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Comparative Law Between Indonesia and Philippines Regarding the Procedure for Issuing Replacement Land Certificates

*Dyah Adriantini Sintha Dewi[1]**
Tsuroyyaa Maitsaa' Jaudah[1]
Sigit Priyono[1]
Princess Alyssa D.Tee Anastacio[2]

[1]Universitas Muhammadiyah Magelang, Indonesia
[2]Our Lady Fatima University, Philippines

**✉dyahasd@ummgl.ac.id*

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Abstract:
Land certificates play a vital role in ensuring legal certainty of land ownership. However, in practice, these certificates are often damaged or lost, which can lead to new disputes, as reflected in Administrative Court (Pengadilan Tata Usaha Negara 0 PTUN) Decision No. 60/G/2023/PTUN.SMG. This study aims to compare the procedures for issuing replacement land certificates in Indonesia and the Philippines and assess their implications for legal certainty. The research employs a normative juridical method with a comparative legal approach and qualitative analysis of regulations, court decisions, and legal literature. The findings reveal two main points: First, the Administrative Court declared that the issuance of replacement certificates by the Land Office in Pekalongan Regency violated legal provisions, namely the Government Regulation No. 24 of 1997 and the BPN Regulation No. 3 of 1997, as well as general principles of good governance, including the principles of legal certainty, impartiality, and accuracy. Second, the procedure in Indonesia is administrative, carried out through the Land Office with internal verification and without involving the court. In contrast, the Philippines adopted a judicial system, requiring applicants to file a petition with the Regional Trial Court accompanied by a publication in a national newspaper for three consecutive weeks. In conclusion, Indonesia's system is faster and more efficient but lacks strong legal safeguards. Meanwhile, the Philippines implements a slower, court-based process ensuring document validity and provides stronger legal protection. The study recommends that Indonesia enhance internal oversight within the National Land Agency and improve transparency and accountability in the issuance of replacement land certificates

Keywords:
land registration; legal certainty; replacement certificate.

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✉ jurnal.dinamikahukum@unsoed.ac.id https://jos.unsoed.ac.id/index.php/jdh/index

Introduction

Land certificates are a fundamental aspect of ensuring legal certainty in land ownership. In the national land system, certificates function as legal instruments that guarantee the clarity of the legal status of land subjects and objects. Without a valid Certificate, land rights become vulnerable to double claims, misuse, and legal conflicts. The existence and management of land certificates in an orderly and accountable manner are an important part of ensuring legal and social stability in the field of land tenure. Land certificates, as valid proof of ownership, not only serve as administrative documents but also as tools for protecting landowners' rights. Registered and state-recognized land certificates can prevent land disputes in the community.

This is in line with the finding that adaptive risk mapping and land use can strengthen the state's role in issuing land use through the issuance of certificates.[1]

Land disputes are one of the most commonly found conflicts in Indonesia, whether between individuals, individuals and companies, or communities and the government. Based on the report from the Ombudsman of the Republic of Indonesia, there was a surge in public complaints in 2024, totaling 10,864 complaints, with agrarian issues topping the list at 1,865 reports or approximately 17.17% of all complaints. The reports are related to the slow land service, overlapping ownership, and land control conflicts.[2] Meanwhile, the Ministry of Agrarian *(Badan Pertanahan Nasional – BPN)* reported handling 5,973 defense cases consisting of 1,664 dispute cases, 60 conflict cases, and 4,249 legal cases.[3] Based on that data, land disputes and conflicts must receive primary strategic thinking from the government. The *BPN* must have a strategic plan related to dispute resolution and improving the public service system.[4]

Land conflicts in Indonesia are generally triggered by overlapping regulations, complex bureaucracy, and non-uniform administrative procedures, specifically often caused by the rejection of court decisions, changes in control or ownership status, and inconsistency in decisions regarding the same disputed object.[5] Land certificates, which should serve as valid proof recognized by the state through the *BPN*, often become sources of conflict due to issuance errors, leading to annulments by the court. These conflicts not only impact legal aspects but also spatial planning and land management, especially in the context of rapidly developing housing projects. A housing development is regulated by laws that ensure legal certainty regarding land ownership, the issuance of certificates, and the provision of access roads by developers, as stipulated in the Housing and Settlement Areas Law (2011). In practice, the government, through the *BPN* and permits such as the Building Permits *(Izin Mendirikan Bangunan - IMB)*, is required to ensure the legality of land which is generally under the Right to Build *(Hak Guna Bangunan - HGB)* status, as the legal basis for the implementation of housing projects.[6]

The recent decision by the State Administrative Court has revealed procedural deviations in issuing replacement land certificates, highlighting the need for oversight and legal reform. In this case, the plaintiff, a housing developer, purchased part of the land from three different owners to serve as access roads to his housing area. The transaction was conducted legally, accompanied by proof of payment and a sales declaration before the name transfer was submitted to the Land Office. However, without his knowledge, in 2020, three replacement certificates were issued for the same plot, designating it as a village road, not as a housing access road. Ironically, the issuance was based on a relinquishment deed by an

[1] Caroline Compton, "Adaptive Landscapes : Planning, Property, and Informality Under Climate Change," *Elsevier* 152 (2024): 1–10, https://doi.org/https://doi.org/10.1016/j.cities.2024.105235.
[2] Dodi Wahyugi, "Jumlah Laporan Masyarakat Ke Ombudsman RI Meningkat," 2025.
[3] Maulana Ilhami Fawdi, "Nusron Wahid : Ada 5.973 Konflik Agraria Selama 2024, Mayoritas Skala Rendah," *DetikNews*, 2024.
[4] Vani Wirawan, "Rekonstruksi Politik Hukum Penyelesaian Sengketa Tanah Dan Konflik Tanah Di Indonesia," *Jurnal Hukum Progresif* 9, no. 1 (2021): 2.
[5] Maharani Nurdin, "Akar Konflik Pertanahan Di Indonesia," *Jurnal Hukum Positum* 3, no. 2 (2018): 138.
[6] Dimas Purnayoga Rakayoni, Subekti, and Ernu Widodo, "Wewenang Pemerintah Dalam Perlindungan Hukum Bagi Orang Atau Badan Yang Menyelenggarakan Pembangunan Perumahan Dalam Undang-Undang Nomor 1 Tahun 2011 Tentang Perumahan Dan Kawasan Permukiman," *Konsensus : Jurnal Ilmu Pertanahan, Hukum Dan Ilmu Komunikasi* 2, no. 1 (2025): 233.

individual who claimed never to have conducted the transaction. In addition, the plaintiff was not involved in the re-measurement of the land, which had changed in size from the initial sdata. This process causes real losses because the plaintiff loses the right to utilize the land purchased, and it also creates legal uncertainty regarding the status of the land.[7] This issue highlights the weaknesses in administrative verification, negligence in tracing land history, and the potential for abuse of authority in issuing replacement certificates. This case involves ownership disputes and highlights the urgency of improving the national land system to ensure the validity of every administrative legal action that directly impacts citizens' rights.

The procedure for issuing replacement certificates due to loss or damage is an important issue that often becomes a source of disputes, even reaching the realm of the Administrative Court. Various previous studies have highlighted the complexity of this issue, from the aspects of formal legality to procedural and administrative weaknesses. Satriadiana (2017) emphasizes that a replacement certificate can be annulled if its issuance is not based on valid legal procedures.[8] Meanwhile, Huda (2022) emphasizes that the legal strength of a replacement certificate is essentially equivalent to that of the original certificate as long as the process follows the provisions of the legislation.[9] However, the weak documentation and minimal oversight remain vulnerable points in the legal protection of land. Meanwhile, Syarifuddin and Yanti (2024) highlight procedural obstacles due to incomplete documents and the lack of outreach from the land office to the community.[10] Based on these gaps, this article presents novelty by conducting a comparative study between Indonesia and the Philippines regarding the procedures for issuing replacement land certificates. With a comparative legal approach, this article aims to identify best practices that can strengthen the legality and effectiveness of procedures in Indonesia while offering alternative policy reforms for a more accountable and responsive land administration.

Based on the description above, it can be understood that the procedure for issuing replacement certificates in Indonesia is administrative and is carried out by the Land Office, generally due to damage or loss of the original certificate documents. Although it is administrative in nature, this process has several weaknesses, particularly in the aspects of verifying legal and physical data, as well as the weak oversight of the validity of supporting documents. This opens up opportunities for disputes and abuse of authority, as illustrated in land cases that end up in court litigation. Therefore, a comparative study is needed to evaluate and improve the issuance system of replacement certificates in Indonesia, with the aim of exploring alternative models, identifying legal gaps or strengths, and formulating policy recommendations based on the practices of other countries. The Philippines was chosen as a comparative object because it shares historical and structural similarities in agrarian

[7] Republik Indonesia Mahkamah Agung, "Putusan Pengadilan Tata Usaha Negara Semarang Nomor 60/G/2023/PTUN.SMG" (2023).
[8] I Dewa Putu Satriadiana, "Analisis Hukum Putusan Pengadilan Tata Usaha Negara Mataram Nomor 52/G/2010/PTUN.MTR Terhadap Pembatalan Sertifikat Pengganti Hak Milik Atas Tanah," *Jurnal IUS* 5, no. 2 (2017): 190–200, https://doi.org/https://doi.org/10.29303/ius.v5i2.447.
[9] Dodi Naufal Rizki, Muhammad Sofyan Pulungan, and Enny Koeswarni, "Penerbitan Sertipikat Pengganti Dan Perlindungan Hukum Terhadap Pemegang Sertipikat Pengganti Karena Hilang Guna Menciptakan Kepastian Hukum (Studi Pada Kantor Pertanahan Kabupaten Batu Bara Sumatera Utara)," *Indonesian Notary* 5, no. 2 (2024): 84–103, https://doi.org/https://doi.org/10.21143/notary.vol5.no2.84.
[10] Muhammad Syarifuddin and Febbi Rahma Yanti, "Pelaksanaan Penerbitan Sertifikat Pengganti Hak Milik Atas Tanah Karena Hilang," *Jurnal Ilmu Hukum Kanturuna Wolio* 5, no. 1 (2024): 1–10, https://doi.org/https://doi.org/10.55340/kanturunawolio.v5i1.1442.

management with Indonesia. Both countries inherited a complex land tenure legal system from colonial rule and faced similar challenges, such as weak land redistribution, overlapping claims, and corruption within the land bureaucracy. The Philippines has progressively implemented agrarian reform through programs such as the Comprehensive Agrarian Reform Program (CARP) that integrate legal, social, and administrative dimensions.[11]

This research aims to compare the legal and administrative procedures in the issuance of replacement land certificates in Indonesia and the Philippines. The primary focus is on how each country regulates the accuracy of land measurement processes as an important part of reissuing certificates. Additionally, this research also analyzes the extent to which the implemented system is capable of preventing legal defects that could harm land rights holders or other stakeholders. This research makes a significant contribution to the development of land law and administrative law in Indonesia through a comparative approach that compares national practices with the system in the Philippines. By highlighting procedural weaknesses in the issuance of replacement land certificates, this research offers a model of legal reform that can be applied to enhance accuracy and accountability in land administration. Furthermore, this research emphasizes the importance of implementing transparent procedures and providing legal protection guarantees for the community to prevent maladministration and agrarian disputes. More broadly, this manuscript contributes to academics, legal practitioners, and policymakers at the global level who are interested in land governance by presenting a comparative study of two legal systems in the Southeast Asian region that can serve as a reference in the development of a more just and sustainable land system internationally.

Method

The purpose of this research is to compare the legal and administrative procedures in the issuance of replacement land certificates in Indonesia and the Philippines. The main focus is directed toward each country's procedures in regulating the accuracy of land measurement processes as a crucial part of the reissuance of land certificates. This research employs a normative juridical method with a comparative legal approach. This approach aims to analyze the legal provisions governing the procedure for issuing replacement certificates in Indonesia and the Philippines, as well as to identify the similarities, differences, and legal implications for legal certainty and protection. The type of data used in this research is secondary data obtained through a literature study. The data includes legislation in Indonesia, such as the Agrarian Law (1960), the Government Regulation No. 24 of 1997 on Land Registration, and the Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration. The applicable laws in the Philippines include Presidential Decree Number 1529 and Republic Act Number 26. In addition, the research uses policy documents, court rulings, and relevant legal literature from both Indonesia and the Philippines. The data analysis technique is conducted qualitatively by examining the legal substance of each system, reviewing the implementation of rules in practice, and evaluating the effectiveness and accountability of the existing procedures. The results of this analysis are expected to

[11] Respicio & Co., "Lost Land Title Replacement Process in the Philippines," Respicio & Co., 2025.

contribute to the improvement of land policy in Indonesia, particularly in the aspect of issuing replacement certificates that are more orderly, transparent, and just.

Discussion

1. The Issues of Issuing Replacement Land Certificates in Indonesia

Land registration is fundamental to ensure legal certainty regarding land ownership. In Article 19 paragraph 2 letter C of the Agrarian Law (1960) and Article 32 paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration, it is explicitly stated that a land certificate is a strong piece of evidence regarding physical and juridical data in accordance with the data listed in the measurement letter and the relevant land book.[12] Thus, it can be interpreted that a land certificate is the final result of the land registration process, which contains physical information such as location, boundaries, area of the land parcel, and any buildings on it. In addition, the land certificate also contains juridical data, namely information regarding the status of the land, the holder of the land rights, and any encumbrances on it. Thus, the existence of a certificate means the legal certainty regarding the type of land rights, the subject of the rights, and the object becomes real. In reality, it is not uncommon for land certificates, which serve as strong evidence, to become damaged or even lost, creating new problems when a transfer of rights occurs. A land certificate is considered damaged if there are torn or detached pages but still has remaining parts of the certificate that are sufficient to ascertain its existence. Damage to the certificate causes some of the information to become unclear, thereby affecting its evidentiary strength. The holder of the damaged certificate has no choice but to apply for the issuance of a replacement certificate to the issuing authority, which is the land office.[13]

A replacement certificate is issued by the *BPN* because the previous certificate was damaged or lost, so the land certificate holder submits an application based on formal and material data that corresponds to the data available at the *BPN*.[14] Land certificates serve as valid proof of ownership for a piece of land, so if the certificate is lost or damaged, it can create legal uncertainty for the owner. Therefore, the *BPN* provides a mechanism for issuing replacement certificates to ensure legal certainty and protect the rights of landowners. The issuance of certificates, is regulated by Government Regulation No. 24 of 1997 on Land Registration, specifically Article 57 paragraph (1), which states that at the request of the certificate holder, a replacement certificate can be issued due to damage, loss, continued use of the old certificate form, or failure to be submitted to the auction buyer in an execution auction.[15] The application for the issuance of a replacement certificate as referred to in Article 57 paragraph (1) can only be submitted by the party whose name is listed in the relevant land

[12] Andi Abdi Islam, Syahruddin Nawi, and Andi Risma, "Penerapan Pasal 32 Ayat (2) PP Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah Mengenai Asas Rechtsverwerking," *Lex Philosophy* 5, no. 2 (2024): 1572–87.
[13] I Putu Wahyu Saputra and I Gede Surata, "Penerbitan Sertipikat Pengganti Hak-Hak Atas Tanah Karena Rusak Di Kantor Pertanahan Kabupaten Buleleng," *Kertha Widya Jurnal Fakultas Hukum Unipas* 7, no. 2 (2019): 56–69.
[14] Vita Alfiana, Wydha Mustika Maharani, and Novita Setyoningrum, "Kualitas Pelayanan Penerbitan Sertifikat Pengganti Pada Badan Pertanahan Nasional Kota Blitar," *Student Scientific Creativity Journal* 2, no. 4 (2024): 258–70.
[15] Setyo Hartono, "Pelaksanaan Penerbitan Sertipikat Pengganti Terhadap Sertipikat Hak Atas Tanah Karena Hilang Di Kantor Pertanahan Kabupaten Sragen," *Dinamika Hukum* 13, no. 1 (2022): 168–85.

book or another party who is the recipient of rights based on the PPAT deed, auction minutes, or their power of attorney. Then, if the right holder has passed away, the application for a replacement certificate can be submitted by the heir by attaching proof of inheritance.[16] In addition, the replacement of substitute certificates is regulated by the *BPN* Regulation No. 3 of 1997 on Implementation Provisions for the Handling and Settlement of Land Cases.

A replacement certificate has the same legal force as the original certificate. If a replacement certificate is issued because the original certificate is damaged, the old certificate is returned to the *BPN* for destruction to prevent undesirable incidents. Whereas if a replacement certificate is issued because the original certificate is lost and then the original certificate is found, the original certificate is considered invalid. This is to avoid the existence of duplicate certificates for the same piece of land, which could lead to disputes in the future. There are several principles in issuing replacement certificates by the *BPN* as part of land registration implementation. In Article 2 of Government Regulation No. 24 of 1997, it is stipulated that land registration is carried out based on the principles of simplicity, security, affordability, informed, and transparency.

The principle of Simplicity in land registration is intended so that the basic provisions and procedures of land registration can be easily understood by the interested parties, especially the land rights holders. The principle of Security means that land registration must be carried out meticulously and carefully so that the results can provide a guarantee of legal certainty. The Principle of Affordability is intended so that it can be accessed by those in need, especially by considering the needs and capabilities of the economically weak, so that the implementation of land registration can be accessed by those who require it. The Principle of Informed is intended to ensure adequate completeness in its implementation and continuity in data maintenance. Lastly, the Transparency principle is intended so that the public can obtain accurate information regarding land data at any time.[17] Meanwhile, according to Soedikno Mertokusumo, in land registration, there are 2 (two) types of principles known, namely the principle of specialization, which means that the implementation of land registration is carried out based on specific legislation that technically involves issues of measurement, mapping, and registration of transfers. Second, the principle of operability or publicity principle, meaning that everyone has the right to know the legal data about the subject of rights, the name of land rights, the transfer of rights, and the encumbrance of land rights available at the land office, including the right to file an objection before the issuance of a certificate, replacement certificate, lost certificate, or damaged certificate.[18]

The principles in land registration, such as the principles of simplicity, security, affordability, informed, and transparency, are fundamental principles designed to ensure ease, security, and clarity of information for land rights holders. Similarly, the principle of specialization and operability (publicity) stated by Soedikno Mertokusumo emphasizes that land registration must be carried out technically in accordance with specific regulations and

[16] Faiqa Fatmala, "Penerbitan Sertifikat Hak Milik Pengganti Karena Hilang Oleh Ahli Waris Yang Disebabkan Oleh Bencana Alam," *Tadulako Master Law Journal* 4, no. 2 (2020).
[17] Rakhmat Wiwin Hisbullah, Farida Petittinggi, and Zulkifli Aspan, "Asas Publisitas Pada Pelaksanaan Program Nasional Agraria Dalam Rangka Mewujudkan Efektivitas Pelayanan Publik," *Madani Legal Review* 2, no. 1 (2018): 40–58.
[18] Denik Puspita, "Problematika Penerapan Asas Terjangkau Dalam Pendaftaran Tanah," *Pena Justisia* 18, no. 2 (2019).

be open to the public. However, in practice, applying these principles has not yet been fully reflected in the process of issuing replacement certificates in Indonesia. Many cases still show a lack of clarity in information, convoluted procedures, and weak access for the public, especially for economically disadvantaged groups, to land services. The first issue is maladministration in the process of issuing replacement certificates. Issuing replacement certificates is often not preceded by adequate data verification and validation. Many cases show that the Land Office does not thoroughly verify the validity of applications and land ownership history. In a case study in Deli Serdang Regency, it was found that replacement certificates were issued based on unilateral applications without confirming the existence of the original certificates, which had not genuinely been lost. This results in duplicate certificates for the same plot of land and harms the rightful owner.[19]

The issue of overlapping procedures also becomes a serious problem. In practice, some Land Offices mix the procedure for issuing replacement certificates with other administrative activities such as subdivision, consolidation, or rights transfer. This contradicts the provision that each land procedure must be carried out separately with its order letter. [20] Research by Syarifuddin and Yanti shows that in the city of Baubau, replacement certificates are often issued simultaneously with land subdivision without going through two separate applications, leading to legal ambiguities regarding land boundaries.[21] Another issue is the lack of public participation and transparency. The process of issuing replacement certificates in Indonesia does not require public announcements, such as in newspapers or village bulletin boards. The absence of public objection space in the Indonesian system opens a gap for the issuance of certificates by unauthorized parties without the knowledge of the rightful owner or their heirs.

This procedural deficiency has repeatedly served as a catalyst for legal disputes. In the Decision No. 60/G/2023/PTUN.SMG, the panel of judges annulled the replacement certificate issued by the Pekalongan Regency Land Office at the developer's request without any application letter or confirmation from the original owner. The ruling stated that the Pekalongan Regency Land Office did not investigate the land history, including the collection of physical and juridical data. The absence of valid evidence regarding the transfer of rights to the village government or the handover of housing facilities, infrastructure, and utilities from the developer to the Pekalongan Regency Government evidences this. This clearly contradicts Article 52 letters c and d of the *BPN* Regulation No. 3 of 1997 on the Implementation Provisions for Land Registration. In addition, the previous landowner was also not involved in the re-measurement of the land plot before the replacement certificate was issued. This also contradicts Article 17 paragraph (2) of Government Regulation No. 24 of 1997 on Land Registration.

[19] Ricky Firanda, Surya Perdana, and Ruslan, "Kekuatan Hukum Penerbitan Sertipikat Tanah Pengganti (Studi Di Kantor Pertanahan Kabupaten Deli Serdang," *Al-Mursalah : Jurnal Hukum Islam* 6, no. 1 (2020): 41–51.
[20] Syarifuddin and Yanti, "Pelaksanaan Penerbitan Sertifikat Pengganti Hak Milik Atas Tanah Karena Hilang."
[21] Alvira Rachma Triana and Irene Mariane, "Pelaksanaan Penerbitan Sertipikat Pengganti Hak Atas Tanah Karena Hilang Oleh Kantor Pertanahan Jakarta Barat," *Reformasi Hukum Trisakti* 1–10, no. 6 (2019): 1, https://doi.org/https://doi.org/10.25105/refor.v1i1.4382.

The issuance of a replacement certificate in the case of Decision No. 60/G/2023/PTUN. SMG, in addition to violating the aforementioned laws and regulations, also contradicts the principles of good governance, particularly the principle of legal certainty, the principle of impartiality, and the principle of prudence. The principle of legal certainty is a principle in a state governed by law that prioritizes the foundation of legislation in the government administration.[22] The principle of impartiality is adhered to by Government Agencies and/or Offices in making and/or implementing Decisions and/or Actions by considering the interests of all parties as a whole and without discrimination.[23] The principle of prudence means that a Decision and/or Action must be based on complete information and documents to support the validity of the determination and/or implementation of the Decision.[24]

The issuance of replacement certificates due to damage involved procedural errors, as the Pekalongan Regency Land Office incorporated irrelevant considerations. Previously, partial sales of the three plots of land in question had been conducted, and permission had been issued by the Regent of Pekalongan Regency regarding the land use conversion from agricultural to non-agricultural. According to the regulations, before the sale and purchase are conducted in the presence of the Land Deed Official (PPAT), the land certificate must first be divided into two parts: one part remains classified as agricultural land, and the other part, which has changed its function, becomes non-agricultural land. After this division process is completed, the portion that has changed its function can be released and used according to its purpose, such as for public roads as stipulated in the Regent's Decree. In the process of issuing a replacement certificate due to damage, the Land Office also considers documents that should only be used in the process of land division or sale, not in the process of replacing a damaged certificate. As a result of these actions, new disputes arise that harm other parties and hinder the achievement of legal certainty in the administration of government.

Similar to the Philippines, a land certificate is recognized as valid proof of ownership and is safeguarded by the Torrens land registration system. This system guarantees that the registered certificate is conclusive proof of ownership, providing legal certainty for the owner and third parties. However, this certificate can be lost or damaged due to natural disasters, fires, or negligence, necessitating a legal process to replace it. In the Philippines, the process of replacing lost or damaged certificates is governed by two main regulations: Republic Act No. 26, which outlines the special procedures for the reconstitution of lost or damaged land certificates through judicial procedures, and Presidential Decree No. 1529, known as the Property Registration Decree, which complements Republic Act No. 26 and also regulates general land registration procedures. Additionally, there is Republic Act No. 6732, which allows for administrative reconstitution under certain conditions, such as when 10% to 90% of documents in the Registry of Deeds are lost or damaged.[25] The process of replacing lost or damaged land certificates in the Philippines is strictly regulated to maintain the integrity of

[22] Abdur Rahim et al., "Relevansi Asas Kepastian Hukum Dalam Sistem Penyelenggaraan Administrasi Negara Indonesia," *JIIP - Jurnal Ilmiah Ilmu Pendidikan* 6, no. 8 (August 2023): 5806–11, https://doi.org/10.54371/jiip.v6i8.2575.
[23] Mohamad Syaiful Aris et al., "Penerapan Asas-Asas Umum Pemerintahan Yang Baik Dalam Penyelenggaraan Pelayanan Publik Di Lembaga Permasyarakatan," *Jurnal Litigasi* 23, no. 2 (2023): 253–71.
[24] Muhammad Kamil Akbar, "Peran Peradilan Tata Usaha Negara Dalam Mewujudkan Pemerintahan Yang Baik," *Dharmasisya* 1, no. 1 (2021): 352–63.
[25] Respicio & Co., "Judicial Reconstitution of Lost Land Title," Respicio & Co., 2025.

the land registration system and protect property rights. Property owners must follow the applicable legal procedures, either through judicial or administrative reconstitution, depending on the condition of the lost or damaged certificate. Compliance with document requirements and procedures is crucial to ensure success in obtaining a replacement certificate.

The development of technology is also utilized by the governments of Indonesia and the Philippines in developing land administration systems. In Indonesia, the digitization of land administration is part of the efforts to reform bureaucracy and public services. This transformation aims to enhance efficiency, transparency, and accountability in land data management. One of the main initiatives is the Complete Systematic Land Registration *(Pendaftaran Tanah Sistematis Lengkap - PTSL)* launched by the *BPN*. This program aims to register all land parcels in Indonesia systematically and integratively. In its implementation, *PTSL* utilizes information technology to expedite the registration process and minimize land conflicts.[26] In addition, the *BPN* is also designing a mobile application "*sentuh tanahku*" as a digital service that can be directly accessed by the public. This application provides various main features, including certificate information, application file information, land plot maps, service cost estimates, and the location of the nearest land office. Through this application, landowners can not only monitor the legality of their land but also avoid the practices of brokering and data certificate forgery.[27]

Meanwhile, in the Philippines, the digitalization of land administration has been carried out through various initiatives, including the Land Titling Computerization Project *(LTCP)*, launched by the Land Registration Authority *(LRA)* in 2008. The *LTCP* aims to computerize all land registration records and offices across the country and enable the provision of electronic services to the public. The *LTCP* has successfully improved efficiency and transparency in the land administration system in the Philippines. However, this project also faces challenges, such as the need for improved information technology infrastructure and human resource training.[28] In addition to *LTCP*, the Philippines is also developing the Land Administration and Management System *(LAMS)* designed to provide effective land record management and efficient information services to the public. The *LAMS* enables the integration of land data with various government agencies, thereby facilitating the transaction processes and decision-making related to land management.[29]

[26] Vallensia Mizatul Khair and Wahib Assyahri, "Optimalisasi Administrasi Pertanahan Di Indonesia : Tantangan Dan Strategis Menuju Kepastian Hukum," *JPAMS : Journal of Public Administration and Managemen Studies* 2, no. 2 (2024): 55–62.
[27] Kurnia Rheza Randi Adinegoro, "Analisis Transformasi Digital Layanan Publik Pertanahan : Hak Tanggungan Elektronik Pada Kementerian Agraria Dan Tata Ruang," *Jurnal Administrasi Publik* 19, no. 1 (2023): 26–49, https://doi.org/https://doi.org/10.52316/jap.v19i1.135.
[28] Jovito Jose Katigbak, "Upgrading the Land Administration System of the Philippines through ICT : A Review of the Land Titling Computerization Program," *Journal of Democracy & Open Government* 11, no. 1 (2019): 1–13, https://doi.org/https://doi.org/10.29379/jedem.v11i1.540.
[29] "The Land Administration and Management System (LAMS)," Land Management Bureau, n.d.

2. Legal Certainty in the Issuance of Replacement Certificates in Indonesia and the Philippines

The *BPN*, as part of the government in carrying out its duties and authorities related to land certification, must be based on the principle of prudence, as part of the General Principles of Good Governance *(Asas-Asas Umum Pemerintahan yang Baik - AUPB)* as regulated in Article 10 of the Government Administration Law (2014). The *AUPB* includes the principles of legal certainty, utility, impartiality, accuracy, non-abuse of authority, transparency, public interest, and good service.[30] The application of this precautionary principle is aimed at avoiding errors and preventing losses that may be suffered by the recipients of State Administrative Decisions. The *AUPB* has at least three benefits, namely for state organizers as a guideline in interpreting unclear legal provisions, for the community seeking justice as the basis for legal claims, and as a reference for judges in resolving administrative disputes.[31]

The government has issued binding regulations related to land ownership, use, and control as stipulated in the Agrarian Law (1960). Article 19 paragraph (1) of the Law states that the government is responsible for land registration to create legal clarity. The government also issued more specific regulations governing land registration with Government Regulation No. 10 of 1961 on Land Registration, which was later revoked by the issuance of Government Regulation No. 24 of 1997 on Land Registration. This regulation was subsequently amended by Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration.[32] Article 19 paragraph (2) of the Agrarian Law (1960) states that land registration includes measurement, mapping, recording of land, registration, and transfer of land rights, as well as the issuance of proof of rights as strong evidence.[33] A certificate is proof of land rights that can prevent land conflicts, but in reality, not everyone understands how to maintain and care for the certificate properly, leading to frequent damage due to accidents or poor maintenance, rendering it unusable as proof of ownership. The numerous cases of damaged certificates have led the government to provide a solution by issuing replacement certificates. The damaged certificates are destroyed and replaced with new blank extension certificates.[34]

A replacement certificate has the same legal certainty as the old certificate; therefore, to prevent forgery or misuse, it must follow several procedures for issuing a replacement certificate. The procedure for issuing replacement certificates refers to the Agrarian Law (1960) and all regulations regarding replacement certificates, namely Article 57 and Article 58 of Government Regulation No. 24 of 1997 on Land Registration, the Government Regulation No. 128 of 2015 on Types and Rates of Non-Tax Revenue for Service Standards and Land

[30] Solechan, "Asas-Asas Umum Pemerintahan Yang Baik Dalam Pelayanan Publik," *Administrative Law & Governance Journal* 2, no. 3 (2019): 541–67.
[31] Andy Gunawan, I Wayan Arthanaya, and Luh Putu Suryani, "Fungsi Asas-Asas Umum Pemerintahan Yang Baik Dalam Menyelesaikan Sengketa Hukum Acara Tata Usaha Negara," *Jurnal Analogi Hukum* 1, no. 1 (2019): 28–33.
[32] Ana Silviana, "Urgensi Sertipikat Tanah Elektronik Dalam Sistem Hukum Pendaftaran Tanah Di Indonesia," *Administrative Law & Governance Journal* 4, no. 1 (2021): 51–68.
[33] Heriyanti et al., "Tinjauan Hukum Terhadap Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional (PERMEN ATR/BPN) Nomor 1 Tahun 2021 Dan Pasal 19 Ayat 2 UUPA," *Jurnal Hukum, Politik, Dan Ilmu Sosial (JHPIS)* 2, no. 4 (2023): 15–33.
[34] Lailatul Mutmainah, Muhammad Yasir, and Herta Novianto, "Penerbitan Sertipikat Hak Atas Tanah Kas Desa Yang Telah Dilepaskan Pada Pihak Ketiga," *Unes Law Review* 6, no. 4 (2024): 11002–8.

Arrangement.[35] The first stage is the implementation of the request for re-measurement and cadastral mapping, which is carried out to ensure the physical and legal data of the land object is registered so that the land registration can be successful. At this initial stage, boundary shifts often occur because irresponsible parties can move boundary makers. Therefore, re-measuring land parcels has become a common practice to update data when issuing replacement certificates. The application for re-measurement and cadastral mapping has several requirements that must be met, namely a formal application containing the identity of the rights holder, the area, location, and use of the land, as well as a statement letter confirming that boundary markers have been installed. In addition, there is a power of attorney if authorized, a photocopy of the identity (ID card and family card) of the applicant and the authorized person, and a photocopy of the establishment deed and legal entity approval if the landholder is a legal entity.

After meeting the requirements, the applicant is directed to the land office to bring the required documents as explained above. Then, the applicant will be directed to the validation locker at the land office to ensure that the registered land has undergone map validation in the BPN application. If the documents are complete, the officer will process the data input, and the applicant will receive a receipt and a payment order with a detailed cost according to the application. After payment, the applicant will receive a receipt as proof of payment. In the following process, the functional officer of the cadastre planner will issue a task letter to the surveyor to conduct measurements according to the instructions of the head of the survey mapping section. The measurement will be witnessed by village officials, and the determination of land boundaries will be carried out by the applicant in accordance with the boundaries of neighboring land. The illustration of the land plot that has been measured and illustrated by the surveyor is then sent to the mapping officer for the mapping process, publication, and printing of the land plot map. The head of the mapping survey section will review and sign the printed land map, which will be initialed by the functional officer in charge of cadastre planning. Next, the field map results will be handed over to the applicant through the counter officer.[36]

Legal certainty regarding land ownership is an important aspect of the land law system. Similar to the regulations in the Philippines, the land registration system is strictly regulated to ensure the rights and legal protection of legitimate owners. To ensure legal certainty regarding land ownership, the Filipino community has a Certificate of Title. The main law governing land registration and the issuance of certificates of title in the Philippines is Presidential Decree No. 1529, known as the Property Registration Decree. This decree regulates the procedures for land registration, the issuance of ownership certificates, and legal

[35] Alifa Putri Rahmadhani, "Pelaksanaan Penerbitan Sertifikat Pengganti Di Kantor Pertanahan Wilayah Kabupaten Kotawaringin Barat," *Konsensus : Jurnal Ilmu Pertanahan, Hukum Dan Ilmu Komunikasi* 1, no. 5 (2024): 11–24.
[36] Laela Rahmawati, Evy Indriasari, and Tiyas Vika Widyastuti, "Regulasi Penerbitan Sertifikat Pengganti Karena Rusak Di Kantor Pertanahan Kabupaten Pemalang," *Elqonun* 2, no. 1 (2024): 1–14.

actions regarding lost or destroyed certificates. In addition, Republic Act No. 26 also provides special procedures for the reconstruction of lost or destroyed Torrens certificates.[37]

The process of replacing a lost land certificate depends on which copy is missing. If the duplicate copy belongs to the missing owner, then the legal step that can be taken is a petition for reissuance based on Article 109 of Presidential Decree 1529. The steps to be taken are to create a loss affidavit (Affidavit of Loss) legalized by a notary and to explain in detail the circumstances of the certificate's loss. Then, submit the affidavit to the Register of Deeds (RD) office where the land is located. After that, file a petition with the District Court or Regional Trial Court (RTC) for the reissuance of a replacement certificate. The court will set the hearing date, notify the interested parties, and if proven true, the court will order the Register of Deeds to issue a new replacement certificate.[38]

If the original copy in the Register of Deeds is lost or destroyed, a Reconstitution of Title must be carried out. This process is divided into two: administrative reconstruction and judicial reconstruction. Administrative reconstruction applies if the loss is due to force majeure, such as fire, flood, or other natural disasters. The number of affected certificates is quite large. Therefore, the Register of Deeds, with the approval of the *LRA*, can conduct administrative reconstruction based on the available archives.[39] If administrative reconstruction is not possible, then the landowner must file a petition before the court. The procedure includes filing a reconstruction petition with the Regional Trial Court *(RTC)*, presenting evidence of ownership and loss, notifying interested parties, and publishing an announcement for three consecutive weeks in the media. If granted, the court will order the Register of Deeds to issue the reconstructed certificate.[40]

Based on the above description, it can be concluded that there are differences in the procedures for replacing lost or damaged land certificates between the Philippines and Indonesia. The Philippines applies a judicial approach, meaning that every application for the issuance of a replacement certificate, whether due to damage or loss, must go through the process in the District Court as explained above. Meanwhile, in Indonesia, the system for issuing replacement certificates due to damage or loss is regulated administratively, meaning it does not have to go through the court but can be handled at the Land Office in accordance with the provisions of the BPN Regulation No. 21 of 2020 on the Handling of Damaged or Lost Certificates. The system in Indonesia relies on speed and administrative efficiency, but it has a weakness in the potential misuse of replacement certificates, which can lead to the issuance of duplicate certificates. On the other hand, the system of issuing replacement certificates in the Philippines has maximum legal protection, prioritizing court decisions as the basis for the legality of certificate replacement. This certainly provides a stronger guarantee of the validity of the replacement documents and also prevents land mafia practices. To facilitate reference, a comparison of the replacement certificate issuance systems between Indonesia and the Philippines can be seen in the table below.

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[37] Aquilino Aquilino, "The Land Law Reform in the Philippines State," *Jurnal Akta* 9, no. 1 (2022): 14–24, https://doi.org/http://dx.doi.org/10.30659/akta.v9i1.20491.
[38] Duran Schulze Law, "Reconstitution vs Reissuance of Lost Land Title in the Philippines," DDS Law, 2024.
[39] Respicio & Co., "Difference Between Lost Title Replacement and Land Title Reconstitution," Respicio & Co., 2025.
[40] Reginald Matt Santiago, "Judicial and Administrative Reconstitution of Title," n.d.

Tabel 1. Comparison of Replacement Certificate Issuance Procedures between Indonesia and the Philippines

Aspect	Indonesia	Philippines
Legal basis	- Government Regulation No 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. - BPN Regulation No. 21 of 2020 concerning the Handling of Damaged or Lost Certificates.	- Presidential Decree No. 1529 about Property Registration Decree. - Republic Act No. 26.
Type of Certificate	Certificate of Ownership *(Sertifikat Hak Milik - SHM)*, Certificate of *HGB*, Certificate of Business Use Rights *(Hak Guna Usaha - HGU)*.	Original Certificate of Ownership and Transfer of Ownership Certificate
Authorized Institution	*BPN*	*LRA* through the Deed Registration Office.
General Provisions	Applicant's identity, damaged certificate, loss declaration letter, power of attorney (if authorized).	Loss/Damage Declaration Letter, police report (for loss), barangay certificate, valid ID.
Initial procedure	Application for the issuance of a replacement certificate to the local land office.	The owner filed a request for a certificate replacement with the District Court.
Document Inspection	Conducted by BPN officers, including checking field maps and land book data.	The court will assess the admissibility of the evidence and hold a hearing for the application.
Public Announcement	Not mandatory, except in cases of disputes or verification needs.	Mandatory, announcements in newspapers and public places for a minimum of 3 consecutive weeks.
Verification and Validation Process	Conducted by *BPN* officers, including field inspections.	Verification through the court process and public response.
Output	Replacement certificates are identical to the original data with a note as a substitute.	Reconstituted Certificate of Ownership or Official Certified Copy from the *LRA*.

Source: Authors

The issuance of replacement certificates for lost or damaged land is an important part of maintaining legal certainty over land rights. In Indonesia and the Philippines, this is regulated through legislation that governs the process, mechanisms, and protection of parties with interests in the land. In Indonesia, the mechanism for issuing replacement certificates is regulated in Article 57 and Article 58 of Government Regulation No 24 of 1997 on Land Registration, the Government Regulation No. 128 of 2015 on Types and Rates of Non-Tax Revenue for Service Standards and Land Arrangement and the BPN Regulation No. 1 of 2010 on Service Standards and Land Arrangement. The issuance of a replacement certificate due to loss requires a loss report to the police and the publication of a loss advertisement in the newspaper as a form of notification to the public. In practice, this lost item advertisement becomes the only notification mechanism for third parties. There is no specific mechanism that proactively involves parties with an interest in the land, such as mortgage holders or owners of adjacent plots.

In the event of an objection to the issuance of a replacement certificate, the objection is generally submitted after the replacement certificate has been issued. A third party who feels

aggrieved has the right to file a lawsuit before the Administrative Court *(Pengadilan Tata Usaha Negara – PTUN)* to annul the administrative decision in the form of the issuance of a replacement certificate.[41] This legal mechanism is classified as reactive, meaning that protection for third parties is provided after the fact. This causes the potential for agrarian conflict to remain high, especially if the replacement certificate is issued without thorough verification of any disputes or third-party rights over the land. In Decision No. 60/G/2023/PTUN.SMG, for example, the Pekalongan Regency Land Office issued a replacement certificate without conducting thorough research and disregarding claims from other parties. This has led to a legal dispute that resulted in the annulment of the decision through the court route.

In contrast to Indonesia, the Philippines applies a stricter system for issuing replacement certificates. The main laws governing this matter are Presidential Decree No. 1529, also known as the Property Registration Decree, and Republic Act No. 26. If the owner's duplicate is lost, the owner must file a Petition for Reissuance with the Regional Trial Court (RTC). This process requires a Affidavit of Loss, notification to all interested parties including neighboring landowners, mortgage holders, and the public through mass media. This process involves the judiciary from the beginning, allowing interested parties to raise objections before the certificate replacement is carried out. If the lost item is the original title stored by the Office of the Register of Deeds (RD), then a reconstitution process is required, which can be conducted administratively or judicially. Administrative reconstitution is carried out if the loss occurs due to a massive natural disaster and is based on documents available at the relevant institution. If administrative reconstitution is not possible, the owner must file a petition with the court for judicial reconstitution. In this process, the court not only verifies the documents but also invites all parties who may have an interest. This process demonstrates the existence of preventive legal protection for third parties, rather than just reactive.[42]

A comparison between Indonesia and the Philippines shows that the Philippine system provides greater assurance of public involvement and the interests of parties with legal claims to land. In the context of objections, the Philippine system allows objections to be submitted before the replacement certificate is issued, whereas in Indonesia, objections can only be filed through a lawsuit after the certificate is issued. This affects the effectiveness of legal protection and the prevention of future agrarian conflicts. Additionally, oversight in the Philippines is carried out by the courts from the beginning, unlike Indonesia, which fully entrusts the administrative process to the Land Office. The involvement of the courts in all critical stages of land registration in the Philippines provides an additional layer of protection against administrative abuse.

In Indonesia, the Administrative Court takes considerable time to resolve administrative disputes, and often, the process is not fast enough to prevent losses arising from using the

[41] Siti Anis Khoirunnisa, Nurikah Nurikah, and Rahmat Jazuli, "Kewenangan Pengadilan Tata Usaha Negara Serang Dalam Menyelesaikan Sengketa Sertipikat Ganda Atas Tanah Di Kabupaten Lebak," *Sultan Jurisprudence* 1, no. 2 (2021), https://doi.org/https://dx.doi.org/10.51825/sjp.v1i2.12444.

[42] Daniel Fitzpa Trick, Caroline Compton, and Joseph Foukona, "Property and The State or "The Folly Of Torrens: : A Comparative Perspective," *UNSW Law Journal* 42, no. 3 (2019): 979.

issued replacement certificate. In the Philippines, the court has full authority from the beginning to reject a petition for reissuance or reconstitution if valid objections are found. This makes the process more preventive, although longer at the beginning. Based on that comparison, Indonesia can learn important lessons from the Philippine system in handling objections to issuing replacement certificates. First, there needs to be a participatory mechanism that formally involves a third party before the certificate is issued. Second, notification is insufficient only through newspaper advertisements, but direct notification is needed to the lienholders, nearby landowners, and related institutions. Third, there is a need to strengthen the inspection mechanism by independent institutions or even through judicial channels in cases where lost certificates are indicated to potentially cause conflicts. Legal reforms in the issuance of replacement certificates in Indonesia also need to consider the integration of digital systems and inter-agency interoperability. A digital land system integrated with the judicial system can prevent the unauthorized issuance of replacement certificates because the court will have direct access to the land status history.

Conclusion

Based on the above discussion, it can be concluded that there are fundamental differences between Indonesia and the Philippines in the procedures for issuing replacement land certificates, particularly in terms of legal protection and objection mechanisms. Indonesia adopts an administrative approach that is relatively fast but prone to maladministration and lacks public participation, whereas the Philippines applies a stricter and more participatory judicial approach from the outset. Although Indonesia's system offers efficiency, many cases demonstrate weak data verification, limited transparency, and the absence of formal notification to interested third parties, resulting in legal disputes. In contrast, the Philippine system provides more comprehensive legal safeguards through court involvement and strict publication requirements prior to the issuance of replacement certificates.

To strengthen the system in Indonesia, it is recommended that the government undertake a comprehensive reform of the procedures for issuing replacement certificates, including implementing formal notification mechanisms for third parties, mandatory public announcements, and enhanced verification of application documents. The government should also improve digital integration between the land administration and judicial systems to prevent duplication and forgery of certificates. Furthermore, involving independent institutions or judicial mechanisms in specific cases, as practiced in the Philippines, can serve as a model to increase accountability and prevent abuse of authority. This approach would provide stronger legal guarantees for the public, reduce the potential for disputes, and promote land governance that is transparent, orderly, and fair.

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