

## POLITICAL REFORM OF LAND MAFIA PREVENTION LAW IN INDONESIA

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**Abstract** - The presence of land mafias can hinder investment and economic growth, as the crimes committed include large-scale land disputes, disputes, conflicts, and involve large economies, thus requiring prevention at the administrative level. This research aims to find and develop new legal regulatory aspects to prevent future mafias. This study is a descriptive study with a socio-legal research perspective. The results of this investigation, in an attempt to prevent future agrarian mafias from the administrative field, have produced a new political-legal structure of the cadastral system, that is, the idea of changing the cadastral publication system for a positive publication system, through the reform of the regulations applicable to Law Number 5 of 1960. Likewise, during the period of validity of the articles related to the negative publication system, a registration process is carried out. In case of error, and in case of damage to the parties that may have more rights, the State guarantees the compensation fund of the claimant, whose rights are represented as a form of compensation with infeasible and indemnity concepts.

**Keywords:** reform, legal politics, prevention, land mafia

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### INTRODUCTION

Social environment is closely related to regional development, human well-being, family and community life. The earth is a very important natural resource for human life, therefore Article 33 paragraph (3) of the NRI Constitution of 1945 establishes that soil, water and natural resources are regulated by states to achieve greater prosperity for people. Other natural resources do not belong to a particular group, but to all groups, such as nations. The state, as the supreme authority over the nation as a whole, is responsible for regulating the use of land, promoting the prosperity of all citizens and not of a particular group. Additionally land or land rights have a social function. Social roles can be facilitating roles or controlling roles (Yusriyadi, 2010).

The imbalance between quantity and land, together with the needs of the community, causes competition between descendants or people, giving rise to many cases of land grabbing (Saebani, 2017). Since independence, the land issue has become a social reality in people's lives, albeit with different forms and identities. Some of the most familiar plots have been seen and heard of recently both in print and online, and one of them is land mafia (Kompas, 2023). The land mafia in the dimension of land cases is included in the category of land disputes and land conflicts that end in land and space disputes. According to Nurhasan Ismail, the land mafia is a network of organized, highly disciplined, systematic, rational and legal popular activities, but still violates the law and conducts illegal activities for personal gain and economic loss of others (Nugraha, 2021).

Land mafias often use organized crime methods to conduct their operations, the most common being forging land records, filing cases in engineering courts, collecting land rights, maintaining bad land contracts, authentic or certified information (ATR/BPN, 2021). So far, there have been various reports on the social and development problems caused by the behavior of land masses, which make the land problem unbounded. The Ministry of Agriculture and Land Planning, National Police of Indonesia (POLRI) in cooperation with the National Land Agency (BPN) have registered at least 180 (one



hundred and eighty) cases of mafia land disputes and land dispute incidents. 2018. and 2021, as well as those who came to court, defined P21 and suspects (Polri, 2021).

In the case of the newly known land in Indonesia, some examples of the involvement of the land mafia with the victim, the heirs of Haji Naimun, have involved more than 4,462 m<sup>2</sup> of land. This case began in 2019 and was certified under the name SHM Nomor 11142/Bintaro/2019, under the name Octa Raharjo and Bunadi Tjatnika (Ichsan, 2023). In addition, the victim was Zurni Hasyim Djal, mother of former Indonesian Deputy Foreign Minister Dino Patti Djalal, during the time of President Susilo Bambang Yudhoyono. This case started in 2020, and one of them was SHM Number 8516 / Cilanda, which wanted to sell or rent in the name of Barat Zurni Hasyim Djalal, paying Yurmishawit to cover all its needs (Bustomi, 2021).

The existence of land mafia case in the land sector is one of the gaps generated by the land mafia space, i.e. by Indonesia's national land law policy, which regulates the land registration system, in which the national legal land registration system adheres to negative publications with positive elements (Sugoto, 2019). The publication system used by Law No. 5 of 1960 on Basic Agrarian Regulations (UUPA) and the Government Regulation Number 24 of 1997 concerning Land Registration is negative and has positive elements (Silviana, 2020). This declaration is set out in Article 19 paragraph (2) letter c, whereby the land registry creates letters of demonstration of the rights that apply as solid proof, as well as in the terms set out in Article 23 paragraph (2), Article 32 paragraph (2), and Article 38 paragraph (2) UUPA.

This cadastral system produces legal and official products, hard proofs but not of property titles, so it has future shortcomings (Mertokusumo, 1998). Boedi Harsono pointed out that the negative publication system of the State that he uses as Registrar of the Cadastre does not guarantee that the person registered as the owner is a person with registered real rights, since according to this system it is not a registry. But validity of the legal act that determines the characteristics of the rights of buyers. According to the registry, recipients of unauthorized third-party rights acquire new rights (Harsono, 2008). Consequently, and no doubt, it is understood that the initial explosion of land mafias was the result of the legal land registration system in which it occurred. It can be said that the land mafia is not only a common crime, but an exceptional crime in the land sector. The impact of land mafias, in addition to harming natural and/or legal persons, can weaken the legal system, hinder access to investment and reduce the rate of economic growth. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the authority responsible for regional administration, has paid particular attention to the existence of land mafias.

### 1. Problem

Based on the previous introduction, the author limits this scientific article to the formulation of the problem: how to formulate new legal policy alternatives in the future in an attempt to prevent land mafias at the administrative level?

### 2. Research Method

This analysis is a descriptive analysis with a socio-legal or *socio-legal approach*, and is an analysis of law from a legal and social sciences perspective (Rahardjo, 2009). This approach is used to understand the law in a social context (Irianto, 2012). The qualitative method for data investigation used in this study is qualitative. Qualitative analysis uses literary materials as sources of research data through primary qualitative materials, secondary qualitative materials, and qualitative materials. The qualitatively analyzed data will be analyzed and analyzed as a correlation between the theories derived from the bibliographic study. In addition, the data collected in the land registration system is systematized by analyzing the information collected as legal terms, which can prevent the rise of land mafias.

### 3. Discussion

Independent Indonesia is one of the fourth preambles of the 1945 NRI Constitution that embodies Pancasila and achieves the objective of statehood. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which became the forerunner of the creation of the UUPA, is a national land policy or agrarian politics (Zon et al., 2016). The existence of UUPA which has the nature of legal unification, is simple and guarantees legal certainty for all Indonesian people. A national land policy



that seeks to guide the state in the control and use of land, water, and natural resources gathered there for the public good, such as a declaration of land parcel construction, is known as state control in the Article 2 paragraph (2) UUPA. That is, the management and use of land as an agricultural resource must be oriented towards the prosperity and welfare of the people in terms of social justice (Wirawan, 2021).

Legislative policy is a choice of laws to introduce, as well as laws to be repealed or not enacted, all with a view to preserving state objectives, as established in the Preamble to the 1945 Constitution of the Republic of Indonesia. Legal policy, as a basis for the development of national law, uses judicial structures and a land sector among them, which is conceptualized in the land law policy (Ismail, 2012). Land law policy is a governance policy in the land sector for the adjudication and use of land ownership, legal protection and improvement of welfare and economic activities, land law formulation and implementation of regulations (Harjati et al., 2018). The principle of land law, in the regulation of the land registration system, according to the concept of law, as an instrument of social engineering, it is really good to build a land registration system based on the characteristics of developing countries (Lestario and Erlina, 2022).

By choosing a system of negative postings with positive features in the land registry, this system fully meets the objectives of the Indonesian Land Registry in terms of legal security of land to achieve land justice and welfare. humans (Silviana et al., 2020). But the lack of crime in the Earth sector, i.e. the average crime committed by the Earth mafia, is not spared with major Earth cases. The consequences of this wide range are a large economy with disputes, conflicts and land and space issues (Wirawan, 2022). This crime will affect the process of attracting investment within and outside the country and will limit economic growth, affecting employment opportunities.

A new land law system needs to be renewed and developed, especially adopted in the cadastral system, to correct the gaps and weaknesses of the editorial top, which was one of the first gaps in the creation of the land mafia. The negative publication system, the certificate issued is strong evidence of land rights. That is, all the information contained therein has legal force which must be accepted as true information by the judge and the judge must accept it as true information unless proven by other evidence. The vulnerability of the negative publication system has a positive trend: determining the validity or not of a right and its transit is the validity of legal acts, not registration (Sumanto, 2020). Therefore, according to the principle of *nemo plus iuris* registered in the property book and to reduce a certificate, the registrants must face the possibility of losing the land still controlled by the need to exercise rights (Iswantoro, 2013).

In the decision of the Supreme Court, a *rechtverwerking* entity, which is an additional means of guarantee in writing and subsequently the provisions of Article 32 paragraph (2) Government Regulation Number 24 of 1997 concerning Land Registration. But the truth is that those who believe that they have sufficient evidence violate the authenticity of the information contained in the certificate despite the 5 (five) period. In Indonesia, the purpose of *rechtsverwerking* is not fulfilled, but the case against the district court appears for electrification or for the certificate issued by the administrative court of the state, which does not indicate the certificate of these rights. Legal certainty in this area is not guaranteed. The certificate is considered reliable proof of ownership until a court decision is issued. It is legally and physically violated (Irfan and Kurniati, 2018).

Development of a national legal system to prevent land mafia as an inalienable and acquired right. This innovation or development is an attempt to rise the assurance of legal certainty, so it is necessary to transfer the national cadastral system to a positive editorial system. According to Effendi Perangin, the cadastral publication procedure is positive in property books and letters that show the rights granted. This means that third parties acting as evidence are fully protected, even if the information obtained in the future is not true. Oily parts will otherwise be compensated (Santoso, 2019).

Affirmative publication is considered to provide full legal certainty of land rights in the land registration system. Affirmative publication systems always use a title registry (Torrance system), so there must be a cadastre or a book as a form of rights reservation and presented as a letter of rights verification (Yubaidi et al., 2022). A person's name is the entry in the registry or book of property to which he is entitled. The dirty book presented in this system of positive publications for the state is real. In the affirmative action system, the principle of good faith applies, which protects the right of



the registrant to act in good faith as the legitimate holder of payment rights. A true share acquires inviolable title to inviolable rights and registers its name in the property book (Harsono, 2008).

The National Mid-Term Development Plan for the Agriculture Sector (RPJMN) has requested political direction for the period 2015-2019 to develop a positively articulated cadastral system. The RPJMN 2015-2019 has four conditions to reduce the likelihood of conflict, including accelerating coverage of certified areas; speed up world map coverage; Disclosure of forest area limits with cadastral maps; and the socialization of land-related laws and regulations (Rudianto et al., 2016). Earth base map coverage must reach 80% and coverage of nationally certified sites must reach 70% of national sites of compacted soil. The high percentage is considered to reduce the presence of many valid certificates, so if there are errors in the records, the risk of financial burden from the state for compensation can still be used appropriately (Rudiyanto et al., 2016).

Regarding the plan, at least 80% of the certified land will be obtained according to RPJMN 2015-2019 and later RPJMN 2020-2024, so the idea of reviewing the property registry of the editorial system will be positive. posting system. In addition, in a positive registration system, where there is a systematic error in the registration and the most vulnerable are harmed, the State guarantees the compensation funds by paying compensation to the claimants, to the extent that their right is proven. Most of the countries in the world have implemented the Torrens system or positive publication system as a land registration system, especially developed countries that apply the concepts of indefeasible and indemnity as compensation for errors in property titles (Rudianto et al., 2016).

The unrated idea must be central or important and must be on the record of the positive post. There are two types of damages in non-consensual law, immediate and vicarious. The creation of a system of land ownership through registration or registration of land rights designed to protect innocent parties such as land buyers and tenants is immediately intolerable. Unlike deferred possession, it targets three parties, namely the original owner of the land, the second owner who acquired the land from a fraudster, and the third owner, the party who acquired the land in good faith, unknowingly. The one who transferred the land from the original owner from him to the second owner was prevented by an imposter (deferred owner). The concept of compensation is the principle of compensation. Indemnity can be interpreted as a process by which the insurer provides financial compensation in an attempt to place the insured in a pre-loss financial position (Rudiyanto et al., 2016).

In order to establish a positive publication system, you need to take into account some important things, such as the government must understand the circumstances that make land registration imperative, the government must meet the prerequisites, and the government must make various efforts. to achieve the success. For the successful implementation of the new land registration system, the government needs to do a few things, such as (Susilowati et al., 2020) :

- a. Government understanding of the cost of expenditure and duration of operations required in the new land registry system;
- b. Socialization and evaluation;
- c. Changes in laws and regulations governing the land registration system; and
- d. Resolution of various issues and problems related to land.

In future, positive wording legal and regulatory analysis is expected to close the loophole of land mafia crime. This concept is fundamental, above all, in prevention and adaptation to eliminate the administrative aspect. However, Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates, relating to electronic certificates, refers to tenure and use of land by electronic and electronic means. Electronic certificate, hereafter referred to as an electronic certificate, is a certificate issued as an electronic document through an electronic system (Silvana, 2021). Through electronic certificates, apart from the positive changes in publishing and implementing the new policy, it is expected to strengthen and cover the crimes committed by the land mafia.

## CONCLUSION

Legal political reform of the land registration system needs to be carried out in an effort to prevent future land mafia from the administrative level. The idea of legal political reform is in the form of the formation of a new legal political system for land registration, namely a negative publication system to become a positive publication system, by revising or amending Law Number 5 of 1960, along with its implementing regulations, especially the articles relating to land registration in the system. negative publications. In addition to the legal reform of the land registration system, it is hoped that this will be balanced with the implementation of an electronic land registration system in the form of electronic certificate legal products that prioritize the principles of reliability, safety and responsibility. In this positive publication system, if it turns out that there was an error in the registration procedure which resulted in a loss for the party who may be more entitled, the state guarantees a compensation fund in the form of payment of compensation to the claimant whose rights are proven correct with the concept of indefeasible and indemnity as a form of compensation.

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