

The Criminal Liability for Land Mafia Actors with Letter Forgery Mode

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Abstract. *There are many land mafia cases with various modus operandi quite apprehensive, let alone the losses incurred are very large. In carrying out their crimes, the land mafia uses various modus operandi and involves parties who have authority in obtaining land certificates. The modus operandi of the land mafia. For example, pretending to be a buyer and borrowing land certificates with the excuse of checking with BPN. The approach method used in writing this law is a normative juridical approach. The author's approach is based on statutory regulations and theories related to the problem of criminal liability for the land mafia with the mode of document forgery. The results of research on techniques and methods used by land mafia perpetrators continue to experience developments to trick victims. The most common mode that the public needs to know is document falsification (the basis of rights). Then occupation (physical control, ed) illegally or without rights (wilde occupatie). Cases of falsification of documents related to land, such as eigendom, girik, Land Certificates (SKT), Land Redistribution Decrees, and signatures of Measurement Letters. Criminal liability is a form of determining whether a suspect or defendant is held accountable for a crime that has occurred. forgery of letters regulated in Article 263 of the Criminal Code up to Article 276 of the Criminal Code with a penalty of six years.*

Keywords: Land Mafia, Criminal Liability, Forgery of Letters

1. Introduction

Land is something that cannot be separated from the way of life of living things, such as being a means of residence or a source of earning a living for the survival of living things. Today land is one of the main assets in order to create a prosperous society. Therefore, land has a very important function for human life.¹

¹Boedi Harsono, (2003), Indonesian Agrarian Law. History of the Establishment of the Basic Agrarian Law. Contents and implementation, Djbridge, Jakarta, Pg. 69

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia regulates land use which states that "the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". On the basis of Article 33 of the 1945 Constitution, the government hopes that this can become the main capital for the welfare of society and is the property of every citizen, not the property of a few people. This is also the legal basis for national land politics with one goal, namely for the welfare of the people with a mechanism of control by the state which is then further elaborated in Act No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

To follow up on the above, government regulation Number 24 of 1997 concerning Land Registration was issued. The administration of land registration within the community is a state task which is carried out by the government for the benefit of the people in order to provide the status of land rights in Indonesia. The purpose of land registration according to Government Regulation Number 24 of 1997 is as follows:

- To provide legal certainty and protection to holders of land rights over a plot of land, apartment units and other registered rights so that they can easily prove themselves as the holder of the rights in question.
- To provide information to interested parties, including the government, so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units.
- For the implementation of orderly land administration.²

There are many land mafia cases with various modus operandi quite apprehensive, let alone the losses incurred are very large. Therefore there needs to be serious attention to be able to eradicate the land mafia. In this regard, this paper examines the modus operandi of the land mafia and the efforts that can be made to eradicate the land mafia. One of the factors driving the rise of the land mafia is the negligence of the community to maintain the secrecy of their land certificates. In addition, the factors that make the land mafia are the lack of supervision and orderliness of land administration and the imbalance between the structure of ownership and land ownership can have an effect and the inadvertence of notaries and officers who make land deeds in carrying out their duties can be fatal.³

²Government Regulation Number 24 of 1997 in Article 3.

³Ramadhani, R, Legal Protection for Land Rights Holders Who Are Victims of the Land Mafia, Vol. No. 5, 2021, p. 87

In carrying out their crimes, the land mafia uses various modus operandi and involves parties who have authority in obtaining land certificates. The modus operandi of the land mafia. For example, pretending to be a buyer and borrowing land certificates with the excuse of checking with BPN.

When the certificates have been obtained, the land mafia falsifies the certificates, sells the land without the owner's knowledge by involving elements that have already been prepared. To avoid this, Wardan reminds us not to give certificates to other parties, especially unknown parties. Based on the description above, the author wants to examine how the process of accountability for land mafia perpetrators with the mode of forging letters because the consequences of their crimes are detrimental to other parties. The purpose of this study is to find out the description of criminal sanctions for perpetrators of crimes in the land sector or called the land mafia.

2. Research Methods

The approach method is a way to approach the object of research so that it relates to how to treat the subject matter in order to find problems in the form of answers to problems and research objectives. The approach used in writing this law is a normative juridical approach, namely discussing legal principles, legal systematics, level of legal synchronization, legal history and comparative law. The author's approach is based on statutory regulations and theories related to the problem of criminal liability for the land mafia with the mode of document forgery.

Conceptual approach (conceptual approach) is an approach that departs from the views and doctrines that developed in the science of law. The author will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issue at hand. Understanding of these views and doctrines is a basis for the author in building a legal argument in solving the issues at hand.

Primary legal materials, namely binding legal materials which may consist of: Criminal Code, Act No. 5 of 1960 Concerning Agrarian Principles, Government Regulation Number 24 of 1997 Concerning Land Registration and secondary legal materials, namely legal materials that provide explanations of primary legal materials, namely those which can be in the form of draft laws, research results, scientific work results from legal circles and others.

3. Results and Discussion

Land has a very important position in the life of the nation and state. Because land can be used for development, both infrastructure such as roads, irrigation, telecommunications as well as in agriculture, animal husbandry, mining, housing so that currently land is a commodity that has very high economic value.

In Article 1 point 1 of the Regulation it is explained that land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding plots of land and apartment units, including the issuance of certificates of proof of title for land parcels that already have rights and ownership rights to apartment units and certain rights that burden them.⁴

The rise of land disputes in court usually does not escape the role of the land mafia. As a result, the people who are victims have to fight hard to defend their land rights in court. For this reason, it is important for the public to know and recognize the various actions of the land mafia mode used to trick victims. The techniques and methods used by land mafia actors continue to develop to trick victims. The most common mode that the public needs to know is document falsification (the basis of rights). Then occupation (physical control, ed) illegally or without rights (*wilde occupatie*). Cases of falsification of documents related to land, such as eigendom, *girik*, Land Certificates (SKT), Land Redistribution Decrees, and signatures of Measurement Letters.⁵

Adami Chazawi said that various kinds of criminal acts that occur in society, one of which is the crime of counterfeiting, even today there are many criminal acts of counterfeiting with various forms and developments which point to the increasingly high intellectuality of increasingly complex counterfeiting crimes.⁶

The crime of counterfeiting is a crime which contains a system of untruth or falsehood of something (object), something that looks from the outside as if it is true, even though in fact it is contrary to the truth. The popular legal rules for resolving this problem are regulated in the Criminal Code (KUHP) and Government Regulation Number 51 of 1960 concerning the Prohibition of Unauthorized Use of Land, which has the right or proxy. These two legal instruments are often used to prosecute various crimes related to land and building objects in Indonesia.

according to the Chairperson of the FKMTI (Indonesian Land Mafia Victims Forum) Supardi Kendi Budiarto, as a guest speaker at the Year-End Reflection National Seminar on Disconnecting the Ecosystem and Episintrum of the land mafia at the GBHN Building, the MPR/DPR RI Complex on Tuesday, December 14, 2021 said that the land mafia mode of conduct was are as follows:

⁴Article 1 paragraph 1 Government Regulation Number 24 of 1997 concerning Land Registration.

⁵<https://www.hukumonline.com/berita/a/mengenali-modus-permainan-mafia-tanah> accessed on January 2, 2023 at 16.56 WIB

⁶Muh. Riezyad, "Thesis Concerning Juridical Review of the Delict of Forgery of Land Certificates", Hasanudin University 2013, page 3.

1. Creating new data by searching for data related to the victim's data or data in other places, it is postulated at the victim's place;
2. Make transactions with new data, namely by making transactions with one of the heirs;
3. Applying for a certificate by way of arguing with Government Regulation No. 24 of 1997 concerning Land Registration by applying for self-interested buyers in good faith.
4. Negotiation with victims, namely by criminalizing finding fault with victims through the legal process so that victims are willing to negotiate.
5. Fighting in court, this mode is carried out by the land mafia, putting the victim on a chess board, fighting in court, where the result has been determined, the victim wins level I (District Court) Level II, High Court, but is executed by the Supreme Court, and if the victim wins, it is difficult to execute.

Aattje Tehupeiori, a land law expert at the Christian University of Indonesia, said that there were many modes used by the land mafia. This was done with an evil conspiracy, giving rise to land disputes and cases in the community and this weakness can result in gaps in the data collection of land in Indonesia that is not yet accurate, causing overlapping land ownership, disputes, land conflicts and so on.

It can be concluded that the land mafia mode is used in various ways, ranging from fraud and falsification of data, certificates, signatures and cooperation with law enforcement officials, notaries, members of the household member/BPN and elements of the court. So it can be interpreted that the mode of the land mafia is very systematic and planned and organized, even the land mafia network has entered into the circles of the state palace. For this reason, extra and special efforts are needed as well as being organized in terms of eradicating the land mafia.⁷

The Dutch Criminal Law which follows the Penal Code regarding counterfeiting uses the term *faux en ecritures*, 'faux' or 'forgery' while 'ecritures' or 'writings', then forgery can only be done in letters, which is defined as every creation

⁷Yunawati Karlina, Irwan Sapta Putra, Eradication of the Land Mafia Using Criminal Law Instruments in Indonesia, *Res Justitia Journal: Journal of Law Science, Law Study Program, Faculty of Law, Bina Bangsa University* Volume 2 Number 1 January 2022

thoughts that are written down in sayings that are made in any way, and the letters that can be the object are not all kinds of letters.⁸

In Indonesian law, counterfeiting of something is a form of crime that has been regulated in the Criminal Code (KUHP). Indeed, forgery itself will result in being regulated in CHAPTER XII Book II of the Criminal Code, the book states that what is included as forgery is only in the form of writings, including forgery of letters regulated in Articles 263 of the Criminal Code to Article 276 of the Criminal Code. Criminal acts that often occur are related to Article 263 of the Criminal Code which reads:

(1) Any person who makes a forged letter or falsifies a letter which can give rise to a right, an agreement or release of debt, or which is intended as evidence of something with the intention of using or ordering someone else to use the letter as if the contents were true and not forged, shall be punished if said use causes harm, due to forgery of documents, with a maximum imprisonment of six years.

(2) By the same punishment shall be punished any person who with deliberate intent uses a forged document or one which has been falsified to pretend to be genuine, if the use of said document can cause harm.

Criminal liability is a form of determining whether a suspect or defendant is held accountable for a crime that has occurred. In other words, criminal responsibility is a form of determining whether a person is acquitted or convicted.⁹

A criminal act refers to things that are prohibited and punishable by a crime. Meanwhile, whether a person who has committed a crime can be sentenced or not depends on whether or not there was a mistake in committing the crime. This is because criminal responsibility is based on the principle of "not being punished if there is no mistake" (*Geen straf zonder schuld; Actus non facit reum nisi mens sist rea*).¹⁰ A person can be declared guilty and responsible for a criminal act he has committed if he has fulfilled three elements, namely guilt, being able to be responsible, and there is no excuse for forgiveness.

Counterfeiting is also closely related to land rights fraud. Falsification of land certificates is the root cause of fraudulent land rights. So the crime of falsifying land certificates will give rise to new crimes, one of which is Article 385 of the

⁸Adami Chazawi and Ardi Ferdian, 2015, Crime of Forgery: Crimes that Attack Legal Interests Against Public Trust Regarding the Truthfulness of the Content of Writing and News Delivered, Rajawali Press, Jakarta, p. 135

⁹AgusRussianto, 2015, Crime and Criminal Liability, Kencana PrenadaMedia Group, Surabaya, p. 3

¹⁰Moeljatno, 2009, Principles of Criminal Law, Rienaka Cipta, Jakarta, p. 165

Criminal Code which contains stellionat crimes or commonly referred to as land rights fraud.

Chapter V of the Criminal Code explains the inclusion of criminal acts regulated in Article 55 of the Criminal Code and Article 56 of the Criminal Code. According to R. Soesilo contained in article 55 of the Criminal Code explains what is meant by a person who participates in committing (medepleger). Taking part means doing it together or at least there must be 2 (two) people and those 2 (two) people are the person who is doing it, namely the forger of the letter and the person who is doing it. And what is contained in article 56 of the Criminal Code is helping to do (medeplichtige). In article 56 of the Criminal Code, namely the intention of the person helping to do it is only to help the main actor achieve his goals, without having his own goals.¹¹

4. Conclusion

In land mafia crimes, the most common mode that the public needs to know is document falsification (base of rights). Then occupation (physical control) illegally or without rights (wilde occupatie). Cases of falsification of documents related to land, such as eigendom, *girik*, Land Certificates (SKT), Land Redistribution Decrees, and signatures of Measurement Letters. A person can be declared guilty and responsible for a criminal act he has committed if he has fulfilled three elements, namely guilt, being able to be responsible, and there is no excuse for forgiveness. Regulations on criminal acts of counterfeiting that apply in Indonesia are contained in Chapters IX to Chapter XII of the Criminal Code (KUHP).

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Government Regulation Number 24 of 1997 concerning Land Registration

¹¹Wirjono Prodjodikoro, 2003, Principles of Criminal Law in Indonesia, PT Refika Aditama, Jakarta, p. 80

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