

THE REFLECTING BACK ON THE ROLE OF THE NATIONAL LAND AGENCY IN ERADICATING LAND MAFIA

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ABSTRACT

Land mafia is a serious problem that can harm society and the country. As a serious problem, BPN, which is a state instrument in structuring national land law, is mandated to be able to play an active role in eradicating the land mafia. This is not yet visible, because land mafia cases continue to increase, including in the Kendari City area. The approach method used in this writing is a qualitative method. Based on the studies carried out, it can be understood that the implementation of BPN's role in efforts to eradicate the land mafia in Kendari City is currently not optimal, this is because BPN acted after there were complaints from the public regarding the existence of land mafia cases in the community. The legal obstacle is the absence of regulations regarding the criminal law enforcement process in the Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII/2018 concerning the Prevention and Eradication of Land Mafia. The next obstacle is the obstacle in the aspect of legal implementation which consists of internal and external obstacles. Internal constraints are constraints from the BPN institution. External obstacles are obstacles related to the legal culture in society regarding the eradication of the land mafia.

A. INTRODUCTION

Legal recognition regarding land ownership in its development cannot guarantee the occurrence of various kinds of land conflict issues in society. One of the reasons for this is the existence of the land mafia. The methods used by the land mafia to achieve their goals are:¹

1. method of taking vacant land, then individuals working together with BPN change the data in the ATR/BPN Data and Data Center and issue a certificate.
2. mode by changing data, both physical data and linguistic data by deleting then changing names and changing land area.
3. Individuals who are land mafia entered the ATR/BPN Data Center with illegal access and then changed the electronic land certificate data themselves.

The existence of the land mafia is currently increasing. The daily electronic media CNN Indonesia recorded 434 land mafia cases from 2021

1 Arief Junianto, Alert! This Is The Most Common Land Mafia Mode, accessed via <https://news.harianjogja.com/read/2022/07/26/500/1107265/waspada-ini-modus-mafia-tanah-yang-paling-sering-terjadi>, on May 12, 2022.

to 2022. In 2021 there were 253 land mafia cases and only 179 cases were resolved, while in 2022 there were 181 land mafia cases and only 93 cases were resolved by law enforcement. ²

The increasing number of land mafias is also occurring in Kendari City, in 2022 there will be land mafia cases There were 60 cases recorded, with a land area of more than 54 thousand hectares and total losses reaching IDR 2.5 trillion, involving 412 land mafia perpetrators from various professions. ³ This situation is clearly far from the aim of the existence of land law which should be able to protect the ownership rights to land owned by every Indonesian citizen. ⁴

In connection with the land mafia issue, it is clearly proven that up to now the government has not been able to systematically and comprehensively eradicate the land mafia. This situation clearly results in the violation of the mandate of Pancasila, especially the Fifth Principle, as well as the violation of the mandate of Article 28G of the 1945 Constitution of the Republic of Indonesia paragraph (1) regarding guarantees for the protection of ownership rights over objects, including ownership rights over land. The violation of the mandate of Article 28G of the 1945 Constitution of the Republic of Indonesia paragraph (1) clearly results in a violation of the principle of equal treatment before the law as regulated in Article 28D of the 1945 Constitution of the Republic of Indonesia paragraph (1). From a state aspect, the land mafia has also violated the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia regarding the state's responsibility in managing equitable land governance through clear agrarian formulations in order to realize the welfare of the Indonesian people ⁵.

This land mafia issue clearly indicates the urgency of the role of the National Land Agency, as a party that is able to provide knowledge and information regarding disputes over a plot of land where ownership rights are to be transferred. It is common knowledge that one of BPN's authorities is to provide legal counseling related to land law.

The National Land Agency (BPN) is a government institution in Indonesia which has the task of carrying out government duties in the land sector nationally, regionally and sectorally. BPN was previously known as the

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- 2 Dika Kardi, *Throughout 2021-2022 there are 434 Land Mafias*, accessed via [https://www.cnnindonesia.com/nasional/20220630132705-12-815534/sepanjang-2021-2022-ada-434-mafia-tanah-sulsel-3-ditargetkan-selesai#:~:text=Year%202022%20ada%20181%20report,Thursday%20\(30%2F6\).&text=Nana%20explains%20since%20year%202021,to%20resolve%20case%20mafia%20land](https://www.cnnindonesia.com/nasional/20220630132705-12-815534/sepanjang-2021-2022-ada-434-mafia-tanah-sulsel-3-ditargetkan-selesai#:~:text=Year%202022%20ada%20181%20report,Thursday%20(30%2F6).&text=Nana%20explains%20since%20year%202021,to%20resolve%20case%20mafia%20land), on May 12, 2022.
 - 3 Kendari Pos., *Number of Land Mafia Cases Expected to Increase in 2022*, accessed via <https://kendaripos.fajar.co.id/2022/12/09/sukses-berantas-mafia-tanah-Head-bpn-sultra-raih-pin-emas/>, on May 12, 2022.
 - 4 Nur Cahyanti, Budi Raharjo, and Sri Endah Wahyuningsih., *Sanctions Against Notaries Who Commit Criminal Acts According to Legislation in Indonesia*, *Jurnal AKTA*, Vol. 5, No. 1, 2018, page. 288-289.
 - 5 Ahmad Amiruddin., *Tesis : Analisis Pengaruh Infrastruktur Terhadap Pertumbuhan Ekonomi di Privinsi Sulawesi Barat Tahun 2008-2013*, Yogyakarta: Fakultas Ekonomika dan Bisnis, UGM, 2016

Agrarian Office. BPN is regulated through Presidential Regulation Number 10 of 2006 concerning the National Land Agency. In carrying out the tasks as intended, BPN has main tasks, including:

1. Building public trust in the National Land Agency (BPN).
2. Improving implementation and registration, as well as overall land certification.
3. Ensure the strengthening of people's rights to land.

The legal counseling carried out by BPN is part of national legal development through the dissemination of certain laws and regulations to increase the public's legal awareness in obtaining justice to carry out their rights and obligations in obtaining their rights to land. BPN only BPN legal counseling can be carried out by providing a correct understanding of the laws and regulations related to the deeds desired by the public. In its development, the authority of legal counseling by BPN has developed into the role of BPN as a party that must be able to protect the public from the fraudulent actions of the land mafia⁶ so that they do not suffer losses. BPN must be able to explain irregularities related to rights and obligations in land-related transactions where there is mafia interference. land to the people who face it. In reality, this has not yet materialized. The BPN seems to only be waiting for reports of land issues related to the land mafia, even though the BPN also has the responsibility to carry out free and neutral legal education in an active manner in the community⁷.

B. RESEARCH METHODS

The approach method used is a qualitative method, namely a method focuses attention on the general principles that underlie the manifestation of symptom units that exist in human life, or the patterns analyzed are socio-cultural phenomena and the culture of the society concerned to obtain an overview of the prevailing patterns.⁸

C. RESULTS AND DISCUSSION

1. Implementation of BPN's Role in Efforts to Eradicate Land Mafia in Kendari City Currently

The land mafia issue is not only a national problem. This is because the land mafia problem is also growing massively in various regions of Indonesia, including in the Kendari City area. One of the land mafia cases that occurred in Kendari City was the case of land acquisition for the construction of the Kendari-Toronipa tourist road. Based on the results of interviews conducted by the author with the Intelligence Assistant for the Southeast Sulawesi Prosecutor's Office, Noer Adi, it was discovered that the land mafia case involved three perpetrators. The

6 Meli Oktarina, Rosida dan M.Tohir., Pelaksanaan Pendaftaran Perseroan Terbatas Perorangan Menurut UU No. 11 Tahun 2020 Tentang Cipta Kerja, *Jurnal Dewantara*, Vol. 3, No. 1, 2023

7 Yanti, Asima dan Darma, Piki., 2022, *Transformasi Pembangunan Melalui Pelayanan Publik*, Pena Persada, Jawa Tengah

8 Burhan Ashshofa., *Legal Research Methods*, PT. Rineka Cipta, Jakarta, 1996, page. 20-21.

three suspects were SLM, the former Toronipa village head, the head of SMPN 9 Kendari, MLW and AZ, one of the honorees at Halu University. Oleo (UHO) Kendari, These three suspects played an active role in the case of the loss of assets belonging to UHO Kendari which were released during the construction of the Kendari-Toronipa road. Furthermore, Noer Hadi explained, this case started with a report from UHO Kendari regarding the loss of their assets in Toronipa District. He explained that previously the three people were named as suspects because they were suspected of having transferred land from the Research and Community Service Institute (LPPM) of Halu Oleo University (UHO) in 2019. The 4,896 square meter land is used as a research laboratory and fish breeding pond. In 2019, the Southeast Sulawesi Provincial Government held a Kendari-Toronipa road construction project and of course there was land acquisition for residents. The suspect AZ claimed that he owned the land, by manipulating the land ownership letters or documents, as if in 2001 UHO Kendari had returned the land to the person concerned. However, this was denied by UHO Kendari. This manipulated document was then supported by suspect SLM, as the village head and suspect MLM as a witness, that the land belonged to AZ. Due to this, the village head then issued a physical possession certificate in AZ's name.⁹

This falsified document was then used as the basis for receiving compensation payments for part of the land from the Southeast Sulawesi Highways and Water Resources Service. AZ has received land acquisition funds from the Southeast Sulawesi Provincial Government amounting to IDR 127 million, then AZ sold the remaining 3,300 square meters of land to MLM for IDR 100 million. In total, AZ received IDR 227 million from the land price resulting from the forged documents. After successfully purchasing the land, MLW, assisted by suspect SLM, resold the land to the late wife of the Governor of Southeast Sulawesi Ali Mazi, Agista Ariani, for approximately IDR 750 million. Then the Konawe National Land Agency (BPN) issued a certificate of ownership of the land in Agista's name. From this case, the Southeast Sulawesi Province Department of Highways and Water Resources is suspected of carrying out land acquisition in 2019 not in accordance with the provisions. He said that land acquisition with an area of more than five hectares should have been carried out by BPN Sultra. Moreover, the construction of the Kendari-Toronipa tourist road uses APBN funds because it requires approximately 40 hectares of land to be acquired. In this activity, the land acquisition committee was negligent, so that the manipulative documents from the three suspects were successfully released without accurate verification. According to the Prosecutor, the three suspects violated the provisions of Law Number 2 of 2012 and Presidential Regulation Number 71 of 2012 and its amendments, that as a result of the actions of the suspects the state suffered state losses and the

⁹ Personal interview with Noer Adi as Intelligence Assistant for Kajati Kendari, on January 11 2023.

suspects were subject to the Corruption Law, Law 31 of 1999 as amended and supplemented by Law Number 20 of 2001 charged with article 2 paragraph 1 and article 3. The attorney for the three suspects, Muhammad Iqbal SH, said that in principle his party respects the decision of the prosecutor's office, and for the previous detention his party had also submitted a letter not to carry out the detention included with a letter of guarantee¹⁰.

This is clearly contrary to the objectives of law according to Islam. The objectives of law according to Islam are basically regulated in principles *Maqasid al-Shariah*. The principle of Maqsid al-Syariah explains that the law must be able to protect five things, the five things are:¹¹

- a. Religion;
- b. Reason;
- c. Soul;
- d. Property;
- e. Descendants.

The land mafia issue in the juridical dimension also still has problems. Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII/2018 concerning Prevention and Eradication of Land Mafia regulates the mechanism for eradicating land mafia. In the Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII/2018 concerning the Prevention and Eradication of Land Mafia, there is no penalty mechanism. This provides an opportunity for land mafia perpetrators to be able to escape freely because in the process of research, legal studies and delegating the legal process to suspected land mafia perpetrators, there is no mechanism for detaining them, even though a land case takes a long time¹².

This means that the Anti-Land Mafia Task Force cannot work quickly and precisely. The rise of land mafia crime modes has encouraged the formation of a land mafia task force starting from the central level to the regional level and collaborating with the relevant Ministry of ART/BPN. The basis for establishing the land mafia task force is as follows:¹³

- a. Memorandum of Understanding between the Ministry of ATR/BPN and the National Police dated 17 March 2017 No. 3/SKB/III/2017 and B/26/III/2017 concerning Kerma in the Agrarian/Land and Spatial Planning Sector;

10 Sony Hendra Permana., Peran Kepala Daerah Untuk Mempercepat Implementasi Paket Kebijakan Ekonomi Jilid 16, *Jurnal Hukum*, Vol. X, No. 3, 2018. Also see Purwanti, Dian., 2022, *Efektivitas Perubahan Kejibakan*, Sumatera Barat, CV.Azka Pustaka. Also see: Steers, M. Richard, *Efektivitas Organisasi*, Yogyakarta: Pustaka Pelajar, 1999.

11 Sri Endah Wahyuningsih, *Principles of Criminal Individualization in Islamic Law and Indonesian Legal Reform*, UNDIP, Semarang, 2013, p. 68.

12 Andrian Nurdin., *Kepailitan BUMN Persero Berdasarkan Asas Kepastian Hukum*, Bandung: Cetakan Pertama, PT Alumni, 2012;

13 Yunawati Karlina and Irwan Saptu Putra., *Op. Cit.*

- b. Work Guidelines between the Ministry of ATR and the National Police dated 12 June 2017 No. 26/SKB - 900/VI/2017 and 49/VI/2017 concerning Cooperation in the Agrarian/Land and Spatial Planning Sector;
- c. Joint Decree of the Head of Criminal Investigation Agency and the Director General for Handling Agrarian Problems on the Use of Space and Land No.: B/01/V/2018/Bareskrim - 34/SKB - 800/V/2018 dated 8 May 2018 concerning the Land Mafia Prevention and Eradication Task Force.

According to the Deputy Chairman of the Indonesian People's Consultative Assembly, Ahmad Basarah, in his remarks at the national seminar End of Year Reflexology on Breaking Up the Ecosystem and Epicenter of the Land Mafia at the GBHN Building, MPR/DPR RI Complex on Tuesday, December 14 2021, he said that the actions of the land mafia fall into the category of crime. In the Criminal Code, several criminal offenses are used as a reference for punishment in land crimes, some of which are:¹⁴

- a. Article 167, "entering the house or yard unlawfully."
- b. Article 263, "making fake documents that can give rise to rights."
- c. Article 266, "Including false information in an authentic deed."
- d. Article 385, "unlawfully selling, exchanging or encumbering land rights."

Based on the existing explanation, it is clear that positive law actually regulates criminal acts involving land crimes. However, these articles cannot be imposed easily because in reality, the land mafia is in cahoots with elements within the central and regional government, from Notaries/PPATs to law enforcement officials, to individuals in the courts. Basarah further quoted the opinion of the Coordinating Minister for Political, Legal and Security Affairs Mahfud MD, who stated that the land mafia had damaged the legal system. Not only at the investigative level, but also at the end of the justice system, namely the courts. So often the conflict between the land mafia and the people is a fight between the strong and the weak. Moreover, if we look at the many agrarian conflicts in forest and plantation areas, small people/indigenous communities often have to face large corporations with unlimited capital power. Meanwhile, according to the Chairman of the National Council of the Agrarian Reform Consortium, Iwan Nurdin, said. wherever mafia alliances grow, it is because of covertness, low public supervision, and minimal law enforcement. Land is an important tool in development and for human life, both from economic, socio-cultural and legal aspects. As development increases, the need for land increases, while land supplies are very limited. The importance of land often results in conflict in society, characterized by land conflicts, namely land disputes between individuals, groups, classes, organizations, legal entities or institutions

14 Yunawati Karlina and Irwan Sapta Putra., *Op. Cit.*

that have had a wide sociopolitical impact. Various problems and issues of land conflict in Indonesia are caused by many parties who often misappropriate land with the popular term 'land mafia'. "The rise of the land mafia shows that land has become a high and promising economic investment community so that it attracts certain interests to own and control it in various ways, resulting in law violations, disputes and conflicts in the land sector" That is based on statements by state officials and law enforcers As mentioned above, we can all know that in handling the eradication of the land mafia, a task force or what is known as the Land Mafia Task Force has been formed, where the task force consists of the Police, Prosecutor's Office and BPN starting from the City/City and Provincial levels up to the level of Center. So, with the formation of the land mafia task force, we hope that land mafia crimes can be eliminated.¹⁵

In reality, the enthusiasm for the formation of the Land Mafia Task Force has not been able to be seen clearly, this is because the Land Mafia Task Force still seems to be waiting for complaints, not actively preventing and eradicating the land mafia in society which is increasing.

Optimizing the eradication of the land mafia requires land law experts to solve every land mafia case, this clearly shows the important position of Notaries/PPATs in efforts to eradicate the land mafia. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) is collaborating with Land Deed Making Officials or Notaries/PPATs in an effort to eradicate the land mafia. Director General for Handling Land Disputes and Conflicts at the Ministry of ATR/BPN Agus Widjayanto asked Notaries/PPATs as partner institutions to participate in efforts to prevent land mafia practices. The importance of Notaries/PPATs as parties needed in eradicating the land mafia was stated by the Director General of Land Dispute and Conflict Handling of the Ministry of ATR/BPN Agus Widjayanto who stated that "We cannot do it alone, we need all lines to jointly carry out prevention and supervision, including Notaries/PPATs".

So far, BPN's role and responsibility in eradicating the land mafia, where BPN is assisted by a Notary/PPAT and is part of the Land Mafia Task Force, has not been optimal. This is because BPN only acts when there are complaints from the public. BPN should be able to carry out early data collection regarding the existence of the land mafia in society¹⁶. So BPN's role has not been maximized in terms of eradicating the land mafia in Kendari City. This clearly goes against the concept legal certainty LJ Van Apeldoorn stated that one form of legal certainty is the existence of legal guarantees that are able to protect people's rights. Kendari City BPN's lack of proactivity in efforts to eradicate the land mafia means that many people who are victims of the land mafia have

15 *Ibid.*

16 Hartani Sulihandari dan Nisya Rifiani., *Prinsip-Prinsip Dasar Profesi Notaris Berdasarkan Peraturan Perundang-Undangan Terbaru*, Jakarta: Dunia Cerdas, 2013.

their rights violated, this is clearly far from LJ Van Apeldoorn's concept of legal certainty¹⁷.

2. Obstacles in Implementing BPN's Role in Efforts to Eradicate Land Mafia in Kendari City Currently

The legal obstacle is the absence of regulations regarding the criminal law enforcement process in the Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII/2018 concerning the Prevention and Eradication of Land Mafia. So the Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII/2018 concerning Prevention and Eradication of Land Mafia only regulates the implementation of handling land mafia cases using an administrative approach, meaning that the Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII /2018 concerning Prevention and Eradication of Land Mafia only contains administration carried out by BPN and related parties regarding data collection and legal studies related to complaints about land mafia cases, while law enforcement efforts are left to law enforcers, including the Police, Prosecutors and Courts. This is clearly vague, considering that the Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII/2018 concerning Prevention and Eradication of Land Mafia regulates the mechanism for eradicating land mafia, not just prevention. So the existing law enforcement mechanisms should also be included. The absence of a criminal and civil law enforcement mechanism in the Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII/2018 concerning the Prevention and Eradication of Land Mafia makes coordination between institutions in criminal and civil legal processes experience difficulty, including coordination between the Police and BPN in the investigation process, the BPN often ignored the police's request to present data and information related to land certificate issuance documents in land mafia cases. The next obstacle is the obstacle in the aspect of legal implementation which consists of internal and external obstacles. Internal obstacles are:

- a. BPN made efforts to eradicate the land mafia after public complaints regarding alleged land mafia cases, while the majority of people who were in contact with the land mafia made more criminal complaints about these cases to the police. The next obstacle is data collection on land ownership rights by BPN, especially regarding certificates that have been valid for a long time, are not stored neatly, and most of them are lost.
- b. Obstacles at the legal process stage:
 - 1) Obstacles at the investigation stage:
 - a) Often BPN has not submitted information and data related to documents for issuing land plot certificates that are the object

17 Habib Adjie., *Hukum Notaris Indonesia*, Bandung: PT Refika Aditama, 2008.

- of land mafia crimes;
 - b) Accessing data related to land area and land boundaries to the Land Office is very difficult and fees are even charged according to the land area;
 - c) BPN has not been able to provide clear data before the fingerprinting process takes place.
- 2) Obstacles at the investigation stage:
- a) When the Land Office is asked to provide documents for issuing certificates in land mafia cases, it must ask for permission from the Head of the Land Office at the Regional or Kanwil level, this takes a long time;
 - b) The Land Office often states that certificates are lost when investigators ask for certificate issuance documents in land mafia cases;
 - c) It is difficult to coordinate with the Land Office regarding coordination in the process of investigating land mafia cases.

External obstacles are obstacles related to the legal culture in society regarding the eradication of the land mafia. These external obstacles consist of:

- a. Most people do not take care of their land ownership documents, so there are many cases where land owners only have proof of land other than land certificates, this situation is clearly weak before the law, and there is an opportunity for the land mafia to confiscate the land unlawfully;
- b. The public does not understand the existence of the Land Mafia Task Force and the role and responsibility of BPN in protecting the public from the land mafia which can unlawfully seize their land ownership rights;
- c. The public does not have sufficient legal education so they are often deceived by the persuasion of the land mafia, especially regarding the management of the land certificates they own by the land mafia, so that the land mafia often changes land names against the law.

D. CONCLUSION

The implementation of BPN's role in efforts to eradicate the land mafia in Kendari City is currently not optimal, this is because BPN acted after there were complaints from the public regarding the existence of land mafia cases in the community. The legal obstacle is the absence of regulations regarding the criminal law enforcement process in the Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII/2018 concerning the Prevention and Eradication of Land Mafia. The next obstacle is the obstacle in the aspect of legal implementation which consists of internal and external obstacles. Internal constraints are constraints from the BPN institution. External obstacles are obstacles related to the legal culture in society regarding the eradication of the land mafia.

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