

Role of Notaries and PPAT in Overcoming Land Mafia Problems

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Abstract

Several cases due to the existence of the land mafia that often occur at this time have become a serious concern for the government. Given the importance of land for the community, certainty, order, and legal protection demand that legal traffic in people's lives requires legal evidence, so that people get legal certainty over their ownership. To determine the status of ownership of a plot of land, it must involve a Notary PPAT officer administratively. This study aims to examine the practices of the land mafia and the parties who must be involved in the practice of land mafia crimes as well as the role of Notaries and PPAT in overcoming the problem of land mafia. The research method used in this research is normative legal research with a literature review approach to laws and regulations related to the focus of research on land mafia. PPAT Notaries have a central and strategic role in eradicating, overcoming and preventing the occurrence of land mafia. One of the roles that must be carried out by PPAT Notaries is to really pay attention to the regulatory system for making land deeds, ensuring the originality of documents by confirming to the parties concerned, and ensuring that interested parties actually come face to face with the PPAT Notaries. when making the deed.

Keywords

land mafia; notary; PPAT



I. Introduction

The Constitution of the Republic of Indonesia at the beginning of the formation of the state basis has regulated land, this can be seen in Article 33 paragraph (3) of the 1945 Constitution which has mandated the state that everything related to land as part of the earth, water and natural resources contained in it that exists in Indonesia must and must be managed and utilized for the greatest prosperity of the Indonesian people. The meaning of Article 33 paragraph (3) of the 1945 Constitution can be interpreted that those relating to land, water and the natural resources contained therein must be managed and utilized for the greatest benefit of the Indonesian people. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). The success of leadership is partly determined by the ability of leaders to develop their organizational culture. (Arif, 2019).

Land is one of the most valuable assets, even its ownership is protected by law, meaning that to own and control the benefits of a plot of land, it must go through applicable legal procedures, so that ownership of the land can be legally accounted for. The legality of ownership of the land will be a guarantee of security from other parties who want to take the rights to the land, or from people who have bad intentions to take or seize the rights to the land.

Cases of confiscation of land rights are currently on the rise, this happens because it is carried out by the "land mafia". The land mafia is a conspiracy between parties with bad

intentions in controlling land and the participation of officials who have the authority to issue legal rights to land. The root of the problem of the land mafia is because land that is fixed does not increase while the number of people continues to grow so that it pushes the value of land which is getting higher and higher and expensive considering its limited nature. (Yunawati Karlina, 2022)

Several cases due to the existence of the land mafia often occur, one of which is the case of land tenure without procedures with the defendant Djerman Prasetyawan which began to be tried at the Surabaya District Court, in August 2021. This case arose because the heirs found a letter of transfer of land that was not processed to completion. Defendant Djerman was charged with falsifying three documents to control other people's land in Manukan Kulon. The public prosecutor in his indictment explained that the three letters that were falsified by Germany were, among others, a statement of physical and juridical control of land parcels dated November 10, 2019. Another letter that was deemed to be fake was a statement on the installation of land parcel boundaries. The letter was signed by two people who were not the heirs of the land owner. With the fake letter, the defendant's application was processed by the Surabaya I Land Office. Subsequently, a field map was published in the name of the defendant Djerman. The defendant then obtained the right to register the issuance of a certificate of land with a measuring area of 17,551 square meters and an application area of 30 thousand square meters. In fact, the land belongs to the heirs of H Ichsan/S. Marwiyah and never sold. (JawaPos, 2021)

A similar case also happened to one of the national artists, Nirina Zubier, in her press conference she stated that there are six assets in the form of letters allegedly embezzled by Riri Khasmita. Among them are two parcels of vacant land that have been sold and four parcels of land and buildings that have been pledged as collateral to the bank. That way, Nirina reported Riri Khasmita in June 2021 for a case of alleged embezzlement of assets. After carrying out the development, the Sub-Directorate of Harda Ditreskrimum Polda Metro Jaya named five suspects in this land mafia case. Three of the five suspects were immediately detained after undergoing examination as witnesses. They are Riri Khasmita, her husband named Edrianto, and a notary official for making land deeds (PPAT) in West Jakarta named Farida.. Riri is strongly suspected of being the mastermind behind the embezzlement case. The reason is that the suspect has previously held the six certificates. The suspects allegedly acted by forging the signatures of Nirina Zubir's mother to issue a power of attorney to sell, then reversed the names of the six certificates. (Kompas.Com, 2022).

The rise of land mafia cases at this time has indeed become a serious concern for the government, even The National Police's Anti-Mafia Land Task Force is currently handling 69 cases as of August 31, 2021. Of these cases, 61 suspects have been identified. According to the Director of Criminal Acts of the Criminal Investigation Department, Brigadier General Andi Rian, the most cases occurred in East Java, followed by Central Java, South Sulawesi and West Nusa Tenggara (NTB). Of the total 69 cases that became the Task Force, the most in East Java were 7 cases. Followed by Central Java, South Sulawesi and NTB each with 4 cases. (Julaika, 2021)

According to Agus Surono, the land mafia case is different from the land dispute case. MLand Afia can be classified as a classic organized and professional crime. In the land mafia has a modus operandi. One of them is through the creation of false documents on proof of ownership of land rights in collaboration with individuals who have the authority to issue false proof of rights, which is usually done neatly so that it is difficult to reveal. (Harianto, 2021)

Mafia has a negative connotation, because it is synonymous with criminal acts. In Indonesia, the term mafia is attached based on the type of activity, for example case mafia (markus), legal mafia, land mafia, and others. The land mafia seems legitimate, legal, and natural, this is because the activities of the land mafia are marked by two things, namely involving the symbols of law enforcement such as state civil apparatus (ASN) in the National Defense Agency as well as lower ranks, local government officials, PPAT Notaries, and law enforcement officers such as “judges/courts”. Nevertheless, law enforcement officers and enforcers can be part of the land mafia network, while the supervision system in law enforcement in Indonesia is still weak.(Sofyan, 2021)

Departing from the cases above, we can understand that land is one of the assets that is often the target of the land mafia. Because land as one of the important things in Indonesia has various uses. The use of the land is as a place to live, as a place to work and also make a living by gardening or farming. Land is very important in Indonesia, this is due to the large population, while the land supply is running low. The selling price of land soared as a result of the development in the area around the land, making it increasingly difficult for the community to obtain land.

Given the importance of land for the community, certainty, order, and legal protection demand that legal traffic in people's lives requires legal evidence, so that people get legal certainty over their ownership. PPAT Notaries who in their profession are actually authorized agencies in making authentic deeds. The authority of a notary in providing legal evidence is regulated in a statutory regulation at the level of the law. This means that to determine the status of ownership of a plot of land, it must involve a Notary PPAT officer administratively. This also shows that the practices of the land mafia, either directly or indirectly, will involve PPAT Notary Officers in each of their crimes.

Based on the explanation above, the researcher is interested in examining how land mafia practices can occur and who should be involved in these criminal practices. Furthermore, what is the role of Notaries and PPAT in overcoming the problem of land mafia?

II. Research Method

The research method used in this research is normative legal research with a literature review approach to laws and regulations related to the research focus. The normative legal research in Indonesia is almost the same as the common law law research. In the common law legal system, it is more oriented towards practical aspects or aspects, which are generally to resolve or solve concrete legal problems (certain legal cases) or are carried out by legal practitioners (legal practitioners) in the form of disputes and only want to find ways and places for a problem. the law is governed by law which is carried out through researching a number of legal facts, legal regulations that are appropriate or relevant (relevant) or looking at a number of cases that are in line with the statement to be resolved, (Sonata, 2014).

III. Result and Discussion

3.1 Land Mafia Modus Operandi

The term land mafia is not found in the Agrarian Law and the Corruption Crime Act. The term land mafia is mentioned in the Technical Instruction Number: 01/Juknis/D.VII/2018 Concerning the Prevention and Eradication of the Land Mafia, it is explained that the definition of land mafia is "Individuals, groups and/or legal entities that

carry out actions intentionally to commit crimes that can lead to crime. and cause delays in the implementation of the handling of land cases”.

The land mafia is a land crime that involves a group of people working together to illegally own or control other people's land. The perpetrators used methods that violated the law which were carried out in a planned, neat and systematic manner. The illegal ownership and control of land often triggers conflicts or disputes that often result in human lives. Weak supervision, law enforcement, and lack of transparency are some of the causes of the land mafia. In addition, the people's neglect of the land they own is also often used by the land mafia to illegally control their land. Ironically, victims sometimes do not know that their land certificates have changed names because they do not check with the National Land Agency (BPN).(Cahyaningrum, 2021)

Land Mafia can also be said as a form of crime committed by two or more people who work together to occupy other people's land. The following methods are commonly used by the land mafia: document falsification (for rights), legalization in court, legal/unfair occupation (illegal), incident engineering, collusion with unscrupulous officials to obtain legality, crimes with corporations such as embezzlement and fraud, destruction of land rights and loss of land titles. There are three reasons for the existence of the land mafia, namely: lack of supervision, lack of law enforcement, and lack of transparency. In addition, land is a profitable investment and high economic benefits. Also the existence of land that is always needed by the community.(Prayitno, 2021)

According to Sofyan Djalil as Minister of Agrarian and Spatial Planning/National Land Agency (ATR/BPN), among others, by falsifying documents, illegal occupation or without rights. (wilde occupatie), seeking legality in court, case engineering, collusion with unscrupulous officers to obtain legality, corporate crimes such as embezzlement and fraud, falsification of power of attorney to manage land rights, conducting land sales and purchases carried out as if formally, and loss of warkah. soil. The loss of land parcels is a modus operandi carried out by elements in the Ministry of ATR/BPN in collaboration with the land mafia.(Akbar, 2021)

Meanwhile, according to the Chairman of the FKMTI (Forum Victims of the Indonesian Land Mafia) Supardi Kendi Budiarjo, as a resource person at the National Seminar on Year-End Reflection on Deciding the Ecosystem and Epsintrum of the Land Mafia at the GBHN Building, MPR/DPR RI Complex on Tuesday, December 14, 2021, he said that the land mafia mode involved done is as follows,(Yunawati Karlina, 2022):

- 1) Create new data by searching for data related to the victim's data or data elsewhere argued at the victim's place;
- 2) Conduct transactions with new data, namely by making transactions with one of the heirs;
- 3) Apply for a certificate by postulating Government Regulation No. 24 of 1997 concerning Land Registration by appealing to interested buyers in good faith.
- 4) Negotiation with the victim is by criminalizing finding fault with the victim through the legal process so that the victim is willing to negotiate.
- 5) Fighting in court, this mode is carried out by the land mafia, entering the victim into a chessboard, fighting in court, the result of which has been determined that the victim wins level I (District Court) Level II of the High Court but is executed by the Supreme Court and if the victim wins, it is difficult to execute

Of the various modus operandi, the most common mode used by the land mafia is document falsification. This is as stated by the Minister of ATR/Head of BPN, Sofyan A. Djalil, that of the 305 cases targeted for operations, the modus operandi mostly consisted of document falsification as much as 66.7%, crimes of embezzlement or fraud as much as

15.9%, illegal occupation without rights as much as 11%, and the sale and purchase of disputed land 3.2%.(MediaIndonesia, 2021)

The land mafia still overshadows land governance in Indonesia. Various loopholes are used for certain purposes, one of the most common being falsification of land ownership documents. There is a big gap exploited by the land mafia, namely the incomplete data on land registration in Indonesia. The existence of the land mafia is still one of the factors causing land problems in Indonesia. The land mafia takes advantage of land scarcity and the negligence of land related parties for various purposes,(Ramadhani, 2022).

3.2 Authority of PPAT Notary in Making Land Deed

Notary officials are appointed and dismissed by the Minister in this case the Minister of Law and Human Rights, the guidance and supervision is in the officials under the ministry, namely the District Court. PPAT is appointed and dismissed by the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), while the guidance and supervision is on the appointed official at the district or city level, this is the Head of the local Land Office. However, in this context, a Notary can also be appointed as PPAT.

The resulting legal product is an authentic deed, but with different types, in Law no. 30 of 2004 and Law no. 2 of 2014 concerning the Position of Notary (UUJN), NAauthorities are public officials who are authorized to make authentic deeds and have other authorities as referred to in this Law or based on other Laws. Furthermore, a notary is authorized to make an authentic deed regarding all actions, agreements, and provisions required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, giving grosse, copies and excerpts of the deed, all of which are as long as the making of the deed is not assigned or excluded to other officials or other persons stipulated by law. In Article 15 paragraph (2) of UUJN 2014 Notaries are also authorized to:

- a) ratify the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
- b) book a letter under the hand by registering in a special book;
- c) make a copy of the original handwritten letter in the form of a copy containing the description as written and described in the letter concerned;
- d) validate the compatibility of the photocopy with the original letter;
- e) provide legal counseling in connection with the making of the Deed;
- f) make a deed related to land; or
- g) make a Minutes of Auction Deed.

Meanwhile, according to Government Regulation no. 24 of 2016 concerning Amendments to Government Regulation No. 37 Year 1998AboutRegulation of the Position of Land Deed Maker Officials, PPAT is a public official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or property rights to flat units. PPAT is in charge of carrying out some land registration activities by making a deed as evidence that certain legal actions have been carried out, such as: buying and selling, exchanging, grants, entry into the company (inbrenng), sharing of joint rights, granting building rights/use rights on land. property rights, granting mortgages, and granting power to impose mortgages. The deed made by PPAT will then be used as the basis for registering changes in land registration data caused by the above legal actions.

The authority of a Notary/PPAT as a legal professional is not only to make an authentic deed, but also has the authority to carry out management in terms of land registration activities as stated in Article 2 Paragraph (2) PP Number 37 of 1998 concerning the Regulation of the Position of the Official Making Land Deeds for the President of the Republic of Indonesia (hereinafter referred to as “PP PPAT”). In addition, the Notary/PPAT must pay attention to the notary's code of ethics in making land rights certificates. The land mafia case involving the PPAT Notary has occurred in the case of Nirina Zuber.

One of the provisions regarding the transfer of land rights or flats is regulated in Government Regulation Number 24 of 1997 concerning Land Registration contained in Article 37 which states that the transfer of land rights and ownership rights to apartment units must be through sale and purchase, exchange, grants, income in the company, and other legal acts of transfer of rights. Based on Article 6 Paragraph (2) of PP Number 24 of 1997, the Head of the Land Office is assisted by PPAT and other officials assigned to carry out certain activities in carrying out land registration. It is further regulated in Article 2 of PP PPAT that the main tasks of PPAT are:(Dinda BW Pastika, 2022)

Referring to the explanation above, it can be understood that the PPAT Notary has the authority in the process of making land deeds or making certificates of land rights. Thus, the PPAT Notary also has a central part that must be passed by land mafia actors. Because without the role of the PPAT Notary, the transfer of land rights is impossible. If the PPAT Notary performs its role and function properly, then of course the practice of land mafia can be prevented.

3.3 The Role of the PPAT Notary in Overcoming the Land Mafia Problem

Within a country, land conflicts themselves can occur because of the minimal amount of land while population growth is getting higher so that things like the land mafia will actually be difficult to contain. However, this is becoming more and more worrying because land disputes are increasingly diverse and also increasingly complex so that they can affect the development of the desire for land. This has caused a lot of news about the land mafia, because there are various kinds of new problems and complicated modes that arise along with the development of the population. Not a few people who experience losses or fraud in land disputes, due to the naughty hands of the land mafia that continues to run rampant.(Ramadhani, 2022)

Responding to the rampant land mafia cases, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) as one of the agencies authorized to decide the practice of land mafia has formed an Anti-Land Mafia Task Force (Satgas) in early 2021. In this case ATR/ BPN intensively cooperates with the National Police, the Attorney General's Office, the Supreme Court, and the Judicial Commission. Not only at the national level, the Land Anti-Mafia Task Force was also formed at the provincial level. In addition, the government has also issued technical instructions regarding the eradication of land mafias which are expected to be a guide in steps and aspirations to prevent and eradicate land mafias in Indonesia. Based on the Technical Instructions,

Eradication of the land mafia is a homework that must be immediately completed by all relevant authorities, namely from the Ministry of Agrarian Affairs and Spatial Planning, the Indonesian Police, and all supporting elements who will always be involved in all interests in land issues including demanding the participation of PPAT Notary. directly related to land issues to be involved in eradicating and overcoming the land mafia problem.

ProtectionThe law of land rights certificate holders needs to be considered because it is inseparable from the crime of document falsification, this is a criminal act. Referring to

article 263 paragraph (1) and paragraph (2) of the Criminal Code which states, whoever makes a fake letter or falsifies a letter that can give rise to a right, an engagement or which is intended as evidence rather than something with the intention of using or ordering other people to use the letter as if Even if the contents are true or not and are not fake, they are threatened if the use can cause harm, due to falsification of the letter, with a maximum imprisonment of six years. Furthermore, paragraph (2) explains, is threatened with the same punishment, whoever deliberately uses a forged or forged letter as if it were real, if the use of the letter can cause harm. Forging a signature also includes the meaning of falsifying the letter of this article. This shows that document falsification is the main door to land mafia cases, and can be the key to preventing land grabbing.

One of the main problems with land is land administration. Especially with regard to land certificates. Certificates of land rights are given to rights holders to provide legal certainty and protection. The certificate of land rights is obtained after going through several stages of making a PPAT Notary deed so that a deed can be obtained. The PPAT Notary Deed is made not only to recall events that have occurred, but is more aimed at the interests of the strength of the evidence, so it is hoped that it will provide legal certainty in determining the rights and obligations of each in the future. After obtaining a certificate of land rights, then the right holder can take legal actions on the land. So in this context the certificate of land rights becomes a key point in the practice of the land mafia. While the process of making land certificates administratively must pass through the hands of a PPAT Notary.

The important role of the PPAT Notary in overcoming this land mafia problem is: lies in the principle of prudence in carrying out their duties and responsibilities. The implementation of the principle of prudence (prudence) must be carried out in the process of making a deed given that an authentic deed has perfect evidentiary power. The following is the form of the principle of accuracy that must be considered by a Notary/PPAT: a) Conduct an introduction to the appearer based on his/her identity shown; b) Asking, then listening and observing the wishes or wishes of the parties; c) Checking the documentary evidence relating to the wishes or wishes of the parties; d) Provide advice and create a deed framework to fulfill the wishes or wishes of the parties; e) Fulfill all administrative techniques of making a deed, such as reading, signing, providing copies and filing for minutes;(Dinda BW Pastika, 2022)

PPAT must ensure the parties who will conduct transactions when making the deed related to land, whether they are the rightful and authorized parties to do so. The parties who make the transfer of land rights must come together before the PPAT when making the deed, the deed is read out. In addition, the PPAT Notary must also be able to ensure all the requirements and original documents by confirming the people concerned, and must comply with all existing regulatory systems in the land deed process. Notary and PPAT compliance with regulations is very important. This effort aims to avoid deviant practices by various parties.

IV. Conclusion

Land mafia crimes are crimes committed by several people systematically with various modes that are quite complicated and complicated, such as document falsification, illegal occupation or without rights (wilde occupatie), seeking legality in court, case engineering, collusion with unscrupulous officers to obtain legality. , corporate crimes such as embezzlement and fraud, falsification of the power of attorney for land rights, buying and selling land carried out as if it were formal, and the loss of land parcels. The loss of

land parcels is a modus operandi carried out by elements in the Ministry of ATR/BPN in collaboration with the land mafia.

However, of the many modus operandi of the land mafia, the process of land mafia crime must go through the administrative system handled by the PPAT Notary, so that the PPAT Notary in the context of this land mafia crime, becomes an important part that must be passed by the perpetrators of these crimes. Because the PPAT Notary has the authority to make a land deed that transfers land rights.

On the other hand, PPAT Notary has a central and strategic role in eradicating, overcoming and preventing the occurrence of land mafia. One of the roles that PPAT Notaries must play is to really pay attention to the regulatory system for making land deeds, ensuring the originality of documents by confirming to the parties concerned, and ensuring that interested parties actually come face to face with the PPAT Notaries. when making the deed.

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