

## Legal Protection for Land Owners Against Land Mafia That Encloses and Cuts Off Access to The Owner's Land

Isamu Gusti Putu Rai Ganesha<sup>1\*</sup>, William Wijaya<sup>2</sup>, Juan Safero Rianda<sup>3</sup>

<sup>1,2,3</sup> Master of Notary, Universitas Airlangga, Surabaya, Indonesia.

 : [gustiisamu@gmail.com](mailto:gustiisamu@gmail.com)

Corresponding Author\*



### Abstract

**Introduction:** Landowners hold the right to use and access their land, including the right-of-way. When land mafia enclose a parcel and block road access, it creates a fundamental legal issue concerning the protection of those rights.

**Purposes of the Research:** This study was conducted to analyze the legal protection for landowners who lost their right-of-way due to the land mafia, who enclosed and closed access to their land in Indonesia, forcing landowners to surrender and sell their land at low prices.

**Methods of the Research:** This research will use normative juridical research, employing both a legal and a conceptual approach.

**Results Main Findings of the Research:** The findings reveal that closing road access by enclosing a land parcel with the intent to coerce the owner into selling their property constitutes an unlawful act subject to both civil and criminal sanctions. Legal protection for landowners is provided through several mechanisms: they may file a civil lawsuit on the grounds of unlawful conduct to seek compensation for damages and restoration of their right-of-way. In addition, the perpetrator (commonly referred to as a land mafia) may also face criminal prosecution for land encroachment, allowing the state to impose penalties aimed at deterring further violations. Through this combination of civil remedies and criminal enforcement, landowners receive both restorative and punitive legal protection.

**Keywords:** Legal Protection; Land Mafia; Land Enclosure.

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## INTRODUCTION

Land occupies a fundamental position in Indonesian society, not only as an economic asset but also as an essential part of human existence. From birth to death, individuals depend on land for housing, livelihood, social interaction, and community life<sup>1</sup>. The Basic Agrarian Law (UUPA) affirms that all land, water, and airspace within Indonesia constitute the collective wealth of the Indonesian people under the right of control by the state. This framework establishes that every parcel of land is part of the nation's shared heritage and must be managed to ensure justice and welfare.

The UUPA regulates various land rights, including ownership, cultivation, building rights, and rights of use. Land ownership (defined as the strongest and most complete right) grants the holder the authority to utilize land within the boundaries of the law. Historically, land in Indonesia shifted from being merely a resource for subsistence to becoming an

<sup>1</sup> Hajati, Sri, Sri Winarsi, Agus Sekarmadji, and Oemar Moechtar. *Politik Hukum Pertanahan*. Surabaya: Airlangga University Press, 2020.

economic commodity, leading to increasing disputes as population growth intensified competition and demand<sup>2</sup>. In recent years, land-related conflicts have escalated, particularly due to the systematic operations of land mafias. By 2023, Indonesia recorded more than 31,000 land cases, many involving document falsification, collusion, unlawful occupation, and manipulation of legal processes<sup>3</sup>. Research shows that land mafias often collaborate with corrupt officials, turning land disputes into complex criminal schemes that harm legitimate landowners. The persistence of land mafia practices is closely linked to weak supervision, lack of transparency, and the high economic value of land<sup>4</sup>.

One of the most alarming strategies used by land mafias is the closure of access roads to a landowner's property. This tactic is frequently used to pressure owners into relinquishing or selling their land at extremely low prices<sup>5</sup>. A clear example occurred in Kalijudan, where residents' road access was completely sealed off by a concrete fence built by a developer, preventing them from reaching their own land<sup>6</sup>. Such actions not only disrupt public access but also create legal vulnerability for owners whose land becomes physically enclosed.

Road access is a crucial public facility, and its obstruction has significant social and legal implications. In private land settings, access is often regulated through servitude rights (erfdienstbaarheid) under the Civil Code, which allow the use of one parcel of land for the benefit of another. When access is blocked (especially without negotiation or legal justification) it can trigger civil disputes, criminal liability, and violations of landowners' fundamental rights. Studies further emphasize that landowners trapped by access closure often face prolonged legal battles and economic losses due to restricted mobility and limited land utilization<sup>7</sup>. Against this background, this study entitled "Legal Protection for Land Owners Against Land Mafia That Enclose and Cut Off Access to the Owner's Land" aims to analyze the legal remedies available to landowners whose access has been deliberately blocked. This issue is crucial because access obstruction has become one of the land mafia's most effective coercive tools. Strengthening legal protection is essential to ensuring justice, preventing exploitation, and safeguarding landowners from being forced to surrender their property under pressure.

## METHODS OF THE RESEARCH

This research employs a normative juridical method, focusing on the identification, interpretation, and application of legal rules, principles, and doctrines relevant to the issue of land access closure by land mafias. Two analytical approaches are used: the statutory approach and the conceptual approach. The statutory approach involves examining laws and regulations governing land rights, road access, unlawful land occupation, and related legal protections. Meanwhile, the conceptual approach utilizes legal doctrines and scholarly perspectives to construct a coherent theoretical framework aligned with the research objectives. The legal materials in this study consist of primary legal sources, including

<sup>2</sup> Setiawan, I Ketut Oka. *Hukum Agraria: Revisi*. Jakarta: PRC, 2021.

<sup>3</sup> Mongi, Griffin Yoyakhin, et al. "Perlindungan Hukum terhadap Pemilik Sertifikat Hak atas Tanah dalam Permasalahan Sengketa Penyerobotan Tanah Milik Orang Lain." *Lex Crimen* 12, no. 4 (2024).

<sup>4</sup> Surahman, Ansar, Awaluddin, Muja'hidah, and Aminuddin Kasim. "Retributive Justice in Law Enforcement Against Land Mafia in Indonesia: Perspectives of State Administration Law and Indonesian Criminal Law." *International Journal of Criminal Justice Science* 18, no. 2 (2023).

<sup>5</sup> Aditya, Afif Khalid, and Muhammad Aini. *Analisis Yuridis tentang Kedudukan Hak atas Tanah yang Tertutup Akses Jalan*. Thesis, Universitas Islam Kalimantan, 2021.

<sup>6</sup> Tvononews.com. "Protes Pagar Beton Tutup Akses Jalan, Warga Kaliju dan Patoki Tanah Mereka." May 2, 2025.

<sup>7</sup> Ananta, Cyntia. *Analisis Yuridis Penutupan Akses Jalan di Atas Tanah Hak Milik oleh Pemegang Hak*. Skripsi, Universitas Muhammadiyah Sumatera Utara, 2025.

legislation (such as the Basic Agrarian Law, the Civil Code, the Criminal Code, and related regulations), court decisions relevant to road access disputes, and official guidelines concerning land mafia prevention. In addition, secondary legal materials are used, including journal articles, theses, books, research reports, and other academic publications discussing land law, illegal land occupation, servitudes, and legal protection mechanisms. The technique used to collect these materials is document analysis, conducted through a systematic review of statutory provisions, judicial decisions, academic literature, and authoritative writings. All materials are then classified, processed, and analyzed by connecting them to relevant legal theories, doctrines, and principles, enabling a comprehensive examination of the issues under study.

## RESULTS AND DISCUSSION

### A. Closing Road Access Is an Unlawful Act (*Onrechtmatigedaad*)

Article 1365 of the Civil Code states, "Every unlawful act that results in loss to another person, obligates the person causing the loss through their fault to compensate for that loss." This article regulates Unlawful Acts (PMH), which states that every unlawful act that causes loss to another person obliges the perpetrator to compensate for that loss through their fault. To claim compensation, four cumulative elements must be proven: the unlawful act, the element of fault on the part of the perpetrator, the element of loss, and a causal relationship between the act and the loss.<sup>8</sup> Regarding the confinement of land and blocking access to landowners' roads by the land mafia, this constitutes an unlawful act or *Onrechtmatigedaad* because it meets the four cumulative elements stipulated in Article 1365 of the Civil Code, as follows: a) Unlawful Acts: An act can be considered unlawful if it violates an existing law. In this case, the land mafia's blocking of access to or exiting a person's home can be categorized as an unlawful act because the landowner is eliminating the land's social function, as stipulated in Article 6 of the UUPA, which states, "All land rights have a social function." Therefore, all land has a social function, meaning that social interests are superior to personal interests. Even though the land is owned, the landowner must still respect the interests of others. Therefore, if access to a plot of land is blocked, the land's social function is lost and violated. This action is also considered an unlawful act under Article 667 of the Civil Code, which states, "The owner of a plot of land or yard, which is so tightly enclosed between the lands of others that he has no access to a public road or ditch, has the right to demand that the owners of neighboring yards provide him with access through their yards, with compensation commensurate with the losses caused."

Based on this article, it is clear that the land mafia who enclose and block access to the owner's land are obligated to provide access, provided that they compensate the landowner for the losses caused by the enclosing and blocking access to the road with compensation commensurate with the losses suffered by the owner: b) Fault of the Perpetrator: For a fault to exist, the perpetrator must have committed an unlawful act, and the perpetrator's mental state must be the basis for legal liability, both in criminal and civil law, as stipulated in Article 1365 of the Civil Code.<sup>9</sup> The deliberate confinement of land and blocking of road

<sup>8</sup> Cevitra, Mendy, and Gunawan Djajaputra. "Perbuatan Melawan Hukum (Onrechtmatigedaad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata dan Perkembangannya." *UNES Law Review* 6, no. 1 (2023). <https://reviewunes.com/index.php/law/article/view/1074/818>.

<sup>9</sup> Pawewang, Rifka Ramadani, Olga A. Pangkerego, and Berlian Manopo. "Karena Salahnya Menyebabkan Orang Luka Berat Sebagai Tindak Pidana Berdasarkan Pasal 360 KUHP." *Lex Privatum* 9, no. 4 (2021). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33363>

access by the land mafia to the landowner, if linked to this theory, constitutes a fault, violating the provisions of Articles 667 and 668 of the Civil Code, which state: Article 667 of the Civil Code: "The owner of a plot of land or plot of land located between the lands of others in such a way that he has no access to a public road or public waters, has the right to sue the owners of neighboring plots to provide him with an access route for the benefit of his land or plot, with the obligation to pay compensation commensurate with the damage caused." Article 668 of the Civil Code: "This exit must be made on the side of the land or yard closest to the road or public waters, but otherwise, it must be taken in a direction that causes the least possible damage to the land on which it is permitted to be used"; c) Losses: Losses caused by the actions of land mafias who enclose land and block access roads to landowners result in homeowners experiencing material losses, namely economic losses, which result in landowners being unable to utilize and cultivate their land; d) The Existence of Causality Relationship: The existence of a causal relationship is a cause-and-effect concept that shows that an event (cause) directly causes another event (effect). This concept is crucial for determining liability, as seen in criminal law, to understand which action is relevant to the cause of an event. The event of confinement and closure of the landowner's road access by the land mafia can be categorized as an act against the law because there is a causal relationship between the two: (1) The existence of an act or an action, in this case, the confinement of the owner's land that closes the road access by the land mafia, can be categorized as an action; (2) The act violates the rights of others, where, in the case of confinement of the land to choose the owner who closes the road access to this land, the actions of the land mafia have violated the landowner's access rights regulated in Articles 667 and 668 of the Civil Code; (3) The act is contrary to the legal obligations of the perpetrator, in this case, the land mafia, as the perpetrator of the confinement of the land has violated the legal obligations that the perpetrator should have complied with in the form of the obligation to utilize his land without causing harm to others; (4) Causing losses to others due to the activities of the perpetrator, in this case it is clear that the land mafia, as the perpetrator, committed the act of confining the land and closing the landowner's access road by closing, obstructing, or building something with the aim of obstructing, closing, or even prohibiting the landowner from entering his land so that the perpetrator forced the landowner to sell the land at a low price as a result of the act. Any act can be categorized as an unlawful act if it meets the four elements mentioned above. The case of land confinement by the land mafia, thus blocking access to the landowner's road, meets all four elements of an unlawful act mentioned above. Thus, it is clear that the act committed by the land mafia, as the perpetrator, is an unlawful act.

The land mafia has intentionally committed an act that harms another person, namely the landowner. Therefore, this act is clearly an unlawful act because it has resulted in a loss for the landowner. It is stated that any act that causes loss to another person, due to their fault in causing the loss, is obligated to compensate for that loss, as stipulated in Article 1365 of the Civil Code. These findings highlight significant implications for legal practice, particularly regarding the enforcement of land access rights and the prevention of unlawful land confinement. In legal reality, disputes involving blocked access often face obstacles such as weak coordination between administrative and law-enforcement institutions, slow case processing, and limited public awareness of the legal remedies available. These challenges create a space in which land mafia actors can operate with relative confidence, exploiting procedural delays and the reluctance of authorities to intervene in what is frequently framed as a "civil dispute." Strengthening institutional responsiveness and

improving access to legal assistance for landowners are therefore essential to prevent similar cases in the future.

### **B. Land Encroachment Can Be Charged with Land Grabbing.**

Although the Criminal Code does not provide a specific definition of land grabbing, Article 385 addresses offenses closely connected to land ownership. It stipulates that a sentence of up to four years' imprisonment may be imposed on: "Any individual who, with the intention of unlawfully gaining benefit for themselves or another, sells, transfers, or places a burden such as a mortgage on a right of use over government or private land or on a house, structure, crop, or seedling located on land subject to such rights – while knowing that another party holds ownership or co-ownership of the property". Therefore, Article 385 of the Criminal Code can be interpreted as the act of controlling, occupying, or taking over another person's land unlawfully, against their rights, or in violation of applicable laws.<sup>10</sup>

The actions of the land mafia to close road access by confining the landowner's land and forcing the landowner to sell his land at a low price are included in the criminal acts regulated in criminal law based on Article 385 of the Criminal Code or Articles 2 and 6 of Government Regulation in Lieu of Law Nomor 51 of 1960 and can be subject to civil lawsuits regulated under Article 1635 of the Civil Code as an unlawful act.<sup>11</sup> In practice, land mafia actors typically succeed because they combine legal manipulation with coercive field tactics. Their methods often include gradually restricting access routes, exploiting unclear land boundaries, collaborating with unscrupulous officials, and using forged or overlapping documents to create the impression of legitimacy. These actors also take advantage of weaknesses in land registration systems, the slow verification process for ownership disputes, and the reluctance of victims to engage in lengthy litigation. As a result, the perpetrators often generate social pressure and economic urgency that force landowners into selling their land at an unfair price. This combination of procedural exploitation and psychological pressure explains why land mafia operations are frequently effective despite being unlawful.

### **C. Protection of Land Owners Against Land Mafia That Confines Owners' Land.**

In the case of the confinement of the land owner by the land mafia who confines the land owner with the aim of closing the road access so that the owner sells his land at a low price, it is an unlawful act and can be subject to criminal and civil sanctions regulated based on the description of the provisions of Article 667 and Article 668 of the Civil Code (KUHPerdata), therefore the owner of the land who is confined has the right to demand that the perpetrator of the confinement of the land provide an exit access, through the land owned by the land owner on his land. The exit access is provided on the side of the yard or land closest to the road or public ditch. This aims to ensure that the provision of the exit will only cause the smallest possible loss for the land owner. In addition, the compensation provided based on Article 667 of the Civil Code is through the provision of compensation that is commensurate with the loss caused by the closure of the exit.<sup>12</sup> However, if the perpetrator (land mafia) continues to force the landowner to sell their land by confining the

<sup>10</sup> Griffin YoyakhinMongi, dkk., "Perlindungan Hukum terhadap Pemilik Sertifikat Hakatas Tanah dalam Permasalahan Sengketa Penyerobotan Tanah Milik Orang Lain," *Lex Crimen* 12, no. 4 (2024), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/58960/48004>

<sup>11</sup> Angel Christina MelaniPutong, Jusuf Sumampow, dan NurhikmahNachrawy, "Perlindungan Hukum Bagi Pemegang Sertifikat terhadap Perbuatan Penyerobotan Hakatas Tanah," *Lex Privatum* 15, no. 2 (2025)

<sup>12</sup> Afif Khalid Aditya dan Muhammad Aini, *Analisis Yuridistentang Kedudukan Hakatas Tanah yang Tertutup Akses Jalan*, Tesis, Universitas Islam Kalimantan, 2021, <https://eprints.uniska-bjm.ac.id/5679/1/ARTIKEL%20Aditya-dikonversi.pdf>

land, this action can also be considered a criminal offense of land grabbing. Article 2 of Law Number 51/Prp/1960 prohibits the use of land without authorization from the legitimate owner or their legal representative. Article 6 of the same law further provides that: 1) Any individual who occupies or uses land without such permission may face a penalty of up to three months' imprisonment and/or a fine not exceeding IDR 5,000, except in cases concerning plantation and forest land as regulated under Article 5 paragraph (1); 2) Any individual who obstructs the lawful owner or their representative in exercising their rights over the land; 3) Any individual who instructs, persuades, encourages, or invites others, either orally or in writing, to engage in acts prohibited under Article 2 or point (b) of paragraph (1) of this article; 4) Any individual who, in any form, assists in carrying out the acts referred to in Article 2 or point (b) of paragraph (1) of this article.

When the unlawful appropriation of another person's land is carried out through acts such as selling, exchanging, pledging with credit, mortgaging, or leasing, the perpetrator may be subject to the provisions of Article 385 of the Criminal Code or, under the revised framework, Article 502 of Law Number 1 of 2023 on the Criminal Code. Article 385 of the Criminal Code: A prison sentence of up to four years may be imposed on: 1) Any individual who, with the intention of unlawfully profiting themselves or another party, sells, exchanges, or places a mortgage on uncertified land rights – or on any building, structure, crop, or seedling situated on uncertified land – while knowing that such rights belong to or are shared with someone else; 2) Any individual who, with the same intent, sells, exchanges, or mortgages uncertified land rights, or a building, structure, crop, or seedling on land already subject to a mortgage, without disclosing the existing encumbrance to the other party; 3) Any individual who, with similar intent, enters into a mortgage agreement involving uncertified land rights while concealing from the counterparty that the land in question has already been mortgaged; 4) Any individual who, with the same intent, mortgages or leases uncertified land rights while being aware that ownership or co-ownership belongs to another person; 5) Any individual who, with such intent, sells or exchanges uncertified land rights that are already mortgaged, without informing the other party of the mortgage; 6) Any individual who, with the same intent, sells or exchanges uncertified land rights for a specific term, knowing that the land has already been leased to another party for that period.

Article 502 of Law Number 1 of 2023 on the Criminal Code: Any person who seeks to unlawfully gain an advantage for themselves or for another may be subject to imprisonment of up to five years or a fine not exceeding category V. Such penalties apply to those who, with that intent: 1) Sell, transfer, or encumber with a credit bond the right to use state land, a house, crops, or a nursery enterprise located on land under their use, while knowing that another party holds ownership or co-ownership rights to the land or property; 2) Sell, transfer, or encumber with a credit bond the right to use state land, a residence, a plantation, or a nursery on land under their use, when the land or property is already subject to a credit bond, without informing the counterparty of such encumbrance; 3) Create a credit bond over the right to use state land while deliberately concealing from the other party that the land has already been pledged; 4) Pledge or lease land under their use, knowing that another individual possesses ownership or co-ownership rights over it; 5) Lease, sell, or transfer land subject to a mortgage, without disclosing to the other party that the land is already encumbered; or 6) Lease land for a certain period under their use rights, while being aware that the same land has previously been rented to another party.

## D. Legal Steps When Land Mafia Confines Owner's Land to Force Owner to Sell Land

The following steps can help maximize the state's responsibility in ensuring legal certainty regarding equal land tenure rights. In this regard, there are several legal protections or remedies available to victims of criminal land grabbing, namely: a) Filing a Complaint or Report to the Police. This is a means for the police to implement the mandate of Article 2 of Law Number 2 of 2002 concerning the Indonesian National Police (law enforcement and maintenance, protection, guardianship, and public service);<sup>13</sup> b) Landowners can file a lawsuit for unlawful acts against the perpetrator of land grabbing with the local court where the land is located, based on Article 1365 of the Civil Code: "Every unlawful act that causes loss to another person, obliges the person causing the loss through his fault to compensate for that loss." Landowners, as plaintiffs, must have strong evidence in the form of a valid land title deed or certificate. They can also present witnesses with direct knowledge of the land ownership to testify in court. If the land encroacher also holds a certificate issued by an official state agency, namely the National Land Agency, the landowner must also be able to confirm that their certificate was issued before the land encroacher's certificate. This is accompanied by strong and concrete evidence that the land encroacher has clearly violated the social function of the land by encroaching and denying access to the land, with the aim of forcing the land rights holder to sell their property.<sup>14</sup>

## CONCLUSION

This research has achieved its objectives by examining the legal protection available to landowners whose land is unlawfully enclosed by land mafia, resulting in blocked access or forced sales. First, the study confirms that enclosing a landowner's plot to obstruct access constitutes an unlawful act under Indonesian civil and criminal law. Second, the research identifies the legal remedies available to victims, including the right to file a civil lawsuit for unlawful acts and claim compensation based on Article 1365 of the Civil Code. Third, the findings also show that perpetrators can be prosecuted for land grabbing under Article 385 of the Criminal Code, which carries a maximum penalty of four years' imprisonment. Furthermore, this research demonstrates how these legal mechanisms provide a structured pathway for landowners to defend their rights – beginning with filing a police report and proceeding with civil and criminal actions in the local court. Through this analysis, the study fulfills its aims of clarifying the legal framework, outlining practical steps for enforcement, and highlighting the level of legal protection available to landowners facing enclosure practices by land mafia.

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<sup>13</sup> Muhammad Nabbil Atqiya and Gialdah Tapiansari Batubara, "Penyerobatan Tanah dalam Perspektif Pidana dan HakAsasiManusia," *Jurnal Ilmu Hukum dan HakAsasi Manusia (JIHHP)* 5, no. 5 (2025).

<sup>14</sup> Trian Apdoni, Yumi Simbala, and Refli R. Umbas, "Kajian Hukum terhadap Penyerobatan Tanah Menurut Hukum Pidana," *Lex Privatum* 16, no. 1 (2025), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/62044>

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