

Legal Remedies for Notary Involvement in Land Mafia Cases (Case Study of Verdict Number 272/PID/2021/PT DKI)

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ABSTRACT

Land is one of the valuable assets, because it has a high economic value. Land is a vital object in human life, because it has various values. Due to the high demand for land, it triggers the number of land mafias. The land mafia mode is to issue land evidence, manipulate cases and pretend to carry out land sales and purchase transactions. If someone wants to make a sale and purchase, someone is needed in the process of making the Sale and Purchase Deed. In the case of the land mafia that is currently rife, they will later work with a notary to process the AJB. The provisions of the Law on Notary Positions and this Code of Ethics have regulated the obligations and prohibitions of a Notary in carrying out his duties. The form of research used in this research is normative juridical research, namely research that refers to theories and laws and regulations related to this research. If there is a violation committed by a Notary which has been prohibited by laws and regulations. The notary will be subject to a code of ethics sanction as well as sanctions in the Notary Position Act. There are several efforts that can be done to eradicate the land mafia that is so rampant in Indonesia: 1) take firm action against the land mafia actors; 2) improve the integrity and professionalism of the apparatus; 3) improve cooperation/coordination between apparatus in handling and eradicating land mafia; 4) carry out land certification.

ABSTRAK

Tanah merupakan salah satu aset berharga, karena memiliki nilai ekonomi tinggi. Tanah merupakan objek vital di dalam kehidupan manusia, karena memiliki beragam nilai. Dikarenakan kebutuhan tanah yang tinggi, menjadikan pemicu banyaknya mafia tanah. Modus mafia tanah adalah menerbitkan bukti tanah, merekayasa perkara dan berpura-pura melakukan transaksi jual beli tanah. Bila seseorang hendak melakukan jual beli, dibutuhkan seorang dalam proses pembuatan Akta Jual Beli. Dalam kasus mafia tanah yang sedang marak terjadi, mereka nantinya akan bekerjasama dengan Notaris untuk memproses pembuatan AJB. Ketentuan dalam Undang-Undang Jabatan Notaris maupun Kode Etik INI telah mengatur mengenai kewajiban dan juga larangan seorang Notaris dalam melakukan tugas jabatannya. Bentuk penelitian yang digunakan dalam penelitian ini adalah penelitian yuridis normatif yaitu penelitian yang mengacu pada teori-teori serta peraturan perundang-undangan yang berkaitan dengan penelitian ini. Bila terjadi pelanggaran yang dilakukan oleh seorang Notaris yang mana telah dilarang oleh peraturan perundang-undangan. Notaris tersebut akan dikenakan sanksi kode etik dan juga sanksi dalam Undang-Undang Jabatan Notaris. Ada beberapa upaya yang bisa dilakukan untuk memberantas mafia tanah yang begitu marak di Indonesia: 1) menindak tegas pelaku mafia tanah; 2) meningkatkan integritas dan profesionalisme aparat; 3) meningkatkan kerjasama/koordinasi antar aparat daam menangani dan memberantas mafia tanah; 4) melakukan sertifikasi tanah.

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I. INTRODUCTION

Land is one of the valuable assets, because it has a high economic value. Land can also encourage the acceleration of development in various countries, especially in Indonesia. Soil is a vital object in human life, because it has a variety of values. (Margareta Sevilla Rosa Angelin; et.al, 2021) With the population who was starting to increase, the need for land becomes high and also its availability is running low. Due to the high need for land, triggers the number of land mafias. (Margareta Sevilla Rosa Angelin; et.al, 2021). The reason for the existence of the land mafia is because there is not much land in Indonesia but the population growth is very high. It affects the development of the desire of the soil.

Not a few communities experience losses/fraud in land dispute cases. This happened because of the land mafia that continues to run rampant in Indonesia. news about the land mafia is getting more and more and more emerging. "The Ministry of Agrarian Spatial Planning/National Land Agency (ATR/BPN) said that during the period from 2018 to 2020, ATR/BPN had handled 185 land cases indicated by the existence of a land mafia." (Cahyaningrum, 2021) Various cases of land mafia continue to emerge in the country. The emergence of the land mafia added to the problem of disputes related to land ownership. The way it works is by forging land ownership documents and bringing them to the Court to seize land belonging to others. It is residential land, office buildings, factories or state projects, and public facilities that are being seized. The existence of the land mafia is difficult to solve because it concerns important and powerful people, by bribing and cooperating with people with power. They are willing to do anything to deprive others of their rights.

"Land and land disputes are things that are prone to trigger conflicts between community members and delinquent individuals." (Pratiwi, 2021) Land disputes can later have an impact on the status and function of land, namely: land becomes unproductive, land can no longer be used as it should be and the income of the State Treasury will be reduced because it is sourced from taxes. "The land mafia is a rogue-loving practice that thrives due to low public oversight and lack of law enforcement." ("Studi Kasus Pertanahan: Membedah Tindak Pidana Pertanahan Dan Mafia Tanah," 2021) The mode of the land mafia is to issue evidence of land, engineer cases and pretend to make land buying and selling transactions.

If someone wants to buy and sell, it takes a person in the process of making an AJB (Deed of Sale and Purchase). "A general officer who is entitled to issue an authentic deed and has other powers stipulated in the law is called a notary." (Ade Oki Subagja; Puti Priyana, 2022) The provisions in Article 1 number 1 of Law Number 2 of 2014 concerning the Position of Notary, explain that a Notary is a general official who has the authority to make authentic deeds. In the case of the land mafia that is currently happening, they will later cooperate with a Notary to process the creation of AJB. One example of the latest case is the mafia buying and selling luxury houses that ensnared a Notary, namely Erlina Dwi Kurniawari, S.H. (Putusan Pengadilan Negeri Nomor 272/PID/2021/PT DKI, n.d.)

In the sale and purchase of the luxury house involved Ferryjanto Satrio, The Selling Power of Mustopa aka Typhoon, Arnold Siahaya, Dedi R., Notary Staff and Julfan Saluri, all three of whom are serving sentences in Cipinang Prison and Neneng Zakia with the status of a Person Search List (DPO) with Hendrik Oktavianus. (District Court Decision Number 272/PID/2021/PT DKI, n.d.) Notaries together with other perpetrators commit criminal acts of fraud and/or embezzlement and/or forgery of letters and/or order to place false information into authentic deeds and/or criminal acts of money laundering.

The provisions in the Notary Position Law and this Code of Ethics have regulated the obligations and also the prohibition of a Notary in carrying out the duties of his position. If the notary violates these obligations and prohibitions, the Notary will be subject to sanctions adjusted to the legal actions carried out by the Notary. Based on the above problems, the author formulates two legal problems, namely: 1) Notary Responsibility for Being Involved in Land Mafia Cases and 2) Legal Remedies in Eradicating Land Mafias That Are Rampant in Indonesia.

II. RESEARCH METHODS

The form of research used in this research is normative juridical research, namely research that refers to theories and laws and regulations related to this research.(Ali, 2013) The type of data used is secondary data obtained from official documents, books, scientific articles and laws and regulations.(Ali, 2013) The types of legal materials used are as follows:

1. Primary Legal Materials

Primary Legal Material is a legal material that has a juridically binding nature.(Dyah Ochtorina Susanti; A'an Efendi, 2014) In this study, the primary legal material that will be used is:

- a. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary;
- b. Notary Code of Conduct 2015.

2. Secondary Legal Materials

Secondary Legal Material is material that provides a view of the subject matter and provides an explanation of the primary legal material related to this research.(Dyah Ochtorina Susanti; A'an Efendi, 2014) Secondary legal materials in this study are in the form of books, journals, and scientific articles related to notary professional ethics.

III. RESULTS AND DISCUSSION

1. Notarial Responsibility in Review of the Code of Ethics

The notary profession plays a role in preventing deviations from the implementation of his profession. If there is a violation committed by a Notary which has been prohibited by the regulations of the regulations. The notary will be subject to code of ethics sanctions, in the form of reprimands, fines, temporary dismissals, compensation, disrespectful dismissal and finally dismissal from office.(E.Y. Kanter, 2001) Notaries who are proven to have violated the code of ethics, must be able to account for their actions. "An accountability can be seen on the basis of a mistake and an absolute liability."(Ade Oki Subagja; Puti Priyana, 2022) Responsibility is an act that has an adverse effect on the legislature and is born a result of the actions committed.

The Notary has the authority to make authentic deeds and from this authority it is the responsibility of the Notary in every process of making authentic deeds can be carried out in accordance with laws and regulations. "Based on Article 6 of the Notary Professional Code of Ethics, the Indonesian Notary Association (INI) states that Notaries who violate the Code of Ethics may be subject to sanctions in the form of reprimands, suspending (temporarily suspending) membership of the Association, continuing (revoking) membership of the Association, revoking the membership of the Association."(Ade Oki Subagja; Puti Priyana, 2022)

Based on Decision No: 272/PID/2021/PT DKI, in that case a Notary was involved in the Land Mafia. Notary Erlina Dwi Kurniawati, S.H made an AJB between Vanda Gusti Andayani and Zurni

Hasyim Djalal for SHM No. 2614/Pondok Pinang an Zurni Hasyim Djalal. In Article 3 of the Notary Code of Ethics, there are several obligations of a Notary in carrying out the position of Notary, one of which is: having morals, ahklah a good personality. A Notary Must also act honestly, independently and with a sense of responsibility.(Ikatan Notaris Indonesia, 2015) From the above case, the obligations of a Notary in carrying out their position have been violated by Notary Erlina Dwi Kurniawati, S.H, for participating in the Land Mafia case.

The imposition of sanctions on notary members who violate the code of ethics is adjusted to the quality and quality of violations committed by the Notary (Article 6 paragraph (2) of the Code of Ethics). In this case, Notary Erlina Dwi Kurniawati, S.H was subject to sanctions in the form of disrespectful dismissal from the membership of the association. His actions, which participated in committing fraud against victims, also helped by making AJB an act that violated the code of ethics. "Notaries must be held accountable for their actions if a Notary is caught committing an unlawful act or violating the Code of Ethics in carrying out his professional duties."(Ade Oki Subagja; Puti Priyana, 2022).

2. Notary Liability in Review of the Notary Office Act

Provisions in Article 16 of the Notary Position Law, dalma carrying out his position a Notary is obliged to act trustworthy, honest and maintain the interests of related parties in legal acts. If a Notary violates these provisions, it will be subject to sanctions in the form of: a) written warning; b) temporary termination; c) dismissal with respect or d) dismissal with disrespect.(Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d.) Notaries are also prohibited from doing other work that is contrary to religious norms, decency or disability, so that later it can affect the honor and dignity of the position of Notary (Article 17 paragraph (1) of the Law on the Position of Notary).

Notaries will be subject to sanctions if they violate these provisions, in the form of: 1) written warnings; 2) temporary dismissal; 3) respectful dismissal; and 4) dismissal with disrespect. The obligations and prohibitions of a Notary that have been regulated in the Notary Position Law have been violated by Notary Erlina Dwi Kurniawati, S.H. "The provisions contained in Articles 16 and 17 of the Notary Position Law clearly state the obligations and prohibitions that must be fulfilled by the notary."(Ade Oki Subagja; Puti Priyana, 2022) Violation of everything that a notary commits is subject to sanctions, and there are binding rules for the benefit of an organization or association, not only for notaries, but for all professions. Notary Erlina Dwi Kurniawati, S.H. as a party involved in the Land Mafia was given a sanction of dismissal as a member of INI disrespectfully. INI conveys that by dismissing a Notary for violation of office, it is a form of guidance by sanctioning a Notary who commits a violation.(Stefani Wijaya, 2021)

"If there is a Notary in making a deed not based on the Notary Position Law so as to cause harm to the community then it is an individual who must be individually responsible for his actions."("Tanggapi Mafia Tanah, Ketum INI: Oknum Notaris Bertanggungjawab Secara Individu," 2021) The provisions in Article 15 paragraph (1) of the Notary Position Law and the authority accompanied by legal responsibility, must be followed by notaries with the principle of prudence in carrying out activities in carrying out professional authority that meets the factual legal aspects of legal legality.("Notaris Harus Teliti Perhatikan Legalitas Akta Jual Beli Tanah," 2021) According to the author, the involvement of a Notary in the land mafia is a deviant act of a Notary and INI as a Notary organization that houses a Notary, has nothing to do with it.

3. Legal Remedies to Eradicate the Land Mafia

There are several efforts that can be made to eradicate the land mafia that is so rampant in Indonesia: 1) crack down on land mafia actors; 2) improve the integrity and professionalism of the apparatus; 3) increase cooperation/coordination between officials in handling and eradicating the land mafia; 4) conduct land certification. Imposing criminal sanctions on perpetrators who are proven to have committed criminal crimes is intended to have a deterrent effect on the perpetrators. So that the perpetrators will not repeat their actions. Individuals involved in the land mafia, such as Notaries are not only subject to criminal sanctions but also administrative sanctions such as disrespectful dismissal.

"Integrity is related to the morale of clean and honest officers, while professionalism is related to the ability or expertise of officers in carrying out their duties."(Cahyaningrum, 2021) Sofyan A. Djaliil said that the land mafia has a strong and extensive network involving Notaries, law enforcement, courts and finally the Ministry of ATR / BPN. "In order to realize the integrity and professionalism of the apparatus, it is important to carry out bureaucratic reforms in order to realize good governance."(Cahyaningrum, 2021) It is also necessary to monitor and supervise from the Ministry of ATR / BPN and the process of issuing land certificates, so that community land rights can be protected.

President Jokowi ordered that a Land Mafia Prevention and Eradication Team or PPMT Team be formed for short. Members of the PPMT Team will be the National Police, the Ministry of ATR/BPN and the Prosecutor's Office. The purpose of forming the team is to facilitate coordination and improve the handling of land mafia cases that are so rampant.(Cahyaningrum, 2021) It is also expected that people who have land rights to immediately register land. This action is one of the efforts that can be done to eradicate the land mafia with the active role of the community in protecting their land. If the landowner does not register his land rights, then there is no guarantee of legal certainty over his land ownership. After the landowner registers his land rights, a Certificate of Land will be born which becomes proof of ownership of land rights.

The Ministry of ATR/BPN said that to eradicate the land mafia is to have an effective communication strategy in disseminating information to the community.("Upaya Perangi Mafia Tanah," 2022) The strategic communication is in the field of law carried out by the Public Relations Of the Ministry of ATR / BPN. According to the author, other efforts to eradicate the land mafia by minimizing overlapping land ownership in Indonesia. Until now, cases of overlapping land ownership still occur in Indonesia. "The strategy for preventing land cases is to map potential cases based on case typology and conduct scientific studies / akademis and as well as practical studies on the causes of cases and their resolution strategies, mapping priorities for land case prevention based on the highest trends, strengthening cooperation and coordination between agencies, academics and related stakeholders, and optimizing electronic information systems for the prevention of Land SKP"("Studi Kasus Pertanahan: Membedah Tindak Pidana Pertanahan Dan Mafia Tanah," 2021)

The perpetrators of the land mafia know of major loopholes such as incomplete land registration data in Indonesia.(Yoga Sukmana; Erlangga Djumena, n.d.) So that the perpetrators of the land mafia took advantage of the loopholes. If these efforts can be carried out and implemented properly between the community, law enforcement is also the Ministry of ATR / BPN. Then the land mafia will no longer exist. As we know, that the land mafia harms so many people that it must be eradicated.

IV. CONCLUSION

If there is a violation committed by a Notary which has been prohibited by the regulations of the regulations. The notary will be subject to code of ethics sanctions and also sanctions in the Notary Position Law, in the form of reprimands, fines, temporary dismissals, compensation, disrespectful dismissal and finally dismissal from office. Violation of everything that a notary commits is subject to sanctions, and there are binding rules for the benefit of an organization or association, not only for notaries, but for all professions. Notary Erlina Dwi Kurniawati, S.H. as a party involved in the Land Mafia was given a sanction of dismissal as a member of INI disrespectfully.

There are several efforts that can be made to eradicate the land mafia that is so rampant in Indonesia: 1) crack down on land mafia actors; 2) improve the integrity and professionalism of the apparatus; 3) increase cooperation/coordination between officials in handling and eradicating the land mafia; 4) conduct land certification. These efforts are needed so that later they can eradicate the land mafia and provide protection to the community for their land ownership.

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