciding the case Number: 17 Pdt.G/2015.PN.MRS.

2. There are legal consequences from the Decision of the Maros District Court Number. 17 Pdt.G/2015.PN.MRS

3. Methods

3.1. Type of Research

Based on the formulation of the problem and research objectives, this research is a normative legal research. In this study, the author uses this type of qualitative research. Qualitative research is a process of solving problems that are investigated by describing the object of research clearly and in more detail (Confidence), as well as to draw generalizations that explain the variables that cause a symptom or social reality [11]. Normative legal research aims to produce arguments, theories or concepts as prescriptions for solving problems [12].

3.2. Legal Materials

The types of legal materials used by the author in this study consist of:

1. Primary Legal Materials

Primary legal materials are authoritative legal materials, meaning that legal materials have the most important authority [13]. Primary legal materials is legal material that comes from various laws and judges' decisions. In this study, the researchers made the Basic Agrarian Law No.5 of 1960, Law Number 48 of 2009, Regulation of the Head of the National Land Agency Number 8 of 2012 and Regulation of the Minister of Agrarian Affairs Number 11 of 2016 as primary legal materials in this study [14].

2. Secondary Legal Materials

Secondary data collected from library materials and documents that support this research [15]. Secondary legal materials are legal materials that strengthen primary legal materials, secondary legal materials include official documents, in the form of text books, research results in the form of reports, opinions of experts who support the theme of the discussion or the results of scientific work with the research carried out [16].

3. Tertiary Legal Materials

Tertiary legal materials, namely materials that provide information about primary and secondary legal materials. In this case, some tertiary law sources include dictionaries, biographical encyclopedias related to research [17].

3.3. Legal Material Collection Techniques

The technique of collecting legal materials that will be used in this study, the researcher conducts a search to find legal materials that are relevant to the issue at hand. Because in this study the researcher uses a statute approach, a case approach and the researcher searches for relevant laws and judgments and then makes a comparison of decisions related to the research issue.

3.4. Analysis of Legal Materials

Analysis of legal materials is the most important stage in a study. In order for the collected legal materials to be accounted for and can produce the right answer to a problem, it is necessary to have an appropriate technical analysis of

legal materials. It is through this process of analysis of legal materials that the process of rationalization and understanding of the theory is obtained, so that then the author is able to analyze the existing theories and provisions with the facts that occur and process the research results into a report.

4. Results and Discussion

4.1. Basic Consideration of the Panel of Judges in Deciding Case Number. 17 Pdt.G / 2015.PN.MRS

In the Maros District Court Decision Number. 17 Pdt.G/2015.PN.MR The Panel of Judges decided that Freehold Certificate Number. 00007/Desa Abbulosibatang in 2006 on behalf of Rukaya was invalid and had no legally binding power considering the following matters, namely based on the plaintiff's claim which was denied by the defendants, the plaintiff submitted several evidences to corroborate his claim, based on 283 Rbg, then the plaintiff is obliged to prove in advance to strengthen the argument for his claim.

The Defendant denies these arguments by submitting documentary evidences in the form of photocopies, to get certainty whether the defendant and co-defendant who controls the land object of the dispute is an act against the law, evidence must be made of the ownership rights over the suspect land, so that on that basis the panel of judges conducted a local inspection on 29 October 2015 attended by the head of Pampangan Hamlet Abd Rasyid and confirmed that the northern part was the house of Dg. Dolo and the position of the disputed land is correct as evidenced by P 1 lies in Parcel 46 B D.1 Kohir 617 C.1.

The Panel of Judges considered the testimony of the witnesses at the trial, the panel of judges found the fact that the parents of defendant 3, named Katu and Tjoe bin Balo, had 4 children, namely: Mari bin Tjoe (the plaintiff's wife), Musa bin Tjoe, Sabato bin Tjoe and Dg. Bollo binti Tjoe (Defendant 3). At the trial the plaintiff presented the defendant 3's siblings as witnesses, namely Musa bin Tjoe and Sabato bin Tjoe, from both the panel of judges received information that the witnesses did not belong to the parents of the witnesses who were defendant 3 and the grandmother of the defendant 1. The panel of judges based their decision in accordance with the provisions of Article 311 Rbg , then the Plaintiff's P-2 evidence is considered perfect evidence.

The Panel of Judges considered, in proving the trial, the defendant was also in the form of an application for land conversion, signed by Defendant I as the applicant for conversion rights, in the letter as a basic complement to the application for land rights, Defendant I attached a photocopy of Identity Card and Calculated Tax Return, as a the basis of ownership of land rights. In addition to the evidence of the rights application from Defendant I, the defendant also attached proof of TT-3 in the form of a statement of physical control over land parcels (sporadic), which was signed by Abulosibatang Village Muh. Idris.

In the evidence of the letter, Defendant I did not fill in the column of origin of land acquisition from where and since when the disputed land was controlled by the petitioner Rukaya, so that the Panel of Judges considered the evidence of the TT-3 letter only showing that Defendant I controlled only the disputed land area. However, the TT-4 evidence is in the form of a land history certificate

Number 02/ABS/MRS/VI/2006 where in the evidence the disputed land originates from Tjoe bin Balo with parcel number 13 CI kohir 21. The panel of judges found that in the TT-4 letter There was also a streak in the origin of the parcel from 13 C1 to 46 b DI and the defendant was unable to explain this matter in court.

The Panel of Judges considered all documents of the rights application submitted by Defendant I, namely evidence of TT-2, 3 and 4 which were used in the context of the application for land rights, then Co-Defendants then issued evidence of TT-5, namely the minutes of juridical data research and determination of land boundaries. dispute (DI document 201). After examining the data in the TT-5 evidence, in column II regarding data on ownership and control of land rights, in that column it turns out that no evidence of ownership of the land parcels is found, but Co-Defendants only fill in the taxation column where the right applicant is Defendant I only attach the Regional Development Fee. So that on this basis the Defendant also issued a Certificate of Ownership Rights Number. 00007/Abulo Sibatang Village on behalf of Rukaya as Defendant I, on evidence of Regional Development Levy which was based on the issuance of a Certificate on disputed land, it is clearly stated in the Supreme Court Decision Number 34/Sip/1960 dated February 3, 1960 that "The land tax petuk letter is not an absolute proof that the disputed rice field belongs to the person whose name is listed in the land tax petuk"

Based on the considerations described above, the researcher considers that the actions of the Head of the Maros Regency National Land Agency Office in issuing Freehold Certificate Number 00007/Desa Abbulosibatang on behalf of Rukaya have acted inappropriately and have contradicted the general principles of good governance, especially the principles of accuracy and certainty. law, in Article 2 of Government Regulation Number 24 of 1997 concerning Land Registration, violations of the Principle of Accuracy and Legal Certainty in the principles of land registration are included in the category of Safe Principles.

The non-implementation of the Safe Principle by the Office of the National Land Agency of Maros Regency, namely, it is known that the issuance of Freehold Certificate Number 00007/Abbulosibatang Village was not carried out thoroughly and carefully. The land for which freehold rights is requested is land where the origin of the acquisition is not clear. At that time, the Office of the National Land Agency of Maros Regency should automatically reject the application for land rights submitted by Rukaya (Defendant I) and not issue a Certificate of Ownership. 00007/Abbulos Engagement Village.

According to the researcher, the Judge's consideration was incorrect. Rukaya cannot be subject to Article 32 paragraph (2) of Government Regulation Number 24 of 1997, because in this case the Rukaya does not cumulatively fulfill the elements in the article. In accordance with Article 32 paragraph (2) Government Regulation Number 24 of 1997 which states that certificates must be issued legally, but in reality the issuance of Freehold Certificate Number 00007 / Desa Abbulosibatang was issued illegally. The Office of the National Land Agency of Maros Regency continued to issue the certificate even though it was clear that the origin of the land was not clear when Defendant I submitted a request for land conversion based on facts obtained by the Panel of Judges.

The researcher also found the mistakes of the Panel of Judges in arguing their decision based on Article 73 to Article 76 of Government Regulation Number 24 of 1997, because the articles argued by the Panel of Judges are not in Government Regulation Number 24 of 1997, the Government Regulation is There are only 66 articles, the researcher considers that the judges are not careful in arguing their decisions. So that the verdict issued by the Maros District Court judges has legal flaws.

4.2. Legal Consequences of the Decision of the Maros District Court Number. 17 Pdt.G / 2015.PN.MRS

The rules regarding the settlement of land cases are regulated in the Regulation of the Minister of Agrarian Affairs Number 11 of 2016. The authority in handling cases for the implementation of certificate cancellation can be through the general court (civil cases) or the state administrative court, for the implementation of court decisions is a follow-up to the decisions of judicial institutions that already have legally enforceable. Court decisions that have permanent legal force, relating to the issuance, transfer, cancellation of land rights include:

- a. Order to cancel land rights
- b. Declare that it is canceled / invalid/does not have legal power over land rights
- c. Declare proof of rights that are not valid/legally binding
- d. An order to do recording or write-off in the land book
- e. Order to issue land rights
- f. Order to cancel assignment neglected
- g. Amar, which has the meaning of causing legal consequences of the issuance of the transfer of rights or the cancellation of the transfer of rights.

In the Decree No. 17 Pdt.G/2015.PN.MR State as follows:

1. Partially granted the plaintiff's claim
2. To declare that the land object of $\pm 316 \text{ m}^2$ recorded in the parcel detail book No. 46 b DI kohir 617 C1 is the property of the plaintiff.
3. Declare that the actions of the Defendant and Co-Defendants are illegal acts.
4. Declare that the certificate of ownership rights Number 00007/Desa Abbulosibatang 2006 is invalid and has no legally binding power.
5. Declare that according to the law all letters or circumstances published on the object of the dispute are invalid and do not have binding force.
6. To punish the Defendants or anyone who has the right thereof to submit the object of the dispute to the Plaintiff in a blank condition without any conditions.

The order from the Minister of Agrarian Regulation Number 11 of 2016 Concerning Settlement of Land Cases regarding the injunction of the ruling is to cancel the certificate of land rights, stating that they do not have legal power over the certificate of land rights.

The amar does not state there is an order to issue land rights, therefore a land registration process is required for the first time at the local National Land Agency Office by submitting an application letter and the necessary attachments.

In Article 50 paragraph 4 and paragraph 5 Regulation of the Minister of Agrarian Affairs Number 11 of 2016 concerning Settlement of Land Cases, the implementation is carried out by submitting an application letter accompanied by a photocopy of the identity of the applicant or his attorney if authorized, an official copy of a court decision that has permanent legal force that has been legalized, a letter from an authorized official from the court that the decision has permanent law, minutes of execution, and other documents relating to the application for the cancellation of the land title certificate.

5. Conclusion

Based on the results of the analysis and discussion of the problem formulations that have been carried out previously, the following conclusions can be drawn: (1) The legal basis of the Maros District Court Judges Number: 17 Pdt.G/2015.MRS stated that the actions of the Head of the Maros Regency National Land Agency Office in issuing a Freehold Certificate Number 00007 / Abbulosibatang Village on behalf of Rukaya had acted inappropriately and were contrary to the principle -General principles of good governance, especially the principles of accuracy and legal certainty, in Article 2 of Government Regulation Number 24 of 1997 concerning Land Registration, so that the issuance of certificates where the origin or history of the acquisition of rights to land is not clear and has an impact on the certificate according to the consideration of the Assembly. the judge has no legally binding power; (2) The legal consequence of the decision of the Panel of Judges Number: 17 Pdt.G/2015.MRS according to the order of the Minister of Agrarian Regulation Number 11 of 2016 concerning Settlement of Land Cases on the verdict is canceling the certificate of land rights, stating that he has no legal power over the certificate. rights to the land. So a re-registration process is required at the local National Land Agency Office by submitting an application letter and the necessary attachments. There are several suggestions from researchers as follows: (1) It is necessary to supervise the authorities in land land registration activities, in this case the local National Land Agency officials so that irregularities occur in the land registration activities; (2) So that the National Land Agency as the executor of land administration should be thorough and careful in examining the data during the process of issuing land title certificates so as to guarantee legal certainty to the community.

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