JOURNAL OF LAW AND POLICY TRANSFORMATION

113 Vol. 4 Issue 1, 2026, 113-142

Positive Fictitious Decisions and Administrative Silence in Land Services: A Study of the National Land Agency in West Sumatra

Mutia Jawaz Muslim[1*], Meissy Putri Deswari[2], Ammar Bedonza Sulthana Asyar[3]

[1-3]Faculty of Law, Universitas Adzkia, Indonesia
Email: mutiajawazmuslim@adzkia.ac.id

History of Article
Submitted : 2026-05-20
Revised : 2026-06-09
Accepted : 2026-07-15
DOI ` : https://doi.org/10.37253/jlpt.v11i1.12424

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Abstract

Land administration services constitute a form of public service playing a strategic role in providing legal certainty regarding the public's land rights. However, the actual delivery of land services in Indonesia is frequently marred by various forms of maladministration, ranging from protracted delays and a failure to provide service to procedural irregularities. This situation reflects a phenomenon of "administrative silence" that potentially harms the public and leads to legal violations. Under Indonesian administrative law, this phenomenon is addressed through the concept of the "fictitious-positive decision" (deemed approval) stipulated in Article 53 of Law Number 30 of 2014 concerning Government Administration; in principle, this deems a public request for a permit to be granted if a government official fails to issue a decision within the timeframe prescribed by legislation. This study aims to analyze the application of the fictitious-positive decision mechanism regarding administrative silence in land services. It employs a normative legal research method, utilizing statutory, conceptual, and case-based approaches. The findings indicate that the most prevalent forms of maladministration in land services in West Sumatra are protracted delays and a failure to provide service. Implementing the fictitious-positive decision mechanism in land services proves ineffective due to the complex nature of these services, which involve physical and legal verification, technical surveying, and a high potential for disputes. Furthermore, the existence of "ulayat land" (customary communal land) within the Minangkabau customary legal system prolongs administrative processes, given its communal ownership structure and the requirement for approval from various parties within the customary community.

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

Consequently, the study concludes that a policy reformulation regarding fictitious-positive decisions in the land sector is necessary, specifically through the introduction of more detailed, sector-specific regulations.

Keywords: Administrative Silence; Land Services; Positive Fictitious Decision; West Sumatra.

INTRODUCTION

The arrangement of public services is a manifestation of the state's responsibility to its citizens within the concept of a modern state based on the rule of law (Ridwan & Sudrajat, 2020). Democratic governance is measured not only by the existence of substantial regulations but also by the service aspects implemented in the practice of state administration. The implementation of good public services for the community is one indicator of government success. In Indonesia, public services have been a primary focus of bureaucratic reform for nearly two decades. Efforts such as the implementation of good governance principles, a merit system, and bureaucratic digitization have been undertaken to increase efficiency and strengthen public service accountability (Lumbanraja & Rustiyana, 2024). In line with this, in order to realize legal certainty for the public in public services and encourage accountability in government administration, a legal concept has been designed in the form of a positive fictitious decision. The positive fictitious decision is regulated in Article 53 of Law Number 30 of 2014 concerning Government Administration, where this concept requires the government to issue a decision or take an action requested by the public within a certain time period, which if not fulfilled, is deemed to have granted the request (Simanjuntak, 2017). Over time, the provisions governing "fictitious positive" decisions have been amended by Law Number 6 of 2023 concerning Job Creation. This amendment is marked by a reduction in the application processing timeframe—specifically to five (5) working days—for government decision requests where no specific timeframe is stipulated in the underlying regulations. In

the development of modern administrative law, the concept of administrative silence is no longer understood as mere bureaucratic inactivity/silence, but rather as a legal phenomenon with normative implications for citizens' rights. In many legal systems, government silence on a request for a state administrative decision is seen as a form of state failure to fulfill its public service obligations, which should be responsive and accountable. Therefore, the birth of the concept of positive fictitious decisions is part of the evolution of administrative law that seeks to overcome bureaucratic stagnation and strengthen the public's position in dealing with public authorities (Nugraha et al., 2022).

Theoretically, positive fictitious decisions reflect a paradigm shift from state-oriented administration to citizen-oriented administration, where the interests of the public are placed at the center of every government action (Teguh & Sadjijono, 2018). This paradigm demands a shift in perspective on administrative authority, from one that was initially dominant to one that is more participatory and accountable. In this context, every request submitted by the public is not viewed merely as an administrative procedure, but as a legal right that must be fulfilled by the state within the framework of protecting citizens' human rights. The Indonesian Ombudsman (ORI) noted that public complaints regarding maladministration in state governance practices continue to increase, with the agrarian sector ranking among the highest in the past five years. Despite the integration of digitalization into land services, findings of maladministration continue to occur (Jaweng, 2020). Cases of maladministration that have occurred, such as prolonged delays, abuse of authority, failure to provide services and illegal levies in land services, show that bureaucratic reform has not fully guaranteed clean and efficient services.

Upon further examination, maladministration in the form of prolonged delays and failure to provide services to public

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

requests regarding government decisions and/or actions will automatically result in fictitious decisions, but still raise many questions in their implementation. The phenomenon of maladministration in land services is caused by various complex factors in land services, even the unique characteristics of customary land in West Sumatran customary law also play a role. The National Land Agency (BPN), as an institution mandated by law to manage the agrarian sector, needs to improve further due to the various cases of maladministration that have occurred. This condition not only reduces the credibility of the National Land Agency (BPN) as a public service institution in land affairs, but also threatens the principle of legal certainty over land, which is a basic right of citizens (Nasir, 2024).

Academic studies on the implementation of positive fictitious decisions in public services, particularly in the land sector, are still rare, although some previous researchers have. For example, a study by (Wulandari, 2020) on the Testing of Positive Fictitious Decisions in the State Administrative Court outlines the criteria for positive fictitious decisions in legislation and court decisions, as well as the basis for testing positive fictitious decisions in court based on legislation and general principles of good governance.

Airlangga (2019) identified maladministration in land dispute resolution services at the Lampung Province National Land Agency (BPN). First, the initial land registration service occurred due to negligence or incompetence of officials responsible for collecting physical and legal data, resulting in the land certificates issued not reflecting the actual conditions in the field or the relevant parties. Furthermore, maladministration in land dispute resolution services at the National Land Agency (BPN) was caused by neglect of legal provisions, procedural deviations, and legal interpretations carried out for the benefit of certain groups. These conditions have legal consequences for administrative actions and legal products issued by the BPN.

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Therefore, the BPN needs to restructure its legal system, optimize bureaucratic performance, and strengthen its legal function.

Although the study contributes to the conceptual understanding of positive fictitious decisions and the phenomenon of maladministration in land services, there has been no research that links the implementation of positive fictitious decisions in land services that emerge as a response to maladministration and a specific study in the socio-cultural context of regions such as West Sumatra where this region has unique land characteristics due to the influence of the matrilineal Minangkabau customary system and adheres to the concept of "customary land" as a symbol of identity and honor of the people.

In Law Number 25 of 2009 concerning public services, it is stated that public services are activities or a series of activities in order to fulfill service needs in accordance with statutory regulations for every citizen and resident for goods, services, and/or administrative services provided by public service providers to provide legal certainty in the relationship between the community and providers in public services. In public services there are service standard components that must be met including legal basis, requirements, systems, mechanisms, and procedures, completion timeframe, costs/rates, service products, facilities, infrastructure, and/or facilities, implementer competence, internal supervision, handling of complaints/suggestions and input, number of implementers, service guarantees that provide certainty that services are carried out in accordance with service standards, guarantees of security and safety of services in the form of a commitment to provide a sense of security, freedom from danger, and risk of doubt, and evaluation of implementer performance. This provision of course mutatis mutandis binds land services organized by the BPN. In Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, it is stated that maladministration is

behavior or actions that are against the law, exceed authority, or do not comply with public service standards carried out by state or government officials, which result in material or immaterial losses for the community.

This research aims to complement the theoretical study of administrative law on the application of positive fictitious decisions to government silence (Administrative Silence) in the practice of land services in the region This study is a socio legal analysis focusing on the examination of legal norms regarding "fictitious-positive" decisions and their applicability to government inaction in the provision of land services. The analysis considers the practical application of the fictitious-positive norm, using instances and characteristics of maladministration as a context to evaluate the norm's relevance and potential application to land service issues. To support this analysis, the study incorporates data from the West Sumatra Representative Office of the Ombudsman of the Republic of Indonesia regarding maladministration cases in land service provision across Land Offices in West Sumatra between 2021 and 2024, as well as findings from interviews with representatives from the Padang City Land Office.. In addition, this research also examines the relationship between customary law and whether it has an influence on the occurrence of maladministration in the form of government silence in providing land services as they should. Practically, the findings of this research are expected to be a consideration for policymakers and supervisory institutions such as the Indonesian Ombudsman and the National Land Agency (BPN) in providing land services for legal certainty and formulating strategies to prevent maladministration in the land sector.

Thus, this article aims to analyze: (1) the forms and factors causing maladministration in land services by the National Land Agency (BPN) in West Sumatra; (2) the application of positive fictitious decisions regarding the government's silence in land

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

services and (3) the relevance of customary land in Minangkabau customs in West Sumatra to the emergence of maladministration. This research uses a normative-empirical legal method with a statutory, case, and conceptual approach to obtain a comprehensive picture between legal norms and empirical reality in the field. Overall, this research is expected to not only provide academic contributions to the development of administrative law science, but also have strong policy relevance in efforts to build a just public service system and review the effectiveness of implementing positive fictitious decisions in the land sector

RESEARCH METHOD

This study employs a normative-empirical legal method (socio-legal research) that combines an examination of legal norms with an analysis of empirical realities within the provision of land services. The normative approach is used to analyze statutory provisions governing "fictitious-positive" decisions, public services, government administration, and the delivery of land services. Meanwhile, the empirical approach is utilized to examine practices of maladministration and the implementation of the fictitious-positive decision concept within land services provided by the National Land Agency in West Sumatra. Legal research methodology plays a crucial role in formulating legal arguments that are logical, critical, and scientifically defensible, thereby fostering more purposeful legal development (Antony et al., 2026). Legal research possesses distinctive characteristics in its mode of reasoning and must be grounded in an analysis of the gap between legal events (Das Sein) and legal rules (Das Sollen). The selection of a research method hinges on the characteristics of the research objective (Disemadi, 2022). This study employs several approaches: the statute approach, the conceptual approach, and the case approach (Soerjono Soekanto & Sri Mamudji, 2001). The statute approach involves examining

various regulations concerning government administration, public services, land affairs, and "fictitious positive" decisions. The conceptual approach is used to analyze the concepts of administrative silence, maladministration, and fictitious positive decisions from the perspective of state administrative law. Meanwhile, the case approach is conducted by reviewing findings of maladministration in land services recorded in reports by the Ombudsman of the Republic of Indonesia (West Sumatra Representative Office) for the 2021–2024 period.

This study employs a descriptive-analytical approach. It is descriptive as it aims to outline the forms of maladministration and their underlying causes within land services in West Sumatra; it is analytical as it examines the legal implications of administrative silence regarding the application of the "fictitious positive" decision mechanism. The study utilizes both primary and secondary data. Primary data were obtained from reports and examination findings by the Ombudsman of the Republic of Indonesia (West Sumatra Representative Office) concerning complaints and findings of maladministration in land services. Secondary data were gathered through a literature review, encompassing primary legal materials (legislation), secondary legal materials (books, journal articles, research findings, and relevant legal doctrines), and tertiary legal materials (legal dictionaries and other supporting sources). Data collection was conducted through document analysis and a literature review. Document analysis was used to gather empirical data (specifically reports on maladministration at land offices in West Sumatra) while the literature review served to establish the theoretical and normative foundations supporting the study's analysis (Mcevoy et al., 2014).

RESULT AND DISCUSSION

Forms and Factors Causing Maladministration in Land Services in West Sumatra

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

Based on data from the West Sumatra Representative Office of the Republic of Indonesia Ombudsman between 2021 and 2024, maladministration occurred year after year in almost all district/city land offices. This phenomenon indicates that land service issues require special attention. In the context of administrative law, maladministration is an indicator of the government's failure to carry out state functions based on the general principles of good governance, such as legal certainty, accuracy, professionalism, openness, and non-discriminatory service (Hayati, 2021). Conceptually, maladministration is defined as administrative behavior or actions that deviate from the legal obligations and procedures that public officials should follow. In land services, maladministration relates not only to procedural aspects but also to the management of authority, documentation, and officials' responses to public requests (Bahrul Alam, 2022).

Based on the data processing results, there are three forms of maladministration that carried out by the National Land Agency in the West Sumatra Region, namely (1) prolonged delays, (2) not providing services, and (3) procedural deviations. These three forms of maladministration have a significant proportion and have occurred repeatedly over the past four years. Prolonged delays are the most common form, followed by the act of not providing services, and procedural deviations involving violations of administrative procedures and authority practices.

To provide an empirical picture of maladministration cases, the following table presents a summary of the findings of the West Sumatra Ombudsman based on the maladministration category.

Table 1. Findings of Maladministration of Land Services in West Sumatra 2021–2024

Year	Reported Maladministration	Cases

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2024	Solok City Land Office	procedural irregularities	1
	Padang City Land Office	prolonged delays	1
	West Sumatra Province National Land Affairs Office	prolonged delays	1
2023	South Solok Regency Land Office	Prolonged delays	1
	Padang City Land Office	Failure to provide services	2
		Prolonged delays	5
		Procedural irregularities	1
	Padang City Land Office	Prolonged delays	1
		Procedural irregularities	1
	Sijunjung Regency Land Office	Procedural irregularities	1
	Pesisir Selatan Regency Land Office	Failure to provide services	1
	Head of West Pasaman Regency Land Office	Prolonged delays	1
	Tanah Datar Regency Land Office	Failure to provide services	1
	Solok City Land Office	Prolonged delays	1
2022	Padang City Land Office	Prolonged delays	2
		Failure to provide services	4
		Procedural irregularities	3

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	Solok City Land Office	Procedural irregularities	2
	Solok Regency Land Office	Failure to provide services	1
	Tanah Datar Regency Land Office	Prolonged delays	1
	Pesisir Selatan Regency Land Office	Procedural irregularities	2
	Padang Pariaman Regency Land Office	Failure to provide services	1
		Prolonged delays	1
2021	Solok Regency Land Office	Prolonged delays	1
	Dhamasraya Regency Land Office	Failure to provide services	1
	Head of the Padang City Land Office	Failure to provide services	1
	Padang City Land Office	Failure to provide services	3
		Prolonged delays	1
		Procedural irregularities	1
	Pesisir Selatan Regency Land Office	Failure to provide services	3
		Prolonged delays	1
	Sawahlunto Regency Land Office	Prolonged delays	1
	Agam Regency Land Office	Failure to provide services	1
		Prolonged delays	1

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

	Procedural irregularities	1

Source: The report of the Indonesian Ombudsman Representative Office for West Sumatra (2021-2024)

Table 2. Aggregate Summary of Land Service Maladministration in West Sumatra (2021–2024)

Category of Maladministration	**Number of Cases**	**Percentage (%)**
Prolonged Delays	20	38,5 %
Failure to Provide Services	19	36,5 %
Procedural Irregularities	13	25 %
Total	52	100%

Source: Author Analysis, 2026

Data regarding maladministration in land services, compiled by the West Sumatra Representative Office of the Ombudsman of the Republic of Indonesia between 2021 and 2024, provides empirical evidence that the quality of land services in the province still falls short of public expectations. These findings are limited to complaints from citizens who possess the necessary access, knowledge, and legal confidence to file a report. In reality, field observations indicate that many citizens choose to remain silent and refrain from pursuing permit-related matters when faced with poor land services—whether due to a lack of knowledge regarding complaint procedures or a sense of pessimism about the likelihood of a resolution.

Prolonged delays—a predominant finding regarding the failure to provide services—typically manifest as maladministration in the context of requests for the issuance of State Administrative Decrees (KTUN), specifically land certificates. Services frequently stalled or subject to such delays include applications for initial land registration, requests for land

certificates in the name of farmer groups, the processing of Freehold Titles (SHM), land tenure upgrades, certificate subdivision, and requests for on-site land parcel surveys. Obstructions in the administrative processes at these critical stages directly result in a delay regarding the applicant's right to legal certainty.

In response to the numerous reports, this study sought to obtain in-depth confirmation and clarification from the Padang City National Land Agency (BPN)—the agency most frequently cited in public complaints. However, the process of verifying these matters on the ground encountered specific bureaucratic challenges. The researcher faced difficulties in establishing direct communication to conduct face-to-face interviews with authorized officials. Ultimately, the responses obtained were limited to brief, formal written replies via email. This situation constrained the researcher's ability to explore the BPN's institutional arguments in a more specific, contextual, and substantive manner.

In its official statement, the Padang City Land Office (BPN) reaffirmed its commitment to optimizing all land service mechanisms in accordance with prevailing operational standards. The agency asserts that it has addressed workload demands by strategically deploying and strengthening its human resources—specifically regarding regulatory understanding and the technical management of service delivery. From BPN's internal perspective, the service bottlenecks criticized by the public stem primarily from a high volume of applications that exceeds the bureaucracy's daily processing capacity, compounded by the complexities associated with customary (ulayat) land in West Sumatra; these complexities necessitate multi-layered verification processes and lengthy timelines, particularly during the initial land registration stage.

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Published by Universitas Internasional Batam

In addition to the structure of customary law, the Padang City Land Office (BPN) also highlights technical challenges during the field-based physical verification stage. By nature, land services require a high degree of precision—such as in cadastral surveying and area mapping—to ensure the certainty of land rights. This process necessitates the support of certified surveyors and the availability of adequate technological equipment. A shortage of official surveyors and a lack of standard surveying instruments at the regency/city level ultimately contribute to protracted delays.

However, the technical arguments and workload issues cited by the Padang City National Land Agency (BPN) are inconsistent with the objective findings documented by the West Sumatra Ombudsman. The Ombudsman's evaluation revealed that the root cause of prolonged delays often stems not merely from technical or geographical constraints, but rather from poor coordination and communication between BPN staff and service applicants. In practice, digital service modernization initiatives—such as the Sentuh Tanahku application and BPN's official information portal—have yet to provide applicants with concrete legal certainty, as application status updates frequently fail to occur in real-time.

An institutional tendency to offer minimal response—or even fail to provide written clarification—regarding the status of pending files ultimately leaves applicants in a state of prolonged legal uncertainty (administrative silence). This bureaucratic silence not only violates the general principles of good governance (AUPB)—specifically the principles of openness and legal certainty—but also underscores that public service reform in West Sumatra's land sector still suffers from fundamental shortcomings regarding transparency and accountability in public communication.

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Published by Universitas Internasional Batam

Implementation of Positive Fictitious Decisions in Land Services

A positive fictitious decision is a form of government legal action that arises from an attitude of inaction within a certain period of time as determined by statutory regulations (Bimasakti, 2022). Public requests for public services are essentially identical to requests for the issuance of a state administrative decision. Therefore, the concept of a positive fictitious decision must be carefully understood to avoid being equated with factual actions, such as inaction by the government, that do not result in administrative legal consequences (Jawaz Muslim, 2025). Factual action in the form of not carrying out an action by the government (administrative omission) after its permission. Law Number 30 of 2014 concerning Government Administration has expanded the authority of the State Administrative Court (PTUN) to adjudicate cases arising from such actions (Asimah & Erliyana, 2025).

Maladministration in public service delivery often manifests itself in the form of prolonged delays and failure to provide services as stipulated in laws and regulations. Upon closer examination, this situation has the potential to give rise to legal consequences in the form of fictitious positive decisions. The emergence of fictitious positive decisions is closely related to the time limit for government administration to fulfill public requests for decisions/actions, which is stipulated in the original regulations and the Law on Government Administration, which is 10 (ten) working days, which was later shortened to 5 (five) working days in the Job Creation Law.

The BPN already has a regulatory framework for providing land services. Several regulations, spread across laws and various BPN Head Regulations, address the mechanisms and procedures for land services. Furthermore, each land office website in West Sumatra contains various service standards,

ISSN (Online): 3025-7387
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including systems, mechanisms, and procedures for applying for land services.

Under the Regulation of the Minister of Agrarian Affairs and Head of the National Land Agency Number 1 of 2010 concerning Land Service Standards and Arrangements—which has undergone several partial amendments, most recently by the Regulation of the Head of the National Land Agency Number 12 of 2021 concerning technical considerations regarding land (although timeframes are governed solely by the Regulation of the Head of the National Land Agency Number 1 of 2010)—the timeframes for each service are as follows:

Table 2. Land service deadline

No.	Service group	Type of service	Time
1.	First Time Land Registration	Conversion, Recognition, and Affirmation of Rights	98 days
		Granting of Individual Property Rights	38 - 97 days
		Granting of Legal Entity Property Rights	
		Granting of Individual Building Use Rights	
		Granting of Legal Entity Building Use Rights	
		Granting of Land Use Rights to Indonesian Citizens	
		Granting of Land Use Rights to Foreign Citizens	
		Granting of Land Use Rights to Indonesian Legal Entities	
		Granting of Land Use Rights to Foreign Legal Entities	

		Granting of Land Use Rights to Government Agencies	
		Granting of Land Use Rights to Foreign Governments	
		Granting of Management Rights to Government Agencies/Regional Governments/State-Owned Enterprises/Regional-Owned Enterprises	97 days
		Waqf of Uncertified Land (Conversion, Recognition, and Affirmation of Rights)	98 days
		Waqf of State Land (Granting of Waqf Land Rights)	57 days
		P3MB/Prk.5	145 days
		Registration of Ownership Rights for Apartment Units	30-90 days
		Granting of Land Use Rights to Individuals	38 days
		Granting of Land Use Rights to Legal Entities	38 – 138 days
2.	Maintenance of Land Registration Data	Transfer of Sale and Purchase Rights	5 days
		Inheritance/Wills	
		Exchanges	
		Gifts	
		Sdaysng of Joint Rights	
		Auctions	
		Investment into Companies/Inbreng	
		Mergers	

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Published by Universitas Internasional Batam

	Change of Name of Land Certificate and Ownership Rights for Apartments	7 days
	Extension of Cultivation Rights	30 – 70 days
	Extension of Use Rights	30 – 49 days
	Extension of Ownership Rights for Apartment Units	30-89 days
	Individual Building Rights	38 – 97 days
	Legal Entity Building Rights	
	Individual Use Rights for Indonesian Citizens	
	Individual Use Rights for Foreign Citizens	
	Indonesian Legal Entity Use Rights	
	Foreign Government Use Rights	
	Granting of Building Rights/Use Rights over Management Rights	
	Individual Cultivation Rights	38 days
	Registration of Mortgage Rights	38 days
	Elimination of Mortgage Rights (Roya)	7 days
	Transfer of Mortgage Rights (Cessie)	5 days

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

		Subrogation (Change of Creditor)	7 days
		Transfer of Sale and Purchase Rights	7 days
3.	Land Registration and Information	Blocking	1 days
		Seizure	
		Seizure Removal	
		Certificate Verification	
		Land Registration Certificate	4 days
		Technical Base Point Information	3 days
		Map Information	3 days
4.	Land Area Measurement	Field Measurements For Boundary Return Purposes	12 – 30 days
		Measurements for Land Inventory/Procurement Activities	18 days
		Measurement at the request of agencies and/or the community to determine the area of land	18 days
		Measurements for the Preparation of a Complete Situation Map (Topography)	18 days
5.	Land Regulation and Arrangement	Self-Help Land Consolidation	210 days
		Technical Considerations for Land Management	14 days
		Technical Considerations for Land Use Management	14 days
6.	Complaint Management	Complaint Management.	5 days

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

Source: Author Analysis, 2026

The service period stipulated in this regulation appears to focus solely on bureaucratic performance targets and fails to address the consequences of exceeding the deadline for issuing state administrative decisions or government action. However, a positive fictitious decision is not solely dependent on the lapse of time but also requires the fulfillment of substantive conditions that allow for administrative legal consequences. The complexity of this service substance makes BPN Regulation 1/2010 vulnerable to creating a false sense of legal certainty.

This regulation does not require land officials to provide a written response when the deadline has passed, whether in the form of approval, rejection, or suspension for legal reasons. This gap creates an administrative gray area that encourages officials to opt for silence as a risk-avoidance strategy. Due to the lack of a mandatory written response, fictitious positive decisions lose their effectiveness as legal protection instruments. Normatively, applicants can claim a fictitious positive decision, but in practice, such claims are difficult to enforce without a concrete administrative product.

The implementation of fictitious positive decisions in land service practices faces various structural and procedural obstacles. Land services are highly complex, involving multiple administrative stages, verification of physical and legal data, and coordination across work units. This process cannot be completed in a single, simple step; it requires time and high precision to ensure legal certainty regarding land rights.

The problem becomes even more complicated when prolonged delays occur in the early stages of the land service process, such as during the document completeness check or initial measurement. If this situation is immediately classified as the basis for issuing a fictitious positive decision, it will create a mismatch between normative legal construction and field practice. Furthermore, the immediate application of a fictitious

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

positive decision to land services has the potential to create chaos in land governance. Determining land rights, particularly in the form of certificate issuance, requires the fulfillment of all procedures and substantive verification. Therefore, it is impossible to immediately issue land certificates simply because of a delay in service at a particular stage without going through a complete and legally valid series of processes.

The application of the "fictitious positive decision" concept in land services—following regulatory changes introduced by Law Number 6 of 2023 on Job Creation—reflects a shift in government policy orientation toward prioritizing the acceleration and certainty of public services. At the sectoral level, Regulation of the Head of the National Land Agency (BPN) Number 1 of 2010 has already established a clear, standardized timeframe for each type of land service application.

The issue arises when land agency officials fail to adhere to these time standards due to various internal and external obstacles—exacerbated by a lack of formal communication with applicants; in such cases, bureaucratic silence cannot simply be interpreted as the automatic activation of a fictitious positive decision. In essence, the application of the fictitious positive principle in the land sector still requires the fulfillment of strict substantive qualifications and verification processes. Without the support of strengthened institutional capacity, meticulous physical and legal verification, and robust data integration, claims of a fictitious positive decision based on BPN's silence will be difficult to translate into a concrete legal outcome and risk creating new legal complications. The concept of positive fiction in Indonesia needs to be reformulated through a more measured approach, by setting clear boundaries on certain matters, so that its implementation is in line with the objectives of its formation (Utami Mas Bakar et al., 2026).

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

The Relevance of Customary Land in West Sumatra to the Emergence of Maladministration

Reformulating

Manner Land holds a crucial position in the lives of communities. It is a source of wealth with economic value. Furthermore, it also possesses magical-religious values that can unite and maintain a close relationship with the lives of humans and their communities, both physically and non-physically. Especially since land is the source of life for humans and their communities. Customary land is a constitutive condition for the existence of indigenous communities. The struggle for recognition of customary land is a key agenda for indigenous peoples' movements in Indonesia and around the world. At the international level, this struggle has culminated in the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly on September 13, 2007. One of the contents of the declaration affirms the relationship between indigenous peoples and their traditional rights, including customary land, as fundamental rights that must be universally recognized, respected, protected, and fulfilled.

In the context of West Sumatra, Minangkabau Ulayat Land in the concept of ownership is included in the narrow sense, namely in the form of assets which are classified as high heritage which have the power to apply both internally and externally, which can be utilized by members of the community or outside the community with gifts in the form of " adat diisi limbago dituang " with the main principle of Minangkabau customary land being *jua ndak makan bali, gadai ndak makan sando* (customary land cannot be sold or pawned), but in urgent situations it can be transferred/transferred. while such as *Mait terbujur di tengah rumah* (a corpse lying in the middle of the house), *Rumah gadang ketirisan* (a traditional house whose roof is leaking or damaged), *Gadih gadang indak balaki* (an adult girl who is not yet married), or *Mebangkik Batang terandam* (upholding the title of heirloom or

ISSN (Online): 3025-7387
Published by Universitas Internasional Batam

appointing a headman). To be able to carry out the transfer/transfer of customary land, it must be with the agreement of all members of the group concerned (Citrawan, 2020).

However, currently the use of customary land and the traditional rights of the Minangkabau indigenous people have experienced a legal shift and legal tug of war between the economic interests of the community and the government with the issuance of various policies and laws regarding the use of customary land on the one hand, and on the other hand members of the Minangkabau legal association are trying to reclaim their traditional rights to customary land (Jonaidi, 2018).

The existence of a customary land certification program for communal rights through Government Regulation Number 24 of 1997 concerning Land Registration which was later amended by PP No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration and followed by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2019 concerning Procedures for the Administration of Customary Land of Customary Law Community Units and its amendments as well as Regional Regulation of West Sumatra Province Number 16 of 2008 concerning Customary Land and its Utilization allows the law that has grown in the West Sumatra community (the living law), to fade and thin out along with the development of the times and economic needs (Murniwati & Delyarahmi, 2023).

In terms of land services, the main problem arises when customary land is subject to formal land services, which require certainty about the subject, object, and boundaries of individual rights. Ownership of customary land is inherently communal and involves many parties, from the community, tribe, ninik mamak, to the nagari (village). Within a single plot of customary land, there are often diverse claims of interest that are not always

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aligned, both between community members and between generations. When one party submits a request for land services, such as registration or rights enhancement, the administrative process becomes lengthy because it requires the approval and understanding of all relevant parties

This diversity of interests further prolongs the process if there is no unanimous agreement among the community. Disagreements between parties within the customary community often make it difficult for land officials to determine the most secure legal basis for proceeding with or rejecting a request. In such situations, the National Land Agency (BPN) is in a difficult position, as every decision has the potential to trigger social conflict or legal disputes. As a result, land officials tend to delay or not provide a firm response to a party's request, even if the application has been formally submitted administratively.

The lengthy administrative process involving customary land ultimately impacts the National Land Agency's (BPN) response to service delivery. Delays are not solely caused by negligence on the part of officials, but also by the complexity of social and customary verification processes, which lack clear deadlines within the state administration system. Even the deadline stipulated in BPN Regulation No. 1 of 2010 does not apply to land service applications where disputes, conflicts, lawsuits, or other legal issues are identified during the process, and the files can be returned to the applicant. However, when these delays are not accompanied by official explanations, transparent communication mechanisms, or clear administrative decisions, the situation still transforms into maladministration in the form of protracted delays or failure to provide services.

Thus, the relevance of customary land and maladministration in land services in West Sumatra demonstrates that the recognition of customary law in national law has not been fully integrated into the design of land service

procedures. Customary land, with its multiple ownership characteristics, prolongs administrative processes and indirectly impacts the BPN's response to community requests. Without adaptive technical arrangements and clear mechanisms for handling customary land, this complexity will continue to be a structural factor that encourages administrative silence and increases the potential for maladministration.

CONCLUSION

Society This study concludes that land service practices by the National Land Agency (BPN) in West Sumatra remain characterized by various forms of maladministration—most notably undue delay, failure to provide service, and procedural irregularities. This phenomenon demonstrates that the existence of comprehensive regulations regarding public service standards does not automatically guarantee the delivery of effective and equitable services. A contributing factor is the Land Office's slow response to public applications, particularly concerning land with distinct local socio-cultural characteristics; specifically, the recognition of ulayat (customary communal) land within the Minangkabau customary system—which involves multiple stakeholders such as "*Ninik Mamak*"—has not been technically or adaptively integrated into national land administration workflows. The complexity of verifying these customary socio-legal aspects ultimately prolongs bureaucratic processes and leads to "administrative silence" on the part of land officials.

On the other hand, the application of the "fictitious positive decision" mechanism—intended as a legal safeguard against government inaction—cannot operate automatically within the land sector. The highly complex nature of land services—requiring physical and legal verification, cadastral surveying, and the mitigation of dispute risks—tends to make land officials defensive; consequently, applicants often fail to secure legal certainty in the absence of a concrete, enforceable administrative

ISSN (Online): 3025-7387
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act. Therefore, the effectiveness of the fictitious positive decision mechanism hinges on the state's ability to reconcile administrative complexities, the reliability of substantive verification, and the plurality of local customary laws. Without institutional reforms sensitive to regional contexts and the formulation of well-calibrated sectoral regulations, this mechanism risks losing its function as a legal safeguard and instead widening the gap between administrative legal norms (das sollen) and the reality of public service delivery on the ground (das sein).

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ACKNOWLEDGMENTS

This research was funded by the Directorate of Research and Community Service (Direktorat Penelitian dan Pengabdian kepada Masyarakat/DPPM), Ministry og Higher Education, Sciene, and Technology of the Republic of Indonesia, under Grant Agreement Numbers 131/C3/DT.05.00/PL/2025, 013/LL10/DT.05.00/PL/2025, and 010.24/LPPMPenelitian/UA/2025. The authors also extend their sincere gratitude to Universitas Adzkia for its support throughout the research process.

DECLARATION OF GENERATIVE AI USE

The authors declare that no generative artificial intelligence tools were used in the preparation of this manuscript.

COMPETING INTERESTS

The authors have declared that no competing interests exist.

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ISSN (Online): 3025-7387
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