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The Role of *Siyāsah Shar'iyah* in Analyzing and Addressing Land Disputes

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Abstract

Disputes are often reported from complexities related to land ownership, particularly when multiple parties lay claim to a specific plot acquired through gifting or inheritance. Public objections predominantly center around preventing inaccuracies in the transfer of ownership rights during the recording of land blocks at National Land Office (BPN) concerning blocking of ownership rights. Therefore, this study aims to examine the prevalent issues encountered during the recording of land title certificate, with a specific focus on the common land disputes that lead to legal proceedings. An analytical framework of *siyāsah shar'iyah* is adopted with empirical juridical methodology using a socio-juridical perspective. The data-gathering method comprises three distinct stages, namely reduction, presentation, and conclusion. The results show that the submission of a plot of land for registration cannot be executed by any arbitrary party. A clear understanding of applicant's status and the rationale behind the request is necessary to restrict the use of land effectively. In this context, the registration of land blocks has diverse effects in terms of economic, socio-cultural, and legal assurance. The challenges encountered in the act of obstructing are predominantly rooted in the administrative procedure. Therefore, the proposed remedy includes the use of technology based on electronic systems to effectively disseminate information to the public. In this jurisdiction, land ownership is primarily governed by Sharia law, which views documenting property rights as a method of promoting good governance. Meanwhile, zoning arrangements serve as an alternative for documenting land blocking, mitigating potential ownership issues in the future.

Keywords: Block Notepad; Land Certificate; National Land Office; *Siyāsah Shar'iyah*.

Abstrak

Sengketa sering kali muncul karena kompleksitas yang berkaitan dengan kepemilikan tanah, terutama ketika beberapa pihak mengklaim sebidang tanah yang diperoleh melalui hibah atau warisan. Keberatan masyarakat umumnya berpusat pada pencegahan ketidakakuratan dalam pengalihan hak kepemilikan selama pencatatan blok tanah di Kantor Pertanahan Nasional (BPN) terkait pemblokiran hak kepemilikan. Oleh karena itu, penelitian ini bertujuan untuk mengkaji masalah-masalah umum yang dihadapi selama pencatatan sertifikat hak atas tanah, dengan fokus khusus pada sengketa tanah yang sering terjadi dan berujung pada proses hukum. Kerangka analisis *siyāsah syar'iyah* diadopsi dengan metodologi yuridis empiris dengan menggunakan perspektif sosio-yuridis. Metode pengumpulan data terdiri dari tiga tahap yang berbeda, yaitu reduksi, penyajian, dan kesimpulan. Hasil penelitian menunjukkan bahwa pengajuan sebidang tanah untuk didaftarkan tidak dapat dilakukan oleh pihak manapun. Pemahaman yang jelas mengenai status pemohon dan alasan dibalik permohonan tersebut diperlukan untuk membatasi penggunaan tanah secara efektif. Dalam konteks ini, pendaftaran bidang tanah memiliki dampak yang beragam dari segi ekonomi, sosial-budaya, dan jaminan hukum. Tantangan yang dihadapi dalam tindakan menghalangi sebagian besar berakar pada prosedur administratif. Oleh karena itu, pemulihan yang diusulkan mencakup penggunaan teknologi berbasis sistem elektronik untuk menyebarkan informasi secara efektif kepada masyarakat umum. Di yurisdiksi ini, kepemilikan tanah terutama diatur oleh hukum Syariah, yang memandang pendokumentasian hak milik sebagai metode untuk mempromosikan tata kelola pemerintahan yang baik. Sementara itu, pengaturan zonasi berfungsi sebagai alternatif untuk mendokumentasikan pemblokiran lahan, mengurangi potensi masalah kepemilikan di masa depan

Kata kunci: Pencatatan Blok; Sertifikat Tanah; Kantor Pertanahan Nasional; *Siyāsah Syar'iyah*.

Introduction

The increase in human demands is intrinsically tied to quantity, with land being an undeniable asset coveted by individuals primarily to acquire a residence (Fedele et al., 2021). A registered land shows that one or more individuals have ownership, usage, and building usage rights (Octaviani & Purwadi, 2022). To establish the ownership of a piece of property by a certain party, tangible evidence should be provided in the form of a land certificate to ensure legal certainty and protection (Murni et al., 2022). The certificate provides irrefutable proof that carries legal validity concerning land ownership (Roberts, 2021). Meanwhile, conflicts arise due to the general occurrence of multiple parties claiming ownership of a plot of land, particularly when acquired through gifting or inheritance (Naway & Elfikri, 2022).

Minister of Agrarian Affairs and Spatial Planning/National Land Office (ATR/BPN) issues Land Certificate as a non-ministerial institution responsible for government tasks in land sector under the laws and regulations stated in Government Regulation (PP) Number 24 of 1997 regarding Land Registration (Salim, 2019). The purpose of land registration is to offer legal safeguard and assurance to individuals who possess rights to land, dwellings, or similar properties (Sanniawati et al., 2023). The certainty of land rights can be determined by two factors, namely the object of the right, which is the location of the plot

specified by georeferenced coordinates, and the subject, as the name of the holder listed on certificate (Asnan & Mahmudah, 2023). This matter is important due to the increasing trend of land ownership, with a restricted quantity available at exorbitant rates, resulting in conflicts among stakeholders (Setiyabudi, 2020). Issuing a bond certificate provides conclusive evidence since land book contains both legal and physical data necessary to establish ownership.

Practically, Land Office is distributed in all regencies and cities in Indonesia. The property owner will retain possession of the issued certificate, while BPN must also own physical evidence of the historical recording, commonly referred to as the property Book (Monalu et al., 2023). Land certifications consist of both physical and legal data recorded in the measuring certificate and land book (Tediosaputro & Sukarningsih, 2023). Therefore, there is synchronization between certificate and land book. Land book serves as a definitive and legally binding document in all procedures related to the transfer of ownership (Powers & Nugraheni, 2021). According to Article 19 of UUPA, certificate is considered compelling evidence, but anybody has the right to challenge the accuracy. The court and the Head of BPN have the authority to revoke certificates when flaws are discovered (Menropa et al., 2023). The cancellation is carried out under the methods and procedures outlined in Minister of ATR Regulation Number 13 of 2017, which pertains to the procedures for blocking and confiscation (Tjandraningsih & Khan, 2023). This ensures that the cancellation is not conducted arbitrarily and provides legal clarity for rights holders.

The concept of blocking is not specifically defined in Ministerial Regulation Number 13 of 2017, Regulation of Minister of ATR/Head of BPN Number 3 of 1997, or Government Regulation Number 24 of 1997 (Kementerian Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional, 2017). According to Regulation of Minister of ATR Number 13 of 2017, the recording shows that blocking registration is considered an administrative action by Land Office. This action is specifically targeted at officials determined to establish a temporary freeze on legal rights and events occurring in the vicinity. The registration of blocks provided by landowner cannot be accomplished easily or without proper procedure. The procedure of documenting land parcels includes multiple phases that necessitate initial preparation. This faces several issues pertaining to block registration, resulting in legal proceedings. A comprehensive and methodical investigation of blocking registration is carried out at Parepare City Land Office, as well as the challenges encountered in registering land rights.

Opposing parties have the option to file a request for registration in land book, commonly referred to as partition or block registration. As a security measure, all changes to land title certificate have been temporarily blocked by Land Office until a final decision

from the court. Therefore, land remains untransferred to others through transactions such as purchasing and selling and is not encumbered by rent or collateral to external parties. To maintain organized land administration, it is important to store registration information in the form of entries in land books and measurement letters. This includes documenting blocks, confiscations, disputes, and lawsuits related to property rights. Land registration data maintenance actions are conducted in the event of modifications to the physical or juridical information of pre-existing entities. The party perceiving a disadvantage must officially record any alterations at Land Office to ensure that the information stored is in line with the actual conditions.

Multiple studies identified various factors contributing to the obstruction of Land Rights Certificate. These factors include the distribution of jointly owned assets ([Mulyanto & Adillah, 2022](#)), lack of good faith among land rights holders, distribution of inherited assets, lost certificates, investigations conducted by the Police ([Wiryani & Najih, 2021](#)), and land rights being confiscated by the State Receivables Affairs Committee (PUPN) as part of the process of resolving State Receivables ([Suharyono, 2019](#)). During the implementation at Land Office of Flores ([Tolo, 2018](#)), Padang Pariaman Regency ([Syuryani & Ardian, 2023](#)), Sleman Regency and Bantul Regency ([Sekarsari et al., 2019](#)), Depok City ([Wahyuni et al., 2016](#)), and West Pasaman Regency ([Fitrawadi Nst, 2021](#)), there is a policy mandating applicant to pay a fee only after receiving the block. The policy poses a potential risk of loss in Non-Tax State Revenue (PNBP) through the application process.

The phenomenon observed in society surrounding the numerous public complaints about the administrative procedures is investigated at Parepare City property Office, specifically related to the registration of property ownership rights being blocked. Therefore, this study holds significance in offering an impartial perspective on the protocols included in documenting the restriction of land ownership rights in Parepare City.

Methods

This study was based on empirical evidence and used a descriptive qualitative method. The study site was selected by Parepare City Land Office in response to the growing number of public complaints over administrative procedures. The method used was socio-juridical, which included analyzing statutory regulations and the social realities in the field. Meanwhile, the data sources were acquired through participatory observation, interviews with key stakeholders, including state civil servants at Parepare City Land Office, and documentation studies from pertinent journals, publications, regulations, and research. The data collection process consisted of three stages, namely reduction or selection of previous data, data presentation which included packaging the selected

sources into easily comprehensible data and drawing conclusions by identifying patterns and making inferences.

Results and Discussion

Mechanism for recording blocks at Parepare City Land Office

Block registration refers to the transfer of land status or ownership rights, which includes the cessation of land data collecting. There are specific limitations on land usage after completing the process, particularly for the construction of commercial and residential structures. In this scenario, land status remains unchanged until the block is lifted, which occurs when an agency official or a court decides to initiate the process. Land Office conducts block registration by designating an official to assess the current state after officially receiving the application from landowner ([Pattikraton & Silviana, 2023](#)).

Blocking typically arises due to a range of factors, including land use zoning, environmental concerns, spatial planning rules, or property conflicts. Meanwhile, land ownership often led to conflicts and numerous occurrences result in disastrous outcomes in response. This occurrence is not limited to specific individuals but can affect anyone, regardless of friendships, professional environments, or familial connections. Preventing the granting of land rights could also serve as a potential solution ([Syuryani & Ardian, 2023](#)). To mitigate unfavorable occurrences, an individual can submit requests for land blockage. Landowners have the ability to impede the procedures of altering names, issuing certificates, or transferring rights between parties and this prevents land from being purchased or sold.

An individual requesting a land block must meet specific criteria, such as providing genuine and valid evidence of ownership and being open to scrutiny to prevent the potential misuse of requests ([Ibrahim & Yusriyadi, 2018](#)). Applicant must possess a comprehensive understanding of the fundamental regulations that govern blocking procedure. BPN authorities must exercise utmost caution while reviewing applications since only those with a well-defined rationale are accepted ([Buana & Raharjo, 2021](#)).

Land-blocking applications can be submitted by both landowner and law enforcer. Law enforcement has the authority to impose a block that remains in effect until the conclusion of a criminal case under investigation and prosecution. The Head of Service is responsible for handling requests for information on the investigation. The submitted application is transmitted to the Head of BPN Office or a designated official. Essentially, the head of BPN office has the authority to approve or reject an application based on applicant's clear demonstration of ownership. Applicant can only submit blocking application once for a certain object. Land Office will examine the application to determine the adherence of the submission to relevant terms and conditions. This evaluation includes

cross-referencing land ownership history recorded in BPN database with applicant's certificate. The Head of Land Office formally communicates the decision to applicant or other relevant parties through an official written letter, providing detailed explanations for the denial when the evaluation obtains a negative outcome regarding the request. The registration of blocks is documented in land register and the corresponding survey certificate at the local Land Office.

Blocking records should include the time and date of the record, applicant's identity, and an explanation of the grounds for blocking. The review procedure is conducted in a maximum of three business days following the receipt of the application. Furthermore, approved requests will be restricted for a duration of 30 days. Land Office personnel initially offers legal assistance to ensure comprehension of the rights and responsibilities included in land blockage. Blocking period may be lifted when the file is not pursued by the court in 30 days. Land Office does not promptly refer the case to court when applicant transfers the issue to the legal domain (Ulfa & Andraini, 2020). Mediation is initiated as the first phase of dispute resolution, where the two parties negotiate and find a mutually agreeable settlement. Meanwhile, the case may continue to court when mediation fails to obtain a resolution. The release of a court ruling that definitively establishes land ownership coincides with the removal of any obstacles preventing access, as well as the registration of details on certificates and records (Istiana et al., 2022).

Registering an encumbrance on land or property results in a range of adverse effects and financial setbacks (Jha et al., 2022). From an economic perspective, limitations on use result in a decline in property prices, particularly when not effectively regulated, leading to doubt regarding adherence to the original development plan (Islamiyati et al., 2022). The status of being a disputed land might also diminish the market value in the community. Restricting the use of land, especially in areas such as rice fields or locations where commercial activities thrive, will have a detrimental impact on the welfare of the indigenous population. Land blocking leads to population displacement as community obtain alternative areas of residence from a societal perspective. Residents who lack sufficient alternative homes experience population and economic disruption. Socio-cultural losses may arise from the displacement of traditional and cultural communities. Legal ambiguity regarding land ownership develops over a specific duration. An increase in court filings may result from the resurgence of litigation initiated by opposing parties to overturn decisions and this procedure is time-consuming with significant expenses.

The Law Number 5 of 1960, known as UUPA, remains the fundamental legislation governing land matters (Suartining & Djaja, 2023). UUPA is considered as a solution to the issue of dualism in land law that persisted for a period of 15 years following Indonesian independence in 1945. Consequently, UUPA is considered a national land law to establish

a unified framework for agricultural activities. Culture and law ensure legal certainty, a fundamental entitlement of all Indonesian residents. The purpose is to establish a solid basis for ensuring legal clarity in regard to land rights for all residents of Indonesia. The achievement of legal certainty of property rights can be accomplished by implementing registration as stipulated in Article 19. The elucidation of Article 19 is provided through the enactment of Government Regulation Number 10 of 1961, which is revised by Government Regulation Number 24 of 1997 about Land Registration (PP Number 24 of 1997). The implementation of land registration has adhered to the guidelines outlined in Government Regulation Number 24 of 1997. However, there are ongoing land disputes that currently pose a challenge for the administration. Even though certificate serves as a powerful kind of evidence, the legal certainty of the individual is not ensured. According to Article 32 of PP Number 24 of 1997, individuals who have the right to file a civil lawsuit in the deed can conduct the process in the general court or the State Administrative Court against the Head of BPN/Land Office.

There is a lack of specific information regarding the procedures for blocking, with only implicit arrangements mentioned for the initial land registration application (origin air) to obtain certificate from Land Office (Safitri, 2020). Blocking process is conducted under the guidelines provided in PP 24 of 1997, specifically Article 30 paragraph (1) letters c and d. Additionally, blocking of transfer registration or encumbrance of rights is regulated by Article 126 of the Regulation of Minister of ATR/Head of BPN Number 3 of 1997 (referred to as PMNA/KBPN 3/1997). This regulation states that blocking can be initiated by parties whose interests have been disrupted and may result in a lawsuit filed in court. The provision of a copy of the specific letter of claim is registered in land book at Land Office. The record is immediately erased when no guaranteed decision and minutes of execution of blocking application are received within 30 days. In addition, blocking may also arise due to a vested relationship between the individual obstructing the recording and landowner, or due to landowner's interests. Instances of problematic debt-receivable relationships include situations such as default, loss of certificate, inequitable division of inheritance, forgeries, or problems related to land ownership. The regulations of block registration are currently dispersed among many sections, lacking completeness and consistency. Therefore, discrepancies in the interpretation of applications arise when dealing with multiple Land Offices. The issuance of Regulation of Minister of ATR/Head of BPN Number 13 of 2017 aims to establish uniformity and standardization by providing guidelines on the procedures for blocking and confiscation. This regulation specifies the requirements, authority, period, and stages in recording and lifting blocking and confiscation measures.

Parepare City Land Office Obstacles in Accepting Applications for Land Plots

Block registration by Parepare City Land Office encounters numerous difficulties. Firstly, block registration process, which includes multiple stages, must adhere to the prescribed procedures and regulations, including intricate documentation necessitating Land Office to possess highly skilled personnel. The government may modify procedures, regulations, or policies, which are subject to change and cannot be anticipated, complicating the process of blocking. Acknowledging a piece of property by multiple parties, with dissenting views on the obstruction, leads to conflicts impeding the progress of blocking procedure. Furthermore, BPN, namely Land Office, possesses restricted resources, such as manpower and budget, which can impede the progress of blocking measures. In numerous instances, there were property title conflicts where the identity of the rightful owner was unknown, leading to the question of who possessed the authority to make obstructive determinations. Landowner facing financial limitations may intentionally delay blocking procedure, leading others to perceive Land Office staff as showing unjust treatment towards certain individuals. The public strongly advocates for a prompt resolution of the blockage to prevent the reduction of investment strategies. After a logging blockade, it is crucial to establish efficient monitoring and enforcement systems to ensure compliance with the underlying reasons (Tyastuti & Nuswardhani, 2021).

Parepare City Land Office is actively exploring multiple strategies to address the challenges. A method includes aggressively disseminating enacted policies through social media platforms and conducting meetings in each hamlet to engage with the local community. Landowner and related parties can receive legal consultation regarding rights and obligations in the specific situation of land blocking. Previously, BPN had a significant role in establishing precise regulations on land blocking, including stipulations, protocols, and prerequisites to be upheld by certificate holders. Following the preparation, BPN is contemplating revising regulations and procedures on land blockage to address community inquiries and requests.

The enhancement of block registration administration process includes the implementation of novel innovations to facilitate the acquisition of precise, dependable, and efficient information regarding the prerequisites and completeness of application files for applicant. Due to technological advancements and the rise of evaluation websites with blocking capabilities, individuals can conveniently obtain remote information, such as file integrity and administrative expenses. This also facilitates personnel in efficiently executing responsibilities without the need for frequent trips to the counter.

Work quality control is conducted through the implementation of human resource development as a method of supervision, which includes evaluation activities and remedial measures (Mangku, 2020). The enhancement of service quality is increased by the presence of employees who possess integrity, professionalism, honesty, and the ability to establish effective communication, with the use of technology based on electronics. Integrity refers to the steadfast adherence to professional norms and codes of ethics when serving the community. The online service system deployed at Land Office imposes limitations on both back-office staff and the public, ensuring high efficacy in blocking transactions violating predefined provisions.

Thorough and meticulous land block registration is necessary to ensure that Land Office establishes unambiguous and precise ownership records, preventing potential disputes. Land Office is responsible for facilitating the establishment of unambiguous land use zoning and showing regional spatial arrangements to mitigate problems.

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Siyāsah Syar'iyah Review of the Registration of Blocking of Land Ownership Rights

In the context of *siyāsah shar'iyah* (Syatar et al., 2023), which refers to the principles of Islamic law, the concept of land ownership has a major foundation in sharia (Karimullah, 2023). These principles are reflected in several key tenets, including private property rights (*mulk*) (Sait & Lim, 2006), rental rights (*ijārah*) (Angraeni & Primadhany, 2022), and temporary use rights (*istibdāl*) (Lapatantja & Bakry, 2021). In the Islamic political system, land ownership is governed by the principles of justice and equitable distribution of wealth (Komaruddin, 2020). The system tries to prevent unjust accumulation of land and ensure that natural resources such as land are used for the common good and prosperity of society (Iqbal & Gill, 2000). Unlike zamindari, which is a land system that developed in various parts of the world with the influence of colonialism, Islam emphasizes individual ownership governed by the principles of justice (Gojali, 2022). Property rights to land in Islam are expected to support the basic needs of the individual and the community and prevent land monopolies that can be detrimental to society.

Land law in Islam can be defined as Islamic law that discusses ownership rights, including land management and land distribution (Karjoko et al., 2021). In the context of Islamic law, everything on earth including land essentially belongs to Allah. So, if viewed from the point of view of *siyāsah shar'iyyah* (Minhaji, 1996) that humans are obliged to accept all decisions related to land and those related to life and life. Therefore, we can understand together that the resolution of various land issues including the recording of blocking land ownership rights can be resolved based on positive law and Islamic law.

Viewed from the perspective of Islamic law, the implementation of recording property rights to land alludes to good governance by implementing the principles of good governance (Thalib & Abrianto, 2019). The main purpose of forming a law or *maqāṣid shari'ah* is to realize the benefit of the people and avoid harm. The law derived from the Land Law (UUPA) can realize the benefit of the people to achieve the goal of good governance.

In this context, *maqāṣid shari'ah* has an important role in regulating various aspects of life, including governance (Isman & Kaltsum, 2022). *Maqāṣid shari'ah* is a basic concept in Islamic law that refers to the basic objectives of the Shari'ah (Al Munawar, 2021). These objectives include the preservation of religion, soul, mind, offspring, and property. In the context of land and property, these principles include the protection of property rights, social justice, and equitable distribution of wealth (Muyasaroh & Herlina, 2022). The concept of good governance includes principles such as transparency, accountability, public participation, effectiveness, and the rule of law (Aziza & Arif, 2023). By applying these principles in the context of land title registration, the government can create a fair, transparent, and efficient system.

The UUPA, which includes provisions related to land ownership (Wigana, 2019), can be implemented to achieve the objectives of *maqāṣid shari'ah* and the principles of good governance (Komaruddin, 2020). Clear and transparent registration of land titles can provide legal certainty, prevent conflicts, and support a more equitable distribution of wealth in accordance with Islamic principles. By ensuring that the UUPA is implemented with due regard to *maqāṣid shari'ah* and the principles of good governance, the government can achieve the objectives of good governance and the benefit of the people. It creates a legal framework that supports the development of a society based on the values of justice, transparency, and shared prosperity.

The Prophet PBUH in a rule said that the imam's action towards his people must be related to the benefit. It can certainly be defined that the policy of the leader always leads to the benefit of the community. Because the leader is a figure who has power over the led. One of the forms of power of a leader is the matter of deciding on a case or in determining a policy.

Policies issued by a leader, including in determining the procedure for recording blocking land ownership rights, must be in favor of the community. Because the general benefit takes precedence over the specific benefit. Even so, we realize that the implementation of block recording of land ownership rights in Parepare City still has many shortcomings, but the government must not make omissions as the rule says that what cannot be implemented entirely, then do not leave it entirely.

Conclusion

In conclusion, BPN was responsible for the registration of restricted land ownership rights conducted by Land Offices located across Indonesia. Applicant applied for block registration to control land registration procedures, such as name changes or the transfer of rights to contested land. In this context, applicant also provided compelling justifications for the application to be approved. The Head of Land Office had the authority to accept or reject an application for land registration. Blocking status remained in effect for a period of 30 days and was rescinded when no further action was taken in court. Meanwhile, the cessation of landowner registration was predicated on a judicial ruling. During the process of recording blocking, several impediments were encountered, including the frequent alteration of procedures and rules, prolonged administrative resolution by applicant, and extended duration due to conflicts between the parties. Considering the challenges, Parepare City Land Office implemented several measures, including the use of electronic-based technology to facilitate the public in transferring information, enhancing public services, and offering legal education.

In the framework of *siyāsah shar'iyah*, land ownership was primarily grounded in sharia law. Islamic law considered registration as a method of promoting good governance using principles. This study focused exclusively on the execution and challenges encountered in documenting land ownership parcels at Parepare City Land Office. Academic recommendations were exclusively applicable to BPN to enhance public services, concerning block registration of land ownership.

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