



## Law enforcement in land dispute management: Paradigm of criticism of Lawrence W. Friedman's legal system

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### Abstract

The dynamics of law enforcement on land disputes tend to vary depending on the social and cultural situation in the community. Government administrators have made much innovation to deal with land disputes which are often caused by overlapping problems of land documentation by some land mafias. The problem of land disputes often arises due to the weak administrative system for managing land registration at the village level. This research used primary and secondary legal materials. Then, a deductive analysis was carried out using a statutory approach and a conceptual approach with a literature study. An ideal system related to law enforcement in managing land disputes is the system theory of Lawrence W. Friedman, which includes three components or sub-systems, namely the structure of law, the substance of law, and legal culture. The government as the executor of the law enforcement and land management system is more thorough and applies the principles of legal protection in the administration of land registration to make a perfect certificate because it is supported by an accessible and transparent database.

**Keywords:** law enforcement, land dispute, legal system

### Introduction

Many conflicts are caused by problems related to land tenure in Indonesia (Achmadi *et al.*, 2020) <sup>[1, 2]</sup>. Many potential land disputes arise due to the influence of development. Interestingly, land mafia cases are usually committed by the government elements with notaries, from document falsification (for rights), seeking legality in court, legal/unrighteous residents (*wilde occupatie*), case manipulation, collusion with officers for the legality, corporate crimes such as embezzlement and fraud, falsification of the power of attorney for land rights, and the loss of waqf or mortmain property. These land cases influence economic, social, political, defense, and security conditions. Weak land administration in the land registration process often leads to land disputes in urban areas. In direct observation, the author has summarized several weaknesses that allow land mafias to do illegal actions against the falsification of land documents. The root of the problem is often due to the issuance of SPT (Land Declaration Letter) at the village level which has not used a correct recording and mapping system, resulting in overlapping and falsification of SPT documents.

One of the current cases is the weak land registration at the village level upon the issuance of SPT by the Petuk Katimpun Village on behalf of Stevendi's ownership. The history of the land acquisition comes from the Decree of the Mayor of KDH Level II Palangka Raya No. Sk.613.460.42 on June 28, 1994, concerning the Designation of a State Land Site Location to the Tani Karya Bersama Foundation, Petuk Katimpun village for agricultural businesses located in the Petuk Katimpun village, Pahandut district, the Second Level Region of Palangka Raya. SPT was issued for this 2-ha land on behalf of Asban by the Head of Petuk Katimpun on August 6, 2008, Village Register No.

140.594/026/BAB/PM/YTKB/2008 on August 9, 2008, Register Jekan Raya District No. 594.138/031/Pem on 14-08-2008. Then, on the same land was the handover of a plot of land from Asban to Tommy Laurensia Wijaya published by Petuk Katimpun Village Register Number 140.594/72/YKTKB/2010, acknowledged by the District Head of Jekan Raya Register Number 584.138/5501/Pem. Then, there was the handover of a plot of land on behalf of Tommy Lauren Wijaya to Stevendi published by Petuk Katimpun village on August 22, 2016. On July 19, 2010, acknowledged by the Head of Community Association II and the Chief of Petuk Katimpun Village, the 100-ha plot of land was handed over to Brata Jaya, SE. The weak land administration in the village is due to no application of regulations that specifically regulate land administration and mapping at the regency/city level.

The case above becomes the initial evidence of overlapping in the issuance of permits by the village which later resulted in land disputes in several areas due to the weak administrative system of land registration at the village level in making SPT or initial documents as material for issuance of certificates at the National Land Agency. In line with the implementation of government administration, Law Number 23 of 2014 concerning regional government has been issued in Article 12 paragraph 2 letter (r) where matters relating to land services are under the authority of the regency/city government. The supervision and development of affairs in the regency/city under its authority are carried out by the government.

The occurrence of land disputes shows that the land administration system in Indonesia is not good yet. The legal certainty of land rights is not yet strong. It shows that land has not been able to provide or improve people's welfare. The Indonesian philosophy in the concept of the

relationship between humans and the land places the individual and society as an integral unit. The fulfillment of a person's need for land is within the framework of the needs of the entire community so that the relationship is not merely individualistic but more collective while still providing a place and respect for individual rights (Soemardjono, 2009). To provide legal certainty to guarantee individual rights, effective, efficient, and sustainable land management is needed in the use and utilization of land. Land management is explicitly regulated in the Indonesian constitution. This land management needs to be integrated into a system within the legal framework of land which is the legal provisions governing the rights to control and use of land (Harsono, 2004)<sup>[7]</sup>. The objective of Law Number 5 of 1960 concerning Basic Rules of Agrarian Fundamentals as the basis of land management in Indonesia is to provide legal certainty regarding land rights. The main points to be discussed in this article relate to law enforcement on land dispute management from the perspective of Lawrence W Friedman's legal system.

### Research Method

This research combines empirical and normative legal research approaches using primary and secondary legal materials. The data were obtained from several problems at the village level of Palangka Raya City. Then, a deductive analysis was carried out using a statutory approach and a conceptual approach with a literature study. This research aims to provide solutions or views on the importance of sustainable land registration system management to provide legal certainty for land rights owners.

### Results and Discussion

Land registration is a series of activities carried out by the government continuously. This includes the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data in the form of maps and lists, to the issuance of certificates of proof of rights for the entitled plot of land. Based on the decision of the Head of the National Land Agency No. 2 of 2003 concerning Norms and Standards, the mechanism authorities for the government management of the land sector are carried out by the regency/city government. Among others, there are 9 (nine) authorities carried out by the regency/city, one of which is the permit to clear land and resolve land issues.

Based on the statutory provisions, land problems, such as overlaps, can be minimized if guidance and supervision are carried out on the granting of permits to issue land administration documents.

Lawrence W. Friedman argues that the effectiveness of legal certainty depends on the legal system which includes three components or sub-systems, namely the structure of law, the substance of law, and legal culture. The validity of Friedmann's theory is simply hard to argue. However, it is less realized that this theory is based on his critical perspective on the legal system (Erwin, 2016)<sup>[5]</sup>.

To provide fair legal certainty in terms of establishing a legal system for national land management in Indonesia, especially in the process of registering land administration, the legal system theory according to Lawrence W. Friedman (1984)<sup>[6]</sup> is recommended to be applied. It describes three sub-system components.

### The Structure of Law

*"The structure of a system is its skeleton or framework; it is the permanent shape, the institutional body of the system, the though rigid norms that keep the process flowing within bounds... The structure of a legal system consists of elements of this kind: the number and size of courts; their jurisdiction (that is, what kind of cases they hear, and how and why); and modes of appeal from one court to another. Structure also means how the legislature is organized, how many members..., what a president can (legally) do or not do, what procedures the police department follows, and so on. Structure, in a way, is a kind of cross section of the legal system? A kind of still photograph, which freezes the action."*

Based on the legal structure system above, the success of a legal system is influenced by the multilevel law enforcement structure. To accommodate multilevel law enforcement, regency/city governments should formulate legal rules as a juridical basis in the formation of a law enforcement task force that can assist in solving land problems starting from the village office level. At the next level, when the problem of overlapping land documents caused by the SPT as the basis for issuing certificate documents at the Agrarian and Spatial Planning/National Land Agency which is the main trigger for the occurrence of criminal acts of spatial planning abuse, the role of PPNS (Civil Servant Investigator) should be strengthened for handling violations of spatial planning in carrying out supervision, observation, research, or examination under the applicable rules, Article 28 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 3 of 2017 concerning Civil Servant Investigators of Spatial Planning. This policy aims to ensure that the legal structure subsystem can be well integrated and synchronized among law enforcement to make the performance more effective.

The principle of law enforcement is stated in Article 2 of the Basic Agrarian Law (UUPA) where the state represents all parties who claim to be the legitimate land rulers. The state, in this case, is a legal institution as an organization for all Indonesian people. The government as the implementing agency for state laws in this process acts as the party executing and implementing the provisions contained in Article 2 of UUPA. In other words, the government is the party that is obliged and authorized to resolve and mediate disputes over land tenure rights that arise as well as to be a facilitator for the disputing parties.

The basic function of the law is a means of community reform (Kusumaatmadja, 1995)<sup>[8]</sup>. It is relatively under the current development of national law, but it needs to be equipped with bureaucratic engineering tools that put forward the concept of leadership (including law enforcement) so that this function can create harmonization between bureaucratic elements and society in a single domain called *bureaucratic and social engineering* (Atmasasmita, 2003)<sup>[3]</sup>.

### Legal Substance

#### The Substance of Law

*"The substance is composed of substantive rules and rules about how institutions should behave. By this is meant the actual rules, norm, and behavioral patterns of people inside the system ...the stress here is on living law, not just rules in law books."*

Forming a substance means composing the rules, norms, and behavior patterns of people in the real system. It emphasizes laws living in society (living law), not just law in book. The substance or content of the law as a reference in law enforcement has an important role as a guide for law enforcers in carrying out their authority. This means that weaknesses in the content of the law will result in ineffective law enforcement so that the objectives are not met. The substance of law in the management of land registration is based on responsive legal rules that accommodate values, norms, and behavior patterns as living law. A legal umbrella in the administration of land registration is important as a means of acculturating a responsive legal system. For the implementation of government administration, Law Number 23 of 2014 concerning regional government, including the affairs of land services, under the authority of the regency/city government was issued. The supervision and development of affairs in the regency/city under its authority is also carried out by the regional government. However, establishing a humanist legal substance regulatory hierarchy as the basis for effective supervision and guidance should be considered. Thus, the legal system is the norms that support a group of people, but it is mainly about social norms that have other normative powers through customs (Dimiyati *et al.*, 2017).

### Legal Culture

*"The legal culture, system their beliefs, values, ideas and expectation. Legal culture refers, then, to those parts of general culture customs, opinions ways of doing and thinking that bend social forces toward from the law and in particular ways. ...in other words, is the climate of social thought and social force which determines how the law is used, avoided, or abused."*

The legal culture system is defined as the beliefs, values, and expectations of ideas for the general culture of society. It concerns the order of the concept of legal culture as the basis of culture, local wisdom, and nature has a legal system, legal process, and substance to run the law and maintain the legal inheritance that functions as social control. No matter how good the arrangement of the legal structure to carry out the stipulated legal rules and the quality of the legal substance made, without being supported by the legal culture of the people involved in the system and society, law enforcement will not run effectively.

The cultural attitude of the Indonesian people in understanding the rule of law is not fully supported by adequate legal awareness. They often misinterpret that legal regulations are not in line with local culture. As for supporting public awareness in understanding the legal culture system, it is necessary to present the ideal legal culture concepts (Achmadi *et al.*, 2020) <sup>[1, 2]</sup>.

1. The legal culture of society refers to the parts of culture that are passed down over generations as the basis for acting, having opinions, thinking, and creating works to maintain social order.
2. The legal culture of the community is a natural heritage from the ancestors who uphold local customs. It determines the legal system, legal process, and its substance for local indigenous peoples to live a traditional life.
3. The legal culture has local wisdom values that are rooted in the beliefs and habits of the local community.

4. The legal culture of the Dayak Tomun people is the ideas, thoughts, and expectations about implementing the law and maintaining the legal heritage.

In the discussion of the legal system, the legal culture of this society is the legal awareness of the legal subjects of a community. From the individual side of society, legal awareness is awareness or values contained in humans about existing laws or about laws that are expected to exist. What is emphasized is the values regarding the function of law, instead of a legal assessment of concrete events in the society.

According to Soerjono Soekanto (1982) <sup>[10]</sup> quoting Kutschinsky, the indicators of legal awareness are:

- a. Knowledge of legal regulations (law awareness)
- b. Knowledge of the contents of legal regulations (law acquaintance)
- c. Attitude towards legal regulations (legal attitude)
- d. Patterns of legal behavior (legal behavior).

Each of the indicators mentioned above points to a certain level of legal awareness from the lowest to the highest. Law enforcers cannot carry out their authority well if they are not supported by facilities. Therefore, supporting facilities are included in the legal structure while legal awareness is essentially a legal culture as described above, so it is categorized as legal culture based on the legal system according to Lawrence W Friedman.

Law as a rule in national land management based on a sustainable recording system can be developed by integrating the legal system, which must fulfill the components of the legal sub-system. Therefore, the government as the executor of the law enforcement and land management system is more thorough and applies the principles of legal protection in the administration of land registration to make a perfect certificate because it is supported by an accessible and transparent database. The owner of land rights will also not be worried about the continuity of his land and can take legal actions freely against his land. There are several efficiencies of revitalizing information technology in the land registration mechanism.

1. Providing convenience to the National Land Agency in accessing land data to minimize errors;
2. Providing legal protection to the owner of a legal land certificate because the land data can be archived both manually and digitally;
3. Providing information to other parties who will and carry out legal actions with land (sales and purchases, inheritance, and other engagements).

Thus, the fulfillment of an accessible land database is also in line with efforts to increase public control over national land policies (Riyadi & Atmoredjo, 2017) <sup>[9]</sup>. This can strengthen public control over state policies because most government policies are administrative mosaics that occur in real society. Transparency, accountability, effectiveness, and efficiency are the most important demands from society towards the state (Teubner, 2012; Ponzetto *et al.*, 2018) <sup>[11]</sup>.

### Conclusion

Law enforcement in the management of land disputes and legal certainty is implemented by actualizing the components of the legal structure sub-system (structure of

law), the substance of law, and legal culture so that, as a means of reform, it can create harmonization between bureaucratic elements and society in one aspect called *bureaucratic and social engineering*. Thus, the legal system is the norms that support a group of people, but it is mainly about social norms that have other normative powers through customs.

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