

The Reflecting Back on the Role of the National Land Agency in Eradicating the Land Mafia

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Abstract. *The 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 yet to be seen, 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 conducted, it can be understood that the implementation of the BPN's role in efforts to eradicate the land mafia in Kendari City is currently not optimal, this is because the BPN acted after a public complaint regarding a land mafia case in the community. The juridical obstacle is the absence of regulation regarding criminal law enforcement processes in 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. The next obstacle is the obstacle in the aspect of law enforcement which consists of internal and external obstacles. Internal constraints are constraints from the BPN institution. External constraints are obstacles related to the legal culture in society related to eradicating the land mafia.*

Keywords: Agency; Eradication; Land; Mafia.

1. Introduction

Legal recognition related to land ownership in its development cannot guarantee the occurrence of various kinds of land conflict problems in the community. This

is partly due to the existence of the land mafia. The modes used by the land mafia in achieving its goals are:¹

1. the mode of taking vacant land, then the person working with the BPN changes the data at the ATR/BPN Pusdatin and issues a certificate.
2. mode by changing the data, both physical data and linguistic data by deleting then changing the name and changing the land area.
3. a person who is a land mafia enters the ATR/BPN Data Center with illegal access and then changes the electronic land certificate data himself.

The existence of the land mafia is currently increasing. CNN Indonesia's electronic period daily noted that there were 434 land mafia cases from 2021 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 increase in the number of land mafia has also occurred in Kendari City, in 2022 land mafia cases 60 cases were recorded, with a land area of more than 54 thousand hectares and a total loss of IDR 2.5 trillion, involving 412 land mafia actors from various professions.³ This situation is clearly far from the purpose of the existence of land law which should be able to protect property rights over land owned by every Indonesian citizen.⁴

With regard to the land mafia issue, it is clearly evident that until now the government has not been able to systematically and thoroughly eradicate the land mafia. This situation has clearly resulted in the violation of the Pancasila mandate, especially the Fifth Precept, as well as the violation of the mandate of Article 28G of the 1945 Constitution of the Republic of Indonesia paragraph (1)

¹Arief Junianto, Alert! This is the Land Mafia Mode that Happens Most Often, 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.

²Dika Cardy, Throughout 2021-2022 There are 434 Land Mafia, accessed via [https://www.cnnindonesia.com/nasional/20220630132705-12-815534/sepanjang-2021-2022-ada-434-mafia-tanah-sulsel-3-ditargetkan-selesai#:~:text=Tahun%202022%20ada%20181%20report,thursday%20\(30%2F6\).&text=Nana%20explains%20since%20years%202021,to%20complete%20case%20mafia%20land](https://www.cnnindonesia.com/nasional/20220630132705-12-815534/sepanjang-2021-2022-ada-434-mafia-tanah-sulsel-3-ditargetkan-selesai#:~:text=Tahun%202022%20ada%20181%20report,thursday%20(30%2F6).&text=Nana%20explains%20since%20years%202021,to%20complete%20case%20mafia%20land), on May 12, 2022.

³Kendari Post, The Number of Dikendari Land Mafia Cases Will Increase in 2022, accessed via <https://kendaripos.fajar.co.id/2022/12/09/sukses-berantas-mafia-tanah-kapal-bpn-sultra-raih-pin-emas/>, on May 12, 2022.

⁴Nur Cahyant, Budi Raharjo, and Sri Endah Wahyuningsih, Sanctions Against Notaries Who Commit Crimes According to Legislation in Indonesia, Journal of Deeds, Vol 5 No 1, 2018, p. 288-289.

regarding guarantees for the protection of property rights over objects, including property 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 the violation of the principle of equality of treatment before the law regulated in Article 28D of the 1945 Constitution of the Republic of Indonesia paragraph (1). From a national perspective,

This land mafia problem clearly indicates the urgency of the role of the National Land Agency, as a party capable of providing knowledge and information regarding disputes over a parcel of land to which ownership rights are to be transferred. It can be seen that one of the BPN's powers is to conduct legal counseling related to land law.

The National Land Agency (BPN) is a government agency in Indonesia which has the task of carrying out governmental tasks in the land sector nationally, regionally and sectorally. BPN was formerly known as the Agrarian Office. BPN is regulated through Presidential Regulation Number 10 of 2006 concerning the National Land Agency. In carrying out the tasks referred to, BPN has the main tasks, including:

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

Legal counseling conducted by the National Land Agency is part of the development of national law through the dissemination of certain laws and regulations to increase public legal awareness in obtaining justice in exercising their rights and obligations in obtaining land rights. BPN only BPN legal counseling can be carried out by providing a correct understanding of the laws and regulations related to the deed desired by the community. In its development, the BPN's legal counseling authority has developed into the role of the BPN as a party that must be able to protect the public from fraudulent acts by the land mafia so as not to suffer losses. BPN must be able to explain irregularities related to rights and obligations in transactions related to land where there is interference from the land mafia to the people who face it. In reality, this has not materialized. The BPN seems more than just waiting for reports of land problems related to the land mafia, even though the BPN also has the responsibility to actively conduct free and neutral legal counseling in the community.

2. Research Methods

The approach method used is a qualitative method, namely the method that *focusing attention* on the general principles that underlie the manifestation of the existing symptom units in human life, or the patterns being analyzed are socio-cultural phenomena with the culture of the community concerned to obtain an overview of the prevailing patterns.⁵

3. Result and Discussion

3.1. Implementation of the Role of BPN in Efforts to Eradicate the Land Mafia in Kendari City Today

The land mafia problem 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 city of Kendari. One of the land mafia cases that occurred in Kendari City was the land acquisition case for the construction of the Kendari-Toronipa tourist road. Based on the results of interviews conducted by the author with the Intelligence Assistant of the Prosecutor's Office for Southeast Sulawesi, Noer Adi, it was learned that the land mafia case involved three perpetrators. The three suspects were SLM, former Toronipa village head, head of SMPN 9 Kendari, MLW and AZ, one of the honorary students 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 freed in the construction of the Kendari-Toronipa road. Furthermore, Noer Hadi explained, this case started with a report by UHO Kendari on the loss of their assets in Toronipa District. He explained, previously the three people were named suspects because they were suspected of having transferred land owned by the Institute for Research and Community Service (LPPM) at Halu Oleo University (UHO) in 2019. The 4,896 square meters of 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 claims his land, by manipulating the letters or documents of the land ownership, as if in 2001 UHO Kendari had returned the land to those concerned. However, UHO Kendari denied this. This manipulated document was then supported by the suspect SLM, as the village chief and the MLM suspect as a witness that the land belonged to AZ. Based on this, the village head then issued a certificate of physical possession on behalf of AZ.⁶

This falsified document was then used as the basis for receiving payment of compensation for part of the land from the Southeast Sulawesi Highways and

⁵Burhan Ashshofa, 1996, Legal Research Methods, PT. Rineka Cipta, Jakarta, p. 20-21.

⁶Personal interview with Noer Adi as Intelligence Assistant to the Kendari High Court, on 11 January 2023.

Water Resources Office. AZ received IDR 127 million for land acquisition funds from the Southeast Sulawesi Provincial Government, then the remaining 3,300 square meters of land was sold by AZ to MLM for IDR 100 million. In total, AZ received IDR 227 million from the price of the land resulting from the falsification of these documents. After successfully buying the land, MLW, assisted by the 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 the name of Agista. From this case, the Department of Highways and Water Resources for the Province of Southeast Sulawesi is suspected of carrying out land acquisition in 2019 not in accordance with the provisions. According to him, land acquisition with an area of more than five hectares should have been carried out by the Southeast Sulawesi BPN. Moreover, the construction of the Kendari-Toronipa tourist road uses state budget 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 passed without accurate verification. According to the Prosecutor, the three suspects violated the provisions of Act No. 2 of 2012 and Presidential Regulation Number 71 of 2012 and their amendments. That as a result of the actions of the suspects the state suffered losses to the state and the suspects were subject to the Corruption Law No. 31 of 1999 as amended and added to Act No. 20 of 2001 was charged under Article 2 paragraph 1 and Article 3. The attorney for the three suspects, Muhammad Iqbal SH said, in principle, his party respected the decision of the prosecutor's office, and for the earlier detention, his party had also submitted a letter not to be detained, accompanied by with a letter of guarantee.

This is clearly contrary to the purpose of law according to Islam. The purpose of law according to Islam is basically regulated in principles of *maqasid al-Shariah*, on the principle of *maqsid al-Syariah* it is explained that the law must be able to protect five things, while the five things are:⁷

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

⁷Sri Endah Wahyuningsih, Principles of Criminal Individualization in Islamic Law and Indonesian Law Renewal, UNDIP, Semarang, 2013, p. 68.

The problem of the land mafia in the juridical dimension also still has problems. The Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII/2018 concerning the Prevention and Eradication of the Land Mafia regulates the mechanism for eradicating the 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 the Land Mafia there is no penal mechanism. This has the opportunity for land mafia perpetrators to be able to escape freely because in the process of research, legal studies up to the delegation of legal proceedings for suspected land mafia perpetrators there is no mechanism for detention, even though a land case takes a long time.⁸

This makes the performance of the Anti Land Mafia Task Force unable to work quickly and precisely. The rampant mode of land mafia crime has encouraged the formation of land mafia task forces starting from the central level to the regional level and in collaboration with the relevant Ministries of Art/BPN. The basis for establishing a land mafia task force is as follows:⁹

- a. Memorandum of Understanding Between the Ministry of ATR/BPN and the National Police dated March 17, 2017 No. 3/SKB/III/2017 and B/26/III/2017 concerning Kerma in the Agrarian/Land and Spatial Planning Sector;
- b. Working 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 Kabareskrim and Director General for Handling Agrarian Problems on Space and Land Utilization No.: B/01/V/2018/Bareskrim - 34/SKB - 800/V/2018 dated 8 May 2018 concerning Task Force for Prevention and Eradication of Land Mafia.

According to Deputy Chairman of the Indonesian People's Consultative Assembly, Ahmad Basarah, in his remarks at the national seminar on Year-End Relection on Disconnecting the Ecosystem and Epicenter of the land mafia at the GBHN Building in the MPR/DPR RI Complex on Tuesday, December 14 2021, said that the land mafia's actions fall into the category of crime. In the Criminal Code, several criminal offenses become a reference for criminal offenses in land crimes, some of which are:¹⁰

⁸Personal interview with Herman Saeri as Head of the Kendari City Land Agency, on January 11, 2023.

⁹Yunawati Karlina and Irwan Sapta Putra, Op. cit.

¹⁰Ibid.

- a. Article 167, "entering the house, yard unlawfully."
- b. Article 263, "makes a fake letter that can give rise to a right."
- c. Article 266, "entering false statements in an authentic deed."
- d. Article 385, "unlawfully selling, exchanging or encumbering a land right."

Based on the existing explanations, it is clear that positive law actually regulates criminal acts related to land crimes. It's just that these articles cannot be imposed easily because in reality, the land mafia conspires with elements in the central and regional government, Notary/PPAT persons to law enforcement officials, to elements in court. 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. Especially if we look at the many agrarian conflicts in forest and plantation areas, Oftentimes, the common people/indigenous people have to deal with large corporations with unlimited capital power. Meanwhile, according to the Chairman of the National Council of the Consortium for Agrarian Reform, Iwan Nurdin, said. Wherever mafia alliances grow, it is because of secrecy, low public scrutiny, and lack of law enforcement. Land is an important tool in development and for human life, both from the economic, socio-cultural and legal aspects. The more development increases, the need for land increases, while the supply of land is very limited. The importance of land often results in conflicts in the community with marked land conflicts, namely land disputes between individuals, groups, classes, organizations, legal entities, or institutions that have had a broad impact sociopolitically. Various problems and issues of Indonesian land conflict are caused by many parties who often commit land abuses with the popular term 'land mafia'. "The rise of the land mafia shows that land is a high and promising economic investment community that attracts certain interests to own and control it in various ways resulting in law violations, disputes and conflicts in the land sector." As mentioned above, we all know that in handling the eradication of the land mafia, a task force has been formed, known as the Land Mafia Task Force, which consists of the Police, The Attorney General's Office and the BPN start from the City/City and Provincial level up to the Central level. So with the formation of the land mafia task force, we hope that land mafia crimes can be eliminated.¹¹

In fact, the enthusiasm for the establishment of the Land Mafia Task Force has not been clearly seen, this is because the Land Mafia Task Force still seems to be

¹¹Yunawati Karlina and Irwan Sapta Putra, Op. cit.

waiting for complaints, does not actively prevent and eradicate land mafia in society which is increasing.¹²

Optimizing the eradication of the land mafia requires land law experts to solve each land mafia case, this clearly shows the important position of the Notary/PPAT in efforts to eradicate the land mafia. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) is collaborating with the Land Deed Making Officer or Notary/PPAT in an effort to eradicate the land mafia. The Director General of Land Dispute and Conflict Handling at the Ministry of Agrarian Affairs/BPN Agus Widjayanto asked the Notary/PPAT as his institutional partner 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/PPAT".

The role and responsibility of BPN so far in eradicating the land mafia where BPN is assisted by a Notary/PPAT and has become one entity with the Land Mafia Task Force has not been optimal. This is because BPN only acts when there are community advocates. BPN should be able to collect early data regarding the presence of land mafia in the community. So that the role of BPN has not been maximized in terms of eradicating the land mafia in Kendari City. This is clearly contrary to the concept of legal certainty LJ Van Apeldoorn who stated that one form of legal certainty is the existence of a legal guarantee that is able to protect people's rights. The lack of pro-activity of the Kendari City BPN in efforts to eradicate the land mafia has resulted in many people who are victims of the land mafia having their rights violated, this is clearly far from LJ Van Apeldoorn's concept of legal certainty.

3.2. Obstacles in Implementing the Role of BPN in Efforts to Eradicate the Land Mafia in Kendari City Today

The juridical obstacle is the absence of regulation regarding criminal law enforcement processes in 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. So 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 regulate the implementation of handling land mafia cases with an administrative approach, meaning that the Technical Instructions of the Ministry of Agrarian Affairs and Land Affairs Number 01/JUKNIS/D.VII /2018 concerning the Prevention and Eradication of the Land

¹²Personal interview with Hana Prisca as Notary/PPAT in Kendari City, on January 11, 2023.

Mafia only contains the administration carried out by the National Land Agency 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, both the Police, Prosecutors and Courts. This is clear, given 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 stipulates that the mechanism for eradicating land mafia is not just prevention. So that it should also include the existing law enforcement mechanisms. The absence of penal and civil law enforcement mechanisms 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 the Land Mafia makes coordination between institutions in criminal and civil law processes experience difficulties, including coordination between the Police and BPN in the investigative process in which the BPN often ignores police requests to provide data and information related to land certificate issuance documents in land mafia cases. The next obstacle is the obstacle in the aspect of law enforcement which consists of internal and external obstacles. Internal constraints are:¹³

1. The National Land Agency made efforts to eradicate the land mafia following public complaints regarding the alleged land mafia case, while most people who have contact with the land mafia mostly filed criminal complaints against the police. The next obstacle is the collection of data on land ownership rights by the BPN, mainly related to certificates that have been valid for a long time, are not stored neatly, and most of them are lost.

2. Obstacles at the legal process stage:

- a. Constraints at the investigation stage:

- 1) Often the BPN has not submitted information and data related to certificates for the issuance of certificates for land parcels that are the object of land mafia crimes;

- 2) Accessing data related to land area and land boundaries to the Land Office is very difficult and you are even charged a fee according to land area;

- 3) BPN has not been able to provide clear data prior to the fingerprinting process.

- b. Constraints at the investigation stage:

¹³Personal interview with Hana Prisca as Notary/PPAT in Kendari City, on January 11, 2023.

- 1) When the Land Office is asked to provide certificates for the issuance of certificates in land mafia cases, they must ask permission from the Head of the Land Office at the Regional or Regional Office level, this takes a long time;
- 2) The Land Office often claims that notes are lost when investigators ask for certificates to be issued in land mafia cases;
- 3) It is difficult to coordinate with the Land Office regarding coordination in the process of investigating land mafia cases.

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

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

4. Conclusion

The implementation of the BPN's role in efforts to eradicate the land mafia in Kendari City is currently not optimal, this is because the BPN acted after a public complaint regarding a land mafia case in the community. The juridical obstacle is the absence of regulation regarding criminal law enforcement processes in 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. The next obstacle is the obstacle in the aspect of law enforcement which consists of internal and external obstacles. Internal constraints are constraints from the BPN institution. External constraints are obstacles related to the legal culture in society related to eradicating the land mafia.

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