

## The Urgency of Establishing A Special Judicial Chamber To Handle Land Mafia in Indonesia

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### Abstract

*The land mafia, one of the major sources of land problems in Indonesia, has not resolved the problem due to its existence as a network involving land officials and law enforcers as well as the judiciary. Many cases related to land have not been resolved and many of them are in the judicial process, one of the causes is related to the queue of cases. This research aims to answer the handling of land cases that specifically involve or impact the existence of land mafia practices in the judiciary experiencing many obstacles. This research uses normative juridical research methods and is supported by simple empirical research. Then this research will be written descriptively. The results of this research show that Indonesia as a state of law certainly requires the role of the judiciary in dealing with land mafia cases, one of which, there must be a strong synergy from the Supreme Court, Attorney General, High Prosecutor, national police chief, Kapolda, DPR and DPRD and of course related executive agencies so that the land mafia can be eliminated. The plan to create a special court for the land mafia is currently receiving a pessimistic response from many circles because it is feared that it will remain an institution that will actually favor the land mafia. This is not without reason because so far, land-related cases resolved through the Administrative Court, Civil Court, or General Court have actually been perceived by some pessimistic circles to only be a sanctuary for the land mafia. This of course must also undermine efforts to advance the quality of justice, so there should immediately be a realization related to the establishment of a special court for the land mafia or at least it is very important to create a special room for land justice in existing judicial institutions in Indonesia, considering that if a separate direct court is created it can have many consequences ranging from budget provisions even to the management of the legal system which of course the connection between the land mafia is in the realm of other courts as well.*

Keywords: *special chambers of justice, land mafia, land.*

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### I. INTRODUCTION

Land in Indonesia is important and valuable, land as an object whose control has been regulated in the state constitution. Article 33 paragraph 1 clearly explains that the right to control land rests with the state. On the other hand, currently land in Indonesia has become a very promising business commodity and has high selling value, especially in densely populated or urban areas.

The high value of land is a special attraction for business people or profit seekers, whether they have good intentions and methods or those who use criminal methods to gain profits

in the land sector. One form of crime in land matters is the work of the land mafia, which is a common problem or conflict related to land in Indonesia to this day.

The existence of the land mafia in Indonesia still cannot be resolved, one of the factors is because its existence is a network involving unscrupulous officials or land officials, including law enforcement officials and even judicial officers, including members of community organizations (Ormas) or thugs. as a field person who will help take over or control land that should not belong to him.

The difficulty in eradicating the land mafia is also caused by the administration and concern of land owners who sometimes do not care or pay little attention to the land they own, resulting in encroachment, even if the land owner does not take care of the administration or registration of the land, the land mafia with their network can register the land as their own. Not to mention examples of cases such as those experienced by artist Nirina Zubir who became a victim of the land mafia whose total loss was estimated at IDR 17,000,000,000 (seventeen billion rupiah), this happened chronologically starting with the Household Assistant (ART) of Nirina Zubir's family who helped Nirina Zubir's mother process 6 lost land title certificates to a Notary/PPAT of her acquaintance. So a collaborative land mafia crime process occurred between the perpetrators and PPAT officials.<sup>1</sup>

*Currently, efforts to eradicate the legal mafia continue to be developed and implemented starting from the drafting of several laws such as Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration which aims to provide legal certainty to holders. land rights or house units and other registered rights, so far there are still land mafia actors many easily and bravely carry out their actions. The practice of the land mafia has led to land conflicts, so far the implementation of handling related to this land mafia has still been slow<sup>2</sup>*

There are many cases related to land that have not been resolved and many of them are in the judicial process, one of the causes is related to queues or the case is indeed difficult to resolve in relation to the evidentiary processes, therefore this research wants to answer one solution to this problem, so the following title This article is " The Urgency of Establishing a Special Internal Judicial Chamber Handling the Land Mafia in Indonesia".

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<sup>1</sup> Pastika, DBW, Aprilia, D., Eoh, SY and Fatih, BZ, 2022. Juridical Review of Land Title Certificates That Have Been Behind Their Names Without the Consent of the Rights Holder (Case Study: Land Mafia ART Nirina Zubir). *Gorontalo Law Review*, 5 (1), pp.212-227.

<sup>2</sup> Karlina, Y. and Putra, IS, 2022. Eradicating the Land Mafia Using Criminal Law Instruments in Indonesia. *Journal of Res Justitia: Journal of Legal Studies* , 2 (1), pp.109-130.

## II. LITERATURE REVIEW

### 1. Land Mafia in Legislation

Land mafia is a crime in the land sector which generally includes several elements or involves a group of people working together in an effort to own or control land owned by other people and seize it illegally or use unlawful methods in a planned, neat and systematic manner.<sup>3</sup>

Currently, land mafia cases in Indonesia are still very numerous and difficult to eradicate, so Indonesia must continue to reorganize land rights in order to realize the noble ideals of the Indonesian nation and state, namely ensuring the sustainability of the Indonesian social and national system, strengthening social harmony, and a just life which then originates from land which is a source of community welfare.<sup>4</sup>

Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) in Article 19 states that to create land legal certainty, the institution authorized to carry out land registration. Land that has been registered is then given proof of land title, which is strong evidence of land ownership. In other words, certified land rights are very important in subjects who have land rights, because the certificate is legal evidence and an authentic deed of ownership of an object, namely land that is protected by law.<sup>5</sup> The legal protection of holders of land title certificates needs to be taken into account because the crime of falsifying documents is a criminal act. Referring to article 263 paragraph (1) and paragraph (2) of the Criminal Code which states, whoever makes a fake letter or falsifies a letter which could give rise to a right, an agreement or which is intended as proof of something with the intention of using or ordering another person to use the document as if its contents were true or not and not fake, is threatened if such use can cause loss, due to falsification of the document, with a maximum imprisonment of six years . Furthermore, paragraph (2) explains that anyone who deliberately uses a fake or falsified letter as if it is genuine is threatened with the same crime, if the use of the letter could cause harm. Adding a signature also includes the meaning of forging a letter in this article.

Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration is then present to provide legal certainty for holders of rights to plots of land, house units and other registered rights. which aims to provide legal certainty to holders of rights to plots of land, house units and other rights that

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<sup>3</sup> Cahyaningrum, D., Eradicating the Land Mafia, Brief Information, Vol. *XIII*, 23 .

<sup>4</sup>Saripudin, S., 2015, Concept of Controlling and Utilizing Abandoned Land in the Perspective of Agrarian Reform, *DiH: Journal of Legal Studies*, Vol. 11, no. 22, pp110–153. doi: 10.30996/dih.v11i22.2235

<sup>5</sup>Kartiwi, M., 2020, The Role of Land Deed Officials in Minimizing Land Disputes, Garut College

have been registered so that they can easily prove themselves as holders of the rights in question. Apart from that, to protect the public as victims of the land mafia, criminal sanctions are needed against elements of the land mafia who are deemed to have violated existing laws. Even though land itself actually falls into the civil realm, with proper criminal law enforcement, the land mafia will be able to be properly eradicated, especially when the resulting losses can reach hundreds of millions or even billions. So it can be seen how important a just agrarian restructuring or reform is. Where when the implementation of reform can be carried out well, it will also produce good benefits for the lives of people who rely on land.<sup>6</sup>

## 2. Multiple Certificate Completion Flow

So far, in handling land mafia cases involving stakeholders or officials, currently many law enforcers rarely use Article 15 of the PTPK Law in their indictment letters. In this case there is an error in applying the essence of the office offense. That the PTPK Law regulations understand that the essence of the birth of this article is also due to the fact that in corruption cases there will be many perpetrators carried out by the private sector and the government, therefore in this case it is appropriate to be subject to a form of assistance due to the fact that in office offenses there is no involvement of different quality perpetrators. Thus, the element of assistance was born in Article 15 of the PTPK Law. This form of assistance is specifically imposed on criminal acts of corruption in Article 2 and Article 3 of the PTPK Law.<sup>7</sup> As with the land mafia corruption case in NTT, both prosecutors and judges agree that the form of criminal responsibility is participation as stipulated in Article 55 paragraph (1) of the Criminal Code. This article emphasizes the actions of the perpetrator, namely doing it (pleger), ordering it to do it (doen pleger), participating in doing it (medepleger). In this case, even though the land mafia's actions involve conspiracy, Article 15 of the Corruption Law does not apply.<sup>8</sup>

In the context of resolving land disputes related to dual certificates, there are several efforts that can be made to resolve the dispute, including through the following channels or efforts:<sup>9</sup>

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<sup>6</sup>Utomo, S., 2021, Accelerating Agrarian Reform to Achieve Justice, *Bonum Commune Business Law Journal*, Vol. 4, no. 2, pp. 202–213

<sup>7</sup>Alifia Swatika Maharani, 2020, Participation in official offenses in Corruption Crimes, *Jurist-Diction Journal* Vol 3 number 4 page 131

<sup>8</sup> Prayitno, B., 2021. Criminal liability of the land mafia in corruption crimes. *Journal of Law and Economic Development* , 9 (2), pp.269-280.

<sup>9</sup> Salma, PN and Adjie, H., 2023. Settlement of Land Disputes Concerning Multiple Certificates Due to Criminal Actions of the Land Mafia. *Journal of Education and Counseling (JPDK)* , 5 (1), pp.5144-5153.

1. Mediation Efforts: mediation is the original culture of Indonesian society. This is also clear in the basis of the state constitution, even philosophically in the 4th (fourth) principle of Pancasila which also states that it is related to deliberation, which means finding a solution through deliberation, which is in line with positive law as in Article 1851 of the Criminal Code (KUHP). Civil Law) is an agreement where both parties, by handing over, promising or retaining an item, end a pending case or prevent a future case from arising. Likewise, in the case of double certificates, it can actually be resolved through mediation efforts, because cases of double certificates fall within the realm of civil law and because cases of double certificates are different from cases of falsification of state documents, even though there may be falsification of document requirements in the issuance process.
2. Settlement through BPN: Juridically, the resolution of double certificate disputes can also be resolved at the land office, as in Article 1 point 5 of the Minister of ATR/Head of BPN Regulation, which reads "Complaints for Disputes and Conflicts, hereinafter referred to as Complaints, are objections submitted by parties who feel disadvantaged regarding a legal product of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, Regional Office of the National Land Agency, Land Office in accordance with their authority or feeling disadvantaged by other parties regarding control and/or ownership of certain land parcels. The concrete steps for resolving disputes are based on Article 6 paragraph (1) of the Regulation of the Minister of ATR/Head of BPN, which goes through several stages as follows:
  - a. Case review;
  - b. Initial title;
  - c. Study;
  - d. Exposure to research results;
  - e. Coordination meetings;
  - f. Final title;
  - g. Case resolution.

Furthermore, Article 34 paragraphs (2) and (3) of the Minister of ATR/Head of BPN Regulation, explains as follows:

- a. In the event that there are one or several overlapping certificates in one plot of land, either in whole or in part, the said certificates will be handled as intended in Article 6 paragraph (1).
- b. Cancellation is carried out on certificates based on the results of the handling as intended in paragraph (2), it is found that there are administrative and/or juridical defects.

That is the process and stages of resolution through the objection route at the local BPN. In its implementation, if you are not deemed satisfied with the results decided, you can follow up with the judicial route.

Settlement through a Lawsuit through the State Administrative Court (PTUN): can be another alternative for resolving multiple certificate cases, this can be based on Article 1 point 9 of Law no. 51 of 2009, which in essence states that SHM fulfills the elements of a State Administrative Decree. Through the PTUN, parties who feel disadvantaged can file a lawsuit for cancellation of the SHM (dual certificate). What is meant by the TUN element is that SHM is a written determination issued by a state administrative official, in this case the BPN office. Other legal bases related to the cancellation of State Administrative Decisions are regulated in Article 53 paragraph (1) of Law no. 9 of 2004, which states "Persons or civil legal entities who feel that their interests have been harmed by a State Administrative Decision may submit a written lawsuit to the competent court containing a demand that the disputed State Administrative Decision be declared null or invalid, with or without accompanying demands for compensation and/or rehabilitation.

### **III. METHODOLOGY**

The method used in this research is normative juridical, while this research uses library materials which are basic research data which are classified as secondary data.<sup>10</sup> In this research, a simple empirical juridical study was also carried out by carrying out observations and interviews with related parties such as BPN and so on. Data collection techniques and data collection tools are carried out through research obtained from statutory regulations, books, journals, research results, encyclopedias, bibliographies, and observation methods<sup>11</sup> related to land and the land mafia. Next, the data is analyzed using qualitative analysis, namely by explaining the relationship between legal facts and legal rules contained in the law, which then describes them in the research results.

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

Land has a high selling value, this is because there is a need for land due to the increasingly rapid development process.<sup>12</sup> The need for very large areas of land as land to carry out the development process, including building infrastructure, residential buildings, industry and

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<sup>10</sup>Martin Roestamy, et., al, *Methods, Research, Reports and Writing of Legal Scientific Papers*, Faculty of Law, Djuanda University, Bogor, 2020, Pg. 41.

<sup>11</sup> *Ibid*, Pp. 42.

<sup>12</sup>Nurahmani, A. and Rismansyah, MR, 2020, Analysis of complete systematic land registration policy arrangements as an effort to accelerate agrarian reform, *Padjadjaran Law Review*, Vol. 8, no. 1, pp1–19.

so on, will result in an increase in land prices, as according to economic theory, demand increases while availability dwindles, there will be an increase in the selling price due to an imbalance in market needs and the availability of goods. being traded. This is what attracts irresponsible individuals to carry out various crimes which are classified as land mafia practices.

Various regulations need and continue to be developed to capture the practices of the land mafia which continues to carry out its activities in Indonesia. Starting from statutory regulations, developing patterns of supervision, enforcement and up to development at the judicial stage, so far there have been many studies and policies issued by the government including the formation of a special task force to eradicate the land mafia, however the studies and developments are related to the judicial process still considered insufficient. Research conducted by Y. Karlina explains that eradicating the land mafia is currently appropriately carried out using criminal law instruments. This is considered to be able to quickly uncover land mafia crimes, as in the case of artist Nirina Zubir, which responded quickly, and furthermore, it is considered important to create a systematic and organized method so that land mafia crimes in Indonesia can be eradicated, at least minimized through synergistic cooperation between law enforcement and The Ministry of ART and other related high state institutions also require stricter supervision.<sup>13</sup>

The study above is one of the studies in the process of eradicating the land mafia, especially highlighting the use of legal instruments that already exist in Indonesia. This certainly has great potential for the process of law enforcement and eradicating the land mafia, but it also needs to be seen that the next process is implementation. the judiciary must also be developed.

The results of this research show that Indonesia as a rule of law country certainly needs the role of the judiciary, including in resolving land mafia cases, considering that there are so many land mafia cases that must be the responsibility of the judiciary.

Looking at the current practice of handling the land mafia, hard work is needed from various state institutions. In 2023, as acknowledged by BPN, within one year, 62 land mafia cases have been handled out of a total target of 86 cases and 159 people have been named as suspects. On the other hand, the Attorney General in the media said that eradicating the land mafia must start from the upstream, namely by recording all plots of land or registering all plots of land in Indonesian territory and issuing land certificates which of course meet the requirements .

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<sup>13</sup> Karlina, Y. and Putra, IS, 2022. Eradicating the Land Mafia Using Criminal Law Instruments in Indonesia. *Journal of Res Justitia: Journal of Legal Studies* , 2 (1), pp.109-130.

Of course, these efforts must have strong synergy from the Supreme Court, Attorney General, High Prosecutor, National Police Chief, Regional Police Chief, DPR and DPRD and of course executive institutions related to the land mafia can be eradicated. Recently there was a plan to create a special court for the land mafia which received a pessimistic response from many circles because it was feared that it would remain an institution that would actually side with the land mafia.

This pessimistic attitude is not without reason because up to now, land-related cases that have been resolved through the PTUN, Civil Court or General Court have actually been felt by some pessimistic groups to have only become a place of refuge for the land mafia. In practice, although there are efforts to improve the quality of law and institutions in eradicating the land mafia, there are also efforts or behavior of individuals who weaken these laws and businesses, especially the land mafia network not only at the administrative level of registration at land institutions, but also at the institution. Justice. The existence of unscrupulous individuals in the judiciary also ultimately weakens efforts to improve the quality of justice, therefore efforts and plans to establish a special court for land mafia or at least it is very important to create a special room for land justice in the existing judiciary in Indonesia, considering that if a court is created directly directly Separately, it can have many consequences, from budget provision to even management of the legal system. Of course, the connection between the land mafia is in the realm of other courts as well.

## V. CONCLUSION

As discussed above, the conclusion of this research is that as a rule of law state it certainly requires the role of the judiciary, including in dealing with land mafia cases, there must be strong synergy from the Supreme Court, Attorney General, High Prosecutor, National Police Chief, Regional Police Chief, DPR and DPRD and of course relevant executive institutions so that the land mafia can be eradicated. Even though the plan to create a special court in the land mafia judiciary received a pessimistic response, in practice currently various developments are still needed in eradicating the land mafia, therefore it is also necessary to quickly establish a special court for the land mafia or at least it is very important to create a special room for land justice in judicial institutions in Indonesia, bearing in mind that if a separate direct trial is created it could have many consequences ranging from budget provision to even the management of the legal system, which of course has connections to the land mafia in the realm of other courts as well.



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