

The Legal Policy towards the Prevention of the Land Mafia Base of Implementing the Land Registration System

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Abstract. *This study aims to determine the building of a land registration system that is free from land mafia practices, and to identify and analyze obstacles in preventing land mafia in the land registration system. The research approach method used in this journal is the normative juridical research method. The specification of this research uses descriptive analysis. The type of data used in this study is primary data which includes the 1945 Constitution; Act No. 5 of 1960; Basic Agrarian Law; Code of Civil law; The Criminal Code, as well as secondary data containing books and other supporting documents. Collecting research data by studying documents or library materials. The data analysis method used in analyzing the data is normative or literary research methods, this research is conducted to obtain more in-depth knowledge about the land registration system and the prevention and eradication of the Land Mafia by individuals and/or groups. Based on the research it was concluded that there is a need for a regulation on the system as well as an increase in good supervision by the central government and an increase in certificate products and guarantees of accountability for formal certificate products. Barriers to preventing the land mafia in the land registration system are the unavailability of a legal umbrella and formation policy alternative dispute resolution (ADR) on land conflict/dispute resolution and the synergy of parties who have special authority in preventing and eradicating the land mafia, namely the Police, Prosecutors' Office, Courts, PANJA Land Mafia.*

Keywords: Land; Mafia; Registration; System.

1. Introduction

Land is one of the needs that is increasing along with the increasing needs of human life for clothing, food and boards which are growing due to the development of the population, the number of business entities, and the number of infrastructure today. The population is increasing but the amount of land is not limited. The function of land over time has expanded not only as meeting the

needs of boards or just a place to live. Land can also function as collateral to obtain a loan from a bank. Land can also be used for the purposes of buying and selling and leasing which makes it have economic value for the community. The importance of the use of land for individuals and business entities causes a high need for legal certainty that regulates it for the benefit of the general public regarding land parcels. Obtaining legal certainty guarantees certainly requires written legal instruments in the form of a systematic recording process of land parcels including physical data and juridical data. This recording activity is called land registration.

Land registration is a condition for achieving guaranteed legal certainty and legal protection of land rights. This is necessary to protect landowners, as well as to find out the status of land parcels, who owns them, what their rights are, how large they are, what they are used for and so on. The guarantee of legal certainty embodied in land registration includes certainty of the status of the registered rights, certainty of the subject of rights, and certainty of the object of rights. This land registration produces a certificate as proof of his rights. Land registration is a series of activities carried out by the government continuously, continuously and regularly which includes collection, processing, bookkeeping, (hereinafter abbreviated as "BPN").

The Government's task is to create a strong organizational culture and guarantee legal certainty in the land registration system, it is necessary to hold land registration throughout Indonesia according to the provisions stipulated in Government Regulations. There are still many deviations in the implementation of the registration of land rights in the BPN bureaucratic and public service system, namely the occurrence of bureaucratic service discrimination against the use, control, ownership and utilization as well as granting of land rights, this shows that in the legal system there are problems in the legal system in Indonesia.¹

Land registration is based on Article 1 point 1 of Government Regulation Number 24 of 1997 concerning Land Registration in explaining that land registration is a series of activities carried out by the government on an ongoing and regular basis, including collection, processing, bookkeeping, and presentation and maintenance of physical and juridical data in the form of maps and lists, regarding land parcels and apartment units, including the issuance of certificates

¹Handoko, Widhi. (2014). "Land Law Policy is a reflection of justice in progressive law", Yogyakarta, Thafa Media, p.3.

of proof of title for land parcels that already have rights and ownership rights to apartment units and certain rights that burden them.²

The term land mafia is not found in the Agrarian Law and Corruption Law. Quoting KBBI Online, the definition of Mafia is a secret society engaged in crime (criminal). Land is the surface of the earth that is given a boundary, the surface of the earth that is limited, which is occupied by a nation that is ruled by a country or becomes a territory of the country.³The term land mafia is mentioned in the Technical Instructions Number: 01/Juknis/D.VII/2018 Concerning the Prevention and Eradication of the Land Mafia, explaining the meaning of the land mafia are individuals, groups and/or legal entities that take actions intentionally to commit crimes that can cause and causing delays in the implementation of the handling of land cases. According to the Technical Guidelines for the Prevention and Eradication of Land Mafia No 01/ JUKNIS/ DVII/ 2018 Land Mafia are individuals, groups and/or legal entities that take actions intentionally to commit crimes which can cause and cause delays in the implementation of handling land cases.

Land Mafia is two or more people who work together to occupy other people's land. The following methods are commonly used by the land mafia: falsification of documents (for rights), legalization in court, legal/unjust (illegal) occupation, fabrication of incidents, collusion with officials to obtain legality, crimes with corporations such as embezzlement and fraud, destruction of land rights and loss of land certificates. There are three reasons for the existence of the land mafia: lack of oversight, lack of law enforcement, and lack of transparency. In addition, land is a profitable investment and high economic benefits. Also the existence of land that is always needed by the community.

Nurhasan Ismail, expert in land law and professor of law at the Gadjah Mada University, stated that, as in other fields, the land mafia tends to appear to be in the "Spaces of Existence and Nothingness". That is, on the one hand the performance network of the land mafia organization in fact exists and is ongoing with all its behavior that is against the law or violates the law including losses suffered by other parties who become victims. On the other hand, their performance network which is organized, neat, and systematic has been able to hide the real facts beneath the surface so that the behavior that appears is a

²Hani Handayani, (2019), "Implementation of the Complete Systematic Land Registration (PTSL) Program Based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN of the Republic of Indonesia Number 12 of 2017 Concerning the Acceleration of Complete Systematic Land Registration in Subang Regency", Semarang, Unissula, h. 11

³ DA Adhi Thea, (2022), "Various definitions and modes of land mafia", <https://www.Hukumonline.com/news/a/there-are-various-definitions-and-modes-of-the-land-mafia--see-the-explanation-lt61dd73256df5f/> [Accessed July 25, 2022]

natural thing. They are able to very shrewdly play a 'confidential game' that appears calm on the surface, but beneath the surface it is full of foul tricks.

The Land Mafia as a structured and organized group is structured because the land mafia group has an organizational structure that involves many actors and a systematic division of labor with an arrangement. There are sponsor groups that function as funders, efforts to influence policies and influence government agencies at all levels, and there is also the Garda Frontline group that functions as actors who are fighting legally (ordinary citizens) and illegally (thugs and Swakaraman Security). There are also authorized professional groups consisting of advocates, Notaries-PPAT, government officials from the central, regional, sub-district heads, village heads who function as legal and illegal supporters. Meanwhile, It is called organized because the land mafia uses various illegal work methods, namely by fighting over land and occupying land that is the target object, and engaging in conflicts using violence that has the potential to cost lives. According to him, the subtle, scientific, and apparently legal way is the search for land ownership documents, falsification of land ownership documents with the appearance of the results being close to or even the same as the original, the approach process in the context of negotiations with landowners, and filing lawsuits with systematic and logical thinking. , there is an impression that the performance network of the land mafia is reasonable, legitimate, and legal because the implementation of its performance is marked by 2 things, namely involving symbols of law enforcement such as PPAT Notaries and State Civil Apparatuses within the BPN and their staff down as well as law enforcers such as judges. These law enforcers and executors can be part of the Land Mafia's performance network or they may only become victims of the land mafia's performance.⁴

2. Research Methods

The research method used by the authors in this journal is the normative juridical research method. Where in this study the authors collected reading support materials from books, journals, magazine articles both print and online, papers, seminars related to the land mafia. The specification of this research uses descriptive analysis. Collecting research data using interview techniques and study of documents or library materials. This research is descriptive in nature, analyzes and examines, explaining the eradication of land mafia crimes using criminal and civil law instrument approaches. Sources of data in this study using primary, secondary and tertiary data sources. The primary binding legal material is the Criminal Code and other related laws and regulations on land. Secondary materials that provide an explanation of primary legal materials are books on

⁴Agung Nugroho, (2021), "Opportunities for Land Mafia to Enter", <https://www.ugm.ac.id/id/berita/219910> [Accessed July 25, 2022]

criminal law, newspaper articles as well as magazines and internet media related to this research topic. Tertiary materials that provide instructions or explanations

3. Results and Discussion

3.1. Building a land registration system at the ATR/BPN ministry that is free from land mafia practices

The government is trying to keep ownership of land rights away from the interference of the Land Mafia, one of the efforts being made is to optimize the Complete Systematic Land Registration. According to PMATR/ Ka. BPN 35/ 2016, Complete Systematic Land Registration is the first land registration activity that is carried out simultaneously which includes all land registration objects that have not been registered in one village/kelurahan area or other name equivalent to that.⁵

Construction of a Land Pre-Registration System Policy to Strengthen Regional Autonomy and Community Autonomy for Indigenous Peoples so that the construction of a Land Pre-Registration System policy guarantees data accuracy and prioritizes the principle of social justice towards the balance of interests between indigenous peoples, rural communities and urban communities. The construction creates a new building that functions as a repair (improvement) or reconstruction of land registration based on Government Regulation No. 24 of 1997, among others, land parcels which are mapped and registered according to this system, referring to the Progressive Publicity Stelsel Land Registration system.

In this system, land rights are considered to have no rights even though they have been mapped and registered in the Land Pre-Registration System data base. This means that the land map and data base are only a register for data collection on Land Rights at the Village/Kelurahan Level. Registration of rights in the Land Pre-Registration System, namely land rights can only be obtained through or at the time of registration or registered in the register, appointed by the village/kelurahan. Which records must be made based on the principle of accuracy, so that measuring officers and recording officers must carry out tests or research in detail to get accurate results. New rights will be born after testing or research between officials at the village/kelurahan level, and being announced. The Village/Kelurahan does not issue land certificates, but only issues land data,

In practice in the field, problems often occur which are the cause of land cases, such as: The right holder does not own the land (for certain reasons), the land is abandoned, the determination of heirs has not been agreed upon, the parties do not appear before the PPAT/Notary when the deed is drawn up, Cooperation Agreements/debts made as if they were a sale and purchase agreement, Default, Buying and selling on behalf of third parties for certain reasons, Measurement

⁵Sinaga, Henry, (2018), "Agrarian Law in Theory and Practice", Citra Aditya Bakti, Jakarta, p.45

Results No Mapping Is Done. The measuring officer does not bring complete documents at the time of carrying out the measurement (registration map, application file, etc.) or does not pay close attention to the land data requested for measurement (location, boundaries, bordering parties, but only based on the applicant's appointment). Then there are cases of multiple certificates which are usually due to inaccuracies in the data at the National Land Agency, non-standard file storage, invalid data and the use of inadequate technology. Unprofessional human resources, supported by a negative (positive) publicity system that is not in favor of the people (land rights holders). The absence of accountability for certificated products has been implicated in the emergence of land disputes and conflicts.⁶

Therefore it is necessary to carry out the reconstruction of the land registration system towards the creation of a pre-registration system construction based on social justice values, which is expected to have a positive impact on the regulation of tenure, use, ownership and utilization of land rights, namely:

1. The impact of the application factor:

- a) It can be protected (prevented) from the occurrence of pressure from personal social forces, both economically and politically, in the application of a land registration system in accordance with PP 24 of 1997. The solution must be overcome by implementing a land registration system.
- b) There will no longer be (can be overcome) the condition of ownership of overlapping land rights, namely the authority to control HAT by and between departments or government institutions, which can be overcome by implementing a land pre-registration system.
- c) The application of the pre-land registration system will make the state sensitive in making land law policy choices based on social justice values, so that investors and personal social forces can benefit themselves and harm the people (the state).
- d) The pre-Land Registration system will be able to have a positive influence on the enactment of law on regional autonomy, so as to be able to provide independence to local governments in HAT mapping.
- e) The land pre-registration system will be able to prevent conflicts and disputes in the land sector, the land pre-registration system is dynamic (progressive) by prioritizing regional autonomy and *local wisdom* (local wisdom), so that it will protect the HAT of adat/customary law communities.

2. The positive impact seen from the objective factors:

The need for the construction of a land pre-registration system based on the value of social justice in the control, ownership, use and utilization of land rights

⁶Handoko, Widhi, (2021), "Land Law Policy", Jakarta, p.9

is by overcoming the emergence of social inequalities, the rich get richer, the poor get poorer;

- a) Aiming to overcome the existence of management fees through the land office which is still thick with extortion and involves high costs, the processing process is rigid and convoluted.
- b) Aims to overcome the ineffective and efficient settlement of land disputes, because the system according to PP 24/1997 is still centralized.
- c) Aims to provide solutions to make you comfortable. And peace for owners of land rights, because the issue of land registration does not provide a solution for land at the village/kelurahan level or according to custom/customary law.
- d) The aim is that the application of the pre-Land Registration system can obtain data that is in accordance with land mapping in its redistribution, so as to prevent structural and systematic impacts on land tenure gaps caused by poverty.
- e) Aims to prevent the occurrence of land mapping that is not in accordance with its designation. At this level, a pre-Land Registration system is urgently needed for the accuracy of land data.
- f) Aims to decentralize land mapping by giving autonomous authority to regional governments, agr to produce accurate certification and legal guarantees for land.
- g) Aims to prevent the emergence of an investor's monopoly on land (ownership exceeds the limit, resulting in social inequality).
- h) Aims to fulfill the standardization of bureaucracy and *database*, at the pre-Land Registration level.
- i) Aims to prevent the occurrence or emergence of land conflicts in the regions because they do not accommodate the interests of local governments, especially regarding the mapping and management of customary land rights.
- j) Reconstruction is offered by researchers as a solution to overcome weaknesses in the land registration system, namely the Creation of Construction of a Land Pre-Registration System at the Village/Kelurahan Level to Strengthen Regional Autonomy and Community Autonomy for Indigenous Peoples.

Construction as a legal concept offered is a Land Pre-Registration System at the Village/Kelurahan level as well as at the Customary Law Community and Indigenous Peoples level. Construction is expected to be able to guarantee data accuracy and prioritize principles or value bases of social justice for social justice for the balance of interests between communities adat, rural and urban communities, namely in the form of buildings which are improvements to the land registration system based on PP No. 1997.PPAT has an important role in carrying out some land registration activities, namely maintaining land registration data, therefore it is very necessary for PPAT's participation as a

partner of the Ministry of Agrarian Affairs / BPN to prevent land disputes and conflicts.

3.2. Obstacles in preventing land mafia in the land registration system through the ATR / BPN land office

In order to realize the integrity and professionalism of the apparatus, it is important to reform the bureaucracy in order to realize good corporate governance (GCG) by adhering to the principles of GCG, especially transparency and accountability. It is also necessary to pay attention to the welfare of the apparatus so that their lives are guaranteed and they are not tempted to commit crimes. To support this effort, monitoring and supervision of apparatus needs to be carried out so that they remain on the right track in carrying out their duties. Such monitoring and supervision, for example, needs to be carried out by the Judicial Commission on the behavior of judges, bearing in mind that the land mafia also often involves judges in committing their crimes. Monitoring and supervision in particular also need to be carried out on BPN employees because they are the ones who issue land certificates and are the "spearhead" in providing protection for community rights to their land. Third, increase inter-agency cooperation/coordination in dealing with and eradicating the land mafia. As has been explained, the crimes committed by the land mafia are carried out in a planned, neat and systematic manner.

Therefore, good expertise and coordination between officers is needed in uncovering land mafia crimes. For this purpose, a Land Mafia Prevention and Eradication Team (PPMT Team) has been formed, consisting of the Ministry of Agrarian Affairs/BPN, the National Police, and the Indonesian Attorney General's Office. The basic consideration for the formation of the PPMT Team was to facilitate coordination and increase the success of handling cases where there were indications of a land mafia. Expert University of Indonesia land law, Arsin Lukman questioned land registration in Indonesia could be a loophole for the land mafia to seek the legality of land ownership in court. To reduce land mafia practices, the land registration system in Indonesia must be changed to a positive land registration.

Indonesia still adheres to a negative land registration system, with negative attachments with positive tendencies. In other words, in the Basic Agrarian Law, that certificate is strong evidence. Strong and absolute are different. So the system of land registration in Indonesia is the registration of titles, what is registered is the right. Usually the registration of titles system is paired with a positive publication system. The opponent is the registration of deeds, what is registered is the deed. The registration of deeds partner is a negative publicity system. Positive land registration means guaranteeing the certainty of land rights.

If a plot of land has been certified in the name of a person, the land cannot be sued again. If there is a case where a certificate is issued incorrectly, the state

must provide a budget to pay the rightful person. Land Dispute and Conflict Handling (PSKP) RB Agus Widjayanto said land mafia practices had taken hold, because many parties were involved from upstream to downstream. The lack of socialization and the weak economic conditions of the people in Indonesia have caused many land problems, along with the increasing population in Indonesia. The problem of this community is the need for a legal umbrella to become their basis or guide if they have problems in land affairs.⁷

State responsibility is one of the obligations for actions or actions that violate international law. Therefore, the government is obliged to provide legal protection to citizens. This legal protection is the implementation of Pancasila, namely the fifth precept regarding a just and civilized humanity. Here the principle of humanity is also obliged to be able to guarantee fair law for all members of society, the most basic thing in order to protect human rights with dignity.

In a country where the culture of corruption is still strong, the land mafia can work in any way. In other countries the arrangements are clear, transparent. In Singapore, for example, land has usufructuary rights, no property rights, after the expiration date, the land returns to the state. In Indonesia, land can be owned. Property rights are land registration status, not absolute ownership.⁸

The implications of whether a land certificate is legal as a result of land registration should legally have accountability to interested parties and/or include accountability to the public. Land registration has a legal relationship both vertically and horizontally to the public, so accountability to the public is an obligation that must be fulfilled.⁹

Published Act No. 22 of 1999 concerning Regional Autonomy, which was later amended by Act No. 32 of 2004, juncto Act No. 23 of 2014 in conjunction with Act No. 2 of 2015 concerning Regional Government, and Act No. 72 of 2005 in conjunction with Act No. 6 of 2014 concerning Villages, marks the start of regional autonomy in which there are hopes for regional development in accordance with regional interests and desires, and is an expectation for the empowerment of indigenous peoples or indigenous peoples and their rights, especially with regard to the regulation of their land rights. This is in line with the construction that the author offers as the author can describe, namely the new construction in the pre-land registration system will map land use (mapping and use) land rights for village/kelurahan communities as well as indigenous peoples or customary law communities in detail and accurately. The mapping and arrangement of the use of land rights in the pre-land registration system also includes the orderly administration of land at the village or kelurahan level. With

⁷2022, Journal (online) available at <http://jurnal.uinbanten.ac.id/index.php/algisthas/article/view/5143/3373>, page 7, downloaded on July 14, 2022 at 12.02

⁸Ibid- p 207S

⁹Ibid – p 249-251

the implementation of the land pre-registration system it can confirm village autonomy, which explicitly emphasizes that villages are returned to their origins, namely community autonomy in Indigenous Peoples including customary law communities. The mapping and arrangement of the use of land rights in the pre-land registration system also includes the orderly administration of land at the village or kelurahan level. With the implementation of the land pre-registration system it can confirm village autonomy, which explicitly emphasizes that villages are returned to their origins, namely community autonomy in Indigenous Peoples including customary law communities. The mapping and arrangement of the use of land rights in the pre-land registration system also includes the orderly administration of land at the village or kelurahan level. With the implementation of the land pre-registration system it can confirm village autonomy, which explicitly emphasizes that villages are returned to their origins, namely community autonomy in Indigenous Peoples including customary law communities.

Construction of pre-registration of land in the implementation of mapping and land use by district/city governments, aimed at supporting the pre-registration of land at the village/kelurahan level, is basically a concept that is appropriate to implement, given the condition of the existing registration system that requires buildings. new land registration or construction of land registration that is integrated with the spatial planning and spatial planning system of the regency or city government. The concept of mapping and land use is integrated and systemized integrally as a new building in the land registration system.¹⁰The disclosure of scandals in cases of land registration, including cases of double ownership of rights and double certificates and other cases, such as the bribery case that occurred at the National Land Agency, without any solution for systemic reform of land law policies, especially in the choice of using a negative (positive) publicity system. . Behind these cases there are still many pathological practices that occur within the BPN bureaucracy.

Chairman of the Committee for Land Mafia Commission II DPR RI, Junimart Girsang, said the Chairperson of the Working Committee (Panja) for the Eradication of Land Mafia or Land Mafia Commission II of the DPR, Junimart Girsang revealed that throughout 2021 the Panja Land Mafia Commission II received 4,358 complaints which were public reports covering at least 100 thousand cases of land disputes in Indonesia and the number of cases is more than 100 thousand. Of these, most land conflicts consist of ownership disputes between real owners and land mafias. It is believed that this was due to the actions of unscrupulous officers and officials within the National Land Agency (BPN) who gave land mafia space to act in the TSM style (structured, systematic, massive).

¹⁰Ibid – Pg 275

The first reason regarding Permen 21 of 2021 is that the existence of this Ministerial Regulation has created obstacles in the field, especially in resolving conflicts over overlapping land ownership.

According to him, this has given more space for the land mafia to carry out their actions to control land that does not belong to them. As a result, this candy is now used as a tool for the land mafia to play cases in court. The land mafia often uses courts to achieve legal ownership of land through dirty means. Among them by conditioning law enforcers and even certain judges to handle their cases. Apart from requesting the existence of Permen 21 of 2021 to be reviewed and even revised again. Junimart also encourages the ATR BPN Ministry to immediately make efforts to form a Land Adhoc Judge who is specifically tasked with adjudicating land issues in all courts in Indonesia. The Adhock Land Judge is in charge of adjudicating land issues in all courts in Indonesia.

ATR Minister/Head of BPN Sofyan Djalil said the land mafia was threatening trillions of rupiah in investment. As a result of the actions of the land mafia, investment from a South Korean company, Lotte Chemical, worth US\$ 4 billion or the equivalent of IDR 56 trillion (exchange rate of IDR 14,000/US\$) was hampered. In Banten, Lotte Chemical wants to invest nearly US\$ 4 billion for petrochemical development many companies that are relocating factories from China do not choose Indonesia as a new location. There were 33 companies that left China and chose Vietnam, Thailand and Malaysia. Not only is this detrimental to companies, but the land mafia is also detrimental to the general public, some have even lost up to IDR 200 billion due to being deceived by a land mafia syndicate. The land mafia succeeded in defrauding the public of up to IDR 200 billion.

Land Dispute and Conflict Handling (PSKP) RB Agus Widjayanto said land mafia practices had taken hold, because many parties were involved from upstream to downstream. The lack of socialization and the weak economic conditions of the people in Indonesia have caused many land problems, along with the increasing population in Indonesia. The problem of this community is the need for a legal umbrella to become their basis or guide if they have problems in land affairs.¹¹ State responsibility is one of the obligations for actions or actions that violate international law. Therefore, the government is obliged to provide legal protection to citizens. This legal protection is the implementation of Pancasila, namely the fifth precept regarding a just and civilized humanity. Here the principle of humanity is also obliged to be able to guarantee fair law for all members of society, the most basic thing in order to protect human rights with dignity.

¹¹ 2022, Journal (online) available at <http://jurnal.uinbanten.ac.id/index.php/alqisthas/article/view/5143/3373>, p. 7, [Accessed July 25, 2022]

4. Conclusion

Based on the results of the research and the discussion or description given in the previous chapters, conclusions can be drawn which are the answers to the problems in this research, namely; In order to create a building for a land registration system at the ATR ministry that is free from land mafia practices, it is necessary to have a rule in the system that provides an ideal policy, namely the land registration system at the ATR ministry which is based on the values of social justice and the principles of local wisdom of indigenous and tribal peoples, including those already in place. prioritizing the precautionary principle but there is no land pre-registration system yet, resulting in deviations from the registration principles, as well as increased supervision by the central government/ BPN, increased accuracy of certificate products with the involvement of village heads/kelurahan/customary communities and there is a guarantee of accountability for certificate products that are more formal in nature and accommodate the interests of indigenous peoples/customary law.

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