

LEGAL PROTECTION OF LAND OWNERS THAT HAVE BEEN CERTIFIED AS A LAND MAFIA PREVENTION EFFORT

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ABSTRACT

There is no legal protection for holders of certificates of ownership of the land they own and creates unrest and commotion among the community, especially the owners of land certificates. Because it opens full space to other parties, especially the land mafia, which at any time can sue the owner of the certificate. The goal to be achieved in this research is to examine and analyze the legal protection of landowners who have been certified as an effort to prevent land mafia that has not been justified. To formulate legal protection for landowners who have been certified as an effort to prevent land mafia based on justice. The research method in this dissertation is empirical juridical law research. Based on the results of research conducted by researchers, it was found that because Government regulations No. 18 of 2021 contains 2 (two) principles, that is, if up to 5 (five) years of ownership of the certificate, and if there is another party who feels he has the rights to the land, proves that the land is his property, then he can sue it to court and the certificate can be revoked, this is what is meant by legal protection that has not been fair and is detrimental to the people who are truly the legal owners and this condition has opened up opportunities for land mafia practices. Legal protection for landowners who have been certified as an effort to prevent justice-based land mafia is that land certificate owners obtain authentic evidence so that people feel safe and comfortable and receive strong and perfect legal protection. Next, it is necessary to delete and/or change the editorial of Government regulations No. 18 of 2021 Article 64 Paragraph (1) and Paragraph (2).

Keywords: Legal Protection, Owners of Land Certificates, Land Mafia, Justice

INTRODUCTION

Land registration is an important part of the Basic Agrarian Law, which is commonly referred to as the UUPA, because land registration is the beginning of the process of producing a proof of ownership of land rights. Due to the importance of the land registration issue, the UUPA ordered the government to register land throughout Indonesia. With land registration, one can easily obtain information regarding a plot of land, such as what rights one has, how wide it is, the location of the land, where and whether it is encumbered with mortgages or bank credit so as to provide a strong guarantee of legal certainty.¹ The implementation of land registration according to Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration in general includes 2 (two) activities, namely sporadic land registration and systematic land registration. During the systematic registration of landowners, people from the Land Office and several Village/Kelurahan officials who are members of the Adjudication Committee will be visited directly by the head of the National Land Agency to certify people's lands that have not been certified under one or part of the Village/Kelurahan area. Unfortunately, there is very little opportunity for this registration to be carried out often, because in systematic registration or often called the Adjudication Project, the government must subsidize 100% of landowners whose land has not been certified, while government finances are limited, in contrast to applications for certificates through sporadic land registration, applicants You can do it anytime as long as it's not on an office holiday, of course. Therefore, sporadic registration is preferred over systematic registration which is not necessarily available every time.²

The granting of certificates³ of land rights is a manifestation of one of the main objectives of the Basic Agrarian Law, namely to provide guarantees of legal certainty regarding land rights for all Indonesian people. This is as stated in article 19 paragraph 1 of the Basic Agrarian Law concerning land registration which states that:

"To guarantee legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations".

The purpose of land registration is to provide legal certainty and legal protection to rights holders over a parcel of land so that they can easily prove themselves as holders of the rights in question.⁴ Land certificates issued by the National Land Agency (BPN) are legal proof of ownership in any land dispute or any issues related to land ownership. To ensure legal certainty, registering land rights is an important thing to do. This is done in order to guarantee legal certainty for holders of land rights and other parties with an interest in the land. The principle of registration guarantee is the status of the right to guarantee the accuracy of a register, even supposed to provide compensation to anyone who suffers a loss.⁵

¹Ana Silviana, *Theory and Practice of Land Registration*, (Semarang: Diponegoro University Publishing Agency, 2010), p. 1.

²Herman Hermit, *How to Obtain Certificates for Freehold Land, State Land, Regional Government Land and Transfer of Names*, (Bandung: Mandar Maju, 2009), p. 6.

³A certificate is a valuable document because it has high economic value. Currently, there are many cases regarding land settlements. The involvement of the land mafia in fighting for land is one of the reasons. The land mafia never stops trying to obtain land that does not belong to them by falsifying certificates. See Adi Kusnadi, *Internship Technical Report on Legal Issues of Purchasing Status*, Jakarta, 1999, p. 15.

⁴See Article 3 paragraph 1 Government Regulation Number 10 of 1961 in conjunction with Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Government Regulation Number 18 of 2021.

⁵Mark P. Thompson, *Modern Land Law*, First Published. (New York: Oxford University Press, 2001), p. 88-89.

Maria S.W. Sumardjono, stated that the law requires certainty. The certificate holder has strong evidence of rights. Indonesian Land Law wants certainty as to who holds ownership rights or other rights over a plot of land.⁶ Land registration besides functioning to protect the owner, also serves to find out the status of a piece of land, who owns it, what rights it has, how wide it is, what it is used for and so on. Land registration will be carried out at the office of the National Land Agency (BPN) and assisted by the Land Deed Making Officer (PPAT) in the district/city area.⁷

De facto, with the increasing progress of the people's economy and the national economy, the need for legal protection in the land sector also increases. In everyday life land certificates often become disputes even up to court. This arises because land has a very important function for people's lives, which makes people try to acquire land in various ways, even by grabbing other people's land.⁸

The existence of the land mafia is not just a figment of the imagination, especially from the fact that the government brought in, it really exists and is being eradicated by the government. One of the cases is legal uncertainty in Indonesia, especially land issues. The Ministry of Spatial Planning (ATR) recorded cases reported as land mafia in Indonesia since 2018, reaching 242 cases. To date, 242 cases handled have been handed over to the public prosecutor and have permanent legal force (in kracht van gewijsde). In addition, there is a civil settlement and the land will be returned to the rightful victim.⁹

Examples of such cases occur because the laws and regulations on land registration itself have provided space for land mafia practices, namely multiple certificates, resulting in the actual owner of the certificate not receiving full and intact legal protection. Although the government has issued the latest regulations, namely Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration. However, these Government Regulations are not effective in preventing the land mafia, in fact, these regulations provide space for the land mafia to freely carry out their land crimes, which usually involve a group of people working together to illegally own or control other people's land. The perpetrators used unlawful methods which were carried out in a planned, neat and systematic manner. There are several modus operandi or operating techniques used by land mafia perpetrators in committing their crimes, including forging documents, illegal or unlawful occupation (wilde occupatie), seeking legality in court, engineering cases, collusion with unscrupulous officials to obtain legality, corporate crimes such as embezzlement and fraud, falsification of power of attorney over land rights, buying and selling land that is carried out as if it were formal, and loss of land certificates.

In de jure terms, Government Regulation Number 18 of 2021 Concerning Management Rights, Land Rights, Flats Units, and Land Registration can cause uproar and conflict in the community, because based on the philosophical basis, namely the 1945 Constitution, the state is obliged to provide, guarantee and safeguard every rights owned by its citizens, without exception. This is inseparable from the contents of Pancasila contained in the 5th precept, namely: Social justice for all Indonesian people. The government has a responsibility to make its people prosperous, avoid social inequality, maintain and even minimize so that there are no conflicts in society, especially regarding land disputes which have claimed too many victims and become social jealousy between groups which then turn into horizontal conflicts. The policies issued by the government greatly affect the wheel of people's lives, if the policy harms one group, then the government's task of realizing social justice has been disbanded. As is the case in Article 64 paragraph 1 and paragraph 2 of Government Regulation No. 18/2021 which reads as follows:

- (1) Cancellation of Land Rights due to administrative defects can only be done:
 - a. before the period of 5 (five) years from the issuance of the certificate of Land Rights, for:
 1. Land rights issued for the first time and have not been transferred; or
 2. Land rights that have been transferred but the parties do not have good faith in the transfer of said rights in accordance with statutory provisions; or
 - b. due to overlapping land rights.
- (2) In the event that the 5 (five) year period as referred to in paragraph (1) letter a is exceeded, the annulment shall be made through a judicial mechanism.

The article mentioned above provides legal legitimacy that even if the community has carried out land registration and has obtained a certificate as authentic evidence, the community feels safe and comfortable because they have strong and perfect legal protection. However, on the contrary with the issuance of Article 64 paragraph 1 and paragraph 2 of Government Regulation No. 18/2021 contradicts each other with Article 20 paragraph 1 of Law Number 5 of 1960 Concerning Basic Agrarian Regulations which states that:

"Property rights are hereditary, strongest and fullest rights that people can have over land, bearing in mind the provisions in article 6".

So that there is no legal protection for holders of certificates of ownership of the land they own and creates unrest and commotion among the community, especially the owners of land certificates. Because it opens full space to other parties, especially the land mafia, which at any time can sue the owner of the certificate.

RESEARCH METHOD

The research method in this is empirical¹⁰ juridical¹¹ legal research, which can also be called applied juridical legal research, which is legal research that examines the implementation or implementation of positive legal provisions (legislation) and contracts in fact

⁶Maria S.W. Sumardjono, Land Policy between Regulation and Implementation, (Jakarta: Kompas, 2001), p. 37.

⁷AP. Protection, Land Registration in Indonesia, (Bandung: Mandar Maju, 1994), p. 13.

⁸Adrian Sutedi, Land Rights Certificate, (Jakarta: Sinar Graphics, 2012), p. 5..

⁹CNNIndonesia. Accessed May 15, 2022..

¹⁰Anis Mashdurohaturun, Ariy Khaerudin, Teguh Prasetyo, Intellectual Property Protection of Indigenous Peoples in Indonesia: Quo Vadis?. Sociological Jurisprudence Journal, Volume. 43. Issue. 1.2020.pp.1-7.

¹¹ Non-doctrinal legal research (empirical legal research), namely research that will not only discuss law (laws) as prescriptions recorded as dead letters of law, but also as socio-political forces structured within the enforcement organization, following are the processes in the socio-cultural context. These are studies with research on text in context. See Peter Mahmud Marzuki, Legal Research, (Jakarta: Kencana, 2014), p. 47.

in every particular legal event that occurs in society in order to achieve the goal which has been specified.¹² Juridical and empirical¹³ legal research on law will produce theories about the existence and function of law in society, along with the changes that occur in processes of social change.¹⁴ Primary data is data that is directly collected by the researcher from the source of the question.¹⁵ Data obtained directly from the community, subjects studied at institutions, or community groups, direct actors who can provide information to researchers who are known as respondents and informants. Secondary data¹⁶ is in the form of primary, secondary and tertiary legal materials.¹⁷ The analytical method used in this study uses a descriptive-prescriptive analysis method. The point is that researchers in analyzing wish to provide an overview or presentation of the subjects and objects of research as the results of the research conducted. Researchers do not justify the results of the research and arguments are carried out by researchers to provide prescriptions or judgments about right or wrong or what should be according to law regarding facts or legal events from the research results.¹⁸

Legal Protection for Certificate Owners

As a consequence of the issuance of Law Number 11 of 2020 concerning Job Creation, several regulations repeal or revise related existing regulations. One of them is Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration. To implement the provisions of Article 142 and Article 185 letter b of Law Number 11 of 2020 concerning Job Creation. And Government regulations No. 18 2021 was born to change the contents of Government regulations No. 24 of 1997 concerning Land Registration.

According to the writer's opinion, Government regulations No. 18/2021 is only based on Law no. 11/2020, does not mention UUPA as the basis for reference. Even though the UUPA is not mentioned as a basis for remembering, the UUPA is still required to be a reference. Because the UUPA contains legal principles as a special law, while the Job Creation Law has the position of general law. As a consequence, the Job Creation Law cannot contain legal substance that is contrary to the UUPA and likewise Government regulations No. 18/2021 may not conflict with the UUPA.

Since the birth of Government regulations No. 18/2021 Article 64 paragraph 1 and paragraph 2 which reads as follows:

- (1) Cancellation of Land Rights due to administrative defects can only be done:
 - a. before the period of 5 (five) years from the issuance of the certificate of Land Rights, for:
 - 1) Land Rights issued for the first time and have not been transferred; or
 - 2) Land rights that have been transferred but the parties do not have good faith in the transfer of said rights in accordance with the provisions of the laws and regulations; or
 - b. due to overlapping land rights.
- (2) In the event that the 5 (five) year period as referred to in paragraph (1) letter a is exceeded, the annulment shall be made through a judicial mechanism.

According to the author of Article 64 paragraph 1 and paragraph 2 Government regulations No. 18/2021 shows that this law is contradictory to Article 20 paragraph 1 and Article 19 paragraph 1 of the UUPA, because it does not distribute legal protection and is fair, as a result it opens up opportunities for the formation of land mafias. Thus giving rise to several modus operandi or operating techniques used by land mafia perpetrators in committing their crimes, including forging documents, illegal or unlawful occupation (*wilde occupatie*), seeking legality in court, engineering cases, collusion with unscrupulous officials to obtain legality, corporate crimes such as embezzlement and fraud, falsification of power of attorney over land rights, buying and selling land that is done as if it were formal, and loss of land certificates.¹⁹

Laws and regulations should provide legal protection and justice as regulated in Article 20 paragraph 1 and Article 19 paragraph 1 of the Basic Agrarian Law. The ownership of a plot of land basically has all legal powers in it, both from the ownership of the rights, the physical land, as well as a legal protection for the legal owner of the land from disturbance or other land disputes. As stated in the sentence of Article 19 paragraph (1) of the UUPA concerning Land Registration with the core discussion of the article, it can be clearly understood that the main purpose of land registration is to guarantee legal protection, namely regarding the subject of rights and objects.

¹² Abdulkadir Muhammad, *Law and Legal Research*, (Bandung: Citra Aditya Bakti, 2004), p. 134.

¹³ Empirical legal research attempts to see law in a real sense and examine how society's legal behavior behaves and how law works in society. See Supri Yono et al, *Reconstruction of Separate-Creditor Positions in the Process Declaring Bankruptcy in Indonesia Based on Justice Value*, *Scholars International Journal of Law, Crime and Justice*, Nov, 2020; 3(11):pp. 334-341

¹⁴ Soetandjo Wignjosebroto, *Social/Nondoctrinal Research Methods for Studying Law in its Concept as a Social Reality*, *Epsitema Digest*, Volume 3/2013, p. 13..

¹⁵ Suryo Subroto, *School Education Management*, (Jakarta: PN Rineka Cipta. 2003), p. 39.

¹⁶ Secondary data is data obtained from written materials. See Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: University of Indonesia, 1986), p. 11. See too Anis Mashdurohatun, & Gunarto, *Trademark Legal Protection against SMEs in Enhancing Global Competitiveness Based on the values of Pancasila*, 2nd International Conference on Indonesian Legal Studies (ICILS 2019), *Advances in Social Science, Education and Humanities Research*, Atlantis Press. volume 363,2019. pp 93-99. See too Yeltriana, Anis Mashdurohatun, Jelly Leviza, *Ideal Reconstruction of Protection for Layoff Victim At the Industrial Relations Court Based on Justice*, *International Journal of Law, Government and Communication*, Volume 4. Issue. 14. 2019. pp.32-49. See too Anis Mashdurohatun, *Hukum Perlindungan Konsumen (Kajian Teori dan Praktik)*, UNISSULA Press, 2019. 1-137 see too Anis Mashdurohatun, *Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-gini) Post-Divorce)*, International Conference on Law Reform (INCLAR 2019), Atlantis Press 2019.pp.70-75.

¹⁷ Suratman and H. Philips Dillah, *Legal Research Methods*, (Bandung: Alfabeta, 2013), p. 66.

¹⁸ Mukti Fajar ND dan Yulianto Achmad, *Dualism of Normative & Empirical Legal Research*, Student Library, Yogyakarta, 2010., p. 183-184.

¹⁹ Dian Cahyaningrum, *Eradicating the Land Mafia*, *Legal Journal Short Info: A Brief Study of Actual and Strategic Issues*, Legal Research Center, DPR RI Expertise Body, Vol. XIII, No.23/I/Puslit/December/2021, p. 1-6.

This condition must be adapted to the constitution of this country, namely the 1945 Constitution²⁰, especially in Article 1 Paragraph (3) of the 1945 Constitution which means that the State guarantees the legal rights of its citizens to provide legal protection especially against the abuse of authority by the mafia against legitimate landowners.

And Article 28 D paragraph (1), namely:

Everyone has the right to recognition, guarantees, fair legal protection and equal treatment before the law.

In the constitutional statement that recognizing the existence of legal protection and justice as a finality cannot be ruled out. In fact, the principle of *nemo plus juris*²¹ is in line with the ideal of law enforcement, which protects the actual owners of land rights from the actions of other people who divert them without their knowledge, thus this principle prioritizes justice for the community. While the implementation of legal certainty is left to the competent Court to assess the evidence belonging to the parties to the dispute which then results in a judge's decision, thus all interests can be properly protected without causing unrest in them so that the benefits of applying the law can be felt. In addition to minimizing the occurrence of lawsuits in court, land registration officers from the BPN/Ministry of Agrarian Affairs must act actively and maximally to accurately examine the correctness of physical and juridical data on a land parcel, and so on in the context of maintaining physical data and juridical data.

The Principle of *Nemo Plus Iuris Transfere (ad alium) Potest Quam Ipse Habet* or commonly known as the Principle of *Nemo Plus Yuris* means that no one can transfer his rights beyond what he has righted. There are two elements in this formula, namely, for an object that belongs to him, a person cannot do more than he has authority over the object. This principle in land law functions to guarantee legal certainty and provide legal protection for holders of land rights, because the state does not guarantee the truth of what is stated on land title certificates.

This is the impact of the negative publication system on land registration in Indonesia. In fact, land has a very central and strategic position for human life. As needed for facilities and infrastructure, such as roads, markets, buildings, housing, such as roads, markets, buildings, housing, to defense and security. Another sentence of life and human life cannot be separated from the soil. After death, humans need land as their final resting place.²²

Issuance of land certificates is a legal consequence of land registration activities which include surveying, mapping, bookkeeping of land and registration of land rights and the transfer of said rights. Therefore, land registration adheres to a negative system and not a positive system, then the land certificate which is the legal consequence of land registration by itself also contains a negative system and not a positive system, so the land certificate which is the legal consequence of land registration by itself also contains a system negative.²³ The reflection of the negative system of land certificates can be seen in the provisions of article 19 paragraph 2 c of the UUPA, which says: the provision of proof of valid rights as a strong means of proof. The proof of title referred to is a land certificate.

In practice it is often called a certificate consisting of a land book and a measurement letter. But what is complete is that it must also be mentioned that there is an outer cover and an inner cover.²⁴

In Government regulations No. 18 of 2021 does not recognize the existence of a temporary certificate. It is clear in Article 31 Government regulations No. 24 of 1997 juncto No. 18 of 2021 it says, certificates are issued for the benefit of the right holders concerned in accordance with the physical data and juridical data that have been registered in the land book. Article 23, Article 32 and Article 38 of the Basic Agrarian Law explain that registration (which ultimately issues certificates) is as strong evidence.

However, this is not the case as in Government regulations No. 18 of 2021 Article 64, for the owner of the certificate there is no legal protection regarding ownership, because if he has owned it for 5 (five) consecutive years he will obtain it in good faith then other parties who feel they have rights to the land will no longer claim exercise of their rights. That is, the provision of legal protection given to land certificate owners is conditional.

According to the author of Government regulations No. 18 of 2021 contains 2 (two) principles, that is, if up to 5 (five) years of ownership of the certificate, and if there is another party who feels he has the rights to the land, proves that the land is his property, then he can sue it to court and the certificate can be revoked, this is what is meant by legal protection that has not been fair and is detrimental to the people who are truly the legal owners and this condition has opened up opportunities for land mafia practices.

Cancellation/revocation of certificates is an authority of the National Land Agency (BPN). But if the ownership has passed 5 (five) years, the owner of the Certificate can no longer be sued for cancellation (certificate revocation). So adhere to the positive principle (absolute).

With the existence of Article 64 paragraph 2 Government regulations 18 of 2021, there is no legal protection for certificate holders for at least 5 (five) years. Because Article 64 paragraph 2 which states:

In the event that the 5 (five) year period as referred to in paragraph (1) letter a is exceeded, the annulment shall be made through a judicial mechanism.

As a consequence of the aforementioned Article, other parties who feel they have rights over land can demand the implementation of these rights in court.

²⁰ Anis Mashdurohaturun, Erman Suparman, I Gusti Ayu Ketut Rachmi Handayani, Authority of the Constitutional Court in the Dispute Resolution of Regional Head Elections, *Lex Publica*, Volume.6. Issue. 1.2019.pp.52-60

²¹ Asas *nemo plus juris* artinya, tak seorangpun dapat mengalihkan hak yang lebih besar daripada yang ia miliki. Tujuannya, melindungi pemegang hak atas tanah yang sebenarnya dari tindakan orang lain yang mengalihkan hal tersebut tanpa diketahui si pemegang hak sejati. Lihat Adrian Sutedi, *Sertifikat Hak atas Tanah*, (Jakarta: Sinar Grafika, 2017), hlm. 47.

²² Derta Rahmanto, Conflict Resolution and Land Ownership Certificate Disputes, *Fair Legal Journal* Vol. 5 Number 1, July 2014, p. 42.

Ahmadi Miru, *Contract Law and Contract Drafting*, (Jakarta: Rajawali Pers, 2007), p. 36.

²³ Abdulrahman, *About and Around the Basic Agrarian Law*, (Bandung: Alumni, 1984), p. 7..

²⁴ Ahmadi Miru, *Contract Law and Contract Drafting*, (Jakarta: Rajawali Pers, 2007), p. 36.

1. Examples of Land Mafia Cases

Table of Examples of Land Mafia Cases in Indonesia

No	Case	Modus Operandi
1.	Sport Center Medan	Alleged falsification of land certificates by making land certificates totaling 95 land certificates covering an area of more than 138 hectares. It was as if it belonged to cultivators on the land that would be used for the Sport Center. This land certificate is suspected of being a tool for the suspects to file a lawsuit against the North Sumatra Provincial Government. That is the basis of the right used to sue in court. Starting from the District Court, High Court to the Supreme Court. ²⁵
2.	Land fraud case in Salatiga, Central Java	Initially, two businessmen bought 10 plots of land in the Salatiga area. It is known that both of them have already paid the down payment. Knowing that the victim's condition was easy to deceive, the perpetrator then borrowed a land certificate to be checked at the land office. However, the perpetrator and a notary in Salatiga, the certificate was transferred to the name of the perpetrator to be used as collateral in a bank. ²⁶
3.	The case of the issuance of Land Rights Certificates law defects occurred in the Baturaja area.	Alleged game case in the issuance of land certificates at the Office of the National Land Agency (BPN). ²⁷
4.	Land grabbing case in West Jakarta City	The suspicion of certificate forgery is getting stronger, because there is a certificate in the same land object that has been canceled beforehand. ²⁸
5.	Asset embezzlement case in the West Jakarta area.	The alleged change of name started with anxiety that they felt their land certificate was missing, so they asked for help to take care of the lost certificate. But in reality the letter was misused to change the ownership name. ²⁹

Case Analysis

Based on the table data above, as proof that legal protection for land certificate owners must be reconstructed, because it causes unrest and commotion and there is no guarantee of protection so that the impact on land certificate owners does not get justice. Therefore, the author will explain the analysis of some of these cases as follows:

- The existence of a network of land mafia organization performance is factually evident with all its behavior that is against the law or violates the law including losses suffered by other parties who become victims. The performance network of the land mafia that is organized, neat, and systematic is able to hide the true facts so that the behavior that appears is normal.
- There are efforts to 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 process of approaching negotiations with land owners, and filing lawsuits with systematic and logical thinking.
- There is the ability of the land mafia to look for loopholes in the laws and regulations in the land sector, information related to the administration of the granting of land rights and certificates of land rights that have been issued, as well as the ability to obtain evidence of land ownership and identify lands that have been abandoned and left unused by the rights holder.
- The existence of loopholes both in legal provisions and land administration as well as the negligent attitude of holders of open land rights is used as an opportunity to carry out their illegal performance to gain benefits and harm other parties.
- There are weaknesses in the regulation of legal protection for owners of land certificates, resulting in a policy of granting land rights that are free to open opportunities for the land mafia

Legal protection for certified landowners as an effort to prevent land mafia based on justice

Government Regulation no. 24 of 1997 juncto Government Regulation no. 18 of 2021 which is a form of implementing land registration which aims to provide legal protection for holders of land rights with evidence resulting from the end of the land registration process in the form of a Land Book and Land Certificate consisting of copies of the Land Book and Measurement Letter.³⁰

Legal protection is given in the event of a violation or action that is contrary to or contrary to the applicable law issued by the government, either from the actions of a ruler who violates the law or from the people who must be considered. In Article

²⁵ Central News FKPPN: Arrest the Main Mastermind of the Tanah Sport Center Mafia Case, 18 December 2020. <https://sentralberita.com/2020/12/fkppn-tangkap-dalang-utama-case-mafia-tanah-sport-center/>. Accessed December 15, 2022..

²⁶ KompasTV, Central Java Regional Police Dismantle Land Mafia Case, 12 Suspects Arrested, <https://www.kompas.tv/article/311455/polda-jateng-bangun-kas-mafia-tanah-12-tersangka-digarkap>, Thursday, July 21 2022 .Accessed December 15, 2022..

²⁷ Wulan Febriana Putri, Legal Settlement of the Case of Issuance of Legally Defective Land Title Certificates at the Baturaja National Land Agency (BPN), South Sumatra Province, Thesis, (Palembang: Master of Law Study Program, Palembang Muhammadiyah University, 2021).

²⁸ Megapolitan, Asks to Thoroughly Investigate the Land Mafia Case, Dozens of Residents Raid the West Jakarta ATR/BPN Office, <https://poskota.co.id/2022/12/16/minta-usut-tuntas-kas-mafia-tanah-belasan-warga-geruduk-office-atrbpn-jakarta-west>, Friday, 16 December 2022. Accessed on 15 December 2022.

²⁹ Viva.co.id, PPAT Notary Ethics in the Land Mafia Case Nirina Zubir, <https://www.viva.co.id/vstory/opini-vstory/1430181-etika-notaris-ppat-dalam-case-mafia-tanah-nirina-zubir>, Wednesday, 8 December 2021. Accessed on 15 December 2022.

³⁰ Aries S. Hutagalung, Spread of Thoughts Regarding Land Law Issues, (Jakarta: Indonesian Legal Empowerment Institute, 2005), p. 81.

1 Paragraph (3) of the 1945 Constitution, which means that the state guarantees the legal rights of its citizens to provide legal protection. In terms of legal protection for landowners, UUPA No. 5 of 1960 concerning Basic Agrarian Regulations aims to regulate ownership of land rights, so that holders of land rights feel protected. One of the aspects in the UUPA is land registration, this is very important, because it is closely related to maintaining citizens' ownership rights to their own land and the protection that is obtained by legal landowners.

The legal protection in question is legal protection concerning physical data and juridical data regarding control over a land. From the results of the author's analysis, it is found that the legal protection for landowners in Indonesia is very strong, provided that the landowner has proof of ownership of the land in dispute. The evidence is in the form of a land certificate which is the strongest evidence for ownership of a land right, as stated in Article 19 Paragraph (2) letter c of the UUPA. In addition, the decision that the Panel of Judges took was the right decision, based on Article 1 Paragraph (3) of the 1945 Constitution, which means that the state guarantees the legal rights of its citizens to provide legal protection, especially against the abuse of authority by the mafia against legitimate landowners.

Land disputes are a classic phenomenon that remains actual and always interesting to be studied by researchers. Disputes are a reflection of a situation where a sense of justice is not fulfilled for people who depend on the land sector for their livelihood.³¹

Settlement of disputes related to the cancellation of certificates can be done through the State Administrative Court and outside the court. Settlement of disputes through the State Administrative Court is resolved in two ways, namely:³²

- a) Through administrative efforts, this method is used if a person or civil legal entity is dissatisfied with a decision of the State Administration. This effort can be done by means of administrative appeals and objections.³³
- b) Through a lawsuit, there are two parties, namely: the plaintiff and the defendant in the State Administrative Court.

The settlement of disputes outside the court in this case is carried out by BPN itself through cancellation. The BPN's authority to cancel is regulated in Law Number 30 of 2014 concerning Government Administration Article 66, namely regarding decisions made by authorized officials that can only be canceled if there are defects in authority, procedure and substance. The cancellation decision can only be made by a government official who makes a decision, a superior official who makes a decision and on a court decision.

Then more specifically the basis for the authority to cancel certificates by the BPN is regulated in Article 11 paragraph (3) of the ATR/Head of BPN Regulation Number 11 of 2016 concerning Settlement of Land Cases, namely regarding:

1. Procedural errors in the process of measuring, mapping and/or area calculations;
2. Procedural errors in the registration process;
3. Procedural errors in the process of determining and/or registering land rights;
4. Procedural errors in the process of determining abandoned land;
5. Overlapping rights or certificates of land rights where one of the rights bases clearly has an error;
6. Procedural errors in the process of maintaining land registration data;
7. Procedural errors in the process of issuing a replacement certificate;
8. Errors in providing land data information;
9. Procedural errors in the permit granting process;
10. Misuse of space utilization; or
11. Other errors in the application of laws and regulations.

Of all the authorities for canceling certificates by BPN above, it can come from initiatives from the Ministry, and it can come from complaints by the public, the settlement of which can be carried out by the ministry or outside the ministry. Disputes or conflicts that can be resolved through the ministry must have certain characteristics as meant in paragraph 1 letter b number 2 of Article 13 paragraph 3, namely:

1. become the public's attention;
2. involving many parties;
3. has high value in terms of culture, economy, public interest, defense and security, and/or
4. request from the competent authority or law enforcement agency.

The authority of the state in dealing with matters relating to land has been regulated in laws and regulations. The authority of the state through its State Controlling Rights to regulate the designation of control and ownership of rights over has been regulated in Article 2 paragraph 2 of the UUPA, namely:

1. regulate and administer the allotment, use, supply and maintenance of the earth, water and space;
2. determining and regulating legal relations between people and the earth, water and space;
3. determine and regulate legal relations between people and legal acts concerning earth, water and space.

In addition to the powers mentioned in article 2 paragraph 2 of the UUPA above, according to Boedi Harsono the State has other duties and authorities in the field of public law such as:³⁴

1. Organize and organize the provision of evidence regarding legal relations and actions contained in article 2 paragraph 2 of the UUPA by carrying out land registration covering the entire territory of the State.
2. Regulates the implementation of an integrated land information system and the provision of land data which includes physical data and juridical data as well as data on capacity supply, allocation and use as well as land value required for the planning and implementation of development by the state and society.

³¹ Abu Rohmad, Agrarian conflict resolution paradigm, (Semarang: Walisongo Press, 2008), Print I, p. 1.

³² Elza Syarif, Resolving Land Disputes Through Special Land Courts, (Jakarta: Gramedia Popular Literature, 2012), Print I, p. 235.

³³ An administrative appeal is the completion of administrative efforts carried out by a superior agency or agency other than the one that issued the decision. Meanwhile, what is meant by objection is the completion of administrative efforts carried out by the State Administrative body or official who issued the decision. See Article 48 of Law Number 5 of 1986.

³⁴ Boedi Harsono, Indonesian Agrarian Law: History of the Formation of Basic Agrarian Laws, Their Content and Implementation, (Jakarta: Djangkat, 1999), p. 49..

3. Regulate the settlement of legal disputes in the land sector, both civil and state administration.
4. Regulate and establish institutions to carry out these tasks both at the central and regional government levels, as well as provide skilled and capable human resources through the provision of professional education and training.

Referring to the theory of authority that the BPN's authority in resolving land disputes in relation to the cancellation of certificates originates from the attribution authority that has been mandated in laws and regulations to administer and manage all matters in the land sector, one of the duties is in the form of issuing a decision on land registration in the form of a certificate or issuance of a decision in the form of cancellation of land title certificates or settlement of land disputes. Settlement of disputes through cancellation of land certificates is based on whether the decision issued by BPN contains administrative defects or not. In the regulations contained in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN number 11 of 2016 it is stated that the intended administrative defects are regulated in Article 11 paragraph 3.

The authority of BPN in resolving a land dispute, disputes that arise are based on administrative defects which have been explained in Article 11 paragraph 3 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 11 of 2016 concerning Settlement of Land Cases. In addition to the form of attribution authority given to BPN as stated above, there is also a form of authority given to it, namely delegation. Authority by delegation is a transfer of authority from a higher official to a lower one. The central government or central BPN can hand over authority to their subordinates, in this case the provincial BPN or the head of the district/city land office to resolve various existing problems or disputes. The authority of the National Land Agency in the Province and Regency/City to resolve disputes by making a decision in the form of cancellation of certificates is based on the authority of the delegation as stipulated in the Minister of Agrarian Regulation No. 11 of 2016. The legal basis for assigning BPN explicitly and clearly to cancel a certificate as stipulated in Article 24 paragraph (7) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 11 of 2016 concerning Settlement of Land Cases, namely:

"In the event that on one plot of land there are overlapping certificates of land rights, the Minister or Head of the Regional Office of the BPN in accordance with their authority issues a decision to cancel the overlapping certificates, so that on the plot of land there is only 1 (one) valid certificate of land rights. ”.

Administrative defects that have been mentioned in Article 11 paragraph 3, especially letter e related to overlapping certificates in which one of the rights has an error is an object of dispute which is the authority of the BPN and is processed or resolved by the Provincial BPN. The Head of the BPN Regional Office or the Minister resolves disputes and conflicts by issuing a decision to cancel land rights, a decision to cancel certificates whose legal basis is regulated in Article 24 of Ministerial Regulation No. 11 of 2016 concerning Settlement of Land Cases. The National Land Agency, which is given the task and authority to run affairs in the land sector, in addition to issuing decisions in matters of land registration, also has the authority to cancel certificates that have been issued which become legal products in the form of state administrative decisions.

Cancellation of a land title certificate is regulated in Article 12 of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1999 concerning Delegation of Authority for Granting and Cancellation of Decrees for Granting State Land Rights, namely:

1. cancellation of the decision to grant land rights that has been issued by the Head of the Regency/Municipal Land Office where there are legal defects in its issuance;
2. cancellation of the decision on the granting of land rights, the authority to grant which is delegated to the Head of the Regency/Municipal Land Office and to the Head of the Regional Office of the Provincial Land Agency, to implement the Court's decision which has obtained permanent legal force.

The authority possessed by BPN in making a decision in the form of canceling land ownership certificates in which there are administrative legal defects that have been issued by the Head of the Regency/City Land Office whose authority has been delegated by the Head of the Regional Office as well as decisions in the form of cancellation a certificate issued by the Head of the Regional Office to implement a court decision that has permanent legal force. This is also explained in Article 49 of the new regulation of Minister of ATR/Head of BPN No. 11 of 2016 concerning settlement of land cases, namely:

1. Implementation of a court decision is a follow-up to a court decision that has permanent legal force.
2. Orders of court decisions that have permanent legal force, relating to the issuance, transfer, cancellation of land rights and/or cancellation of abandoned land stipulations, including orders to annul land rights, declaring null and void/not having legal force. over land, stating proof of invalid/non-legal force, orders to record or write-off in the Land Book, orders to issue land rights, orders to cancel stipulations of abandoned land; and amar which means giving rise to legal consequences of issuing a transfer of rights or canceling the transfer of rights.

The authority to resolve disputes in the event of cancellation of a certificate in which there is an administrative defect can be exercised by BPN and/or this authority can be exercised in the form of delegation to the Head of the Regional BPN Office in canceling overlapping certificates. The settlement of certificate cancellation disputes is regulated in the Minister of Agrarian Regulation No. 11 of 2016 concerning Settlement of Land Cases. Apart from the provisions above, to realize good governance, especially for government officials, the Law on Government Administration No. 30 of 2014 can also be used as a legal basis to underlie decisions and/or actions of government officials to meet the legal needs of the community in resolving disputes or problems that occur in the community.

Government Regulation Number 18 of 2021 Concerning Management Rights, Land Rights, Flat Units, and Land Registration can cause uproar and conflict in the community, because based on the philosophical basis, namely the 1945 Constitution, the state is obliged to provide, guarantee and safeguard every right owned by citizens, without exception. This is inseparable from the contents of Pancasila contained in the 5th precept, namely: Social justice for all Indonesian people.

The government has a responsibility to make its people prosperous, avoid social inequality, maintain and even minimize so that there are no conflicts in society, especially regarding land disputes which have claimed too many victims and become social jealousy between groups which then turn into horizontal conflicts. The policies issued by the government greatly affect the wheel of people's lives, if the policy harms one group, then the government's task of realizing social justice has been disbanded.

As is the case in Article 64 paragraph 1 and paragraph 2 of Government Regulation No. 18/2021 which reads as follows:

- (1) Cancellation of Land Rights due to administrative defects can only be done:

- a. before the period of 5 (five) years from the issuance of the certificate of Land Rights, for:
 - a) Land Rights issued for the first time and have not been transferred; or
 - b) Land rights that have been transferred but the parties do not have good faith in the transfer of said rights in accordance with the provisions of laws and regulations; or
 - b. due to overlapping land rights.
- (2) In the event that the 5 (five) year period as referred to in paragraph (1) letter a is exceeded, the annulment shall be made through a judicial mechanism.

The article mentioned above provides legal legitimacy that even if the community has carried out land registration and has obtained a certificate as authentic evidence, the community feels safe and comfortable because they have strong and perfect legal protection. However, on the contrary with the issuance of Article 64 paragraph 1 and paragraph 2 of Government Regulation No. 18/2021 contradicts each other with Article 20 paragraph 1 of the UUPA:

"Property rights are hereditary, strongest and fullest rights that people can have over land, bearing in mind the provisions in article 6".

The purpose of the phrases in the said Article "strongest and most complete" according to the elucidation of this Law is to distinguish it from usufructuary rights, building usufructuary rights, usufructuary rights and others, namely to show that among the rights over land that can be owned by the right of ownership is the "ter" (meaning: the most)-strongest and fullest.

Then the reading of Article 20 paragraph 1 is linked to Article 6 which reads all land rights have a social function. in the Elucidation of this Law which is summarized in the General Elucidation of point II number 4 explaining the purpose of this social function is that the use of land must be adapted to its circumstances and the nature of its rights, so that it is beneficial both for the welfare and happiness of those who own it and for the benefit of society and the state. So it is a natural thing that the land must be well cared for, so that it increases its fertility and prevents its damage. The obligation to maintain this land is not only borne by the owner or right-holder concerned, but is also borne by every person, legal entity or agency that has a legal relationship with said land.

Article 19 paragraph (1) UUPA:

"The government is to carry out land registration to ensure legal clarity over lands in all areas of the Republic of Indonesia, and also entrust the making of a government regulation for its implementation."

According to the author, this means Article 64 paragraph 1 and paragraph 4 Government regulations No. 18/2021 shows that there is no legal protection and justice for the holders of certificates of ownership of the land they own and creates unrest or commotion among the community, opens up full space for other parties, especially the land mafia which can sue the owner of the certificate at any time, p. This is the cause of land mafia practices which are very detrimental to the community, especially the certificate holders.

Although the government has issued the latest regulations, namely Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration. However, these Government Regulations are not effective in preventing the land mafia, in fact, these regulations provide space for the land mafia to freely carry out their land crimes, which usually involve a group of people working together to illegally own or control other people's land. The perpetrators used unlawful methods which were carried out in a planned, neat and systematic manner.

There is no form of legal protection for the holder of a certificate of ownership against the issuance of a certificate, there is still a legal vacuum in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration and in other regulations. The Legal Vacuum itself can be interpreted as an empty state or absence of legislation (law) that regulates (certain) order in society in an effort to eradicate the land mafia by closing or repairing gaps that become opportunities for land mafia networks to enter, including:

1. Land administration managed by the National Land Agency (BPN) has not yet been integrated with existing land administration in the village, for example in relation to Letter C land, the Customary Chairperson has the authority to issue a Land Certificate (SKT) or Customary Land Certificate (SKTA);
2. The land registration process has not yet been completed, so that the use of proof of land rights that existed before Law Number 5 of 1960 concerning Basic Agrarian Regulations is still open;
3. Administrative action is not immediately taken on land whose rights have expired or have been deleted; or;
4. There are multiple overlapping certificates.

According to the author, Article 64 paragraph 1 and paragraph 2 of Government Regulation Number 18 of 2021 are contradictory to each other so that they are inconsistent with the purpose of establishing the Basic Agrarian Law Number 5 of 1960 which in the article contains the values of justice, in this case Pancasila justice, because according to the author that:

- a. The establishment of the UUPA uses the Stufen Theorie (the ladder theory) explained by Hans Kelsen. The theory is that legal order or legal order is a system of norms that are shaped like pyramidal steps. At each ladder there are rules (norms) and at the top of the pyramid there are rules called basic rules (grundnorm). Under the basic rules there are rules called the Constitution, under the Act there are rules called regulations, under these regulations there are rules called stipulations. So the basis applies and the legality of a rule lies in the rule that is above it.³⁵
- b. Based on Stufen's theory, the basis for the validity and legality of the UUPA can be explained as follows: Pancasila with its five precepts is listed in paragraph IV of the 1945 Constitution. The Preamble to the 1945 Constitution is an inseparable part of the body of the 1945 Constitution or in other words, both are one unit which cannot be separated. The Pancasila contained in the Preamble of the 1945 Constitution animates the body of the 1945 Constitution, meaning that the precepts in Pancasila are further elaborated in the Articles (body) of the 1945 Constitution. So because Pancasila is further elaborated in the body of the 1945 Constitution, this means that the basis apply and the legality of the 1945 Constitution lies in Pancasila.³⁶

³⁵Bachsar Mustafa, Agrarian law in perspective Publisher, Remadja Karya, Bandung.1984,p. 66.

³⁶ *Ibid.*, p. 61.

- c) One of the Articles of the 1945 Constitution is Article 33 paragraph (3) which states that the land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This provision is used as the basis for the formation of the UUPA, as contained in Article 2 paragraph (1) of the UUPA, namely on the basis of the provisions in Article 33 paragraph (3) of the UUD and matters as referred to in Article 1, earth, water and space including the natural wealth contained therein is at the highest level controlled by the state, as the organization of the power of all the people. So the basis for the validity and legality of the UUPA lies in the 1945 Constitution.

- d) The provisions in the UUPA indicating that the UUPA is based on Pancasila can be explained as follows:

- a. In the preamble of the UUPA under the word of opinion letter c it is stated that:

"National agrarian law must embody the embodiment of Belief in One Almighty God, humanity, nationality, democracy and social justice, as the spiritual principles of the state and the ideals of the nation as stated in the Preamble to the Constitution".

- b. General Explanation of Number 1 UUPA states that:

"National Agrarian Law must realize the embodiment of the spiritual principles of the state and the ideals of the nation, namely Belief in One Almighty God, humanity, nationality, democracy and social justice and in particular must be the implementation of the provisions in Article 33 of the Constitution and the Outlines of State Policy (GBHN)) stated in the Political Manifesto of the Republic of Indonesia on August 17, 1959 and confirmed in the Presidential Speech on August 17, 1960.

Meanwhile, the Government Regulation of the Republic of Indonesia Number 18 of 2021 Concerning Management Rights, Land Rights, Flats Units, and Land Registration Article 64 paragraph 1 and paragraph 2 contains an understanding that the ownership of a certificate has adhered to 2 (two) principles at once, namely first, if up to 5 (five) years of certificate ownership. Second, if there are other parties who feel they have rights over the land, it proves that the land belongs to them, then they can challenge it to the court and the certificate can be cancelled. This is contradictory to Article 19 paragraph (1) of the UUPA:

"The government is to carry out land registration to ensure legal clarity over lands in all areas of the Republic of Indonesia, and also entrust the making of a government regulation for its implementation."

And Article 20 paragraph 1 of the UUPA:

"Property rights are hereditary, strongest and fullest rights that people can have over land, bearing in mind the provisions in article 6".

The purpose of the phrases in the said Article "strongest and most complete" according to the elucidation of this Law is to differentiate it from usufructuary rights, building usufructuary rights, usufructuary rights and others, namely to show that among the rights over land that can be owned by the right of ownership is the "ter" (meaning: the most)-strongest and fullest.

Therefore, based on this description, according to the authors of Article 64 paragraph 1 and paragraph 2 Government regulations No. 1/2021 must be reconstructed, because it is contradictory to Article 19 paragraph 1 and Article 20 paragraph 1 of the UUPA and Article 33 paragraph 3 of the 1945 Constitution. This is based on a legal principle which reads: The principle of *lex superior derogate legi inferiori*. That laws which have a lower degree in the hierarchy of laws and regulations may not conflict with laws and regulations which have a higher degree, namely the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations, which have a higher degree than the Regulations Government of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration. Therefore, Government regulations No. 18 of 2021 is not contradictory with the UUPA.

CONCLUSION

Legal protection for landowners who have been certified as an effort to prevent land mafia has not been fair, because Government regulations No. 18 of 2021 contains 2 (two) principles, i.e. if up to 5 (five) years of ownership of the certificate, and if there is another party who feels he has the rights to the land, proves that the land is his property, then he can sue it to court and the certificate can be revoked, this is what is meant by legal protection that has not been fair and is detrimental to the people who are truly the legal owners and this condition has opened up opportunities for land mafia practices. Cancellation/revocation of certificates is an authority of the National Land Agency (BPN). But if the ownership has passed 5 (five) years, the owner of the Certificate can no longer be sued for cancellation (certificate revocation). So adhere to the positive principle (absolute). With the existence of Article 64 paragraph 2 Government regulations No. 18 of 2021, there has been no legal protection for certificate holders for at least 5 (five) years. Because Article 64 paragraph 2 which states: In the event that the 5 (five) year period as referred to in paragraph (1) letter a is exceeded, the annulment is carried out through a judicial mechanism. As a consequence of the aforementioned Article, other parties who feel they have rights over land can demand the implementation of these rights in court. Even though the ownership of a parcel of land basically has all legal powers in it, both from the ownership of the rights, the physical land, as well as a legal protection for the legal owner of the land from disturbance or other land disputes. Legal protection for landowners who have been certified as an effort to prevent justice-based land mafia is a process to rebuild or rearrange ideas, ideas or concepts about law. The legal reconstruction is first, to amend the legal protection of ownership of land certificates. The articles include: Article 64 Government Regulation No. 18/2021 amended with the addition of Articles in Article 64 Government regulations No. 18 of 2021 regarding arrangements governing the land mafia, which aims to eradicate land mafia parties (persons) so that people who own land certificates receive legal protection. Second, the owner of the land certificate obtains authentic evidence so that the community feels safe and comfortable and receives strong and perfect legal protection, as stated in Article 19 Paragraph (2) of the UUPA: strong evidence." Third, the deletion and/or changes to the editorial of Article 64 paragraph 1 and paragraph 2. Based on the legal principle which reads: The principle of *lex superior derogate legi inferiori*, that laws and regulations that have a lower degree in the hierarchy of laws and regulations may not conflict with those that higher, namely Law of the Republic of Indonesia Number 5 of 1960 Concerning Basic Agrarian Regulations, which has a higher degree than Regulation of the Government of the Republic of

Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration. Therefore, Government regulations No. 18 of 2021 may not be contradictory with the Basic Agrarian Regulations.

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