

The Urgency the Role of Amicus Curiae in the Eradication of Land Mafia Crimes

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Abstract

Amicus curiae is needed by the development of judicial practice in our country. This is as a result of the crime development which is more completed and massive. The existence of amicus curiae is expected to find the answers in every deadlock situation that occurs in the case examination process. It is including on land mafia. They do it through digital media, carried out by actors who have skills and good knowledge in law , and has carried out by people who have access to land documents. It cannot be considered ordinary and also cannot be enforced with ordinary law enforcement methods. The design of this article was qualitative law research. Based on the research before, It can concluded that the criminal mode of the land mafia is not in general but specific in land documentation. It also uses technological advances to change the administrative data of land registration and the land ownership. They also use specialized knowledge about land, which is not always mastered by criminal law experts. This condition showed that Amicu Curie is needed to solve criminal cases that have a more complicated mode, if compared it to traditional crimes. The existence of amicus curiae in the eradication of land mafia cases has not been yet recognized by legislation, either in the context of Technical Guidelines Number: 01/Juknis/D.VII/2018 on the prevention and eradication of Land Mafia or in the Criminal Procedure Code. Therefore, the term of amicus curiae is not formally found in Indonesian criminal legislation. The judges and prosecutors ignore the role of amicus curie and is different with expert witnesses who are juridically recognized and required to be present by legal mechanisms.

I. Introduction

The The innovation of technology has brought the convenience for better life. The book with the title “Living Digital 2040, Future Work, Education and Healthcare”, explain that“, “digital technologies have made possible new interactions and connections across the city and around the world. Living digital means we can go beyond the physical to also focus on interactions, and explore

new regional and global possibilities". The opinion describe that the digital technologies mean connect and interaction each other easily. Digital living means beyond the physic and also focus on interaction, explore the regional and new global probabilities.¹

One of the crime is cyber crime problem. According to Osman Goni, Md. Haidar Ali, Showrov, Md. Mahbub Alam, dan Md. Abu Shameem, "*cyber crime is defined as any criminal activity which takes place on or over the medium of computers or internet or other technology recognized by the Information Technology Act*".² This era has brought the crime beetween human relationship and technology and also in proliferation crime.

Technologi in industrial era 4.0 has bourgt the information that impact on advancement of civilization and society mindset. In other hand, the society mindset is not only create the crime from all social aspect but also from the economy life. One of them is mafia land. This criminal was born because of to get the benefit through against the law. The land mafias uses the way to raise their purposes:³

1. They took the no owner land. Further, they have cooperation with BPN to change the data at Pusdatin ATR/BPN and release the certificate.
2. They changed the data. They removed physic and linguistic data and later, change the data and expanded the land.
3. They have changed the data throught illegal acces at Pusdatin ATR and change the data of electronic certificate.

The cases have been obstructed objectives of national land law development.⁴ The crime is not only on the person life but also on national life. Operandi ways has retrieved to proofing problems. It is in action crime as *strafbaar feit* as a result of technology development and social culture of human being and has brought the urgensi to reform of proofing low in criminal aspect.

¹King Wang Poon, Hyowon Lee, Wee Kiat Lim, Rajesh Elara Mohan, Youngjin Chae, Gayathri Balasubramanian, Aaron Yong, dan Raymond Yeong, *Living Digital 2040 : Future of Work, Education and Health Care*, Lee Kuan Yew Centre for Innovative Cities Singapore University of Technology and Design, Singapore. hlm. 33.

²Osman Goni, Md. Haidar Ali, Showrov, Md. Mahbub Alam, dan Md. Abu Shameem, "*The Basic Concept of Cyber Crime*", *Journal of Technology Innovations and Energy*, 2022, hlm. 29. <https://doi.org/10.5281/zenodo.6499991>, pada 8 Agustus 2023.

³Arief Junianto, Waspada! Ini Modus Mafia Tanah yang Paling Sering Terjadi, <https://news.harianjogja.com/read/2022/07/26/500/1107265/waspada-ini-modus-mafia-tanah-yang-paling-sering-terjadi>, 12 Mei 2022.

⁴Nur Cahyant, Budi Raharjo, dan Sri Endah Wahyuningsih, Sanksi Terhadap Notaris Yang Melakukan Tindak Pidana Menurut Peraturan Perundang-Undangan Di Indonesia, *Jurnal Akta*, Vol 5 No 1, 2018, hal. 288-289.

The dynamics of law develop in line with the development of disruptive society life. It has impact to the crime such as mafia land. The high price of land makes it as an object that everyone wants to own including land mafia. They take advantages from selling transaction. This has an impact on the issue of inspection and proof in criminal cases. It cases often unresolved because is not traditionally. The actors has planned the crime greatly and cannot found in previous cases. They crimes is categorized as contemporary crime and well-organized. They got off scot-free because law enforcers were not careful in examining the case. The proofing of criminal act required honesty and mentality from them. Mental aspects are important in determining the chronology of a crime. It is also important to determine of punishment and the judges are not able to define of it because it is a physiology domain.⁵ In other case, the proofing domain has basic assessment and evidence analyzed. Article 184 the criminal procedure code is out of date because it does include the digital evidence and physiology domain.

Amicus curiae is one of the alternative ways of proving a criminal case in court. Amicus curiae allows third side who is interested on it to give their opinion not do the fight.⁶ Amicus curiae has an important position as a group that is able to provide their skills in a court. However, the function of Amicus curiae is not the same with *yuridis* funtion on criminal procedure law. Amicus curiae does not manage in KUHAP clearly.⁷ Some of article gives Amicus Curie the opportunity but the law practitioner or academic person does not use it. The Judiciary uder supreme court does not have Amicus curiaer, however, article 5 (1) law No 48 of 2009 about judicial authority said "Judges and constitutional judges are obliged to explore, follow, and understand the values of law and justice in society life. This concept also supported by article 14 regulation of constitutional court No. 06/PMK/2005, the sides who because of their positions, main duty, and function need to hear their descriptions. In conclusion, Amicus curiae has adopted by the rule of constitutional court. The other law which allows the using Amicus curiae

⁵Maulida Fathia Azhar dan Taun Taun, "Aspek Hukum Terhadap Peran Psikologi Forensik Dalam Penanganan Pelaku Kejahatan Tindak Pidana Ditinjau Pada Hukum Positif Indonesia". *Jurnal Meta-Yuridis*, Vol. 5, No.2, 2022, hlm. 162-163.: <https://doi.org/10.26877/m-y.v5i2.13527>, 12 May 2023.

⁶Natanael Israel Kumendong, Wempie Jh. Kumendong, dan Roy Ronny Lembong, "Implikasi Perkembangan Alat Bukti Pada Pembuktian Tindak Pidana Dalam Kitab Undang-Undang Hukum Acara Pidana", *Lex Crimen*, Vol. X, No. 2, hlm. 130-134.: file:///C:/Users/windows%2010%20Pro/Downloads/jm_lexcrimen,+13.+Natanael+Israel+Kumendong_crimen.doc.pdf, pada 12 May 2023.

⁷Sukinta, "Konsep dan Praktik Pelaksanaan Amicus Curiae Dalam Sistem Peradilan Pidana Indonesia", *Administrative Law & Governance Journal*, Volume 4, Issue 1, hlm. 90.: [file:///C:/Users/windows%2010%20Pro/Downloads/11256-36874-1-SM%20\(1\).pdf](file:///C:/Users/windows%2010%20Pro/Downloads/11256-36874-1-SM%20(1).pdf), 12 May 2023.

is the law no 8 of 1981 in article 180 (1) KUHAP. The rule declared that “In judicial proceedings, the presiding judge may request expert testimony and new materials by those in need”. The rule allows *Amicus curiae* in judicial proceedings.

Based explanation above, *Amicus curiae* concept has adopted by the rule in Indonesia eventought it does not say as directly. There is no basic law that admit the using it. The judges gives their considerations and wise. The judges have to know about the law.⁸ *Amicus curiae* just gives their law opinion. *Amicus curiae* is not as evidence tools on KUHAP, because the proofing power is in article 183 KUHAP. Base on the law, he judge who decides a case is prohibited from giving a sentence without being at least two valid pieces of evidence and conviction based on the evidence.⁹ There is no juridic recognition about *amicus curiae* as evidence tool in KUHAP. Eventhought, *Amicus curiae* does not prohibit in judicial proceeding. However, it makes the judges ignore about the function of *Amicus curiae*. The function of *Amicus curiae* which does not running as appropriate and has impact of the eradication of the land mafia was not accomplished.

The discussion about *Amicus curiae* as a examination and evidance has done by some law pratitioners as follows:

1. Article was made by Rizal Hussein Abdul Malik, Antonius Sidik Maryono, and Pramono Suko Legowo with the title “Penerapan *Amicus Curiae* Dalam Pemeriksaan Perkara Di Pengadilan Negeri Tangerang”. It explains about *Amicus curiae* which does not have basic law that manage it. However, *Amicus curiae* is accepted by article 5 (1) UU no.48 of 2009 about judicial power.¹⁰
2. Article was made by Muhamad Ilham Hasannudin dan Amy Yayuk Sri Rahayu with the title “Peranan *Amicus Curiae* Pada Putusan Gugatan Terhadap Proses Seleksi Calon Hakim Agung Kajian Putusan Nomor 270/G/2018/Ptun-Jkt”. This research describes that the panel of judges on their decision No 270/G/2018/Ptun-Jkt have paradox reason. They adopted

⁸Linda Ayu Pralampita, “Kedudukan *Amicus Curiae* Dalam Sistem Peradilan Di Indonesia”, *Lex Renaissance*, No. 3, Vol. 5, hlm. 566.: [file:///C:/Users/windows%2010%20Pro/Downloads/17677-Article%20Text-45003-49386-10-20210420%20\(1\).pdf](file:///C:/Users/windows%2010%20Pro/Downloads/17677-Article%20Text-45003-49386-10-20210420%20(1).pdf), pada 12 Mei 2023.

⁹*Ibid*, p. 567.

¹⁰Rizal Hussein Abdul Malik, Antonius Sidik Maryono, dan Pramono Suko Legowo, “Penerapan *Amicus Curiae* Dalam Pemeriksaan Perkara Di Pengadilan Negeri Tangerang”, *Soedirman Law Review*, Vol. 4, No. 2, 2022, hlm. 160-161.

on Amicus curiae opinion and jurisprudence but they adopted the analogy of circular letter of supreme court.¹¹

In this article, the writer focus on the urgency of Amicus curiae in eradication of land mafia.

2. Research Method

The design of this article was qualitative law research. This methode is concern in comprehend aspect in deeply which using in-depth analysis. It study about the problem case by case. Qualitative research believe in one problem will be different with other. The data must be complete and in good quality. It consists on primer and seconder data. The primer data was verbal data that has said by believing subject and the seconder data was documentation from graphic, film, video recording, stuffs, another that can support the primer data.¹²

3. Results and Discussion

Amicus Curiae in the Indonesian Criminal Justice System

Amicus Curiae has known at court practices since the beginning of 9th century in accent Roman. It continues to expand around the world. Amicus Curiae is a person or a profesional organization, as a third sides which is not a person in the case, however have a care to the case and then gives the description thorough verbal or writing by themselves or court request.¹³ Amicus Curiae was born based on collaborative governance, collaborative governance concept which has meaning an activity that is binding between related parties. The parties are cooperation partner to raise the purpose to produce goods and services.¹⁴ Amicus curiae has an important position as parties who capable to provide their expertise in criminal evidence. *das sein amicus curie* has an important role in evidence deadlocks in court. Philosophically, or *das sollen amicus curiae* is a way to ensure justice in the criminal evidence room.

The Urgency of Amicus Curiae in the Eradication of Land Mafia.

The meaning of land mafia has not founded in law no 5 of 1960 about Basic Agrarian Provisions or laws outside of that rule. Land mafia was founded at technical Guidance Number: 01/Juknis/D.VII/2018 on the Prevention and Eradication of the Land Mafia. Land Mafia is Individuals, groups and/or legal

¹¹Muhamad Ilham Hasannudin dan Amy Yayuk Sri Rahayu, “Peranan Amicus Curiae Pada Putusan Gugatan Terhadap Proses Seleksi Calon Hakim Agung Kajian Putusan Nomor 270/G/2018/Ptun-Jkt”, *Jurnal Yudisial*, Vol. 15, No. 1, 2022, hlm. 2.

¹²Afid Burhanuddin. “Metodologi Penelitian: Penelitian Kuantitatif dan Kualitatif”, <https://afidburhanuddin.wordpress.com>, diakses pada 12 Mei 2023.

¹³Muhamad Ilham Hasannudin dan Amy Yayuk Sri Rahayu, *op, cit*, hlm. 5.

¹⁴Ni Luh Yulyana Dewi, “Dinamika Collaborative Governance Dalam Studi Kebijakan Publik”, *Jurnal Ilmiah Dinamika Sosial*, Vol 3, No. 2, 2019, hlm. 205.

entities who are knowing to commit crimes that can cause the hinder and implementation of land case. Land Mafia is two or more people working together to occupy lands right of other. The following methods are commonly used by the land mafia such as: falsification of documents (for rights), legalization in court, engineering incidents, collusion with officials to obtain the legality, crimes corporations such as embezzlement and fraud, destruction of land rights and loss the land certificate. There are three reasons why the land mafia still exist, lack of controlling, lack of law enforcement, and lack of transparency. Furthermore, land is a profitable investment and has high the economic benefits and then land is always also needed by the human.¹⁵

According to land law expert of Indonesia Christian University, Aattje Tehupeiori on a national seminar "*Repleksi Akhir Tahun Memutus Ekosistem Dan Episentrum mafia tanah*" at the GBHN Building, MPR / DPR RI Complex on Tuesday, December 14, 2021, said that there are many modes used by the land mafia because of the inaccuracy of ownership land data which are recorded in RT, RW, district, Tax Office, BPN. Inaccurate data results in multiple ownership, disputes, land conflicts, etc.¹⁶ This is done by a malicious conspiracy, has the impact cases in the society occurred. Meanwhile, According to Yunawati Karlina and Irwan Sapta Putra, the modus operandi of the land mafia is to falsify documents to the land objects in Girik/Petruk form; certificates, AJB, PPJB; Land Certificates; Deed of Inheritance, statement of inheritance: Signature forgery, creating new data. It is This is done by looking for data that related to the victim's data, has done the new transaction with one of heirs. Next, they sued land ownership and cooperate with the court, sale and purchase fictive, embezzlement, leasing, controlling land in illegal (illegal land occupation), engineering cases, brokers and unscrupulous notaries has also involved, cooperating with law enforcement officials and BPN as a person, and inaccurate land ownership data has recorded, so it opens to the land mafia to do their act.¹⁷ There are several obstacles in prosecuting land mafia cases, as follow:¹⁸

- a. BPN officials have not been able to provide data and information that related to the issuance of Certificates.
- b. It is difficult to get location access and the boundary retrieval by the land department and charged is according to the size of the land object.

¹⁵Bambang Prayitno, "Pertanggungjawaban Pidana Mafia Tanah Dalam Tindak Pidana Korupsi", *Jurnal Hukum dan Pembangunan Ekonomi*, Volume 9, Nomor 2, 2021, hlm. 273.

¹⁶Yunawati Karlina dan Irwan Sapta Putra, "Pemberantasan Mafia Tanah Dengan Menggunakan Instrumen Hukum Pidana Di Indonesia", *Jurnal Res Justitia: Jurnal Ilmu Hukum Program Studi Hukum Fakultas Hukum Universitas Bina Bangsa*, Volume 2, Nomor 1, 2022, hlm. 126.

¹⁷*Ibid*, hlm. 128.

¹⁸*Ibid*, hlm. 127-128.

- c. PPATK/Notary could not provide information and data before the investigation process.

In accordance with the land mafia mode. The case is not generally, but uses land document in specific. It is also change the administration data and ownership of it. They also use the specific land knowledge that not all criminal law experts have. Amicus curiae is needed in solving criminal cases that have complicated mode than other traditional crimes. The role of amicus curiae in land mafia issues which it have seen in the land mafia case in Malang Sari, Lampung. Soerya Trisnanta as an academic became an amicus curiae in the case.

Lampung Police Criminal Investigation Director, Kombes Reynold EP Hutagalung, said the land mafia case began in June 2022 with the suspect was Soejatno, a retired police officer, sold 10 hectares of land in Malangsari village. He sold without using supporting by original documents, but fake document that made by Sayuto, head of Gunung Agung Village, East Lampung. Soejatno sold the land to AM and was helped by RA as notary. RA made fake sale and purchase deeds. After ownership has transferred to the witness AM, the land object was submitted for the issuance of a certificate ownership to the South Lampung BPN. In the process, a measurement of the land was carried out by the suspect FBM as a surveyor. He asked for a reward of 2.5 million based on the request of witness AM. Then, he reported about the existence of another party's to control over the land object as settlements and minutes. Furthermore, He published six books of AM's SHM. AM reported this to the Malangsari village head and he put up ownership signs on the land object. Residents who did not accept the land because they had lived on since the 1990s. Immediately, they reported to the Lampung Police on the alleged forgery of land certificates.¹⁹ Legal aid organizations asked Tisnanta as Amicus Curie in this case. It is because he as academis that has has deep knowledge in exposing the inaccuracy the legal process in the Malang Sari case.²⁰ The existence of land mafia continues to grow and is not only in the Malang Sari case.

CNN Indonesia noted that there were 434 cases of land mafia from 2021 to 2022. In 2021, there were 253 cases of land mafia and only 179 cases were resolved. In 2022, there were 181 cases of land mafia and only 93 cases were

¹⁹Salda Andala, *Polda Ungkap Kronologis Mafia Tanah Penyerobotan Lahan di Desa Malangsari*, <https://m.lampost.co/berita-polda-ungkap-kronologis-mafia-tanah-penyerobotan-lahan-di-malangsari.html>, 11 March 2023.

²⁰Josua Napitupulu, *Menanti Keseriusan Penegak Hukum Usut Mafia Tanah Malang Sari*, <https://balam.lampung.com/menanti-keseriusan-penegak-hukum-usut-mafia-tanah-malang-sari/>, pada 12 May 2023.

resolved by law enforcement.²¹ In kendari the number of land mafias has also increased. in 2022, 60 cases of land mafia were recorded. These cases covered an area more than 54,000 hectares with a total loss of 2.5 trillion rupiah and involved 412 mafias from various professions.²² Last July 19, the Central Java Police through the Candi Puser Bumi Land Mafia succeeded to catch 12 suspects in the cases. The total of loss because of the cases were about 25 billion rupiah.²³

Various narratives related to the urgency amicus curiae in eradicating land mafia cases have not been yet recognized by the legislation, Both in the context of Technical Guidance Number: 01/Juknis/D.VII/2018 on the Prevention and Eradication of Land Mafia in the Criminal Procedure Code. So, the term of amicus curiae is not formally found in Indonesian criminal legislation. The judges and prosecutors ignore the role of amicus curie and is different with expert witnesses who are juridically recognized and required to be present by legal mechanisms. The absence of experts as amicu curiae has also resulted in various deadlocks on the examination. The proofing cases that are complicated and require experts who have experience both in the field of law and outside the law. The absence of experts as amicu curiae has also resulted in various deadlocks in the examination and proof in cases that are complicated and require experts who have experience both in the field of law and outside the law. Expert testimony is also unable to break the deadlock of criminal trial.

4. Conclusion

Based on explanations above, it can be understood that the existence of amicus curiae in the eradication of land mafia cases has not recognized yet by the legislation. Both in the context of Technical Guidance Number: 01/Juknis/D.VII/2018 on the Prevention and Eradication of Land Mafia in the Criminal Procedure Code. Therefore, the term of amicus curiae is not formally found in Indonesian criminal legislation. The judges and prosecutors ignore the

²¹Dika Kardi, Sepanjang 2021- 2022 Ada 434 Mafia Tanah, [²²Kendari Pos, Jumlah Kasus Mafia Tanah Dikendari Meningkat Pada Tahun 2022, \[²³Agus AP, Setahun, Polda Jateng Tetapkan 12 Tersangka Kasus Mafia Tanah, \\[Ahmad Hadi Prayitno: The Urgency the Role of Amicus Curiae
in the Eradication of Land Mafia Crimes\\]\\(https://radarsemarang.jawapos.com/jateng/721398238/setahun-polda-jateng-tetapkan-12-tersangka-mafia-tanah, 12 August 2021.</p></div><div data-bbox=\\)\]\(https://kendaripos.fajar.co.id/2022/12/09/sukses-berantas-mafia-tanah-kepala-bpn-sultra-raih-pin-emas/, 12 May 2022.</p></div><div data-bbox=\)](https://www.cnnindonesia.com/nasional/20220630132705-12-815534/sepanjang-2021-2022-ada-434-mafia-tanah-sulsel-3-ditargetkan-selesai#:~:text=Tahun%202022%20ada%20181%20laporan,Kamis%20(30%2F6).&text=Nana%20menerangkan%20sejak%20tahun%202021,untuk%20menuntaskan%20kasus%20mafia%20tanah, 12 May 2022.</p></div><div data-bbox=)

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