

**COUNTERING THE JUDICIAL MAFIA FROM THE POLITICAL PERSPECTIVE OF NATIONAL LAW****Tantimin**

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Nama Email: [tantimin@uib.edu](mailto:tantimin@uib.edu)**ABSTRACT**

*Judicial mafia is a crime of abuse of office or can be said to be a dirty game in law enforcement and involves law enforcement officials. From the political aspect of national/criminal law, the judicial mafia can be an abuse of office that causes a violation of the law. The policy of developing the justice system is defined as a reasonable effort to develop and improve its quality. The effort to eradicate the judicial mafia is essentially to restore public trust and respect for the judicial system. The purpose of this study is to analyze and describe the efforts to overcome the judicial mafia in law enforcement and review the law enforcement process carried out by law enforcement officers in achieving justice. This research uses normative legal research methods. The data is based on secondary data obtained from library sources or legislation. This study shows that overcoming the judicial mafia requires a policy in the development of the justice system, which is defined as part of reasonable efforts to develop and improve the quality of the justice system. The effort to eradicate the judicial mafia is essentially an effort to restore public trust and respect in the judicial system.*

**Keywords:** *Judicial Mafia, Political Perspektive, Law***A. INTRODUCTION**

Law is a means and system for realizing justice in society. Law is also a tool to regulate and organize social life, both written and unwritten.<sup>1</sup> With this law, it is hoped that it will reduce crime in society. In law, some systems are made to achieve justice.<sup>2</sup> However, in the legal system created, there are problems carried out by law enforcers, such as what happens in the judicial system, which interferes with the law enforcement process.<sup>3</sup> An excellent judicial system can provide guarantees of justice, public safety and can foster public trust and respect. A law enforcement system is a unit that includes the judicial system and the judicial power system. The criminal justice system has a long stage carried out by law

enforcement officers under their authority. At this stage, “dirty games” or abuse of authority by law enforcement officers are possible. It is increasingly developing in the justice system in Indonesia and is referred to as the “Judicial Mafia”. The term judicial mafia concerns not only the abuse of power but also interests, where this does not only occur within the judiciary or courts but also more broadly in the law enforcement system, which is an inseparable unit.<sup>4</sup>

Because of several facts explained before, it is necessary to develop a judicial development policy as a reasonable effort to develop or improve quality.<sup>5</sup> Policy development and quality improvement in the judiciary involve various vital aspects.<sup>6</sup> Overcoming the judicial mafia can be carried out with an integral approach, making integration between criminal politics and

1 Suryadi, E. A., & Supardi, H. (2021). Mewujudkan Sistem Peradilan Pidana Terpadu Melalui Case Management System (Studi di Kejaksaan Negeri Kota Bogor). *Jurnal Suara Hukum*, 3(1), 1-25.

2 Appludnopsanji, A., & Pujiono, P. (2020). Restrukturisasi Budaya Hukum Kejaksaan Dalam Penuntutan Sebagai Independensi di Sistem Peradilan Pidana Indonesia. *SASI*, 26(4), 571-581.

3 Samsuduha, A., & Ibrahim, I. (2019). Perluasan Kewenangan Komisi Yudisial Dalam Rangka Pemberantasan Praktik Mafia Peradilan. *Legalitas: Jurnal Hukum*, 10(2), 247-274.

4 Arief, B.N. (2011). *Kapita Selekta Hukum Pidana, Tentang Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice System)*, 2011, Badan Penerbit Universitas Diponegoro Semarang, p. 61

5 Suparman, E. (2017). Menolak Mafia Peradilan: Menjaga Integritas Hakim Menyelaraskan Perbuatan dan Nuraninya. *Jurnal Hukum dan Pembangunan*, 47(1).

6 Wiradinata, W. (2010). Masalah Mafia Peradilan dan Korupsi di Indonesia. *Siyar Hukum*, 12(1), 49-61.



social politics and a combination of efforts to overcome penal and non-penal crimes.<sup>7</sup> This approach includes actions that are limited to criminal law enforcement and the quality of individuals. Those individual qualities are Human Resources, institution, work procedures or management, facilities and infrastructure, legal substance or statutory provisions, and environmental quality such as social, economic, political, and cultural conditions, including the legal culture in society. In general, efforts to improve the quality of the judiciary/law enforcement must cover all aspects and procedures related to the quality of the judiciary.<sup>8</sup>

The policy for developing the justice system is a reasonable effort to develop or improve the quality of the justice system.<sup>9</sup> It is identical with the goal of reform, namely seeking to improve the quality of the judicial system for the better, because to reform means to make better, become better, change for better or return to a former good state. In other words, reform of the judicial system means “improvement of the quality of the judicial system”.<sup>10</sup>

This improvement in the quality of the justice system is not limited to the judicial process or law enforcement within the courts but also extends to the entire justice system.<sup>11</sup> The policy of developing or improving the quality of the judiciary is related to several aspects that can affect the quality of the judicial process or law enforcement. Some of these aspects include individual qualities such as human resources, institutions, work or

management mechanisms, facilities and infrastructure, legal substance or statutory regulations, and the social, economic, political, cultural environment, including legal culture in society. Therefore, efforts to improve the quality of the judicial system in law enforcement must cover all aspects and procedures that can affect the quality of the justice system itself. One of the aspects of quality development that was put forward was the issue of human resource development, which in this discussion is limited to the professionalism of the police, prosecutors, and legal advisors.<sup>12</sup> In tackling the judicial mafia, it is also necessary to increase the professionalism of judges and clerks. The professionalism of human resources is essentially able to improve the quality of the judiciary, but what is still a problem is whether professionalism without accountability can take action against judicial mafia problems. This accountability issue is relevant to efforts to tackle the targeted judicial mafia.<sup>13</sup> Based on the description above, the problems discussed in this research are: How are the integral efforts in overcoming the judicial mafia? Furthermore, how are the efforts to overcome the judicial mafia seen from the political aspect of national law?.

## B. RESEARCH METHODS

This research uses normative legal research methods. Where the researcher uses secondary data obtained from library sources relating to the issues raised and legislation. Normative legal research is also known as doctrinal legal research. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. This research refers to the legal norms contained in various laws and regulations, court decisions.

## C. DISCUSSION

### 1. Scope of the Judicial Mafia

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>7</sup> Arief, B. N. (2008). *Bunga Rampai Kebijakan Hukum Pidana*, Kencana Predanamedia Grup, p. 6

<sup>8</sup> Arif, B.N. (2007). *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, 2007, Kencana Predanamedia Grup, p. 39

<sup>9</sup> Widodo, J. P. (2012). Reformasi Sistem Peradilan Pidana dalam Rangka Penanggulangan Mafia Peradilan. *Jurnal Dinamika Hukum*, 12(1), 108-120.

<sup>10</sup> Mustofa, M. (2013). Suap Menyuap dan Mafia Peradilan di Indonesia: Telaah Kriminologis. *Masalah-Masalah Hukum*, 42(1), 1-5.

<sup>11</sup> Kholiq, A. (2017). Kajian Budaya Hukum Progresif Terhadap Hakim Dalam Penegakan Hukum Pada Mafia Peradilan (Judicial Corruption) Di Indonesia. *Justisi Jurnal Ilmu Hukum*, 2(1).

The name Mafia comes from Italian. On the island of Sicily, the Mafia is also called Mafioso. Meanwhile, in Naples and its surroundings, the Mafia is known as the Camora. Mafia, Mafioso, or Camora is a term that has a negative connotation for an organized group (commonly called Cosa nostra) that carries out activities to achieve its goals. This group always uses equipment and is accompanied by psychological (terror) violence, physically and at the same time disturbing objects and destroying the souls of others.<sup>14</sup>

The judicial mafia has a sociological and criminological nature. Its existence is confirmed in society, and criminologically the Judicial Mafia describes the reflection of a reality whose elements of existence are against official and material law.<sup>15</sup> In other words, the Judicial Mafia is a crime because its existence violates the law, norms of justice, and social norms that live in society. The Judicial Mafia often carries out the actions of bribery and abuse of power, authority, position, or opportunities owned by the law enforcement officers concerned to benefit themselves, other people, or corporations. This act can be qualified as a corruption offense. The Judicial Mafia can occur in judicial bodies; the elements can be the police, prosecutors, judges, correctional officers, and lawyers. Therefore, the Judicial Mafia can be equated with judicial corruption.<sup>16</sup>

In terminology, the judicial Mafia is a term for a group of people who carry out crimes as their profession. People who are members of this group are called Mafiosos. They are well organized, have great solidity and loyalty to their leaders and organizations, carry out their work reliably, and comply with organizational rules. The word judiciary in Mafia terminology includes the legal assembly, the judicial assembly, the police, and the prosecutor's office. Even within the criminal justice system, prisons and lawyers

are also involved. Thus, the word "judicial" in the terminology of the Judicial Mafia gives an illustration that the evil acts committed by the Mafia can occur in the aforementioned judicial bodies, which have clerks in them.<sup>17</sup>

On the other hand, in Indonesia, even though it is called the Judicial Mafia, their actions are also crimes, but the people do not belong to any organization. The Judicial Mafia is only intended to carry out bribes and abuse power, authority, position, or opportunities possessed by the law enforcement officers concerned. The goal is to benefit oneself, other people, or corporations, so it is better to use the term judicial corruption.<sup>18</sup>

In a necessary criminal law enforcement process, the parties involved in the judicial process are the Reporter or Complainant, the Reported Party or the Complainant, Investigators, Public Prosecutors, Registrars, Judges, and Correctional Officers. In the law enforcement system, starting from the investigation, prosecution, examination in the District Court to the Supreme Court and the stage of criminal execution, law enforcers can play dirty games. One example of a judicial mafia problem at the investigation level is the Bank Indonesia Liquidity Push case. This case involves Tri Gunawan and Artalyta Suryani as the executor of corruption crime engineering at the investigation level on behalf of the defendants Bibid Ryanto and Chandra Hamzah. Anggodo became a broker by carrying out manipulations to form collusion and tax evasion by the suspect Gayus Tambunan. The Commissioner-General of Police, Susno Duadji, reported that this case involved the Acting Director-General of Taxes and law enforcement officers as defendants. It illustrates a glaring offense regarding the judicial mafia. Of course, the growth of judicial mafia cases does not end here; even though it was

14 Wahyu, W. (2014). Masalah Mafia Peradilan dan Korupsi di Indonesia, *Syar Hukum*, Vol 12, No 1.

15 Mustofa, M. (2013). *Op.Cit.*

16 Tauhid, I. (2020). Kebijakan Penanggulangan Praktek Mafia Peradilan di Lingkungan Mahkamah Agung. *Ius Poenale*, 1(2), 107-118.

17 Gunakaya, A.W. (2010). Pemberantasan Mafia Peradilan dengan Pemberdayaan Gaya Sentrifugal dan Sentripetal Hukum dalam Penegak Supermasi Hukum ( Suatu Kontemplasi Reflektif), *Jurnal Wawasan Yuridika* Vol 23, No 2, 169-170

18 Nisa, C. U., & Jaya, N. S. P. (2021). Fenomena Mafia Peradilan terkait Independensi Kekuasaan Kehakiman dalam Perspektif Budaya Hukum di Indonesia. *Journal of Judicial Review*, 23(2), 155-170.



revealed, the dirty game in law enforcement in Indonesia never ends. To tackle the judicial mafia, the quality of the judicial system needs to be improved and the supervision and control system.<sup>19</sup>

In addition, it is also necessary to increase professionalism and accountability in judicial system policies. Improving the quality of supervision and control is very important to control the justice system because the judicial mafia is closely related to abuse of power. Several judicial mafia operation modes are mainly carried out in the judicial process. First, postpone the reading of the verdict by the judge; The judge also avoided being asked the reason for the delay in reading the verdict. Second, the judge deliberately does not evaluate the truth or the existing evidence so that the decision given by the court is in the form of light sanctions or is declared acquitted. Third, manipulate the implementation of laws and regulations that are not under the legal truth revealed in court. Furthermore, the judge tries to find the rule of law himself so that the truth of the law can be interpreted differently, causing the indictment to be unproven and even giving an acquittal. Fourth, the judge looks for statutory regulations carried out by the judge so that the charges demanded by the prosecutor are transferred to other parties, especially in corruption cases. The defendant was made as if he had committed the act by order of his superiors so that the defendant was sentenced to acquittal.<sup>20</sup>

The Supreme Court has the authority to oversee this judicial mafia issue. The Supreme Court has supervisory authority over Judges, Legal Counsels, and Notaries under the Indonesian Law Number 14 of 1985, which has been amended according to Law Number 5 of 2004 and Law Number 3 of 2009". Through the articles contained in the law, it is said that the Supreme Court only supervises law enforcement at the judicial level but has not expanded from the beginning of the law enforcement process.

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19 Durahman, D. (2017). Pemberantasan Praktek Penyimpangan Peradilan di Indonesia. *Wacana Paramarta: Jurnal Ilmu Hukum*, 16(1), 1-10.

20 Widodo, J. P. (2012). *Op.Cit.*

## 2. Judicial Mafia Seen From the Political Aspect of National/Criminal Law

The judicial mafia is seen from the political aspect of the national/criminal law, which is an abuse of office that causes a violation of the law. The judicial system development policy is defined as reasonable efforts in developing or improving the quality of the judiciary. Therefore, the judicial system is identical with the goal of reform, which demands an increase in quality towards a better one because reform means making better, becoming better, changing for better, or returning to a former good state. In other words, reform of the judicial system implies "improvement of the quality of the judicial system." The development of judicial quality is not only limited to the judicial process in law enforcement in court but also extends to the system in the legal justice system.<sup>21</sup> The national legal system is essentially a system of norms based on the constitution. Thus, a state of law must adhere to the principle of constitutional supremacy in the Grand Design and national legal politics

The principles of constitutional supremacy in the Grand Design and National Legal Politics include

- 1) Agreement on the existence of a grand design as well as national legal politics which are drawn up in the national law development plan and based on the philosophical foundation of Pancasila and the State Constitution, namely the 1945 Constitution of the Republic of Indonesia;
- 2) The grand design describes a comprehensive design that becomes a guideline for all stakeholders covering all factors from planning, legislation, dissemination, and the legal culture of citizens;
- 3) The main thing in structuring the Grand Design and National Law Politics is based on the Pancasila philosophy and the 1945 Constitution of the Republic of Indonesia. It must also be based on commitment and unchanging implementation. The universal principles of Law (General principles of Law) describe the reflection of national identity

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21 Arief, B.N. (2018). *Kapita Selekta Hukum Pidana*, Universitas Diponegoro, Semarang, p. 53

- and national interests while at the same time responding commensurately to the phenomenon of globalization and the growth of international ties;
- 4) One of the pillars of the Grand Design and National Legal Politics is the principle that believes that laws that serve the interests of the nation aim to advance the country and become a pillar of democracy so that people's welfare can be achieved. Therefore, the resulting legal product is a law that does not change, under the philosophy of the country, based on the constitution of the 1945 Constitution, and sociologically as a facility to achieve justice and citizen discipline;
  - 5) The fundamental issue in the Grand Design of system development and National Legal Politics is to create a legal system structure that is conducive to the diversity of sub-systems, diversity of substance, development of legal fields needed by citizens, and freedom to exercise rights and obligations by the applicable provision. In other words, there must be a clear legal policy (fair policy) to produce a situation like the one above;
  - 6) The legal system and constitution must respond to the dynamics, challenges of the era, and the state's life based on the reform consensus. The legal products produced must reflect philosophical, juridical, sociological, and historical aspects so that the life of the nation and state becomes sustainable.<sup>22</sup> National legal politics can be a step in achieving justice in society by providing systematic legal policies according to the constitution and building a legal system in law enforcement.

The policy of developing or improving the quality of the judiciary is related to various aspects that affect the quality of the judiciary or law enforcement. These various aspects may include individual qualities in human resources, institutions, work or management mechanisms, infrastructure, legal/statutory substance, and social, political, and cultural conditions, including the legal culture of citizens. Thus,

efforts to improve the quality of the judiciary in law enforcement must cover all aspects that affect the quality of the judiciary. One of the aspects of development that was put forward was the issue of human resource development, which in this discussion was limited to the professionalism of the police, prosecutors, and legal advisors. In overcoming this problem, it must be accompanied by the professional development of judges and clerks. Besides that, not only professionalism is improved but also accountability. The professional quality of human resources can improve the quality of a professional judiciary, but the problem is whether professionalism without accountability can overcome the problem of the judicial mafia. It is precisely this accountability issue that is very relevant to efforts to tackle the judicial mafia that is being targeted.<sup>23</sup>

Accountability is not only about individual accountability issues but also institutional accountability. Individual accountability, in this case, requires that moral integrity, heart, and conscience are mature by law enforcers or parties participating in the administration or judicial process. Meanwhile, institutional accountability requires the management or administration of justice to operate appropriately to support sustainable development. At the 9th United Nations congress in 1995 in Cairo, Egypt, there was a resolution on criminal justice management in the context of accountability of public administration and sustainable development. The resolution, among other things, appealed to member countries, intergovernmental organizations, and reliable non-governmental organizations so those development programs related to criminal justice management could consider accountability and sustainability issues. The resolution was based on the following considerations:

- 1) Criminal justice administrators are responsible for the implementation of an effective and humane trial;
- 2) Judicial (criminal) management describes a public administration that distributes responsibilities to citizens broadly;

22 Jaya, N.S.P. (2016). *Politik Hukum*, Universitas Diponegoro, Semarang, p. 20-22

23 Appludnopsanji, A., & Pujijono, P. (2020). *Op.Cit.*

- 3) The implementation of justice (criminal) must be part of a policy of sustainable development of resources, including ensuring citizens' justice and safety.<sup>24</sup>

The congress document explains that the important thing in administering (criminal) justice is as far as possible being responsible for the justice system and gaining the trust or respect of the community, both nationally and internationally. So the judicial system should be transparent, not secret, vague, and unresponsive. Furthermore, accountability in the criminal justice system is part of the government's concept to make it better. Implementation of this concept must ensure success in a sustainable society.<sup>25</sup> In the concept of sustainable development, a sustainable society is not only defined as natural or physical resources but also non-physical resources. A good and healthy judicial system must guarantee justice, the safety of the community and foster public trust and respect. However, non-physical resources need to be maintained for the continuation of the next regeneration. Therefore, the judicial mafia should be eradicated because, in essence, a judicial mafia is a form of exploitation that destroys non-physical resources.<sup>26</sup>

### 3. Efforts to Overcome Judicial Mafia

The effort to eradicate the “judicial mafia” is essentially an effort to restore public trust and respect in the judicial system. Community trust and respect are part of the value of quality of life and sustainable development. Therefore, based on the situation described earlier, the justice system development policy must be an integral part of the system development policy in the government, including the procedure for improving environmental quality and sustainable development.<sup>27</sup>

The judicial system in a broad sense is identical to the judicial power system

which is essentially a law enforcement system, known as the criminal justice system, and goes through a fairly long stage. The judicial stages include the investigation process, the prosecution process, the examination process in court (starting from the district court to the Supreme Court level), and the implementation stage, to the criminal execution stage. In these processes, dirty play is possible. Barda Nawawi Arief revealed that it is more appropriate to call it dirty play than judicial mafia, because the term seems to only give the impression of disgraceful acts that occur during the court process. Even though there are many complaints from the public who are the object of extortion and other disgraceful acts or dirty games, before the case is transferred to the court. In tackling the judicial mafia, a policy of developing the judicial system and improving the quality of the supervision or control system must be carried out. In addition, it is also necessary to carry out an increase in professionalism and accountability in the judicial process.<sup>28</sup> Efforts to improve the quality of supervision and control are very significant, because the judicial mafia is closely related to abuse of power.

In the congressional documents, it was stated that it is very important for all aspects of the implementation of the legal (criminal) justice system, which is as much responsible for the justice system as possible in order to gain the trust or respect of the community, both nationally and internationally. So the judicial system should be open, transparent and not secretive and unresponsive. Furthermore, the accountability of the criminal justice system is part of the concept carried out by the government to do the best. The implementation of the concept basically must ensure the cleanliness of the judicial process in the eyes of the community, and make the community sustainable. The concept of sustainable development or a sustainable society is not only defined as physical resources, but also non-physical resources. A clean and healthy judicial system is expected

24 Mustofa, M. (2013). *Op.Cit.*

25 Appludnopsanji, A., & Pujiyono, P. (2020). *Op.Cit.*

26 Nisa, C. U., & Jaya, N. S. P. (2021). *Op.Cit.*

27 Tauhid, I. (2014). Analisis Yuridis Penanggulangan Mafia Peradilan Dalam Peradilan Perkara Pidana, *Jurnal Poenale*, Vol 1, No 1 : Jurnal Poenale

28 Afif, M. (2019). Memberantas Korupsi Melalui Budaya Hukum Yang Baik Dan Cita-Cita Hukum Di Dunia Peradilan Indonesia. *SUPREMASI: Jurnal Hukum*, 1(2), 97-107.

to guarantee justice, the security of citizens or the community, and can foster public trust or respect for the judicial system, which is basically a non-physical resource that can be maintained and considered for future generations. Therefore, judicial mafia should be eradicated, because in essence the judicial mafia is a form of exploitation that can damage non-physical resources.

This supervisory or control system should be questioned again about the authority or supervisory function of the Supreme Court. According to the Indonesian Law Number 14 of 1985, the Supreme Court only can supervise judges (article 32), legal advisors and notaries (article 36). So it is limited to the supervision of judicial or judicial powers in a narrow sense. Suppose “judicial power” is defined as stated above according to article 24 of the 1945 Constitution concerning judicial power exercised by the Supreme Court. In that case, the Supreme Court should function to oversee law enforcement in courts and oversee the entire law enforcement process starting from the investigation stage, the prosecution process, until the decision is handed down and executed. In other words, the Supreme Court becomes the controller and supervisor of the entire law enforcement process. The absence of affirmation of legislation (legislative policies) regarding who is the top leader or the top law enforcement officer of the totality of the law enforcement process is one of the shortcomings and weaknesses seen from the point of view of the management of the integrated justice system (criminal law enforcement).<sup>29</sup>

Legislative policy is a management system. Therefore, it is necessary to improve the judicial system, which can be taken through reforming the legal system.<sup>30</sup> Suppose you want to develop the judicial system as a system of judicial power or an independent and independent law enforcement system. In that case, the legal system must support that direction. It is worth reviewing the entire legislation governing the existing criminal justice system

based on this understanding. It has been stated that an integrated criminal justice system is to be realized through four sub-systems, namely the stages of the investigation, prosecution, examination or sentencing of a crime by the court, and the implementation or execution of a criminal. The whole step should be a manifestation of the system of judicial power (law enforcement power), which is independent. The sole exercise of judicial power in Indonesia is the Supreme Court (according to article 24 of the 1945 Constitution). It feels awkward and can undermine the authority of an independent and independent judiciary/law enforcement if the sub-system is actually under the auspices of “executive power”. Such a situation allows interference with the power or an accessible judicial system. It is not impossible to provide opportunities for the judicial mafia to be carried out by the executive.

#### D. CONCLUSION

Overcoming the judicial mafia requires a policy in the development of the justice system, which is defined as part of reasonable efforts to develop and improve the quality of the justice system. The effort to eradicate the judicial mafia is essentially an effort to restore public trust and respect in the judicial system. In overcoming this crime, called the dirty game (judicial mafia), it is necessary to develop a justice system development policy that must be accompanied by the development or improvement of the quality of the supervision and control system. In addition, there must also be an increase in professionalism and accountability for the judicial process. Efforts to improve the quality of supervision and control are significant because the judicial mafia is closely related to the problem of abuse of power.

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29 Artidjo, A. (2002). Masalah Mafia Peradilan Dan Penanggulangannya, *Jurnal Hukum*, No. 21 Vol 9.

30 Nisa, C. U., & Jaya, N. S. P. (2021). *Op.Cit.*



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