

Land Mafia Prevention and Eradication Efforts in Land Administration Law Perspective

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Abstract

The existence of a land mafia can almost investment and economic growth because the crimes they commit include land cases with a broad dimension, so prevention and eradication are needed in the administrative land area. This study aims to develop efforts to prevent and eradicate future land mafia in the land administration area. This research is descriptive-analytical with a sociolegal approach. This Study obtained alternative efforts to prevent and eradicate future land mafia, namely the idea of changing land registration from a negative publication system to a positive publication system.

Keywords

prevention; eradication; land mafia; land administration



I. Introduction

Land can show a person's social status level, which is reflected in the number of rulers over the land. The more land a person owns or controls, the higher his social status can be used to benchmark a person's social achievement and as a socio-cultural symbol of society.

The land is a natural resource that is very important for human life; therefore, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia regulates that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Land resources and other natural resources do not belong to one particular group but all of us as a nation. As the highest authority organization of the entire nation, the state is charged with the mandate to regulate land use for the prosperity of all components of the nation and not specific groups. In addition, land or also called land rights, has a social function. The function can be either a facilitative function or a control function (Yusriyadi, 2010).

The amount and area of land that is not balanced with the community's needs will give birth to a competition between fellow humans to acquire land; this results in many land problems. This is directly proportional to the many functions, benefits, and limited availability of land in supporting human life, resulting in the emergence of land cases. Land cases consist of land disputes, land conflicts, and land cases. Land disputes, referred to as disputes, are land disputes between individuals, legal entities, or institutions that do not have a broad impact. Land conflicts, referred to as conflicts, are land disputes between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have had a broad impact. From now on, land cases are land disputes handled and resolved through the judiciary (ATR/BPN, 2020).

The existence of land cases since the independence era has become a social reality in every society, even though they have different forms and identities. Some of the most popular land cases have recently been seen and heard, both in print and online, one of

which is about the land mafia (Tempo, 2021). According to the technical instructions for preventing and eradicating land mafias, it is stated that land mafias are individuals, groups, and legal entities that take deliberate actions to commit crimes that can cause and hinder the implementation of handling land cases (Technical Instructions for Prevention and Eradication of Land Mafia, 2018).

In carrying out their actions, the land mafia often uses organized crime modes, of which the most commonly used is the mode of falsifying land documents (Tri, 2020), conducting an engineering lawsuit in court to obtain land rights (Akhiruddin, 2021) holding an evil agreement that carried out in an authentic deed or certificate involving public officials (ATR/BPN, 2021).

There have been several reports of development and social problems triggered by the land mafia, which has made land disputes endless. There have been at least 180 (one hundred and eighty) cases of land mafia since the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (MoU) with the National Police, which has been received from 2018 to 2021 which consist of land disputes and land conflicts, both those that go to court, already P21, as well as the determination of the suspect (Polri, 2021).

Some examples of the involvement of the land mafia in land cases that are popular recently in Indonesia are the involvement of the land mafia with the victim, namely Zurni Hasyim Djalal, the mother of Dino Patti Djalal, the former Deputy Minister of Foreign Affairs of Indonesia in the era of President Susilo Bambang Yudhoyono. This case started in 2020 (Bustomi, 2021). One of them was when SHM Number 8516/Cilandak Barat, in Zurni Hasyim Djalal, wanted to sell or rent it by entrusting Yurmishawita to take care of it all her needs (Anugrahadi, 2021).

According to the Secretary-General of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Himawan Arief Sugimoto, one of the gaps in the creation of a land mafia space is because of the politics of national land law in Indonesia, which regulates the land registration system, where the national land registration legal system adheres to negative publications that contain positive elements. (Harsono, 2008). This land registration system produces legal products, namely proof of rights in the form of land rights certificates that are strong but not absolute. Therefore, there are gaps to be sued (CNBC, 2019).

Boedi Harsono (2008) argues that inland registration using the state negative publication system as a registrar does not guarantee certainty that the person registered as the right holder is the rightful person because, according to this system, it is not registration but the legal action taken which determines the transfer. Rights to the buyer. Registration does not make a person who has obtained rights from an unauthorized party become a new right holder.

Based on this, it can be understood and cannot be denied that the initial gap in the emergence of the land mafia was due to the legal system of land registration adopted. The land mafia is not only an ordinary crime but also an extraordinary crime in the land sector. The impact of the land mafia can not only harm some people and legal entities as victims. However, it can also damage the legal order, and impede the entry of investment and the rate of economic growth. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, as the most responsible institution in land administration, is still paying attention to the existence of the land mafia.

The crimes in the land sector resulted in the fact that *das sein* was not in line with and did not match what *das sollen* aspired to. For this reason, the government must show firmness in the prevention and eradication of the land mafia, which results in land cases with broad dimensions.

Relying on the introduction above, the author limits this scientific work to the formulation of problems, including what are the alternative efforts to prevent and eradicate future land mafias in the land administration area. With that, it is possible to find the purpose and development of law (*ius constituent*) in land administration law, which is expected to prevent and eradicate land mafia.

II. Research Method

This research is descriptive-analytical (Soemitro, 1988) with a sociolegal approach or socio-legal research method, a study of law using a legal and social science approach. In principle, sociolegal studies are legal studies that use a social science methodological approach in a broad sense (Rahardjo, 2009).

This research is based on the analysis of the prevention and eradication of the land mafia in the administrative area, with the idea of preventing and eradicating the land mafia in the future. The data analysis method used in this research is qualitative. Qualitative analysis using ingredients literature (primary legal materials, secondary legal materials, and tertiary or non-legal legal materials) as data sources for his research. Qualitative data will be analyzed, studied, and later systematized into data analysis arranged in written form law.

III. Result and Discussion

3.1 Efforts for Prevention and Eradication of the Land Mafia in the Land Administration Area

The land mafia in the land sector is still thriving in line with the community's high demand for the availability of land. Because of this, the land is a tremendous resource for human life; besides having a high economic value, the land is also non-renewable. Land, from the economic aspect, can bring people's welfare; from the political aspect, land can determine a person's position; socio-cultural aspects of the land can determine the level of social status; and from a legal point of view, the land is the basis of power for jurisdiction. The community's need for land at this time is not following the limited availability of land (Sunarto, 2018).

The politics of land law is a choice of goals and legal principles used as guidelines to realize the political goals of national land, namely the prosperity of the people (N. Ismail, 2012). The existence of the Basic Agrarian Law (UUPA) as one of the legal products of an independent Indonesian nation is determined to realize the incarnation of Pancasila and the state's goals as stated in Paragraph IV of the Preamble to the 1945 Constitution. The LoGA also implements Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. It is a national political land or agrarian politics which requires the state to lead the control and use of the earth, water, and natural resources contained therein to achieve the people's welfare.

As the goal of national land law, the regulation of land tenure and use leads to the creation of equitable prosperity for all people and community groups. To achieve this goal, the LoGA is a legal, political realm that includes three things, namely: the (ideal) goals to be achieved through the law, the proper method or method to achieve that goal, and an effective legal configuration to realize these goals. (Silviana, 2018).

Indonesia's land law politics in regulating the publication system in the land registration process is good, according to the concept of law as a tool of social engineering, with the construction of a land registration system building according to the characteristics

of developing countries. Philosophical considerations in choosing a negative publication system with positive characteristics in land registration are that this system is very much in line with the objectives it is running land registration in Indonesia for legal certainty in the land cadastre in realizing justice and people's welfare (ASYJU & N. Ismail, 2020). However, it is not free from the cracks of crime in the land sector, namely the land mafia, which on average, in crimes committed by the land mafia, including land cases with broad dimensions. The consequences of this broad dimension are disputes, conflicts, and land and space cases that have a high economy (Technical Instructions for Prevention and Eradication of Land Mafia, 2018).

Indonesia, at this time, has become a large country and progressed in socio-economic society, civilization/culture, technology, and especially the national land system. Therefore, there is a need for a renewal and development of a new land law system, especially the system adopted in the land registration system in repairing the gaps and weaknesses of the publication system. The weakness of the negative publication system has a positive tendency that what determines the validity of a right and its transfer is the validity of the legal actions carried out, not the registration. So even though it has been registered in the land book and a certificate has been issued, there is always the possibility that the registered party will lose the land it controls because the actual right holder issuing it (*Nemo plus iuris*) (Wahyuni, 2007). Although in the decisions of the Supreme Court, there is a *rechtsverwerking* institution, which is an additional security facility in written form, and then the provisions of Article 32 paragraph (2) PP Number 24 of 1997 are held.

rechtsverwerking institution that gives a time limit of up to 5 (five) years for a certificate to be sued by another party. However, in reality, everyone who feels they have sufficient evidence is still allowed to refute the truth of the data contained in the certificate even though the 5 (five) year period has passed. The enforcement of the *rechtsverwerking* institution in Indonesia has not been carried out following its objectives, this is proven by the finding of claims against the certificate in the district court or the cancellation of the certificate in the State Administrative Court, but that does not mean that the certificate of land rights does not guarantee legal certainty, because the certificate is recognized as solid evidence of rights, as long as there is no judge's decision that breaks the truth of the juridical data and biological data listed in the certificate (Kurniati, 2018). The opinion of Urip Santoso reinforces this statement that even though the certificate issued by the Regency/City Land Office is 5 (five) years old, it does not mean that the right to sue is lost for people who feel aggrieved by the issuance of the certificate (Santoso, 2019).

Renewal (reform) is an effort to reorient and reform something that will be pursued through policy (Hamzani, 2015). Development in the legal field has two meanings: first, as an effort to renew positive law (legal modernization), and second, as an effort to functionalize the law, namely by participating in making social changes according to the needs of the developing community (Sidharta, 2012). In carrying out the development of national law, it is necessary to go through several approaches, including a policy approach, a religious approach, and a values approach (Arief, 2005).

Developing a national legal system in realizing the prevention and eradication of land mafia is a comprehensive and aspired law. The renewal or development in question is an effort to increase the guarantee of legal certainty so that the national land registration system changes to a positive publication system. According to Effendi Warin, what is meant by a positive publication system inland registration is that what is contained in the land book and certificates of rights issued is an absolute means of proof. This means that a third-party acts on the evidence and gets absolute protection, even though it turns out that

the information contained therein is not accurate. Those harmed will receive compensation in other forms (Santoso, 2019).

Arie Sukanti Hutagalung explained that with inland registration using a positive publication system, people who register as land rights holders could not be contested anymore. In this system, as the registrant, the state guarantees that the registration that has been done is correct (Santoso, 2019). The positive publication land registration system is believed to provide absolute legal certainty over land rights (Wirawan, 2021).

The positive publication system always uses a registration of titles/Torrens system. There must be a register or land book to store and present juridical data and a rights certificate as proof of rights. The registration or recording of a person's name in the register or land book as a right holder makes a person the holder of the right to the land in question. The state guarantees the land book presented in this positive publication system. In the positive publication system, the principle of good faith applies, which protects parties who, in good faith and with payment, obtain rights from the person whose name is registered as the legal right holder in the register. The party with good intentions obtains an indefeasible title that cannot be contested by registering his name as the right holder in the land book (Harsono, 2008). The party whose rights to the land are protected and guaranteed in good faith are protected, even though the person transferring it is not the actual right holder.

The 2015-2019 National Medium-Term Development Plan (RPJMN) for the Land Sector mandates a policy direction to build a positive publicity land registration system. This is not without reason, considering the high number of cases regarding land. Based on the Study on the Preparation for Changes in the Positive Publication of the Land Registration System in Indonesia conducted by the Directorate of Spatial Planning and Land Affairs of the Ministry of National Development Planning/Bappenas in 2016, the statement in the introduction presents data that the accumulation of land cases that enter the Supreme Court is estimated at 60% to 70%. Every year, not counting cases are decided at the first or appeal level (Suprianta, 2016). In order to carry out the mandate in the 2015-2019 RPJMN to make changes to land registration with a positive publication system, four prerequisite conditions must be met to reduce the potential for conflict to a minimum; several prerequisites/preconditions are needed, including; a) Accelerated coverage of certified areas; a) Acceleration of provision of land base map coverage; b) Publication of forest area boundaries with cadastral scale maps; and c) Dissemination of laws and regulations related to customary/layout land (Suprianta, 2016).

The determination of the coverage of the land base map must reach 80%, and the national area coverage that has been certified must reach 70% of the national non-forest land area. The large percentage is believed to reduce the occurrence of multiple valid certificates. If an error occurs in the register, the risk of the state's financial burden to provide compensation can still be appropriately managed (Suprianta, 2016). The expected coverage of the land base map, which is 80%, is expected to produce correct and accountable land parcel certificate data.

Based on the results of the Final Report of the Strategic Coordination of National Agrarian Reform by the Directorate of Spatial Planning and Land of the National Development Planning Agency, which was published in December 2018 the results were achieved, namely: Accelerating the increase in the coverage of the land base map reaching 30.4 million hectares (47.30%) of the total land area Indonesia's territory outside the forest area is 64,324,754.31 Ha, an increase from 29.5 million Ha (45.93%) in 2017; Acceleration of increasing the coverage of digitized certified land parcels covering an area of 13.8 million Ha (20.91%) of the total cultivated area (plus the enclave area) of 65,337,208.87 Ha, an increase from 8.1 million Ha (12.46%) in 2017; Reconstruction and

sealing of forest area boundaries in 5 provinces, namely West Java, Central Java, DIY, East Java and Banten (with 15 forest areas) continued in 2017, namely a pilot project for publication of forest area boundaries in 3 (three) provinces (with 4 Forest); (Hadiyanto, 2018) and 43 regulations (perda/perkada/perbup) have been identified regarding the determination of customary/ulayat land, but only 2 (two) of these regulations have attachments in the form of maps of customary/ulayat land, namely Lebak Regency and Sigi Regency. .

The results of this coverage achievement still do not show the achievement target for certified land parcels with a minimum of 80%. The assumption used is that the greater the coverage of the land parcels that have been certified, the more secure the legal certainty of land rights. The Ministry of Agrarian and Spatial Planning/Head of the Land Agency plans to target as many as 126 million parcels of land throughout Indonesia to be certified from 2017 to 2025 through the Complete Systematic Land Registration (PTSL) program. The Minister of Agrarian and Spatial Planning/Head of the Land Agency Sofyan Djalil targets that by 2025, all land in Indonesia will be successfully certified through the PTSL program (Jumasani, 2020).

If the plan is implemented, the achievement of at least 80% of certified land is fulfilled according to the mandate of the 2015-2019 RPJMN, followed by the 2020-2024 RPJMN, so that the idea of changing land registration from a negative publication system to a positive publication system will be implemented. Furthermore, in a positive registration system, if it turns out that there is a procedural error in the registration that results in losses for parties who may be more entitled to it, the state guarantees compensation funds in the form of compensation payments to the claimant whose rights are proven correct. Most countries have implemented the Torrens System or positive publication system as their land registration system, especially developed countries that have also applied the concept of indefeasible and indemnity as a form of compensation for errors in land rights certification (Suprianta, 2016).

In order to realize the implementation of a positive publication system, there are essential things that must be considered. Namely, the government must understand the circumstances that make land registration necessary. The government must meet the prerequisite conditions, and the government is expected to make various efforts to obtain success. In order for the implementation of the new publication system in the land registration system to be successful, several things need to be done by the government, including; a) The government's understanding of the costs and duration of operations required for the new land registration system; b) Socialization and evaluation; c) Amendments to the laws and regulations governing the land registration system; and d) The resolution of various issues and problems related to land (Suprianta, 2016).

From the mapping of this success, the character of the legal substance of the need for legal reform regarding the idea of positive publication, it can be seen that the legal substance of land registration that adheres to the positive publication system still has to be formed in order to provide more certainty, benefit, and justice as part of the renewal of the national legal system. The development of a national legal system can include "substantial" development (legal substance), "structural" development (legal structure), and "cultural" development (legal culture). As in Lawrence M. Friedman's legal system theory, a legal system must have the first aspect, the legal structure (structure of law) in the sense of law enforcement and rule-making institutions; second, it has a legal substance (the substance of the law) which includes actual rules, norms and human behavior that is in the system, including in the sense that this substance is all products, such as decisions, new rules that are compiled and produced by people who are in the system. that too; third, legal culture

(legal culture) includes beliefs, values, thoughts and expectations of society towards the law, legal culture is anything or anyone who decides to turn the machine on and off, and how the machine should be used (Friedman, 2009).

It is hoped that enacting changes or revisions to the laws and regulations regarding negative publications into positive publications can close the gaps in land mafia crimes. This idea is of the most basic nature, namely prevention and the direction of eradication from the administrative side. According to Subekti, the law always pursues two goals, namely ensuring certainty and meeting the demands of justice. The good faith in a person's personality can be directly felt by the person concerned and by those who feel someone's act of good faith towards him. Good faith carries out its function when a sense of good faith can be felt (Kolopaking, 2013).

Satjipto Rahardjo maintains that the state legal system accepted and implemented by many countries in the world today is also categorized as modern law, which has the following characteristics: written form; is an instrument that is used consciously to realize the political decisions of its people; and applies to the entire territory of the State (Rahardjo, 1986). Because Indonesia adheres to civil law, all the rules used must be in writing, so changes to regulations related to the publication system in registration must also be changed to support the implementation of the registration itself, such as UUPA Article 19 and PP Number 24 of 1997 concerning Land Registration. They should be supported by the establishment of a particular land court. The substance of the regulation of legal reform regarding changes in land registration from a negative publication system to a positive publication system that will be carried out/initiated in the future, it is hoped that the central government and regional governments should as much as possible accommodate the interests and protection of the community who owns land rights, both those who have had a dispute or are in conflict. A conflict is a form of recognition and respect for human rights.

IV. Conclusion

Alternative Efforts to prevent and eradicate future land mafia from the administrative level of land are with the idea of changing the land registration system, namely the negative publication system, into a positive publication system, by making revisions or changes to the UUPA and its implementing regulations, significantly articles relating to land registration in the system. Negative publication.

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