



UDC 34

THE BASIS FOR REGULATING CRIMINAL ACTS IN THE ISSUANCE OF CERTIFICATES OF PROOF OF LAND RIGHTS

Gijariawan Hendrikus, Sudarsono, Sugiri Bambang, Djatmika Prija

Faculty of Law, University of Brawijaya, Malang, Indonesia

*E-mail: hendryussby@gmail.com

ABSTRACT

The strength of evidence of land certificates and so on where matters related to agrarian tend to experience many problems, over time and increasingly modern conditions of society, various forms of land crimes are increasingly rampant. Land mafia is contrary to the role of government bureaucracy in public services that function in organizing public services in the community. The focus of this study is on crimes in the land sector involving individuals from the National Land Agency (BPN). According to the theory of justice presented, the principle of justice is the foundation stone in legal construction. In the context of handling land mafia crimes, justice must be the moral foundation in enforcing the law. Analysis of cases of criminalization of land mafia using the theory of legal certainty illustrates that efforts to create legal certainty in accordance with the expectations of the community are still a complex challenge in Indonesia, hard work and commitment are needed from various parties to increase the effectiveness of the legal system. Circular Letter of the Attorney General Number: SE013 / A / JA / 12/2011, which discusses the Guidelines for Criminal Prosecution in General Criminal Cases. Through this Circular, authority has been delegated to the Heads of the District Attorney's Office (Kajari) to control the prosecution process in general criminal cases.

KEY WORDS

Land, mafia, crime, criminalization.

Indonesia uses and has several regulations governing agrarian matters, including Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) , this law is the basis of agrarian law in Indonesia.¹ Historically, after Indonesia's independence, the condition of agrarian law was still in a position or situation of dualism, where the law left behind by the colonialists was still the basis of its regulations. In fact, this is clearly contrary to the interests of the people and the state of Indonesia. UUPA is here to eliminate these conditions or in other words, UUPA is one of the efforts to eliminate dualism in the agrarian system and establish legal unity, create legal certainty and justice in the land sector .² The articles that regulate land registration are in Articles 23, 32 and 38 which are addressed to the relevant rights holders, with the intention that they obtain certainty about their rights. While Article 19 is addressed to the Government as an instruction, so that throughout the territory of Indonesia there is a land registration that is "*rechts-cadaster*" in nature, meaning that it aims to guarantee legal certainty.³

UUPA is referred to as the basic agrarian law because the regulation only contains principles and several matters related to agrarian matters in general. Meanwhile, its implementation is regulated in various other regulations. ⁴The Basic Agrarian Law has several objectives, namely⁵:

¹ President of the Republic of Indonesia, "Law of the Republic of Indonesia Number 5 of 1960 Concerning Basic Agrarian Principles," Pub. L. No. 5 (1960), <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

² Desi Apriani and Arifin Bur, "Legal Certainty and Legal Protection in the Land Registration Publication System in Indonesia," *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 220–39, <https://doi.org/10.23920/jbmh.v5i2.11>. Pg. 221.

³ Habib. Salma, Prima Novianti., Adjie, "Resolution of Land Disputes Concerning Double Certificates Due to Land Mafia Crimes," *Journal of Education and Counseling* 5, no. 1 (2023): 5144–53, <https://doi.org/2685-936X>.

⁴Some implementing regulations of the basic agrarian law include:

1. PP No. 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Use Rights. Article 17 paragraph 3, Article 26 paragraph 1, Article 30 paragraph 2, Article 36 paragraph 2, Article 46 paragraph 1, Article 47 paragraph 2, Article 48 paragraph 2, Article 49 paragraph 3.
2. PP No. 16 of 2004 concerning Land Use.



- Laying all the foundations for building national agrarian law, as a tool to realize prosperity, happiness, and justice for the country and its people (especially farmers in a just and prosperous society);
- Laying the foundation for uniformity and simplicity of land law;
- Building a foundation to ensure legal security of land use rights for the entire community.

However, based on field facts and several previous studies, it is known that the regulation does not immediately eliminate agrarian problems, especially in current conditions.⁶ Problems related to land registration, such as related to the strength of evidence of land certificates and so on, where matters related to agrarian affairs tend to experience many problems, over time and increasingly modern conditions of society, various forms of land crimes are increasingly rampant, one of which is related to land title certificates and so on.⁷

The national land-related regulations themselves are based on the existing presidential decree (Kepres), land-related policies are handed over to the National Land Agency (BPN),⁸ which carries out the task of organizing government affairs in the land sector and the scope of land-related authority that is handed over to it.⁹ This is also in accordance with Government Regulation (PP) Number 38 of 2007 concerning the Division of Government Affairs between the Government, Provincial Regional Governments and Regency or City Regional Governments,¹⁰ This division of work arrangements or government affairs is carried out with the intention that the government can move better and more precisely, because it is not possible for all affairs to be managed as one without a division of work.¹¹

Back to land registration according to the above information, land registration is carried out gradually from the center to the regions. Based on its purpose, land registration itself is required for the relevant rights holders to provide legal certainty. This is in accordance with Article 19 addressed to the Government as an instruction; so that throughout Indonesia there is a land registration that is "rechts-cadaster".¹²

Based on the review above, it is clear that all existing regulations have the aim of realizing legal unification, legal certainty and justice in the land sector. However, the current situation related to land issues in Indonesia, in particular, is still experiencing obstacles in upholding justice. One of the things that is currently rife as an obstacle to realizing justice in land matters is the rampant land mafia that works together with the National Land Agency (BPN) and several other individuals (such as Government Officials/Regional Heads) where this condition causes abuse of authority in the process of implementing land registration in Indonesia,¹³ even though Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration was born based on considerations to improve the quality of governance.¹⁴

The regulation explains that government officials in using their authority must refer to the general principles of good governance and based on the provisions of laws and regulations where to resolve problems in the administration of government, regulations regarding government administration are expected to be a solution in providing legal

3. PP No. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. Article 50 paragraph 1, and Article 51 .

⁵ Indonesia, Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Principles.

⁶ Elisa Debora Waani, "Legal Review of the Legal Force of Land Certificates Issued by Authorized Officials (National Land Agency)," *Lex Crime VI*, no. 2 (2017): 5–11, file:///C:/Users/Lenovo/Downloads/jm_lexcrimen,+1.+Elisa+Debora+Waani.pdf.

⁷ Margareta Sevilla Rosa Angelin, Inez Devina Clarissa, and Zefaki Widjigo, "The Land Mafia Case That Befell Nirina Zubir: Is It the Result of Weak Land Laws," *National Seminar on Technology and Multidisciplinary Sciences (SEMNASTEKMU) 1*, no. 1 (2021): 160–65, <https://doi.org/10.51903/semnastekmu.v1i1.99>.

⁸ Government of the Republic of Indonesia, "Presidential Decree Number 34 of 2003 Concerning National Policy in the Land Sector," *Pub. L. No. 34*, 1 (2003), <https://peraturan.bpk.go.id/Home/Details/56126/keppres-no-34-tahun-2003>.

⁹ Salma, Prima Novianti., Adjie, "Resolution of Land Disputes Concerning Duplicate Certificates Due to Land Mafia Criminal Acts."

¹⁰ Government of the Republic of Indonesia, "Government Regulation of the Republic of Indonesia Number 38 of 2007 Concerning the Division of Government Affairs Between the Government, Provincial Governments, and Regency/City Governments.," *Pub. L. No. 38*, Government of Indonesia 20 (2007), <https://peraturan.bpk.go.id/Details/4760/pp-no-38-tahun-2007>.

¹¹ Ni'matul Huda, *Regional Government Law*, 2nd ed. (Bandung: Hikam Media Utama, 2019).

¹² Indonesia, Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Principles.

¹³ Yunawati Karlina and Irwan Sapta Putra, "Eradication of Land Mafia Using Criminal Law Instruments in Indonesia," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 2, no. 1 (2022): 109–30, <https://doi.org/10.46306/rj.v2i1.28>.

¹⁴ President of the Republic of Indonesia, "Law of the Republic of Indonesia Number 30 of 2014 Concerning Government Administration," *Pub. L. No. 30* (2014).



protection, both for the community or government officials, of course with the aim of realizing good governance.¹⁵ The law on government administration is the legal basis needed to base decisions and/or actions of government officials to meet the legal needs of the community in the administration of government.¹⁶

The reality of various land mafias is contrary to the role of government bureaucracy in public services that function in the provision of public services in the community and state apparatus.¹⁷ The desire of this regulation is also reflected in Law Number 25 of 2009. Although¹⁸ the provision of public services is said to be carried out with the provisions of applicable laws and regulations as explained above, in fact a condition of conflict of interest can occur. Conflict of interest itself is a condition of government officials who have personal interests to benefit themselves and/or others in the use of authority so that it can affect the neutrality and quality of Decisions and/or Actions made and/or carried out.¹⁹

Reconstruction itself is carried out as an effort from an observation of existing regulations and conditions in society, so that agrarian law can be more capable of providing the possibility of achieving the function of the earth, water and space in accordance with the interests of the Indonesian people and fulfilling important points in Pancasila, one of which is creating prosperity and social justice for all Indonesian people. This is also in accordance with the 1945 Constitution²⁰. In accordance with the 5th principle of Pancasila. Justice in Indonesia is based on social justice. This is also emphasized in the Preamble to the 1945 Constitution.²¹

Justice itself is generally given by judges through the courts. Talking about the courts, this study will also discuss the judicial system. A good judicial system is considered capable of realizing the value of justice in its decisions. The judicial system itself cannot be separated from the theory of judicial power.²² *John Locke* and *Montesquieu* stated that judicial power must be separated from other powers, this is important to prevent arbitrariness and provide a guarantee of the creation of an independent judicial power in accordance with the principles of the rule of law and the creation of freedom for law enforcers in enforcing justice.²³ Because, a dispute must also be resolved by considering the philosophical values of religious humanism, this has long been reflected in Pancasila and should also be a reflection for stakeholders, especially law enforcers and state officials.²⁴ However, the reality is that this does not work as it should where there are still many tendencies in enforcing the law for state officials in Indonesia.

Some regulations related to agrarian include the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2011 concerning the Code of Ethics of Public Services and Public Service Providers within the National Land Agency of

¹⁵ Indonesia.

¹⁶ Law of the Republic of Indonesia Number 30 of 2014 states that what is meant by Government Administration is the implementation of decision-making and/or actions by government agencies and/or officials where the Government Function is a function in implementing Government Administration which includes regulatory, service, development, empowerment, and protection functions where Government Agencies and/or Officials can be interpreted as elements that implement Government Functions, both in the government environment and other state administrators.

¹⁷ Government of the Republic of Indonesia, "Law Number 25 of 2009 Concerning Public Services," Pub. L. No. 25 (2009), <https://peraturan.bpk.go.id/Details/38748/uu-no-25-tahun-2009>.

¹⁸ Article 4:

- a) The creation of clear boundaries and relationships regarding the rights, responsibilities, obligations and authorities of all parties related to the provision of public services.
- b) The realization of a proper public service delivery system in accordance with the general principles of good governance and corporations.
- c) Fulfillment of public service provision in accordance with laws and regulations.
- d) Realizing legal protection and certainty for the community in the provision of public services.

¹⁹ Article 1 number 14 of Law Number 30 of 2014

²⁰ Article 33 paragraph 3 of the 1945 Constitution states that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the Indonesian people. The word "controlled" can be interpreted that the state does not own it but the state as the highest organ in exercising power is given a mandate by all Indonesian people to regulate the earth, water, space and natural resources contained therein concerning 3 (three) things, namely:

- a) Regulating the provision, allocation, and administration of land, water, space and the natural resources contained therein;
- b) Regulates the rights that can be owned regarding the earth, water, space and the natural resources contained therein;
- c) Regulates legal relations related to legal acts concerning the earth, water, space and the natural resources contained therein.

²¹ "...the formation of a Republic of Indonesia with sovereignty over the people, based on the Almighty God, just and civilized humanity, the unity of Indonesia and democracy guided by the wisdom of deliberation among representatives, and by realizing social justice for all Indonesian people." This article also states that the Indonesian government: "participates in implementing world order based on freedom, eternal peace and social justice."

²² Sir Ivor Jennings, *The Law and the Constitution*, ed. Sir Ivon Jennings (British: Creative Media Partners, LLC, 2021).

²³ Jennings.

²⁴ Jennings.



the Republic of Indonesia, Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 17 of 2013 concerning the Work Procedures of the Public Servant Code of Ethics and Public Service Providers within the National Land Agency of the Republic of Indonesia and UUPA. It is also considered unable to provide fair legal certainty and cannot provide a deterrent effect in the development of the times.

The focus of this research is on land crimes involving National Land Agency (BPN) personnel. This research was conducted because of the increasing number of land cases that are continuously carried out with new methods and ways that deviate from existing regulations and involve certain institutions such as the National Land Agency.²⁵

In relation to this, there are several cases that can be evidence that the facts discussed in the discussion above are true. One of the cases that the author took was a case that occurred before 2020, precisely in the PTUN Decision Number: 14/G/2017/PTUN-SRG , where it was proven that the legal action taken by the defendant contained legal defects because it was proven that the issuance of the disputed object in litis was contrary to the provisions of Article 26 paragraph (1) and (2) PP Number 24 of 1997 concerning Land Registration, this was also proven to violate the Principle of Accuracy in the General Principles of Good Governance (AAUPB).²⁶ Where this contains legal defects and violates the second part regarding the Prohibition in Article 11 letters (a) and (d) which states that in carrying out duties at the National Land Agency of the Republic of Indonesia, every Organizer is prohibited from Letter a. Abusing authority for personal, group or certain group interests and letter d which states violating Standard Operating Procedures (SOP) without valid reasons.²⁷

In this case, the Panel of Judges decided that the State Administrative Decision related to the dispute had been canceled by the Defendant. The Panel of Judges also decided that the Defendant must revoke and delete the State Administrative Decision related to the dispute from the Defendant's Land Office Book. The Judge decided that the Building Use Rights Certificate (HGB) was invalid or void. The Judge also required the Defendant, who is the Head of the Tangerang City Land Office, to revoke it. No sanctions were given to people who abused this authority. This will certainly create a bad precedent to prevent similar things from happening again.

Based on the descriptions above, the researcher observes that the decision has not satisfied the sense of justice for the injured parties, even though the certificate has been canceled and returned to its original owner. However, the losses due to the defective issuance procedure and the abuse of authority by the National Land Agency, where these cases are completed in a very long time and years to be able to return to the original owner, certainly require a lot of money and psychological risks for the community (original owner) who are harmed. This is also considered not to have a deterrent effect on the National Land Agency (BPN) officials. This causes the possibility of the same case being made the same mistake.

Then, the case in 2022, where several officials of the National Land Agency (BPN) of DKI Jakarta were arrested by the police, among those arrested was the coordinator of the substance of land management of the National Land Agency (BPN) of the North Jakarta administrative city. The police stated that the person concerned was the intellectual actor in the land mafia case in the city. The person is suspected of changing the data on the land certificate by mentioning a special tool to change the existing data. The tool can delete written data that has been written on the certificate and after being deleted, it is overwritten with someone else's name on the certificate sheet. The person has issued a number of problematic certificates whose transfer and registration procedures were incorrect. The person collaborated with a number of funders by issuing fake certificates and documents,

²⁵ *Margareta Sevilla Rosa Angelin, Inez Devina Clarissa, and Zefaki Widigdo, "The Land Mafia Case That Befell Nirina Zubir: Is It the Result of Weak Land Law?"*

²⁶ *Directory of Decisions, Supreme Court, and Republic of Indonesia, Decision Number: 14/G/2017/PTUN-SRG (2017).*

²⁷ *Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2011 Concerning the Code of Ethics for Public Services and Public Service Providers within the National Land Agency of the Republic of Indonesia*



the mode was to process a large number of transfers of certificate ownership in an incorrect manner.²⁸

In 2023, high levels of land mafia were also found in several areas in Indonesia. Hadi Tjahjanto as the Minister of Agrarian Affairs and Spatial Planning of Indonesia or the Head of the National Land Agency (BPN), said that the areas with the most land mafia cases were in Riau, East Java, Medan and Lampung. The high land mafia factor occurred because of the large number of Land Use Rights (HGU), overlapping and the high land prices that were targeted by land mafia to play there. He also said that this was exacerbated by the large number of lands that did not have signs or boundaries of ownership. Land mafia often played with certain BPN members, Village Heads and also with Sub-district Heads in certain areas.²⁹ Land mafia cases not only occur in big cities but also in remote villages. Land mafia usually cooperates with several other individuals, as stated above. The syndicates conspire to take the rights of the community and even the government by changing ownership identities and withholding ownership of land certificates.³⁰

Land mafia crime is one of the special crimes that has an extraordinary impact (extraordinary). The victims of land mafia crime are very widespread not only in urban areas but also in rural areas. The network is the main tool that connects and facilitates land mafia crime in Indonesia. The perpetrators of land mafia crime in Indonesia vary widely.³¹ The law has provided identification that the perpetrators who are involved unlawfully or not in accordance with the procedures set out by law are the perpetrators of abuse. Organized crime is one of the perpetrators in land mafia. The definition of organized crime in the law has similarities with the concept of inclusion regulated in the Criminal Code (KUHP), in addition, the definition of organized crime and corporate actors has multiple interpretations, especially the definition of corporations that are not legal entities.³²

There are quite a few land cases that have not been touched by the courts or that have been *legally binding*, so it is necessary to investigate the causes and how to handle them and what the sanctions are so that they can provide a deterrent effect because the sanctions contained in the code of ethics regulations are only moral sanctions in the form of a written statement from the violator, either openly or secretly, that they will not repeat their actions again.³³

Sudjito said that Indonesia has a concept of a legal state based on 3 elements, namely Pancasila, national law and state objectives. These three elements are a complete unity. Pancasila is the basis for the formation of national law. National law is formulated as a means to achieve state objectives. There is no point in compiling national law if it is unable to lead the Indonesian people to achieve a prosperous and happy life under the protection of God's blessings. Thus, the concept of law enforcement in Indonesia which is based on "justice" and "Belief in the Almighty God" should also be legally required to refer to the values contained in Pancasila, regulations related to agrarian affairs should also be in

²⁸<http://share.babe.news/al/ckFcRvpbYR>

²⁹Anam, Khoirul. *Land Mafia Modus Revealed, in This Region the Most. Economic Update. CNBC Indonesia. Wednesday, July 12, 2023. Accessed on the website <https://www.cnbcindonesia.com/news/20230712180442-4-453750/modus-mafia-tanah-terungkap-di-daerah-ini-paling-banyak> at October 10, 2023 18.22 WIB.*

³⁰*Ibid*

³¹Putri Fransiska Purnama Pratiwi, "EFFORTS TO ERADICATE LAND MAFIA IN PALANGKA RAYA CITY," *Legal Literacy* 5, no. 2 (2021): 23, <https://doi.org/2598-0750>.

³²Vani Wirawan, "The Roots of the Rampant Land Mafia," *Al YAZIDIY: Social Sciences, Humanities, and Education* 1, no. 2 (2019): 35–43, <https://doi.org/https://doi.org/10.55606/ay.v1i2.526>.

³³Article 18

- 1) Public servants and/or organizers who violate the code of ethics will be subject to moral sanctions.
- 2) The moral sanctions as referred to in paragraph (1) are made in writing and stated by the authorized official.
- 3) The moral sanctions as referred to in paragraph (1) include:
 - a. Statement in private; or
 - b. Open statement.

Article 19

- 1) A closed statement as referred to in Article 18 paragraph (3) letter a, is delivered by an authorized official or other appointed official in a closed room which is only known by the employee concerned and the official delivering the statement and other related officials who have a rank not lower than the Public Servant and Organizer concerned.
- 2) Public statements as referred to in Article 18 paragraph (3) letter b, are delivered through official meeting forums of Public Servants and Organizers, flag ceremonies, mass media and other forums deemed appropriate for this purpose.
- 3) In imposing moral sanctions as referred to in Article 18 paragraph (3), the type of violation of the code of ethics committed by Public Servants and Organizers must be stated.



accordance with this, both in terms of their determination and/or implementation.³⁴ However, with the high level of land mafia practices involving the land institution itself, it shows that the law in Indonesia is not based on Pancasila but rather on interests alone. The National Land Agency (BPN) officials in public services in the land sector seem to be interconnected links to satisfy worldly desires alone.³⁵

In fact, every decision or action that exists must be based on the provisions of laws and regulations and the General Principles of Good Governance (AUPB). The laws and regulations as referred to in Paragraph (1) include laws and regulations that are the basis for Authority and laws and regulations that are the basis for determining and carrying out Decisions and/or Actions.³⁶

Government Agencies or Officials in determining or carrying out Decisions or Actions are required to include or show the provisions of laws and regulations that form the basis for Authority and the basis for determining or carrying out Decisions or Actions.³⁷ The absence or unclearness of laws and regulations as referred to in Paragraph (2) letter b, does not prevent authorized Government Agencies or Officials from determining or carrying out Decisions or Actions as long as they provide public benefits and are in accordance with the General Principles of Good Governance (AUPB). Article 10 of Law Number 30 of 2014 states that the General Principles of Good Governance (AUPB) referred to in this Law include several principles, namely; legal certainty, benefit, impartiality, accuracy, not abusing authority, openness, public interest and good service.³⁸

Other general principles outside the General Principles of Good Governance (AUPB) as referred to can be applied as long as they are used as the basis for the judge's assessment as stated in a court decision that has permanent legal force. Sudharsono said:³⁹

"The elements of the general principles of good governance are diverse, but the intent and purpose are the same, namely, to create good governance to protect the people from the possibility of arbitrary actions or abuse of authority by government officials."

In relation to the problem of the mentality of government administrators, our *founding fathers* have expressed it, which is stated in the explanation of the 1945 Constitution which states that;⁴⁰

"... what is very important in government and in the life of the country is enthusiasm, the enthusiasm of state administrators, the enthusiasm of government leaders..."

This expression teaches us that no matter how complete and good the laws and regulations are, if they are not accompanied by a good spirit from the organizers, then the laws and regulations will not be able to achieve their goals. Conversely, even though there are shortcomings in the regulations, if they are accompanied by a good spirit from the organizers, the goal can be achieved. Likewise in relation to *good governance*, even though the principles of *good governance are good*, if the mentality of the organizers is not good, it is difficult to create *good governance*. This aspect of the mentality of officials also received attention from Djameludin Ancok, in his writing entitled "Memacu SDM Menyongsong Indonesia Baru", he said:⁴¹

"The destruction of this nation is due to the absence of trustworthy, honest, ethical, trustworthy and trustworthy qualities, able to control emotions, discipline, forgiving, patient, sincere and always wanting to please others. Such qualities are very necessary for efforts to build a civilized and high-performance society."

³⁴ Laurensius Arliman, S. "Realizing Good Law Enforcement to Realize Indonesia as a Legal State," *Doctrinal Law Journal* 2, no. 2 (2017): 509–32, <https://www.bing.com/search?q=realize+good+law+enfor+realize+indonesia+as+a+legal+state&go=search&q=ds&form=qbre>.

³⁵ Wirawan, "The Root of the Problem of the Rampant Land Mafia."

³⁶ I GUSTI AGUNG NGURAH AGUNG, "APPLICATION OF MODERN LEGAL POSITIVISM TOWARDS THE PRINCIPLE OF LEGAL CERTAINTY IN LAND OWNERSHIP CERTIFICATES" (Krisnadwipayana University, 2020), <http://digilib.iblam.ac.id/id/eprint/1471/Disertasi.pdf>.

³⁷ Muhammad Solikhudin, "GOOD GOVERNANCE IN LAW NO. 28 OF 1999 CONCERNING THE IMPLEMENTATION OF A CLEAN STATE FREE FROM CORRUPTION, COLLUSION, AND NEPOTISM FROM THE PERSPECTIVE OF MAQĀSHID AL-SHARĪAH JASIRAUDA" (SUNAN AMPEL STATE ISLAMIC UNIVERSITY, 2020), <https://core.ac.uk/download/pdf/328277056.pdf>.

³⁸ Government of the Republic of Indonesia, "Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration," *Laws of the Republic of Indonesia* § (2014).

³⁹ Sudarsono, in *Istislam, Government Coercive Sanctions in Environmental Protection and Management, Dissertation, Unair, 2012, page 287*

⁴⁰ Republic of Indonesia, 1945 Constitution.

⁴¹ Nyoman Ngurah Wairocana, *Good Governance and Its Implementation in the Implementation of Regional Government in Bali, Postgraduate Dissertation, Airlangga University, Surabaya, 2005, page 12*



The review above briefly explains that the important elements in good governance are none other than in each individual. The Netherlands regulates the principles of *good governance* in a regulation called " *Algemene Wet Best*" which is then referred to as " *AWB* " in English known as *the General Administrative Law Act (GALA)*, a codification of general administrative law regulations which were previously contained in various special regulations and in legal decisions which came into effect in 1994.⁴²

In relation to the issue of general principles of good governance as a result of the pressure for reform and the determination of state administrators to create a good government, it was stipulated by the MPR RI Tap No. XI/MPR/1998, concerning Clean and Corruption-Free State Administrators, Collusion and Nepotism.⁴³ There are several things that are put forward as considerations, including that in the administration of the state there have been business practices that have led to the growth of corruption, collusion and nepotism involving state officials with state entrepreneurs which have damaged the joints of state administration in various aspects of life. This is because there has been a concentration of power in President Soeharto which has caused existing state institutions to not function optimally.⁴⁴ Based on the review above, it can be concluded that the purpose of the Tap is to rehabilitate all aspects of national life with justice. For this reason, state administrators are needed who can be trusted, by examining the wealth of state officials and former officials which is estimated to be the result of corruption, collusion and nepotism.

Based on the mandate of MPR Decree No. XI/MPR/1998, Law of the Republic of Indonesia No. 28 of 1999 concerning Clean State Administration Free from Corruption, Collusion and Nepotism was enacted, which was later supplemented with its implementing regulations.⁴⁵ In the explanation of Article 2 number 6, what is meant by "other state officials" are the heads of representatives of the Republic of Indonesia abroad (Extraordinary and Plenipotentiary Ambassadors), Deputy Governors and Regents or Mayors. What is meant by "Other officials who have strategic functions are officials whose duties and authorities in carrying out state administration are prone to corruption, collusion and nepotism practices, which include⁴⁷:

- Directors, Commissioners and other structural officials at State-Owned Enterprises and Regional-Owned Enterprises;
- Head of Bank Indonesia and Head of National Banking Reform Agency;
- Head of State Universities;
- Echelon I officials and other officials of the same rank in the civil, military and Indonesian National Police environment;
- Prosecutor;
- Investigator;
- Court Clerk; and
- Project Leader and Treasurer.

Law Number 28 of 1999 concerning Clean and Corruption-Free State Administrators aims, among other things, to realize state administrators who are able to carry out their functions and duties seriously and responsibly. In other words, it wants to realize state

⁴² JBJM Teo Berge & AJ Bok, *Codification Of Administrative Law In The Netherlands in (GH Addink, General Principle of Good Governance Under GALA) Paper presented at the Workshop and Seminar On Good Governance, Cooperation between Utrecht University-Airlangga University, Surabaya, 2001, page 102.*

⁴³ Central Government of Indonesia, "DECISION OF THE PEOPLE'S CONSULTATIVE ASSEMBLY OF THE REPUBLIC OF INDONESIA NUMBER XI/MPR/1998 ON STATE ADMINISTRATION THAT IS CLEAN AND FREE FROM CORRUPTION, COLLUSION, AND NEPOTISM," Pub. L. No. XI (1998), https://jdih.surakarta.go.id/jdihsolo/proses/produkhukum/file/953TAP_MPR_NO_11_1998.PDF.

⁴⁴ AV Dicey, *An Introduction to The Study of the Law of the Constitution (United Kingdom: Palgrave Macmillan UK, 1985).*

⁴⁵ The implementing regulations promulgated are PP No. 65 of 1999 concerning Procedures for Examination of State Officials' Wealth; PP No. 66 of 1999 concerning Requirements and Procedures for Appointment and Dismissal of Members of the Audit Commission; PP No. 67 of 1999 concerning Procedures for Monitoring and Evaluation of the Implementation of the Duties and Authorities of the Audit Commission; PP No. 68 of 1999 concerning Procedures for Implementing Community Participation in State Administration; Presidential Decree No. 81 of 1999 on the Establishment of the Audit Commission of State Officials' Wealth

⁴⁶ In this Law, state administrators are state officials, whether they carry out legislative, executive or judicial functions and also include other officials whose main functions and duties are related to the administration of the state in accordance with applicable laws and regulations (Article 1 number 1). Those included in state administrators are: State officials at the Highest State Institutions, State officials at High State Institutions, Ministers, Governors, Judges, Other state officials in accordance with the provisions of applicable laws and regulations and Other officials who have strategic functions in relation to the administration of the state in accordance with the provisions of laws and regulations. (Article 2)

⁴⁷ Government of Indonesia, "Law of the Republic of Indonesia No. 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State" (1999).



administrators who are clean and free from corruption, collusion and nepotism.⁴⁸ The general principles of state administration above were then adopted into the provisions of Article 53 paragraph (2) b of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts.⁴⁹ Viewed from these principles, they are almost the same as the general principles or character of *good governance*, and if viewed from the word "organization" it shows the existence of activities (*actions*) which are the same as the meaning of *good governance*. In other words, viewed from the perspective of positive law in Indonesia, the principles of *good governance* are 7 (seven) principles regulated in Law Number 28 of 1999 concerning Clean and Corruption-Free State Administrators, Collusion and Nepotism (KKN).⁵⁰

Handling of cases that occur related to abuse of authority, especially concerning public services in the land sector, is often considered fair by certain members of the National Land Agency (BPN), but this is not the case for the disadvantaged community. The theory of justice explains that A person's satisfaction depends on whether he feels there is justice (*equity*) or injustice (*unequity*) in a situation he is experiencing.⁵¹

This theory is a variation of social comparison. Plato was an abstract idealist thinker who recognized forces beyond human capabilities so that irrational thinking entered his philosophy. Likewise with the issue of justice. Plato argued that justice is beyond the capabilities of ordinary humans. The source of injustice is the change in society. Society has principal elements that must be maintained, namely⁵²:

- A clear division of classes, for example the ruling class consisting of shepherds and guard dogs must be clearly separated from the human sheep;
- Identification of the destiny of the state with the destiny of its ruling class, special attention to this class and its unity, and adherence to its unity, rigid rules for the maintenance and education of this class, and strict control and collectivization of the interests of its members.

From these principal elements, other elements can be derived, for example the following⁵³:

- The ruling class has a monopoly on all things such as military profits and training, and the right to own weapons and receive all forms of education, but this ruling class is not allowed to participate in economic activities, especially in earning a living;
- There must be censorship of all intellectual activity of the ruling class, and constant propaganda aimed at homogenizing their thoughts. All innovations in education, law, and religion must be prevented or suppressed;
- The state must be self-sufficient. The state must aim for economic autarky, otherwise the rulers will depend on the merchants, or the rulers themselves will become merchants. The first alternative will weaken their power, while the second alternative will weaken the unity of the ruling class and the stability of the state.

The case of the Basic Agrarian Law (UUPA) is the only legal product that has a responsive character in this study in the era of authoritarian guided democracy. This can be explained from 4 (four things), namely⁵⁴:

⁴⁸ What is meant by a clean state administrator according to Article 1 number 2 is: "A state administrator who obeys the principles of state administration and is free from the practices of corruption, collusion and nepotism and other reprehensible acts". Meanwhile, what is meant by the general principles of state administration according to the provisions of Article 3 include: The Principle of Legal Certainty, The Principle of Administrative Order, The Principle of Public Interest, The Principle of Openness, The Principle of Proportionality, The Principle of Professionalism and The Principle of Accountability

⁴⁹ DPR RI, "Law Number 9 of 2014 Concerning Amendments to Law Number 5 of 1986 Concerning State Administrative Courts," *地学雜誌* 113, no. 2 (2004): 180–90.

⁵⁰ According to Article 1 numbers 3, 4 and 5, Corruption is a criminal act as referred to in the provisions of laws and regulations governing criminal acts of corruption; Collusion is an agreement or cooperation against the law between state administrators or between state administrators and other parties that harms other people, society and/or the state; Nepotism is any act of a state administrator against the law that benefits the interests of his family and/or cronies, above the interests of society, the nation and the state.

⁵¹ Carl Joachim Friedrich, *Philosophy of Law from a Historical Perspective* (Bandung: Nuansa and Nusamedia, 2004).
⁵² Frederick.

⁵³ Karl R. Popper, *Open Society and Its Enemies, (The Open Society and Its Enemy)*, ed. Uzair Fauzan, 1st ed. (Yogyakarta: Student Library, 2002).

⁵⁴ Muhammad Mahfud MD, *Legal Politics in Indonesia ...*, PT. Raja Grafindo Persada, Depok, 2009 p. 367



- The Basic Agrarian Law (UUPA) originates from the legacy (drafts) of the liberal democracy era, the enactment of which was delayed due to the Presidential Decree of 5 July 1959;
- The Basic Agrarian Law (UUPA) contains material that reverses the foundations of colonialism, which is certainly strongly opposed by all Indonesian leaders, both democratic and authoritarian leaders;
- The material of the Basic Agrarian Law (UUPA) does not concern the distribution of power so that its implementation will not disrupt even an authoritarian regime;
- The Basic Agrarian Law (UUPA) not only contains public aspects (State administrative law), but also contains private issues.

Several government efforts have been made to improve the public service system, especially in the field of land services, such as in the practice of extortion, there has been a Cyber Extortion Team that has shown its action in eradicating extortion. It is hoped that the existence of the Cyber Extortion Team will not only be momentary, but will continue to increase so that the existing culture of extortion can be reduced or even eliminated.⁵⁵ In addition to prevention, education is also needed. By including anti-corruption education starting from the Middle School level, it is hoped that it will instill a sense of anti-corruption in the future successors of the nation. So in the future, it will not only form a mindset of being afraid to commit corruption because of being imprisoned, but also being ashamed if they commit corruption.⁵⁶ It is undeniable that corruption has become a kind of culture. This is what must be changed slowly. Improving the standard of living may need to be done. However, in addition to improving the standard of living, the imposition of penalties for cases of corruption, collusion and nepotism also needs to be increased in order to provide a deterrent effect. This is where the task of the legislature and executive lies.⁵⁷

However, from several case presentations and realities that have been presented by researchers, it shows that *Racio legis* (Legal thinking according to reason) which is the reason or purpose of the birth of a legal regulation or the formation of the Basic Agrarian Law (UUPA) where Indonesia with all its diversity where all of that is an important thing in building a prosperous Indonesia. The applicable Agrarian Law should be one of the important tools for building a just and prosperous society, but what exists is actually an obstacle to achieving the above ideals. Several factors that influence this condition are⁵⁸:

- Agrarian law is still influenced by the aims and principles of colonialism, to the point of being contrary to the interests of the people and the state in carrying out universal development in order to complete the national revolution;
- The dualistic nature of agrarian law, namely the application of customary law regulations alongside regulations from and based on Western law, has given rise to various difficult problems between groups, and this is also not in accordance with the ideals of national unity;
- For indigenous Indonesian people, agrarian law also cannot guarantee the legal certainty that they should receive.

Related to the land case which is indicated as a conflict of interest from certain National Land Agency (BPN) officials, the researcher took another case in the Land sector, namely Decision Number 487K/TUN/2016 *Jis.* 123/B/TUN/2016, 245/G/PTUN/2015, 209/PDT/PT.DKI/2016, 59/PDT. PLW/2015, namely between Santoso as the Applicant for Cassation, formerly the Plaintiff, against the National Land Agency (BPN) of Central Jakarta City Administration as the Respondent for Cassation I, formerly Defendant I and Lim Setiawan as the Respondent for Cassation II, formerly Defendant II.

⁵⁵ Dimas Dyonata Aswitok, Dimas Aswitok, and Yudi Harimurti, "The Existence Of Task Force Clean Sweep Of Illegals In The Constitutional Law Perspective," *Advances in Social Science, Education and Humanities Research* 383, no. Ic55 (2019): 1175–79, <https://doi.org/10.2991/icss-19.2019.138>.

⁵⁶ Nirwana Dewi Harahap et al., "The Importance of Starting Anti-Corruption Education Early," *Jurnal PKM: Pengabdian Kepada Masyarakat* 02, no. 01 (2023): 55–58, <https://www.marsipature.makarioz.org/index.php/marsipature/article/view/38>.

⁵⁷ Dany Try Hutama Hutabarat et al., "The Eradication of Corruption and the Enforcement of the Law in Indonesia As Seen Through the Lens of Legal Philosophy," *Policy, Law, Notary and Regulatory Issues (Polri)* 1, no. 2 (2022): 1–8, <https://doi.org/10.55047/polri.v1i2.74>.

⁵⁸ Andrian Sutedi, *Transfer of Land Rights and Its Registration*, ed. Ade Hairul Rachman, 1st ed. (Jakarta: Sinar Grafika, 2007).



In this case, the object of the lawsuit is the Building Use Rights Certificate Number 2690/Kebon Kelapa Village, Measurement Letter Number 00008/Kebon Kelapa/2013 dated January 31, 2013, in the name of the holder, Lim Setiawan, which was issued on September 2, 2015 for land measuring 751 m² located at Jalan Batu Ceper Raya Number 48, Kebon Kelapa Village. Kebon Kelapa, Gambir District, Central Jakarta Administrative City, published by The defendant, based on the Decree of the Head of the Central Jakarta City Administration Land Office Number 928/HGB/BPN.31.71/2015. Along with the issuance of the Certificate of Land Rights For the purpose of the building, the Plaintiff's interests were harmed as the legal owner of the land as evidenced by Deed of *Ownership* Number 1104 dated 14 July 1931 in the name of Lim Beng Giok who is the Plaintiff's biological father.

The many deviations from the regulation of abuse of authority that have occurred in Indonesia indicate the need to re-regulate matters related to the Reconstruction of Regulations on Criminal Acts in the Issuance of Certificates of Evidence of Land Rights by revising various regulations related to legislation, not limited to laws on criminal acts of corruption, by adding severe sanctions.⁵⁹

In particular, no less important is Article 20 Paragraph 2 regarding the Code of Ethics Sanctions in the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2011 concerning the Code of Ethics for Public Services and Public Service Providers within the National Land Agency of the Republic of Indonesia (BPN RI). which has not been provide a deterrent effect so that there needs to be regulations regarding firm sanctions in the code of ethics regarding abuse of authority by state civil servants against National Land Agency (BPN) officials who commit crimes in the extra ordinary category (extraordinary crimes) in the land sector.

RESULTS AND DISCUSSION

Indonesia is a country of law in accordance with Article 1 paragraph 3 of the Constitution of the Republic of Indonesia in which Indonesia upholds the values and dignity of human beings as stated in the four pillars of national and state life. Indonesia is based on Pancasila and the 1945 Constitution of the Republic of Indonesia with the aim of realizing a prosperous, safe, orderly, peaceful, just and prosperous life.

The philosophical basis can also be found in the existence of Article 2 of Law Number 12 of 2011 concerning the Formation of Legislation, "Pancasila is the source of all sources of State law".⁶⁰The intention of this is that with the existence of such a policy, the will of our Founding Fathers as stated in the opening of the 1945 Constitution can be realized. The Founding Fathers aimed to form the State of Indonesia to protect the Indonesian nation and advance public welfare and educate the nation's generation.

Land rights are rights granted by the State to control land given to a person or group of people or legal entities, both from the Indonesian Citizen (WNI) and Foreign Citizen (WNA) community. Then the State grants full ownership rights to the certificate holder and grants full authority to use the land or by taking advantage of the land.⁶¹

In realizing the philosophical goals above, as Indonesian people, we must always protect and preserve the wealth that has been given by God Almighty. The Republic of Indonesia also has regulations related to land, which have been explained in the Constitution of the Republic of Indonesia, Article 33 paragraph 3 of 1945, which states: "The land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The purpose of this article is that land, water and natural resources are not used for the interests of officials or elites, but for the interests of all people. Regulations related to land are not only regulated in the Constitution of the Republic

⁵⁹Legislation outside the criminal code qualifies criminal acts in land conflicts as a "violation", while provisions in the Criminal Code qualify criminal acts in land conflicts as a "crime". This qualification of criminal acts results in lower criminal sanctions than legislation outside the criminal code. The low criminal sanctions threatened by legislation outside the criminal code in resolving crimes and land conflicts cause the application of criminal sanctions to be less effective and do not create a deterrent effect.

⁶⁰ Republic, "Law Number 12 of 2011 Concerning the Formation of Legislation."

⁶¹ Prasetyo Aryo Dewandaru, Nanik Tri Hastuti, and Fifiiana Wisnaeni, "Land Dispute Resolution Regarding Duplicate Certificates at the National Land Agency," *Notarius* 13, no. 1 (2020): 154–69, <https://doi.org/10.14710/nts.v13i1.29170>.



of Indonesia, Article 33 paragraph 3 of 1945, but also regulated in the Agrarian Law number 5 of 1960.

Referring to the mafia is referring to a certain group that operates in secret in carrying out organized crimes, which makes it difficult for the law to track their activities. Meanwhile, the legal mafia refers to a group of individuals, structured or not, who have the ability to influence and control legal matters.⁶²An alternative understanding of the legal mafia is that the term "mafia" here refers to a certain atmosphere in which the behavior of certain services, policies, and decisions appears to be completely in accordance with the law in reality, when in fact it is not. The essence of the concept of the legal mafia is that its existence is difficult to detect because they can hide behind law enforcement and service institutions. This makes it difficult for the public to distinguish between law enforcers/state officials who are honest and not influenced by the mafia and those who have been contaminated by it.

Referring to the technical directive issued by the Directorate General of Supervision of Agrarian Issues, Utilization of Space and Land Number 01/Juknis/DJ-IVV/2018 dated April 10, 2018 concerning efforts to prevent and eradicate illegal activities in the land sector. The concept of land mafia refers to individuals, groups, or legal entities who intentionally commit criminal acts that hinder the process of handling land cases. In accordance with the definition contained in the Big Indonesian Dictionary (KBBI), mafia is a closed group involved in criminal activities, while in the context of justice, namely:⁶³First, there is a group of advocates who have control over the course of the judicial process, allowing them to free the accused as long as the accused can fulfill the money demands submitted by them. Information regarding judicial issues is spread through coverage in various print media; Second, there is a conspiracy between law enforcement officers and justice seekers. Land cases involving disputes, conflicts, and disputes are the main focus in efforts to prevent and eradicate land mafia, especially those of large dimensions.

Land disputes, conflicts, and cases that have a wide level of complexity or dimension indicate the possibility of land mafia involvement. One of the signs is that even though a court decision that has permanent legal force (*inkracht van gewijsde*) states that the losing party in the case has the right to the land, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency knows that the basis of the rights used by the winning party is not valid according to land law, and has even been declared invalid. Examples include the use of *Eigendom Verponding* or old proof of rights that are not registered in the official data of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, or documents such as *kititir/girik*/old land rights originating from customary law and not registered at the local sub-district/village office, or the making of a certificate of inheritance even though the heir has not died, or the contents of the certificate of inheritance are inaccurate.

Analysis of the philosophical basis for criminalizing land mafia in the context of law enforcement theory shows several relevant aspects, namely: First, Solid Legal Arrangements. Indonesia has a strong constitutional basis in regulating land and natural resource rights, which places the interests of the community above the interests of certain individuals or groups. This is reflected in the 1945 Constitution and land laws that regulate the use of land for the prosperity of the people. Second, the Influence of the Legal Mafia. The concept of the legal mafia shows how certain groups, including government officials or law enforcers, can manipulate the legal system for their personal or group interests. This threatens the supremacy of law and disrupts justice in society; Third, Inadequate Law Enforcement Process. Despite a strong legal framework, law enforcement in Indonesia is still hampered by various factors, including corruption, weaknesses in the judicial system, and intervention from groups with certain interests.

Fourth, the Role of Law Enforcement Institutions. Law enforcement institutions, including the police, prosecutors, and judges, must play a critical role in upholding the supremacy of law and protecting the interests of the community. They must work

⁶²Sofyan A. Djalil. 2018. *Eradication of Land Mafia*. Seminar of Doctoral Alumni of Law Faculty, University of Indonesia, 14 September 2018.

⁶³Arie S. Hutagalung. 2018. *Law Enforcement Against Land Mafia Practices*. Seminar of ILUNI S3 FH University of Indonesia, September 14, 2018.



independently and impartially, in accordance with the principles of the rule of law; Fifth, Expanding the Role of the Community. The community also has an important role in law enforcement, both through active participation in the legal process and in providing support for institutional reforms to improve the integrity and effectiveness of law enforcement. In the context of the theories of law enforcement mentioned, effective law enforcement requires cooperation between various institutions, actors, and the general public to ensure justice, legal certainty, and protection of community rights. This requires high transparency, accountability, and integrity from all parties involved in the justice and law enforcement system.

The form of crime from the land mafia has been legally regulated in positive Indonesian law, in the Criminal Code for general crimes and in special laws for extraordinary crimes (special crimes). Some experts distinguish between extraordinary crime and special crime and there are other experts who distinguish again with the most serious crime, although the three terms are not the legal language in the Criminal Code, but in the discourse of criminal law experts they are the center of their attention. The definition of extraordinary crime according to Prof. Romli Atmasasmita, is part of the generic term called white-collar crime which is a generic term for types of crimes and which is opposed to the term street crime. According to Prof. EH Sutherland in his book entitled *White Collar Crime: The Uncut Version*, states: "white collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation", Meanwhile, CF Wellford and BL Ingraham in their book entitled *White Collar Crime: Prevalence, Trend, and Cost* classify white collar crimes into three groups: (1) business and professional crimes, (2) occupational crimes, (3) individual frauds. Then JW Tomlim in his book entitled *Victim of White Collar Crimes*, describes three typologies of victims regarding white collar crimes, namely: individuals, corporations (corporate or business institutions), government institutions, and (4) international order, and (5) society.

Meanwhile, the definition of the most serious crime, borrowing Kraig Bergnaum's opinion, is that felonies are the most serious type of crime and are often classified by degrees, with a first degree felony being the most serious. They include terrorism, treason, arson, murder, rape, robbery, burglary, and kidnapping. What is the most serious crime in society? Homicide, of course, is considered the most serious crime because it involves the taking of a human life.⁶⁴ Starting from the details of the crimes conveyed by Kraig Bergnaum which are categorized as very serious or the most serious crime does not mention land mafia crimes, but if referring to the opinions of EH Sutherland, CF Wellford and BL Ingraham and Prof. Romli Atmasasmita, then land mafia is included in the economic crime scope which is categorized as an extraordinary crime (extra-ordinary crime).

According to the theory of justice presented, the principle of justice is the foundation stone in the construction of law. In the context of handling land mafia crimes, justice must be the moral foundation in enforcing the law. This means that law enforcement must focus on justice for individuals and communities who are victims of the crime. The theory of justice emphasizes the importance of recognizing and respecting human rights. In the context of land mafia crimes, law enforcement efforts must ensure the protection of the rights of individuals affected by the crime, such as land rights and property rights. This principle emphasizes the importance of maintaining a balance between the violations committed and the punishments given. In the case of land mafia, perpetrators of the crime must be given a punishment that is commensurate with the crime committed, so that a deterrent effect and justice are created for the victims.

Legal certainty is an important aspect in the theory of justice, because it is related to security and justice for the community. In dealing with land mafia crimes, law enforcement must be carried out clearly and consistently, so that legal certainty is created for all parties involved. In some cases, there may be a conflict between the principle of justice and the goal of legal finality, such as collective progress. However, justice must remain the top priority, and if there is a significant conflict between justice and positive law, then justice must be

⁶⁴Kraig Bergnaum, (2022). *Which crimes are the most serious? Which crimes are the most serious?* (legalknowledgebase.com)



prioritized. By applying these principles of justice, law enforcement against land mafia crimes can be more effective and fair, providing protection to individuals and communities who are victims and providing appropriate sanctions to perpetrators of the crime.

The sociological basis for the criminalization of the Land Mafia by reviewing the current social reality, which is due to the problem of control over land ownership without rights, not only harms the community or the parties concerned, but also harms the State.

Criminal acts related to activities that may involve land mafia include: criminal threats, fraud, destruction, theft, and taking land without permission.⁶⁵ The crime of threats, as regulated in Article 368 paragraph (1) of the Criminal Code, refers to an attempt by someone to control another person's land by intimidating and threatening the legal owner. The perpetrator can be punished if there is photographic evidence showing that the threat was made, either with a sharp weapon or without a sharp weapon, and there are two witnesses. In addition, the perpetrator can also be charged with Article 335 of the Criminal Code if he forcibly forces another person to do or allow something through the use of violence or threats of violence, either against himself or others.

The Criminal Act of Fraud is a practice of manipulation in land sale and purchase transactions with the intention of obtaining land rights illegally, which can be subject to Article 378 of the Criminal Code. The Criminal Act of Destruction is regulated in Article 405 of the Criminal Code, referring to the destruction or damage of another person's property in an unlawful manner, with a maximum prison sentence of two years and eight months. Meanwhile, the Criminal Act of Theft concerns the illegal taking of another person's property, with a maximum prison sentence of five years. Theft is considered to have occurred if someone takes another person's property without proper permission.

The Criminal Act of Occupying Land Without Permission, in accordance with Article 2 of Law Number 51 PrP 1960 concerning the Prohibition of Use of Land Without Permission, refers to the use of land without permission that interferes with the rights of the authorized party, with a maximum prison sentence of three months. In addition, the Criminal Act of Land Grabbing, as regulated in Article 385 of the Criminal Code, refers to the act of a person who unlawfully sells or exchanges land that is not his to another party, and gains profit from the act, which can be subject to a maximum prison sentence of four years. The importance of awareness of the rules and provisions related to the use and ownership of land is key to preventing criminal acts that harm many parties and disrupt legal stability and justice in society.

Like several cases that occurred in Indonesia, namely in the PTUN Decision Number: 14/G/2017/PTUN-SRG, the actions taken by the defendant were proven to be legally flawed because it was proven that the issuance of this disputed object was contrary to the provisions of Article 26 paragraph 1 and PP Number 24 of 1997 concerning Land Registration, this also violates the Principle of Accuracy in the Principles of Good Governance (AAUPB).⁶⁶ Then the Panel of Judges decided that the State Administrative Decision relating to the dispute was canceled by the defendant. The Panel of Judges also decided that the Defendant must revoke and cross out the State Administrative Decision relating to the dispute from the Defendant's Office Land Book. The judge decided that the Building Use Rights Certificate (HGB) was invalid or void. The judge also required the Defendant, who is the Head of the Tangerang City Land Office, to revoke it.⁶⁷

In 2020, Polda Metro Jaya arrested officials of the National Land Agency (BPN) in South Jakarta and North Jakarta, the perpetrators issued original but fake certificates which were not the rights of the applicant for complete systematic land registration (PTSL). The BPN officials issued fake certificates, the certificates used were certificates included in the PTSL adjudication program. The original certificate belonging to the applicant was not submitted by the BPN officials, but then the legal and physical data on the SHM were

⁶⁵Gayus Lumbuun, 2018. *Law Enforcement of Land Disputes in the Perspective of Handling Cases in Courts and Prosecutors*. Seminar of ILUNI S3 FH University of Indonesia, September 14, 2018.

⁶⁶Decision, Agung, and Indonesia, Decision Number: 14/G/2017/PTUN-SRG.

⁶⁷Khairul Anam, "Land Mafia Modus Revealed, In The Most Prevalent Regions," CNBC Indonesia, 2023, <https://www.cnbcindonesia.com/news/20230712180442-4-453750/modus-mafiatanah-terungkap-di-daerah-ini-paling-banyak>.



deleted and replaced with applicant data that was not the actual PTSL applicant. The deletion of data on the certificate was not based on the applicable SOP and mechanisms. Which should be the land to be certified must go through several stages such as measurement based on the deed, checking, location survey and measurement.⁶⁸

Then there was a case involving an Indonesian artist, Nirina Zubir, starting in 2017, the perpetrator or assistant to Nirina Zubir said that the 6 land certificates were lost and their whereabouts were unknown. The perpetrator offered Nirina's mother that he had an acquaintance who was a notary who could be trusted to take care of the loss of the 6 land certificates of Nirina's family assets. Nirina's mother agreed to the offer and entrusted the perpetrator to take care of all the needs needed to take care of the loss of the 6 land certificates. Nirina also said that neither she, her mother, nor her brother had ever signed a single letter related to the need to take care of the 6 lost land certificates. After the case entered the legal realm to be processed legally, it was discovered that all of Nirina's data along with her mother and brother such as ID cards and other documents had been falsified by the perpetrator for the process of transferring the 6 certificates to the name of the perpetrator and the perpetrator's husband.⁶⁹

If we look at what happened in some of these cases, it can be seen that the land mafia does not only work alone, but is also assisted by several individuals who are related to the interests of the land mafia. Then when the files have entered the Land Office to be changed, there is no suspicious data because all have been adjusted by the perpetrators with the requirements set by the Land Office.

Analysis of the sociological basis of criminalization of land mafia using the theory of legal certainty leads to an understanding of how legal certainty in Indonesia plays a role in handling cases such as criminalization of land mafia. The theory of legal certainty states that legal certainty is an important principle in the legal system to create order, protect individuals from arbitrary actions, and ensure that the law is enforced consistently and fairly. However, in the Indonesian context, there are challenges in realizing this legal certainty. One of the obstacles in achieving legal certainty is the contradiction between justice and legal certainty. This occurs when the justice expected by society is not always achieved due to legal limitations, such as in the case of a statute of limitations where a perpetrator of a crime can no longer be prosecuted if a certain time limit has passed without an arrest. In this context, legal certainty is achieved at the expense of the element of justice, which raises doubts in society about the legal system.

In addition, the law enforcement factor is also key in creating legal certainty. However, in Indonesia, there is a tendency that law enforcement is not always carried out consistently and fairly. The public often sees law enforcement as not objective and vulnerable to political intervention or corruption. This causes public trust in the legal system and law enforcement to decline, so that street legal practices emerge as an alternative to seeking justice. Furthermore, in the context of cases of criminalization of land mafia in Indonesia, the application of the theory of legal certainty becomes very relevant. First of all, cases such as fraudulent fake land certificates, illegal land acquisitions, and data manipulation in the land administration process are concrete examples of how legal certainty is disrupted. In these cases, uncertainty arises because there is doubt about the validity of the documents used, inconsistent legal processes, and intervention by interested parties. This creates an unstable and unpredictable environment for the public, so that trust in legal institutions is eroded.

Legal certainty is also related to the implementation of fair and consistent rules and law enforcement. However, in the case of land mafia, it often happens that the rules are not strictly enforced against perpetrators of land crimes. There is a tendency to ignore law enforcement or give disproportionate treatment to the perpetrators, especially if they have connections with the authorities. In addition, legal evolution is also important in handling land mafia cases. Continuous changes in land regulations and law enforcement are needed to

⁶⁸ "Issuing Fake Certificates, BPN Officials Arrested by Police," *Tribatanews*.Is, 2022, <https://tribatanews.id/read/15129/terbitkan-sertifikat-palsu-oknum-pejabat-bpn-ditangkap-polisi>.

⁶⁹ Margareta Sevilla Rosa Angelin, Inez Devina Clarissa, and Zefaki Widigdo, "The Land Mafia Case That Befell Nirina Zubir: Is It the Result of Weak Land Law?"



address the loopholes in the system that are exploited by perpetrators of land crimes. However, this also shows that the process towards legal certainty is dynamic and requires ongoing efforts from various parties, including the government, law enforcement agencies, and the community.

Overall, the analysis of cases of criminalization of land mafia using the theory of legal certainty illustrates that efforts to create legal certainty that is in accordance with the expectations of the community are still a complex challenge in Indonesia. Hard work and commitment from various parties are needed to improve the effectiveness of the legal system in handling cases like this and create a more stable and fair legal environment for all parties involved.

The legal basis in question is the legal basis used as a reference or foundation in efforts to criminalize land mafia in Indonesia. The context in this study is to propose a reconstruction of the provisions of land mafia which is a criminal act. Because there is no law or regulation specifically regulating criminal acts of land mafia from several rules, as follows:

- Government Regulation no. 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Use Rights. Article 17 paragraph 3, Article 26 paragraph 1, Article 30 paragraph 2, Article 36 paragraph 2, Article 46 paragraph 1, Article 47 paragraph 2, Article 48 paragraph 2, Article 49 paragraph 3;
- Government Regulation No. 16 of 2004 concerning Land Use;
- Government Regulation no. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, Article 50 paragraph 1 and Article 51.
- Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration;
- Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 8 of 2011 concerning the Code of Ethics for Public Services and the Provision of Public Services within the National Land Agency of the Republic of Indonesia (BPR RI);
- Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 17 of 2013 concerning the Working Procedures of the Public Service Code of Ethics Council and Public Service Providers within the National Land Agency of the Republic of Indonesia and the UUPA;
- Government Regulation No. 24 of 1997 concerning Land Registration;
- Law No. 30 of 2014 concerning General Principles of Good Governance (AUPB), in this law the sanctions given are relatively light;
- Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning State Administrative Courts;
- Regulation of the Minister of ATR/BPN No. 11 of 2016;
- Law No. 35 of 2009, in this regulation organized crime is still not clearly qualified as a perpetrator of land mafia crimes that need to be eradicated because law enforcement of organized crime perpetrators is carried out with the concept of inclusion (deelneming);
- MPR RI Decree No. XI/MPR/1998, Law No. 28 of 1999 concerning Corruption, Collusion and Nepotism;
- Evidence of cooperation between ATR/BPN and the National Police in combating land mafia is the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 16 of 2020 as the basis for authority in handling land conflicts and disputes.

The leadership of the Attorney General's Office pays serious attention to land disputes, especially if they involve land mafia. One aspect that stands out in this context is the tendency to divert civil cases into criminal cases, which has become the focus of the Attorney General's Office. Circular Letter B/230/E/Ejp/01/2013 concerning Handling of General Criminal Cases in Which the Object is Land is concrete evidence of this seriousness, in response to the dynamics of land dispute developments. Cases involving land often have significant business value, thus increasing the trend and escalation in



criminal cases related to land. This phenomenon raises the potential for land cases to be exploited by various parties, including individuals, land mafia, and case brokers. Not infrequently, cases that should be civil are forced and engineered into criminal cases by utilizing various articles in the Criminal Code such as 170, 263, 266, 378, 385, and 406.

This Circular also reminds us of the previous Circular, namely the Circular of the Attorney General Number: SE013/A/JA/12/2011, which discusses the Guidelines for Criminal Prosecutions in General Criminal Cases. Through this Circular, authority has been delegated to the Heads of the District Attorney's Office (Kajari) to control the prosecution process in general criminal cases. With the granting of this authority, it is hoped that the Kajati and Kajari can act independently, bravely, and in line with a high sense of professional responsibility, upholding the values of justice and propriety.

This Circular reminds that in cases of land where the legal status of land ownership is based on clear, strong, and legitimate rights according to the provisions of the law, violations such as land grabbing can be processed criminally. However, if there are cases where the legal status of land ownership is not yet clear, such as in civil disputes, or in land sale and purchase transactions where the ownership status is still disputed after the transaction is carried out, then these cases should be handled in a purely civil realm. Thus, these cases should not be forced to be investigated as general crimes.

CONCLUSION

Criminal law is basically very appropriate when used in handling cases related to land mafia. Indonesia itself has had quite good regulations and institutions related to land. However, the existing regulations basically do not specifically mention land mafia, the existing regulations in the author's opinion are still inefficient, especially land regulations related to land mafia crimes such as those that are currently rampant. Existing land regulations still have to pay attention to many different regulations, making the determination of responsibility and/or punishment for perpetrators of land mafia crimes tend to take a long time to complete because they have to pay attention to many things.

REFERENCES

1. Anam, Khoirul. Land Mafia Modus Revealed, in This Region the Most. Economic Update. CNBC Indonesia. Wednesday, July 12, 2023. Accessed on the website <https://www.cnbcindonesia.com/news/20230712180442-4-453750/modus-mafia-tanah-terungkap-di-daerah-ini-paling-banyak> at October 10, 2023 18.22 WIB.
2. Arie S. Hutagalung. 2018. Law Enforcement against Land Mafia Practices. Seminar of ILUNI S3 FH University of Indonesia, September 14, 2018.
3. Andrian Sutedi, Transfer of Land Rights and Its Registration , ed. Ade Hairul Rachman, 1st ed. (Jakarta: Sinar Grafika, 2007).
4. AV Dicey, An Introduction to The Study of the Law of the Constitution (United Kingdom: Palgrave Macmillan UK, 1985).
5. Carl Joachim Friedrich, Philosophy of Law from a Historical Perspective (Bandung: Nuansa and Nusamedia, 2004).
6. Dany Try Utama Hutabarat et al., "The Eradication of Corruption and the Enforcement of the Law in Indonesia As Seen Through the Lens of Legal Philosophy," Policy, Law, Notary and Regulatory Issues (Polri) 1, no. 2 (2022): 1–8, <https://doi.org/10.55047/polri.v1i2.74>.
7. Desi Apriani and Arifin Bur, "Legal Certainty and Legal Protection in the Land Registration Publication System in Indonesia," Jurnal Bina Mulia Hukum 5, no. 2 (2021): 220–39, <https://doi.org/10.23920/jbmh.v5i2.11>. Pg. 221.
8. Dimas Dyonata Aswitok, Dimas Aswitok, and Yudi Harimurti, "The Existence Of Task Force Clean Sweep Of Illegals In The Constitutional Law Perspective," Advances in Social Science, Education and Humanities Research 383, no. IcSS (2019): 1175–79, <https://doi.org/10.2991/icss-19.2019.138>.



9. Elisa Debora Waani, "Legal Review of the Legal Force of Land Certificates Issued by Authorized Officials (National Land Agency)," *Lex Crime VI*, no. 2 (2017): 5–11, file:///C:/Users/Lenovo/Downloads/jm_lexcrimen,+1.+Elisa+Debora+Waani.pdf.
10. Gayus Lumbuun, 2018. *Law Enforcement of Land Disputes in the Perspective of Handling Cases in Courts and Prosecutors*. Seminar of ILUNI S3 FH University of Indonesia, September 14, 2018.
11. Habib. Salma, Prima Novianti., Adjie, "Resolution of Land Disputes Concerning Double Certificates Due to Land Mafia Crimes," *Journal of Education and Counseling* 5, no. 1 (2023): 5144–53, <https://doi.org/2685-936X>.
12. i Gusti Agung Ngurah Agung, "Application Of Modern Legal Positivism Towards The Principle Of Legal Certainty In Land Ownership Certificates" (Krisnadwipayana University, 2020), <http://digilib.iblam.ac.id/id/eprint/147/1/Disertasi.pdf>.
13. I Nyoman Ngurah Wairocana; *Good Governance and Its Implementation in the Implementation of Regional Government in Bali*, Postgraduate Dissertation, Airlangga University, Surabaya, 2005, page 12
14. JBJM Teo Berge & AJ Bok, *Codification Of Administrative Law In The Netherlands in (GH Addink, General Principle of Good Governance Under GALA)* Paper presented at the Workshop and Seminar On Good Governance, Cooperation between Utrecht University-Airlangga University, Surabaya, 2001, page 102.
15. Karl R. Popper, *Open Society and Its Enemies, (The Open Society and Its Enemy)* , ed. Uzair Fauzan, 1st ed. (Yogyakarta: Student Library, 2002).
16. Khoirul Anam, "Land Mafia Modus Revealed, In The Most Prevalent Regions," *CNBC Indonesia*, 2023, <https://www.cnbcindonesia.com/news/20230712180442-4-453750/modus-mafiatanah-terungkap-di-daerah-ini-paling-banyak> .
17. Kraig Bergnaum, (2022). Which crimes are the most serious? Which crimes are the most serious? (legalknowledgebase.com)
18. Laurensius Arliman. S, "Realizing Good Law Enforcement to Realize Indonesia as a Legal State," *Doctrinal Law Journal* 2, no. 2 (2017): 509–32.
19. Margareta Sevilla Rosa Angelin, Inez Devina Clarissa, and Zefaki Widigdo, "The Land Mafia Case That Befell Nirina Zubir: Is It the Result of Weak Land Laws," *National Seminar on Technology and Multidisciplinary Sciences (SEMNASTEKMU)* 1, no. 1 (2021): 160–65, <https://doi.org/10.51903/semnastekmu.v1i1.99>.
20. Muhammad Solikhudin, "Good Governance In Law No. 28 Of 1999 Concerning The Implementation Of A Clean State Free From Corruption, Collusion, And Nepotism From The Perspective Of Maqāṣid Al-Shar'ah Jasirauda" (Sunan Ampel State Islamic University, 2020), <https://core.ac.uk/download/pdf/328277056.pdf>.
21. Muhammad Mahfud MD, *Legal Politics in Indonesia.*, PT. Raja Grafindo Persada, Depok, 2009 p. 367.
22. Nirwana Dewi Harahap et al., "The Importance of Starting Anti-Corruption Education Early," *Jurnal PKM: Pengabdian Kepada Masyarakat* 02, no. 01 (2023): 55–58, <https://www.marsipature.makarioz.org/index.php/marsipature/article/view/38>.
23. Ni'matul Huda, *Regional Government Law* , 2nd ed. (Bandung: Hikam Media Utama, 2019).
24. Putri Fransiska Purnama Pratiwi, "Efforts To Eradicate Land Mafia In Palangka Raya City," *Legal Literacy* 5, no. 2 (2021): 23, <https://doi.org/2598-0750>.
25. Prasetyo Aryo Dewandaru, Nanik Tri Hastuti, and Fifiana Wisnaeni, "Land Dispute Resolution Regarding Duplicate Certificates at the National Land Agency," *Notarius* 13, no. 1 (2020): 154–69, <https://doi.org/10.14710/nts.v13i1.29170>.
26. Sofyan A. Djalil. 2018. *Eradication of Land Mafia*. Seminar of Doctoral Alumni of Law Faculty, University of Indonesia, 14 September 2018.
27. Salma, Prima Novianti., Adjie, "Resolution of Land Disputes Concerning Duplicate Certificates Due to Land Mafia Criminal Acts."
28. Sir Ivor Jennings, *The Law and the Constitution* , ed. Sir Ivon Jennings (British: Creative Media Partners, LLC, 2021).



29. Sudarsono, in Istislam, Government Coercive Sanctions in Environmental Protection and Management, Dissertation, Unair, 2012, page 287
30. Vani Wirawan, "The Roots of the Rampant Land Mafia," *AI YAZIDIY: Social Sciences, Humanities, and Education* 1, no. 2 (2019): 35–43, <https://doi.org/https://doi.org/10.55606/ay.v1i2.526>.
31. Yunawati Karlina and Irwan Sapta Putra, "Eradication of Land Mafia Using Criminal Law Instruments in Indonesia," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 2, no. 1 (2022): 109–30, <https://doi.org/10.46306/rj.v2i1.28>.
32. Government of Indonesia, "Law of the Republic of Indonesia No. 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State" (1999).
33. DPR RI, "Law Number 9 of 2014 Concerning Amendments to Law Number 5 of 1986 Concerning State Administrative Courts," 113, no. 2 (2004): 180–90.
34. Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Principles.
35. Law of the Republic of Indonesia Number 30 of 2014 Concerning Government Administration,
36. Law of the Republic of Indonesia Number 12 of 2011 Concerning the Formation of Legislation."
37. Decision Of The People's Consultative Assembly Of The Republic Of Indonesia Number Xi/Mpr/1998 On State Administration That Is Clean And Free From Corruption, Collusion, And Nepotism," Pub. L. No. Xi (1998),.
38. PP No. 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Use Rights.
39. PP No. 16 of 2004 concerning Land Use.
40. PP No. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land.
41. Government Regulation of the Republic of Indonesia Number 38 of 2007 Concerning the Division of Government Affairs Between the Government, Provincial Governments, and Regency/City Governments.
42. Government of the Republic of Indonesia, "Law Number 25 of 2009 Concerning Public Services," Pub. L. No. 25 (2009), <https://peraturan.bpk.go.id/Details/38748/uu-no-25-tahun-2009>.
43. Presidential Decree Number 34 of 2003 Concerning National Policy in the Land Sector," Pub. L. No. 34, 1 (2003), <https://peraturan.bpk.go.id/Home/Details/56126/keppres-no-34-tahun-2003>.
44. Decisions, Supreme Court, and Republic of Indonesia, Decision Number: 14/G/2017/PTUN-SRG (2017).
45. Decision, Agung, and Indonesia, Decision Number: 14/G/2017/PTUN-SRG.