

## **Reinforcement of The Land Certification Registration Process to Reduce Land Conflicts in Indonesia**

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### **Abstract**

*This research aims to answer how the concept of minimizing land mafia practices in the land certification process in Indonesia. The method used in the formulation of this research is a juridical-normative approach, namely by examining various laws and regulations and including technical regulations related to the land certification process. The result of this research is that various innovations and corrections have been made so far from the existing laws and regulations, for example the latest amendment to the Regulation of the Head of the National Land Agency Number 1 of 2010 concerning service standards and land arrangements which continues to undergo changes to the regulation of the minister of agrarian and spatial planning / head of the national land agency of the republic of Indonesia number 12 of 2021 concerning technical land considerations. The changes are certainly difficult to follow easily, especially since most stakeholders still use Perkebunan No. 1 of 2010 the center of technical implementation at the Indonesian Land Agency. In addition, in the current process, double chaking must be carried out related to the survey results of the Land Technical Consideration Team as in Minister Regulation ATR No. 12 of 2021 article 17 to article 20, this is important to minimize fraud or double certificates and other problems. The process referred to as double chaking can be done by expanding the role of PPAT or by a special independent institution or at least by establishing a special unit at the BPN.*

Keywords: *land registration, BPN, PPAT, land mafia*

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## **I. INTRODUCTION**

As a legal state, the protection of the rights of every community in a legal state must be protected and prioritized. Soil is a natural phenomenon of the land surface, forming a zone called the pedosphere, composed of loose mass in the form of fragments and weathered rock mixed with organic materials. <sup>1</sup>In Indonesia, it can be owned by the community with the terms and conditions regulated by law. -Invite. As an administration and proof of ownership, land must be registered with the government through the National Land Agency.

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<sup>1</sup> Notohadiprawiro, T., 1998. Soil and the environment. Directorate General of Higher Education, Ministry of Education and Culture. Jakarta , 237 .

In Indonesia, there are many land cases, one of which often occurs is the case of multiple land certificates. **Certificate Land** is something that must be owned by every person or legal entity who controls **the land** because of **a certificate land is** legal proof of control of **land**<sup>2</sup> The strength of a land certificate is where every right to land is certified and controlled by a person or legal entity, for the right holder it is a proof of right which according to the Basic Agrarian Law applies as strong evidence.<sup>3</sup>

As stated in Article 3 letter a t, the aim of Land Registration is to provide legal certainty and legal protection to land rights holders as well as the position of land rights certificates. Certificates of land rights act as strong evidence as confirmed in article 19 paragraph (2) letter c UUPA and article 32 paragraph (1) Government Regulation Number 10 of 1961 concerning land registration, which has now been revoked and reaffirmed in Government Regulation Number 24 of 1997. Certificates are strong and authentic evidence. The strength of the certificate is a guarantee of legal certainty for the certificate holder as perfect evidence as long as no opposing party proves otherwise. The reality in Indonesia shows that land cases often occur, namely double certificates, where in practice the occurrence of double certificates is caused by several factors, namely the bad faith of the certificate applicant, errors on the part of the Land Office, namely in terms of collecting and processing physical data and juridical land data, There is no comprehensive land registration map yet, and because the domicile of the interested party is outside the city.<sup>4</sup>

Double certificates for land can briefly be interpreted as certificates that expropriate the same plot of land or more broadly, double certificates are double certificates of ownership (documents) issued by legal entities which result in the existence of overlapping rights between one part and another. other things, so that a double certificate is issued which has an impact on the occupation of the land in whole or in part of the land belonging to another person<sup>5</sup>

The existence of this double certificate case is a reflection that the land administration process, especially in terms of land registration and land certification, has so far not gone well. This is also exacerbated by the existence of the land mafia which is a

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<sup>2</sup> Sembiring, JJ and SH, M., 2010. *Guide to processing land certificates* . VisiMedia.

<sup>3</sup> Saranani, AM, 2022. Legal Review Regarding Certificate Proof in Settlement of Land Disputes. *SIBATIK JOURNAL: Scientific Journal for Social, Economic, Cultural, Technological and Educational Sectors* , 1 (3), pp.173-184.

<sup>4</sup> Salim, A., 2019. Settlement of Legal Disputes Against Ownership Certificate Holders by Issuing Multiple Certificates. *USM Law Review Journal* , 2 (2), pp.174-187.

<sup>5</sup> Jannata, MM, 2022. *Legal consequences of having multiple certificates of land rights* (Doctoral dissertation, Kalimantan Islamic University MAB).

problem that cannot be resolved in Indonesia, its existence which involves various important roles in the land policy and judicial processes makes this land mafia difficult to eradicate, therefore a concept is needed that can prevent or at least minimize the practice. The land mafia, of course, starts with the land registration or certification process, which is one of the entry points for the land mafia. Therefore, this research aims to answer the concept of minimizing land mafia practices in the land certification process in Indonesia.

## **II. LITERATURE REVIEW**

### **A. Land and Land Regulations in Indonesia**

Land is a natural resource that plays an important role in human life, both from a religious and economic perspective. In Indonesia, there is legal dualism in the land sector, namely the Western Law system left over from the colonial era and the Customary Law system which is the original law of the Indonesian people. Therefore, on September 24 1960 the Basic Agrarian Law Number 5 of 1960 was promulgated. The existence of the UUPA was intended to bring about unification of land law in Indonesia, but this intention could not be realized immediately after the UUPA was enacted. This is because not all regions in Indonesia can apply the provisions of these regulations. One area that cannot directly implement UUPA is the Special Region of Yogyakarta. The UUPA officially came into effect in the Yogyakarta Special Region on September 24 1984 because the Yogyakarta Special Region is a royal region which has its own regulations in the land sector, namely that it still applies the Swapraja Land Law.<sup>6</sup>

The relationship between the people of the Indonesian nation and the land is an eternal relationship, the earth, water, space and the natural wealth contained therein in the territory of Indonesia, which is a unity with the Indonesian nation that cannot be separated or separated from one another. The relationship between the people of the Indonesian nation and the earth. The water and natural resources contained therein within the territory of the unitary State of the Republic of Indonesia are individually collective, meaning that the earth, water and natural resources contained within the land of Indonesia are the collective property of the Indonesian people which must be safeguarded and managed properly and protected from threats by other nations, both physically and mentally. individually or as a group or state, therefore the main subject of control rights over agrarian resources is the

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<sup>6</sup> Wirawan, V., 2019. Study of Orderly Land Administration of Sultanate Land and Duchy Land After the Implementation of the Yogyakarta Perdais. *Law Enforcement Scientific Journal* , 6 (2), pp.161-171.

people of the Indonesian nation themselves, both individually and in groups in social life, customary land law and its contents are individual collective rights because of kinship relationships within Traditional community relations consist of kinship based on lineage and kinship based on territorial unity. The relationship between humans and land, both communally, religiously and individually economically, is a relationship that is hereditary and is a very close relationship that cannot be separated from one another forever. <sup>7</sup>

Joint ownership and benefit of the earth and water and the natural resources contained therein are clearly stated in the 1945 constitution in article 33 paragraph 3 that the earth and water and the natural resources contained therein are controlled by the state for maximum use for prosperity of the people, this provision means that the collective interests of many people are the main goal and suggestion for the use of land, water and natural resources contained therein to be used as much as possible for the public interest and common welfare. This is the basis that philosophically land ownership is a form of collectivity or togetherness does not apply to individuals but to the whole as a group for Indonesian society.

The next provision is a derivative of the 1945 Constitution, paragraph 32, paragraph 3, Article 33, which is contained in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, State Gazette of 1990, Number 104, additional State Gazette Number 2043, which is called Upa in the explanation, namely in the first paragraph, it is stated that the Indonesian state, whose people's structure of life, including the economy, is mainly based on agriculture or land, water and space as gifts from the Almighty God, has a very important function to build a just and prosperous society as aspired to. Therefore, it is necessary to form a new agrarian law. The new agrarian law must provide the possibility of achieving the functions of earth, water and space as intended to achieve people's welfare. To achieve people's prosperity, therefore its ownership is individual or more owned by certain certain people. individually, which does not reflect the value of justice, is a manifestation of misunderstanding the aim of the agrarian law because its aim is a communal aim, not for individuals even though they are still part of the Indonesian people.

Apart from the above, regulations related to land must pay attention to communal ownership, other than that, agrarian law in Indonesia must also embody the incarnation of a spiritual principle because in Indonesia the basis of the state is

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<sup>7</sup> Arba, HM, 2021. *Law on land acquisition for the public interest* . Sinar Graphics (Earth Aksara). p 2

stated in Pancasila in the first principle, namely the one and only God who gives humanity. nationality, people's nationality and social justice, henceforth, the meaning of the Almighty God must also be reflected in the laws and regulations or rules related to agraria or land because this is the basis of the state, specifically it must be an implementation of the provisions in article 30 3 of the law. The foundations and outlines of state policy stated in the political manifesto of the Republic of Indonesia since 17 August 1959 and confirmed in the presidential speech on 17 August 1960 therefore not only reflect communal interests but must also reflect the existence of spiritual values in the sense of contains the meanings of the Almighty God related to land ownership in Indonesia.<sup>8</sup>

The aim of the basic agrarian law is:

- a. laying the foundations for the preparation of a national agrarian law which will be a tool to bring prosperity, happiness, justice to the Indonesian people and state, especially the farming people, in the framework of a just and prosperous society.
- b. laying the foundations for establishing unity and simplicity in laws in land law
- c. lay the foundations for providing legal certainty regarding land rights for the people as a whole.<sup>9</sup>

## **B. Land Registration**

Article 1 number 1 PPNo. 24 of 1997 states that land registration is a series of activities carried out by the Government continuously, continuously and regularly, including collecting, processing, bookkeeping, and presenting and maintaining physical data and juridical data, in the form of maps and lists, regarding land plots and units. -condominium units, including the provision of letters of proof of title to plots of land to which there are already existing rights and ownership rights to the apartment units as well as certain rights that encumber them.<sup>10</sup>

Terminologically land registration comes from the word cadastre, a technical term for a record, showing the area, value and ownership of a plot of land. This word comes from Latin, namely "capistratum" which means a register or capita or unit made for Roman land tax. Cadastre means records on land, or the value of land and its rights holders and for tax purposes. Cadastre can be interpreted as an appropriate

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<sup>8</sup>General explanation of law number 5 of 1960 concerning basic agrarian regulations in number 1

<sup>9</sup>Arba, agrarian law, Jakarta, ray graphic, check the first point, 2015, p. 18 and also see the general explanation of law number 5 of 1960 concerning basic regulations on agrarian principles number 2

<sup>10</sup> Anindita, KDC, 2022. *Legal Certainty Through Complete Systematic Land Registration (Ptsl) of Sultanate Land and Duchy Land in the City of Yogyakarta* (Doctoral dissertation, Atma Jaya University Yogyakarta).

tool to provide a description and identification and as a continuous record of land rights.<sup>11</sup>

Registration is a series of activities carried out by the State/Government continuously and regularly, in the form of collecting information or certain data regarding certain lands in certain areas, processing, storing and presenting them for the benefit of the people, in order to provide guarantees of certainty. law in the land sector, including the issuance of evidence and its maintenance.<sup>12</sup>

Through the land registration process, people can obtain rights to the land they own. However, it is not uncommon to encounter in the field the obstacles or obstacles faced in the land registration process. For example, these obstacles occur during the process of determining limits or *Contradictoire Delimitatie*. The obstacle encountered when applying the principle of *Contradictoire Delimitaie* is that many parties, both the applicant and bordering parties, do not find mutual agreement on boundary markings which affect the land area. In the absence of an agreement between the parties, this creates a dispute or disagreement between the land owners, which causes the land registration process to be hampered.<sup>13</sup>

### III. METHODOLOGY

The method used in this research is normative juridical, while this research uses library materials which are basic research data which are classified as secondary data.<sup>14</sup> Data collection techniques and data collection tools are carried out through research obtained from statutory regulations, books, journals, research results, encyclopedias, bibliographies, and observation methods<sup>15</sup> related to land and the land mafia.

Starting with collecting research materials as a library research in an effort to find secondary data using primary legal materials and secondary legal materials. Primary Legal Material includes related laws and regulations such as:

- 1) The 1945 Constitution of the Republic of Indonesia;
- 2) Criminal Code;

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<sup>11</sup>AP Parlindungan, 1999, Land Registration in Indonesia (Based on PP 24 of 1997) Completed with Position Regulations for Acting Land Deed Makers PP 37 of 1998, Mandar Maju, Bandung

<sup>12</sup>Boedi Harsono, 2008, Indonesian Agrarian Law: History of the Formation of Basic Agrarian Laws, Content and Implementation, Djangkat, Jakarta.

<sup>13</sup>Yunian, R., 2017. Application of the *Contradictoire Delimitatie* Principle in the Land Registration Process in Klaten Regency.

<sup>14</sup>Martin Roestamy, et., al, *Methods, Research, Reports and Writing of Legal Scientific Papers*, Faculty of Law, Djuanda University, Bogor, 2020, Pg. 41.

<sup>15</sup>*Ibid*, Pp. 42.

- 3) Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles of the State Gazette of 1960 Number 104 and Supplement to the State Gazette Number 2043, known as UUPA (Basic Agrarian Law)
- 4) Law Number 26 of 2007 concerning Spatial Planning (State Gazette of the Republic of Indonesia of 2007 Number 68, Supplement to State Gazette of the Republic of Indonesia Number 4725);
- 5) Law Number 39 of 2008 concerning State Ministries (State Gazette of the Republic of Indonesia of 2008 Number 166), Supplement to the State Gazette of the Republic of Indonesia Number 4916);
- 6) Government Regulation Number 16 of 2004 concerning Land Use Management (State Gazette of the Republic of Indonesia of 2004 Number 45, Supplement to State Gazette of the Republic of Indonesia Number 4385);
- 7) Government Regulation Number 21 of 2021 concerning Implementation of Spatial Planning (State Gazette of the Republic of Indonesia of 2021 Number 31, Supplement to State Gazette of the Republic of Indonesia Number 6633);
- 8) Presidential Regulation Number 47 of 2020 concerning the Ministry of Agrarian Affairs and Spatial Planning (State Gazette of the Republic of Indonesia of 2020 Number 83);
- 9) Presidential Regulation Number 48 of 2020 concerning the National Land Agency (State Gazette of the Republic of Indonesia of 2020 Number 84);
- 10) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2020 concerning the Organization and Work Procedures of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (State Gazette of the Republic of Indonesia of 2020 Number 985);
- 11) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2020 concerning the Organization and Work Procedures of Regional Offices of the National Land Agency and Land Offices (State Gazette of the Republic of Indonesia of 2020 Number 986);
- 12) ATR Ministerial Regulation No. 12 of 2021 concerning Land Technical Considerations;
- 13) And other laws and regulations related to land and land mafia.

Secondary legal materials are legal materials that provide an explanation of primary legal materials. Secondary legal materials can be in the form of legal opinions, legal principles and legal opinions obtained from literature, journals, research results and the internet relating to land and land mafia .

In this research, the data were analyzed using qualitative analysis, namely by explaining the relationship between legal facts and the legal rules contained in the law, which then described them in the research results.

#### **IV. RESULT AND DISCUSSION**

The 1945 Constitution of the Republic of Indonesia, article 28j, has laid the foundations for respecting human rights in social life with the provisions that every person is obliged to respect the human rights of others in the orderly life of the nation and state. in exercising his rights and freedoms , every person is obliged to comply with the restrictions established by law with the sole aim of ensuring recognition and respect for the rights and freedoms of other people and to fulfill fair demands in accordance with moral considerations or religious values , security and public order in a democratic society .

Currently, there are still a lot of land cases in Indonesia that have not been resolved, various cases involving the land mafia and even unscrupulous officials who are sometimes also involved in land cases. One of them is related to double certificates which are often difficult to resolve through mediation by BPN until the process reaches the judicial level. Even after going through court, sometimes it is still difficult to resolve or execute disputed land.

Of course many of the solutions offered have been created, but up to now there are still land cases occurring. One solution to prevent double certificates from occurring is to have a land administration process in terms of land registration that guarantees more legal certainty by applying accuracy and a better process than At the moment. Starting from having an accurate land master map to competent human resources who are reliable and have integrity.

One of the tasks of the National Land Agency is "formulation and implementation of policies in the field of surveying, measurement and mapping" and "formulation and policies in the field of determining land rights, land registration and community empowerment" as stated in Article 3 letters b and c of the Decree President Number 20 of 2015.

It is clearly written in the provisions of Article 3 of Presidential Decree Number 20 of 2015 that the task that must be carried out by the National Land Agency is to formulate and fulfill policies relating to the various components of land title certificates.

So far, various innovations and corrections have been made to existing laws and regulations, for example the latest amendment to the Regulation of the Head of the National Land Agency Number 1 of 2010 concerning service standards and land



regulation which continues to undergo changes to the regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the Agency. National Land Affairs of the Republic of Indonesia number 12 of 2021 concerning technical considerations of land .

Changes in the customary order are certainly not easy to follow, especially since most stakeholders still use Perkebunan No. 1 of 2010 as the direction for technical implementation at the Indonesian Land Agency so that changes in the form of policy if not followed by an increase in Human Resources cannot run smoothly. maximum or likely to fail.

As stated in Article 3 letter a of Presidential Decree Number 20 of 2015, the aim of Land Registration is to provide legal certainty and legal protection to land rights holders as well as the position of land rights certificates. To obtain legal certainty and certainty of land rights, people need to register land to obtain a land rights certificate which functions as a strong proof of ownership of land rights. This of course will not apply or will not provide legal certainty to the land owner even though he has registered it with BPN, because there could be double certificates for the land he controls.

Ideally a certificate is a strong and authentic piece of evidence. The strength of the certificate must provide legal certainty for the certificate holder as perfect evidence. Double land certificates can be briefly interpreted as certificates that designate the same plot of land or broadly can be interpreted as certificates of ownership issued by BPN in twins or double. so that overlap and disputes occur in the community due to occupation of land in whole or in part by someone else. The legal consequence of having a double certificate is that it does not provide legal certainty, because a person's goal in registering land is to obtain a certificate as a perfect means of proof. However, the emergence of double certificates creates legal uncertainty because there are two legal statuses on one land. The existence of multiple certificates can cause public distrust in the certainty of the certificate. Because a land title certificate should be a sign of strong proof of ownership of land rights, but how can it be said to be strong if there are two certificates with the same land object, which one is considered strong and can guarantee legal certainty of land rights?<sup>16</sup>

There must be a concrete solution to this, double chaking must be carried out from the survey results of the Land Technical Consideration Team as stated in ATR Ministerial Decree No. 12 of 2021 articles 17 to article 20, this is important to minimize forgery

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<sup>16</sup> Jannata, MM, 2022. *Legal consequences of having multiple certificates of land rights* (Doctoral dissertation, Kalimantan Islamic University MAB).

or duplicate certificates and other problems. The process referred to as double chaking can be done by expanding the role of the PPAT (Land Deed Drafting Officer) or by a special independent institution or at least by establishing a special unit at BPN.

Increasing the role of PPAT can be done to become an actor in land registration and at the same time a party that carries out checking the results of the Technical Consideration Team's survey. Apart from that, of course there is also a need for a separate section in BPN to ensure that the certification process is not carried out for the same land or land.

## V. CONCLUSIONS

After carrying out the discussion in the previous chapter, the conclusion of this research is that changes in statutory regulations have so far not been balanced by improvements in the quality or capacity of the apparatus, even though changes to something that has been going on for a long time are not easy to follow so that stakeholders still make Perkaban No. 1 of 2010 as a direction for technical implementation at the Indonesian Land Agency. Apart from that, in the current process double chaking must be carried out regarding the survey results of the Land Technical Consideration Team as stated in ATR Ministerial Regulation No. 12 of 2021 articles 17 to article 20, this is important to do to minimize forgery or duplicate certificates and other problems. The process referred to as double chaking can be done by expanding the role of PPAT or by a special independent institution or at least by establishing a special unit at BPN.

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