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Criminal Policy on Countering Organized Crime Against Land Ownership in the Perspective of Criminal Law Reform

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This research aims to analyze the countermeasures of organized criminal acts related to land ownership in Indonesia and analyze criminal policies to overcome these criminal acts in the future from the perspective of criminal law reform.

The method used is a normative juridical method, which examines library materials and secondary data related to legislation and literature relevant to the problem under study.

The novelty of this research lies in the clarity of the function of the Land Mafia Task Force attached to each institution, which aims to avoid sectoral ego.

The results show that the settlement of land mafia cases is carried out using penal and non-penal approaches. The penal settlement serves as a catalyst for strict law enforcement, while the non-penal approach focuses on preventive efforts. Although countermeasures against organized crime have been implemented by involving Law Enforcement Officials and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency through the Anti Land Mafia Task Force, this organized crime is still challenging to solve because it is carried out in a structured and organized manner.

The conclusion of this research is that legal reform is needed to tackle this problem, which has the potential to cause huge losses and many victims. The suggested legal reform is to prioritize non-penal policies that are sustainable through cooperation between relevant stakeholders. Thus, overcoming organized crime against land ownership can be done thoroughly, starting from prevention through public education and prosecution of perpetrators to recovery of losses for victims and closing the space for new, more varied crimes.

Keywords: Criminal Policy; Criminal Law Reform; Organized Crime.

Abstrak

Penelitian ini bertujuan untuk menganalisis penanggulangan tindak pidana terorganisir terkait kepemilikan tanah di Indonesia serta menganalisis kebijakan kriminal dalam penanggulangan tindak pidana tersebut di masa depan dari perspektif pembaruan hukum pidana.

Metode yang digunakan adalah metode yuridis normatif, dengan mengkaji bahan pustaka dan data sekunder terkait peraturan perundang-undangan serta literatur yang relevan dengan masalah yang diteliti.

Kebaruan dalam penelitian ini terletak pada kejelasan fungsi dari Satuan Tugas Mafia Tanah yang melekat pada masing-masing institusi, yang bertujuan menghindari ego sektoral.

Hasil penelitian menunjukkan bahwa penyelesaian kasus mafia tanah dilakukan dengan pendekatan penal dan non-penal. Penyelesaian penal berfungsi sebagai katalisator dalam penegakan hukum yang tegas, sementara pendekatan non-penal berfokus pada upaya preventif. Meskipun penanggulangan tindak pidana terorganisir telah dilaksanakan dengan melibatkan Aparat Penegak Hukum dan Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional melalui Satuan Tugas Anti Mafia Tanah, kejahatan terorganisir ini masih sulit diputuskan karena dilakukan secara terstruktur dan terorganisir.

Kesimpulan dari penelitian ini diperlukan pembaruan hukum untuk menanggulangi masalah ini, yang

berpotensi menimbulkan kerugian besar dan banyak korban. Pembaruan hukum yang disarankan adalah dengan mengedepankan kebijakan non-penal yang berkesinambungan dan berkelanjutan melalui kerja sama antar stakeholder terkait. Dengan demikian, penanggulangan tindak pidana terorganisir terhadap kepemilikan tanah dapat dilakukan secara menyeluruh, mulai dari pencegahan melalui edukasi masyarakat, penindakan terhadap pelaku, hingga pemulihan kerugian bagi korban, serta menutup ruang bagi terjadinya kejahatan baru yang lebih variatif.

Kata Kunci: Kebijakan kriminal; Pembaharuan Hukum Pidana; Tindak Pidana Terorganisir.

1. INTRODUCTION

For human life, land is an integral part. So, it can be said that the attachment between humans and land is seen as a pattern of human life in society.¹ Land is a basic human need, and from birth to death, humans need land on which to live. Cosmologically, land is where humans live, where they come from, and where they are going. In this case, land has economic, social, cultural and political dimensions.² In the life of the nation, the dimensions attached to land are cultural, social, economic and political.³

In its development, the existence of land has become very important, especially with the higher population growth and the faster and increasing development, causing the need for land to increase significantly.⁴ On the one hand, the need for land for development is increasing, while on the other hand, the supply of land is relatively limited; in other words, there is no balance between the demand and availability of land needs. This is an imbalance that often occurs, resulting in the emergence of various frictions in society and causing conflicts in the midst of society, both between individuals in the community, individuals within the community and between the government and individuals and/or the community.⁵

In the end, the need for land in Indonesia, both for development and for the benefit of individuals as well as community groups becomes very urgent, so that to address this phenomenon requires a policy from the state, both legal and social and political policies that are comprehensive so that they can provide the best solution in providing protection for the community for the creation of a safe and prosperous community and nation life and avoid conflict in society. But in reality (*das sein*) there are several problems that occur as a result of weak law enforcement and/or lack of strict implementation of the law both by the community and state administrators. In this case, certain parties (individuals) who use the opportunity and/or authority available to them to commit crimes or, in other words commit Crimes in land ownership. This is referred to as crime in the land sector, which the author calls Organized Crime Against Land Ownership.

In the world of law enforcement related to crimes in the land sector, the phrase "Land Mafia" is commonly known.⁶ Although the phrase does not yet have a standardized

¹ Departemen Pendidikan dan Kebudayaan, *Pola Penguasaan, Pemilikan dan Penggunaan Tanah Secara Tradisional*, Jakarta: Depdikbud RI, 1992, Hlm. 1.

² Bernhard Limbong, *Pengadaan Tanah Untuk Pembangunan*, Jakarta: Margaretha Pustaka, 2015, Hlm. 1.

³ Iwan Permadi, Irsyadul Muttaqin. Potensi Sengketa Hak Atas Tanah di Indonesia. *Justisi*, 9(2), 2023. 201-216. <https://doi.org/10.33506/jurnaljustisi.v9i2.2345>

⁴ Hepi Ratna Wulan Nur Habibah, Suharno, Slamet Muryono, Aspek Tata Guna Tanah Dalam Pertimbangan Teknis Pertanahan Untuk Mewujudkan Pembangunan Berkelanjutan. *Jurnal Tunas Agraria* 2(1), 2019, 70-94, <https://doi.org/10.31292/jta.v2i1.18>

⁵ Adrian Sutedi, *Implementasi Prinsip Kepentingan Umum Di dalam Pengadaan Tanah Untuk Pembangunan*, Jakarta: Sinar Grafika, 2020, Hlm 256

⁶ Haposan Sahala Raja Sinaga, Pencegahan Dan Pemberantasan Praktik Mafia Tanah Melalui Pengoptimalan Peran Satgas Anti-Mafia Tanah, *HUKMY : Jurnal Hukum* 4(1), 2024, 590-603,

nomenclature and definition in terms of legal arrangements in Indonesia, it has been used as a technical term, for example in the technical guidelines of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number: 01/JUKNIS/D.VII/2018 on the Prevention and Eradication of Land Mafia. A Land Mafia is an individual or group and/or legal entity that intentionally commits a crime that can cause and hinder the implementation of land case handling.⁷ So, it can be said that people or individuals or groups who commit criminal acts in the land sector are called the Land Mafia.⁸ Criminal Acts of Land Ownership are also part of Criminal Acts in the field of land.⁹ Therefore, it is more appropriate for the author to use the term Land Ownership Crime, which is any act committed intentionally by individuals, groups and/or legal entities in the field of land that causes harm to others in an unlawful manner, punishable by a criminal offense in accordance with the provisions of laws and regulations.

The number of cases or problems in the land sector that occur in Indonesia can be categorized as organized crime,¹⁰ because the act is carried out by an organized and centralized group in illegal activities with the aim of gaining profit. As happened in the Jakarta and Bekasi areas, four officials of the National Land Agency were proven and arrested as suspects in the land mafia ring.¹¹ In this case, the police explained that there was a modus operandi carried out by the suspects who were referred to as a new group and had caused many victims, not only involving officials and / or employees within the Ministry of ATR / BPN but also involving the Head of the DKI Jakarta Forestry UPTD as a suspect in the Cipayung land mafia issue.¹² The practice of organized land ownership crimes almost occurs in all regions of Indonesia. There are several cases that can be categorized as organized land ownership crimes, so they can be used as references and/or considerations in examining and analyzing criminal policies in overcoming land ownership crimes.

This research basically aims to eliminate overlapping rules that cause confusion in the system of determining the authority between the Application of Penal Policy and Non-Penal Policy. Therefore, a common perception between Law Enforcement Officials and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Anti Land Mafia Task Force must be made, so that national security will be realized and close the space for such crimes so that they do not occur again in the future. This goal is realized with the focus of this research which is concerned and/or focused on criminal policy in overcoming organized land ownership crimes with a non-penal approach. What is important here is that when a criminal policy on land ownership crime has been regulated, the only point of attention is the penal

<https://doi.org/10.35316/hukmy.2024.v4i1.590-603>

⁷ Petunjuk Teknis Kementerian Tata Ruang/ Badan Pertanahan Nasional Nomor: 01/ JUKNIS/ D.VII/ 2018 tentang Pencegahan dan Pemberantasan Mafia Tanah, Hlm. 3.

⁸ Anisa Salsabila, Unggul Basoeky, Analisis Kasus Mafia Tanah di Caturtunggal dan Fungsi Hukum Sebagai Social Engineering dalam Upaya Pemberantasan Mafia Tanah, *Unes Law Review* 7(1), 2024, 184-193, <https://doi.org/10.31933/unesrev.v7i1>

⁹ Nikson Silitonga, Analisis Yuridis Penegakan Hukum Terhadap Tindak Pidana Pemakaian Bidang Tanah Tanpa Izin Yang Berhak Atau Kuasanya Di Wilayah Hukum Kepolisian Daerah Sumatera Utara (Polda-Su), *Jurnal Retentum*, 2(1), 2021, 70-78, <http://dx.doi.org/10.46930/retentum.v3i1.904>

¹⁰ Yunawati Karlina, Irwan Sapta Putra, Pemberantasan Mafia Tanah Dengan Menggunakan Istrumen Hukum Pidana Di Indonesia, *Jurnal Res Justitia: Jurnal Ilmu Hukum* 2(1), 2022, 109-130, Issue: 10.46306/rj.v2i1

¹¹ Yogi Ernes, "Total ada 4 Pejabat BPN Ditangkap Terkait Mafia Tanah di Jakarta dan Bekasi", <https://news.detik.com/berita/d-6176556/total-ada-4-pejabat-bpn-ditangkap-terkait-mafia-tanah-di-jakarta-dan-bekasi>, pada tanggal 6 Juni 2023.

¹² Tiara Aliya Azzahra, "Eks Kepala UPTD DKI Kehutanan Jakarta Jadi Tersangka Kasus Mafia Tanah Cipayung", <https://news.detik.com/berita/d-6135257/eks-kepala-upt-dinas-kehutanan-dki-jadi-tersangka-kasus-mafia-tanah-cipayung>, Diakses pada tanggal 6 Juni 2023.

approach. So that the non-penal approach is often untouched and/or neglected either directly or indirectly by law enforcement. Penally, law enforcers tend to prioritize punishment for perpetrators of land ownership crimes, but non-penal approaches have not been implemented well enough. The fact that when cases occur it is the community that suffers the greatest loss, so the urgency of this research is that it is hoped that in the future law enforcement officials and also the Ministry of ART / BPN can work together in providing a form of legal settlement both penal through litigation and non-litigation and non-penal through preventive measures in the form of education and socialization to the public so that they can understand and avoid actions that harm them.

Iwan Permadi has conducted research on the land mafia. He found that the mafia is organized in several ways, such as falsified certificates and buying and selling. In addition, conspiracies with BPN personnel are also carried out, by requesting information on land plots that have not been formally registered with BPN.¹³ Permadi research is fundamentally different from the author, as his research only describes the existence of the land mafia and its schematization. However, the research conducted by the researcher is rooted in the juridical progress that must be taken over the existence of the land mafia, including the mapping of the functions of the land mafia task force. This shows that this research has more value in terms of direct application, not limited to concepts.

On the other hand, research on land dispute resolution using non-punitive methods has also been conducted, but with a restorative justice approach as the focus, as conducted by Suartini and colleagues, in their research it was revealed that restorative justice was carried out by using the mediation method in resolving the case.¹⁴ This is certainly different from the researcher's research, given its focus on the optimization of the BPN and the land mafia task force in resolving land disputes. The research shows that the settlement of land disputes either through penal or non-penal channels will not be optimized if the flow of land administration is not improved first. The author's research reveals that BPN should be the center of view of land settlements including those related to the land mafia, but does not eliminate law enforcement elements such as prosecutors and police. This implies that this research is a "brake" for the BPN in placing its position when dealing with the land mafia, which is not as a law enforcer. The emphasis on mediation is a settlement that can be considered mild in a criminal offense,¹⁵ while the land mafia is a large-scale criminal offense considering that it involves many parties.

2. METHOD

The research method used is a normative juridical approach, namely legal research conducted by examining library materials or secondary data as a basis for research by conducting a search for regulations and other literature related to the problem under study.¹⁶ This approach method refers to the rules and principles that apply in society with the aim of examining problems in relation to Criminal Policy in Countering Organized Crime against Land Ownership. In normative research, what is studied is library material or secondary data in the

¹³ Iwan Permad. *Kejahatan Mafia Tanah sebagai Ancaman Penguasaan Tanah yang Berkepastian Hukum*. *Perspektif Hukum*, 2(1), 2024. 1-25. <https://doi.org/10.30649/ph.v24i1.250>

¹⁴ Suartini, Maslihati Nurhidayati dan Anna Maryam. Pendekatan Restorative Justice Dalam Penyelesaian Sengketa Pertanahan di Indonesia. *jurnal Binamulia Hukum*, 12(2), 2023. 1-25. 10.37893/jbh.v12i2.621

¹⁵ Fandri Rachmanto. The Application of Penal Mediation in Handling Minor Criminal Offenses Regulated by Regional Regulations. *Justisi*, 11(2), 2025. 317-322. <https://doi.org/10.33506/js.v11i2.3961>

¹⁶ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: PT. Raja Grafindo Persada, 2003, Hlm 13.

form of primary, secondary and tertiary legal materials. The research specification used in this research is descriptive analysis, namely describing the land mafia as a form of organized crime which in its resolution involves various parties both law enforcement and BPN itself. The situation is analyzed with the applicable laws and regulations as well as legal theories and the practice of implementing positive law concerning the problems that have been formulated.¹⁷

The source of data used in the research of land mafia as a form of organized crime which in its settlement involves various parties including law enforcement is secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials consisting of the 1945 Constitution of the Republic of Indonesia; the Criminal Code; Law Number 5 of 1960 concerning Basic Agrarian Principles; and Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases relating to Organized Crime against Land Ownership in Indonesia,¹⁸ and supported by secondary legal materials consisting of textbooks written by influential jurists, legal journals, expert opinions, legal cases, jurisprudence, and the results of recent symposiums related to the research topic,¹⁹ as well as using tertiary legal materials, namely materials that provide information about primary legal materials and secondary legal materials, such as internet websites, general dictionaries, legal dictionaries and other relevant articles.

3. DISCUSSION

3.1. Analysis of Combating Organized Crime Against Land Ownership in Indonesia

Crime is not a hereditary event, nor is it a biological inheritance. Crime can be committed by anyone, women or men, with different levels of education. Crimes can be committed consciously, i.e. they are thought out, planned and directed towards a certain purpose. Crime is an abstract conception where it cannot be felt or seen except for its consequences.²⁰ According to Budianto, one of the causes of the high crime rate in Indonesia is the high unemployment rate, so crime will increase if the unemployment problem is not addressed immediately. There are actually many causes of crime in Indonesia, for example: widespread poverty, lack of educational facilities, natural disasters, urbanization and industrialization, and environmental conditions that make it easier for people to commit crimes.²¹

According to Romli Atmasasmita, crime has been a social problem faced by people in all countries for a long time and is essentially a product of society itself. Crime in a broad sense, involves violations of the norms known to society, such as religious norms, legal moral norms. Legal norms are generally formulated in laws that government officials are responsible for enforcing, especially the police, prosecutors and courts.²²

According to Soejono D., realizing the high level of crime, it directly or indirectly encourages the development of reactions to crime and criminals in essence related to the aims and objectives of the crime prevention efforts. Crime prevention efforts have been made by all parties, both the government and society in general.²³

¹⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UII Press, 2010, Hlm 53.

¹⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2006, Hlm. 141.

¹⁹ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Surabaya: Bayumedia, 2008, Hlm. 295.

²⁰ Kartini Kartono, *Patologi Sosial*, Jakarta: Raja Grafindo Persada, 2005, Hlm. 125-126

²¹ Muhammad Mustofa, *Kriminologi: Kajian Sosiologi Terhadap Kriminalitas, Prilaku Menyimpang, dan Pelanggaran Hukum*, Jakarta: Fisip UI Press, 2005, Hlm. 47

²² Romli atmasasmita, *Teori dan Kapita Selekta Kriminologi*, Bandung: Tarsito, 2006, Hlm 32.

²³ Soejono. D., *Doktrin-doktrin kriminologi*, Bandung: Alumni, 1973, Hlm 42.

Various programs and activities have been carried out while continuing to look for the most appropriate and effective way to overcome the problem of crime. There are several ways that can be used in overcoming crime, namely: Criminal law application; Prevention without punishment; and Influencing views of society on crime and punishment through mass media.²⁴

This crime has actually been going on for years, but due to the reluctance of the community to make legal efforts and the lack of capacity and integrity of law enforcement officials to address and resolve these issues, crimes in the land sector have flourished and even become rampant in all levels of government related to affairs in the land sector. It is normal to hear that there are some government officials involved in land crimes from the village level to the Agrarian and Spatial Planning Office/National Land Agency.

In carrying out their criminal actions, the various *modus operandi* used by the perpetrators include forgery of land titles, C letters, and other land titles; forgery of deeds of sale and purchase, powers of attorney, identity documents, or land certificates; fake or replacement certificates; removal of deeds; use of thugs to occupy land; Collusion with officials and law enforcement to obtain legality; to Using absolute power or utilizing the clause of the PPAT (Land Transaction Officer) deed which states full payment for a land sale and purchase transaction, while the payment has not been made at all or has not been paid in full.

All these actions are carried out in an organized, planned, and systematic manner by involving and/or cooperating with unscrupulous law enforcement officers, notaries, BPN officials, and even court officials. The crime of land mafia significantly undermines the spirit of the state in providing prosperity to the people in the aspect of natural resources, especially land.²⁵

On this basis, the then President of the Republic of Indonesia, Joko Widodo, instructed Hadi Tjahjanto, the Minister of Agrarian Affairs and Spatial Planning/National Land Agency, to investigate cases that had captured public attention, including the case involving Nirina Zubir and the case at the South Jakarta Land Office. The result of the President's instruction gave birth to several collaborative products between the Ministry of Agrarian and Spatial Planning/National Land Agency and the Chief of the Indonesian National Police to eradicate Organized Land Ownership Crimes, including 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 Cooperation in the Field of Agrarian/Land and Spatial Planning; Work Guidelines between the Ministry of ATR/BPN and the Police dated June 12, 2017 No. 26/SKB-900/VI/2017 concerning Cooperation in the Agrarian/Land and Spatial Planning Sectors; and the Joint Decree of the Head of Criminal Investigation and the Director General for Handling Agrarian Problems, Utilization of Space and Land No. B/01/V/2018/ Bareskrim-34/SKB-800/V/2018 dated May 8, 2018 concerning the Task Force for the Prevention and Eradication of the Land Mafia.

The thing to know about the existence of the series of rules above is that in practice it does not work effectively, given that sectoral egos are still strongly attached. This sectoral ego implies that each institution wants to show off its authority, so what happens is that the law enforcement element (the land mafia task force) is not integrated in resolving land cases. The

²⁴ Barda Nawawi Arif, *Beberapa Aspek Pengembangan Ilmu Hukum Pidana (Menyongsong Generasi Baru Hukum Pidana Indonesia)*, Semarang: Badan Penerbit Universitas Diponegoro, 2007, Hlm 52.

²⁵ Agustyarsyah, *Menanggulangi Mafia Tanah Melalui One Map Policy (OMP) Guna Penguatan Ekonomi Hijau Dalam Rangka Ketahanan Nasional*, Jakarta: Lembaga Ketahanan Nasional Republik Indonesia (LEMHANAS RI), 2023, Hlm 29.

success of the land mafia task force will result when each institution has clarity over its authority. This clarity will lead to work proportionality and eliminate sectoral egos. In addition, integration will emerge when all institutions coordinate and unite their understanding in eradicating the land mafia.

The Joint Decision became the legal basis for the formation of a task force or special team that has special duties and functions as a team that handles issues of Organized Crime against Land Ownership. In more popular terms, this small team is called the Anti-Land Mafia Task Force.

The concrete efforts that have been made by the government in the context of tackling organized crime against land ownership in Indonesia are currently more about the criminal law application. This is reflected in the treatment carried out by the Minister of ATR/BPN Agus Harimurti Yudhoyono in disclosing cases of criminal acts against land ownership. The disclosure succeeded in uncovering two cases with a total potential state and community loss of Rp183,563,890,260 (one hundred and eighty-three billion five hundred and sixty-three million eight hundred and ninety thousand two hundred and sixty rupiah). The first case was carried out by five land mafia who had been named as suspects with the *modus operandi* of forging sale and purchase deeds. From this land crime, the total saved loss reached more than 4 billion IDR from real lost.

As for the second case, it was carried out by two suspects. The *modus operandi* used in this case was forgery by duplicating the certificates in his family name into 39 certificates. Unmitigated, the total potential losses saved from this case reached more than 179 billion rupiahs originating from *real lost*, *fiscal lost*, and *potential lost* of the Cibitung-Cilincing toll road project.²⁶

In the case of countering Organized Crime against Land Ownership in Indonesia, which is commanded by the Anti-Land Mafia Task Force, in the context of *criminal law application*, the parties that take on a major role are the Police and the Attorney General's Office. Which uses several articles in handling cases of organized crime against land ownership, including Article 167 of the Criminal Code in the case of "entering a yard without permission"; Article 242 of the Criminal Code in the case of "false information in an authentic deed"; Article 263 of the Criminal Code in the case of "forgery"; Article 264 of the Criminal Code in the case of "forgery of authentic deeds"; Article 266 of the Criminal Code in the case of "inserting false information into authentic deeds"; Article 231 of the Criminal Code in the case of "concealing confiscated goods"; Article 385 of the Criminal Code in the case of "embezzlement of land rights"; Article 389 of the Criminal Code in the case of "making goods unusable"; articles 421, 424, 425 of the Criminal Code in the case of "abuse of authority"; Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption *Jo.* Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption; and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering

In relation to Organized Crime against Land Ownership, the object of the crime is land, which has legal consequences, namely that a land case can fall under three types of law, namely criminal law because it relates to the actions of the perpetrator, administrative law if the case

²⁶ Bantul Gumregah (Kompasiana), "AHY Menteri ATR/BPN Berhasil Gebuk Mafia Tanah di Jawa Barat, Potensi Kerugian Rp183 Miliar Diselamatkan!", <https://www.kompasiana.com/bantulgumregah/671080e6c925c442e43d2d22/ahy-menteri-atr-bpn-berhasil-gebuk-mafia-tanah-di-jawa-barat-potensi-kerugian-rp183-miliar-diselamatkan>, 17 Oktober 2024, diakses pada 15 Desember 2024 pukul 19.26 WIB.

relates to land certificates, where land certificates are administrative products because they are the product of State Administrative Officials (TUN), and civil law itself, considering the acquisition and/or transfer of land rights from one legal subject to another legal subject to be identical to the existence of a transfer agreement for the land object.

In carrying out its duties and functions, The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia also fills the legal vacuum regarding the possibility of Organized Crime against Land Ownership in Indonesia by issuing several regulations to complement the Criminal, Civil and State Administration Law instruments, including the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 13 of 2017 concerning Blocking and Seizure Procedures; Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases; and Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 15 of 2024 concerning Prevention of Land Cases.

In the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases, the typology of problems in the land sector is outlined, and the problems are divided into three types, namely Disputes, Conflicts and Cases. Land disputes are land disputes between individuals, legal entities, or institutions that do not have a wide impact. Conflicts are land disputes between individuals, groups, classes, organizations, legal entities, or institutions that have a tendency or already have a wide impact; and Cases are land disputes that are handled and resolved through judicial institutions. In this case, the implementation process begins with the submission of a complaint to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the Regional Office of the National Land Agency, the Land Office in accordance with its authority to obtain handling and settlement in accordance with the provisions of laws and regulations.

The role of the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency in handling these cases is more inclined towards *prevention without punishment* and influencing public views on crime and punishment through the mass media, as is being aggressively promoted on social media by the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency with the *tagline of* "Crush the Land Mafia" which was massively echoed in the Mass Media including Social Media.

The rest is in the order of follow-up execution of the eradication of organized crime against land ownership. The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency collaborates with the Police and the Attorney General's Office in handling land cases, because the eradication of organized crime against land ownership that has been promoted by the government so far requires a different special approach to its resolution. This is because the land mafia syndicate works in an organized, neat, and systematic manner so that it is able to hide the true facts and make it appear as if the results of the actions of this land mafia network are natural, legal, and legitimate, even though the actions they commit actually cause losses, not only for the victims, but also for the state.

Until October 2024, 85 out of 98 targets of operations to eradicate the land mafia in Indonesia have entered the stages of suspect designation, P19, and P21. Of these, 55 targets of operations have entered the P21 stage, which means that the case files are complete. This good cooperation was proven by the awarding of a Gold Pin in recognition and appreciation to 21 Heads of the Attorney General's Office, Heads of Regional Police Headquarters, and

Heads of Regional Offices of the Ministry of Agrarian and Spatial Planning/National Land Agency for their performance and hard work to eradicate land mafia practices by the Minister of Agrarian and Spatial Planning/National Land Agency for the 2024 period, Nusron Wahid.²⁷

What should be known is that in 2023, the Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) succeeded in resolving 62 land mafia cases, of which 62 were part of 86 cases targeted in the Land Mafia Operation and 159 suspects were arrested. On the other hand, in 2022 there were only 60 cases. This shows a positive trend in the handling of land mafia cases from year to year.²⁸ In the previous year, hundreds of suspected land mafia operations took place from 2018 to 2020. The Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) stated that 145 cases had been referred to the Attorney General's Office out of 305 cases from 2018 to 2020.²⁹

The land mafia case happened to Grandma Jubaedah with disputed land located in RT 01 and 05, RW 05, on Jalan Kapten Sangun, Kampung Simpen, Tenjolaya Village, Cicalengka District, Bandung Regency. This land dispute is an allegation of land data manipulation at the village level. It is suspected that the land data in the form of a Letter C has been altered so that one party feels entitled to annex the land rights of another. This allegation is proven by the change in the Letter C data at the Tenjolaya Village level before and after the village was divided. In the past, Tenjolaya Village, Cicalengka District, was very large. According to collected data, in 1901 alone, this area was already a village led by a headman named Moehammad Sanoesi.

Cases involving village officials have also occurred in the case of the Caturtunggal Village land mafia in Sleman Regency, in addition to the presence of the corporation, namely PT Deztama Putri Sentosa, which carried out an illegal housing development project without permission on Jalan Melon, Mundusaren, Caturtunggal, Depok, Sleman, DIY. This certainly harms residents who clearly have rights to the land.

The existence of the land mafia has basically been prevented by a series of strategies carried out by the land mafia, such as the existence of electronic mortgage services/HT-el which includes the registration of mortgages, forgiveness, cession and subrogation. Another strategy undertaken by the government is to provide electronic land information services for land value zones (ZNT) as well as land registration certificates (SPKT) and certificate checks, as well as modernizing services for applying for a decision letter granting land rights.

3.2. Analysis of Criminal Policy in Countering Organized Crime Against Land Ownership in the Future from the Perspective of Criminal Law Reform

Organized Crime against Land Ownership is Organized Crime with the qualification of Serious Crime because the consequences of the Crime can result in many victims, which means that the crime has a broad impact and in terms of output, this crime also aims to seek maximum financial gain from its victims, so it requires special, targeted, planned and continuous handling from all components of the state including maximizing the role of the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency as the Leading Sector

²⁷ Poltial Website Kejaksaan Republik Indonesia, "Tindak Tegas Mafia Tanah, Kajati Sulsel Agus Salim Dapat Pin Emas Kementerian ATR/BPN", <https://kejaksaan.go.id/conference/news/2080/read> diakses pada 16 Desember 2024 pada 21.56 WIB.

²⁸ "Tahun 2023, 62 Kasus Mafia Tanah Berhasil Diselesaikan", <https://www.kompas.com/properti/read/2023/11/08/201500421/tahun-2023-62-kasus-mafia-tanah-berhasil-diselesaikan> diakses pada 10 Maret 2025 pada 20.00 WIB.

²⁹ "Hadi Tjahjanto: Ratusan Kasus Mafia Tanah Periode 2018-2020 P21", <https://www.rri.co.id/hukum/196242/hadi-tjahjanto-ratusan-kasus-mafia-tanah-periode-2018-2020-p21> diakses pada 10 Maret 2025 pada 20.00 WIB.

in eradicating Organized Criminal Acts against Land Ownership which still requires cooperation between related institutions and all components of society including the Indonesian National Police and the Indonesian Attorney General's Office as the vanguard of criminal law enforcement and the spearhead of the criminal justice system in Indonesia. criminal justice in Indonesia. This encourages the construction of a legal foundation for the design of a legal system that must be considered so that the existence of the law can be implemented and accepted by the community.³⁰

It is not a public secret that the Government of the Republic of Indonesia, through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency as the *Leading Sector* and the Indonesian National Police as the agency that enforces criminal law in Indonesia, still has difficulty in eradicating Organized Crime against Land Ownership in Indonesia. In fact, the Criminal Law Instrument in Indonesia can be said to be adequate and regulates Criminal Acts in the Land sector and a special team has been formed by the President to specifically handle Organized Crimes against land ownership, but still in the implementation order both the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency and the Police still have difficulty in terms of case disclosure. On the other hand, the Land Mafia Task Force is also struggling with the number of Land Mafia Cases in Indonesia, so there are fears of a crisis and new problems in terms of dealing with criminal acts. If this is not taken into account, it can lead to a crisis of overcriminalization in the sense of an abundance of crimes and criminalized acts, as well as a crisis of overreach of the criminal law so that controlling crimes using criminal sanctions is ineffective.³¹

This loophole is exploited by perpetrators of Organized Crime against Land Ownership. Because in practice, the perpetrators often take advantage of the weaknesses of the land bureaucracy system. Perpetrators of Organized Crime against Land Ownership are very familiar with the regulations and formalities for issuing land certificates, from the requirements, procedures, processes, to the issuance of land certificates. One of the weaknesses exploited by the perpetrators is that the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency only examines formal correctness and does not have the authority to examine the material correctness of the legality of land certification applications. So that false documents submitted in the land certification process may be accepted and the relevant land certificate may be issued.

In order to provide legal guarantees and protection for the community regarding land ownership rights, crime control efforts are carried out through criminal policies. Criminal policy is essentially an integral part of social defense and social welfare efforts. So it can be said that the main purpose of criminal policy is the protection of the community to achieve social welfare.³² Hoefnagels states that criminal policy is part of a broader policy, namely social policy. This is evident in his statement "criminal policy as a science of policy is part of larger policy:

³⁰ Muhammad Ridwan Hidayat. LegalWisdomin Indonesian Legal System: Toward Progressive Law Enforcement. *Justisi* 10(3), 2024. 518-534. DOI: <https://doi.org/10.33506/js.v10i3.3198>

³¹ M. Sherif Bassiouni, *Substantive Criminal Law*, USA, Springfield-Illionis: Charles C. Thomas Publisher, 1978, Hlm. 84, sebagaimana dikutip oleh Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Cetakan Ketiga, Semarang: Badan Penerbit Universitas Diponegoro, 2000, Hlm 38; Barda Nawawi Arief, *Hukum, Masyarakat dan Pembangunan Nasional*, Bandung: Binacipta, 1995, Hlm 33; Barda Nawawi Arief dan Muladi, *Teori-Teori dan Kebijakan Pidana*, Bandung: Alumni, 1988, Hlm 163.

³² Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung: Citra Aditya Bakti, 1998, Hlm. 9.

the law enforcement policy.... The legislative and enforcement policy is in turn part of social policy".³³ Thus, criminal policy is a subsystem of the law enforcement system, and the law enforcement system itself is part of social policy.³⁴

Then based on the above description, the implementation of the *penal policy* on Organized Crime against Land Ownership is currently supported but still not effective. This shows that criminal policy as an effort to combat crime cannot only be seen from the perspective of criminal law (*penal policy*) but also other aspects outside of criminal law (*non-penal*) as a comprehensive approach that is part of the overall social policy. Thus, it can be said that criminal policy must be carried out with a policy approach in the sense that: a) criminal policy is part of the overall social policy (national development policy); and b) there must be integration between crime control efforts and the use of criminal law (*penal policy*) and means outside criminal law (*non-penal policy*).³⁵

In this case, the Criminal Code clearly regulates these criminal acts and strictly threatens the actions of perpetrators who can harm the wider community with severe criminal penalties. Law Enforcement Instruments through Law Enforcement Officials, namely the Police, the Prosecutor's Office, Judicial Institutions and the Ministry of Agrarian Affairs and Spatial Planning which are incorporated into a task force called the Anti-Land Mafia Task Force have also been officially formed by the President of the Republic of Indonesia with a strong legal basis, but Organized Crime against Land Ownership still occurs massively, is structured, rooted and difficult to uncover in Indonesia. This happens because of the secrecy, low level of public supervision, lack of law enforcement and the main thing is the lack of education and knowledge of the community regarding land administration including the lack of socialization and education regarding organized crime against land ownership in Indonesia.

In the end, no matter how strong the land governance regulations are and no matter how serious the criminal threat is, the practice of land mafia crime will not be resolved without solid and integrated cooperation between relevant *stakeholders*. On the one hand, the public expects the state to enforce the law firmly and impose severe penalties for organized crime against land ownership. Likewise, the public is also required to have high sensitivity and awareness in seeking legal certainty of land ownership status and be aware of various modes of land mafia crime. Criminal policy (*criminal policy*) is a rational effort to tackle crime. This criminal policy is part of law enforcement policy in a broad sense (*law enforcement policy*) and is part of social policy (*social policy*) carried out by the community and the state by striving to realize and improve welfare, it covers a wide scope.³⁶ Thus, criminal policy can also be formulated as a rational effort by society in combating crime.³⁷

Crime control efforts cannot be resolved by criminal law alone, but require other *non-penal* means, namely administrative law, civil law and other broader *non-penal* efforts to eliminate conditions that can directly or indirectly lead to *criminogenic* and *victimogenic* crimes. This is in line with the view that the problem of crime is not only a criminal law problem but is essentially a humanitarian or social problem. Furthermore, Hoefnagels states that the main problem of crime and punishment does not lie in criminal law but in the reality of society.

³³ G. Peter Hoefnagels, *The other side of Criminology*, Holland: Deventer-Kluwer, 1973, Hlm 10.

³⁴ Dey Ravena & Kristian, *Kebijakan Kriminal (Criminal Policy)*, Jakarta: Prenadamedia Group, 2019, Hlm. 47.

³⁵ *Ibid.*

³⁶ Barda Nawawi Arief dan Muladi, *Teori-Teori dan Kebijakan Pidana*, Bandung: Alumni, 1988, Hlm. 1.

³⁷ Teguh Prasetyo, *Hukum Pidana*, Jakarta: Raja Grafindo Perkasa, 2010, Hlm 17.

The main problem of criminal law lies outside the criminal law itself, namely in the issue of the relationship of power/rights between the state and citizens related to the concept of socio-philosophical, socio-political, socio-cultural values of a society, nation and state. The use of criminal law is only a countermeasure to a symptom (*kurieren am symptom*) and not a solution by eliminating the causes. Nevertheless, criminal law as one of the legal systems is still needed to deal with crimes that occur in society. It is not to exclude criminal law, but criminal law must be applied selectively and limitatively considering that criminal law must be enforced as a *Ultimum Remedium*.

In this regard, there is a need for innovation in existing criminal policy, given that the *penal law* policy that has been applied so far has in fact been unable to reduce the growth of organized crime cases involving land ownership in Indonesia. By promoting the spirit of legal reform, which is an effort to reform and re-evaluate the main problems in order to reduce the growth of crime to create prosperity for the Indonesian people.

The meaning and essence of legal reform relating to the background and urgency of criminal law reform can be viewed from socio-philosophical, socio-political, and socio-cultural aspects, or from several policy aspects (especially social policy, criminal policy, and law enforcement policy). This means that the reform of criminal law must also essentially be a manifestation of changes and reforms to the various aspects and policies that underlie it.

So there must be a step and/or strategy regarding the prevention of national-scale cases for the benefit of the community. A concrete step that can be taken is to encourage and strive for the implementation of a *Non-Criminal* Policy in a planned, directed, integrated, and sustainable manner, based on Pancasila and the 1945 Constitution. The *Non-Penal* policy, which is steeped in philosophical and sociological values, will implement the application of the law by considering aspects outside the criminal law itself, so that it is hoped that it can reduce and break the chain of crime itself.

In terms of concrete implementation, the government must issue a breakthrough in the form of national policies and strategies that accommodate several measures including prevention, protection, prosecution, and inter-agency cooperation. In overcoming the problems faced in relation to tackling Organized Crime against Land Ownership in Indonesia, there are several policy models and/or strategies and/or concrete steps that can be implemented by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, including Improving the Quality of Human Resources; Improving Information Systems and Technology (Digitalization); Reviewing Regulations in the field of land administration; Conducting socialization of land services and laws to the community; Coordination and cooperation between institutions.

Regarding regulatory issues, the legal regulations that can be applied to the land mafia in Indonesia need to be strengthened and renewed with stricter law enforcement, increased supervision, and refinement of regulations, including broadening the scope of criminal offenses and speeding up legal processes, as is currently the case, land mafia crimes are often charged under general articles of the Criminal Code, such as Article 167 (entering a house without permission), Article 263 (forging documents), and other relevant articles. Therefore, there needs to be a specific article or additional articles that are more specific to land mafia crimes, so that the sentences imposed are more severe and have a deterrent effect.

Regarding the improvement of the quality of human resources, this is a mandatory step to be taken by the State through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Indonesian Police. this step is an action to educate both the wider

community so that they are not deceived by the perpetrators and to educate the human resources of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency to prevent them from doing things that are detrimental to themselves or other actions that are part of the emergence of Organized Crime against Land Ownership that can ensnare them in the criminal realm, besides that, for the *internal affairs* of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, special training can be held regarding *criminal and non-criminal* actions in the context of eradicating these crimes. On the other hand, the countermeasures against the existence of land mafia will be optimal if the main element of the emergence of land mafia is the damage to land administration, in this case the land certificates managed by the village head, which tend to be exploited by the land mafia by coordinating with the village head, so that the land certificates can be changed.

Furthermore, in the era of digitalization, the role of information technology has become increasingly significant in the context of law enforcement, given that advances in information and communication technology have resulted in significant changes in the standard of living that have restructured the world into *the borderless world*.³⁸ Indonesia is determined to develop the law in the era of digitalization,³⁹ to get around the technological progress that is happening. Technological progress has also made crime more varied and more difficult to handle. By increasing *awareness of* Information Systems and Technology, it is hoped that the growth rate of Organized Crime against Land Ownership can be suppressed. One concrete example is the implementation of Electronic Land Rights Certificates (Electronic Certificates). With the Electronic Certificate, the accuracy and validity of the data cannot be changed by the perpetrators considering that the electronic certificate will be stored in the *cloud* and an integrated data storage system from the regency/city level to the center and every time there is a change in data, an official report of the change must be attached which is approved by the Policy Maker and the history of changes will be recorded in *real time*. In addition, the security features of the Electronic Certificate also use sophisticated security features such as the implementation of a single data portal with account security features in the form of *login authentication* in the form of passwords, fingerprints, and electronic signature (TTE) from the Electronic Certification Center (BSrE) so that the digital signature used to prove the authenticity of the identity of the signer of the legal product is legal and of course the signature also has legal force.

Another correlation of digitization is that digital identity and electronic signatures can prevent document forgery, then *host to host* payment of service fees will avoid embezzlement, then digitization of maps, land books and deeds, in addition to securing land products from the destruction of documents and natural disasters, also eliminates the risk of data loss due to Organized Crime practices against Land Ownership.

In terms of regulatory review, the Ministry of Agrarian Affairs and Spatial Planning must conduct a regulatory review and follow up on changes to several laws and regulations. Among other things, it explains the elimination of land rights under former Western rights, the mechanism for resolving discrepancies between Land Rights and Forest Areas, and the mechanism for land objects that are in dispute so as not to cause differences in perception between law enforcement officials and the community. The regulation must also be socialized

³⁸ Juan Matheus, Ariawan Gunadi. Pembentukan Lembaga Pengawas Perlindungan Data Pribadi Di Era Ekonomi Digital: Kajian Perbandingan Dengan KPPU. *Justisi*, 10(1), 2024. 20-35. DOI: 10.33506/jurnaljustisi.v10i1.2757

³⁹ Itok Dwi Kurniawan, Vincentius Patria Setyawan. The Transition Of Legal Modernism Paradigm To Legal Postmodernism In The Digital Era. *Justisi*, 8(2), 2022. 135-147.

to the community in a massive and comprehensive way as a form of education for the community to know the essence of every rule in land administration in Indonesia.

Furthermore, the main thing in the implementation of the Non-Penal Policy is the socialization of services and land laws. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency is obliged to socialize land services and also to improve the efficiency of services that are friendly to the community so that the community can carry out services independently without going through brokers and/or *brokers*. It must also insert educational content for the community so that the community can be more vigilant against land mafia practices. In addition, accelerate land registration in all village/sub-district areas towards complete villages/sub-districts through complete systematic land registration (PTSL) and land redistribution.

The steps that lead to the existence of cooperative ties between institutions can be carried out between the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency with other institutions outside of land services such as with local governments, law enforcement officials, and private parties. Optimizing the Handling of Land Disputes and Conflicts in the Framework of Agrarian Reform together with all stakeholders (across sectors) including Local Governments, FORKOPIMDA, related agencies, and interested parties. Inter-agency cooperation can result in the development, transfer of knowledge, and implementation of more efficient and innovative practices.

The practice of land mafia crime is carried out in a planned, neat, and systematic manner. Not a few involve close associates, unscrupulous institutions, unscrupulous notaries/land brokers, unscrupulous National Land Agency officials, and law enforcement officials. The *modus operandi* of crimes used by the land mafia includes document forgery, illegal or unauthorized occupation (*wilde occupatie*), seeking legality in court, case engineering, collusion with corrupt officials to obtain legality, forgery of land rights management powers, conducting land purchases and sales as if formally, and the disappearance of land certificates.

As described previously, the *tools used* in order to create an effort to prevent crime and an effort to break the chain of crime are *non-penal* policies. If the implementation of criminal policies through a *non-penal* approach is carried out properly, continuous and sustainable through good cooperation between related *stakeholders*, it will create a comprehensive response to organized crime against land ownership from upstream to downstream, starting from prevention efforts, namely community awareness efforts, prosecution of perpetrators, compensation for victims, and closing the space for new and more varied crimes to occur

4. CONCLUSION

The criminal policy for countering organized crime against land ownership in the future, viewed from the perspective of criminal law reform, must continue to prioritize the principle of law enforcement, but the use of criminal law must be carried out selectively and limitatively considering that criminal law must be enforced as *ultimum remedium*. Considering that the practice of organized crime against land ownership is carried out in a planned, neat, and systematic manner, there must be other preventive efforts, namely implementing a Non-Penal Policy in a planned, directed, integrated and sustainable, based on Pancasila and the 1945 Constitution by implementing Human Resource Quality Improvement and Community Intelligence so as to better understand the dangers of Organized Crime against Land Ownership in Indonesia. This requires cooperation between related institutions and all components of society including the Ministry of Agrarian and Spatial Planning/National Land Agency.

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