

The Role of Land Deed Maker Officials (PPAT) and the National Land Agency (BPN) in Prevention of Land Mafia

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Abstract. *This study aims to analyze: 1) The role of Land Deed Maker Officials (PPAT) and the National Land Agency (BPN) in preventing land mafia in Tuban Regency. 2) Legal protection for victims of land certificates transferred by the land mafia. The approach method used in this study is an empirical juridical approach. The research specification used is descriptive analytical research. This type of data uses primary and secondary data sourced from interviews and literature studies. The data analysis method used in this research is qualitative data analysis. The results of the study concluded: 1) The role of Land Deed Making Officials (PPAT) and the National Land Agency (BPN) in preventing land mafia in Tuban Regency was carried out to provide legal certainty and protection for the community. The role of the PPAT is to ensure that the parties who will carry out the sale and purchase transactions, read and sign the deed in front of the parties, check and match documents to the BPN, and act carefully in making the deed. Meanwhile, the role of BPN is to reform human resources, re-examine files from PPAT, accelerate PTSL, socialize electronic certificates. 2). Legal protection for victims of land certificates transferred by the land mafia in a preventive manner is by preventive measures such as forming a task force for eradicating land mafias, increasing the integrity and professionalism of law enforcement officers, BPN and PPAT, increasing cooperation between officers, accelerating certification with the PTSL program, as well as providing strict criminal threats to land*

mafia perpetrators who are proven to have committed crimes. The repressive protection provided to the victim is in the case of the land mafia related to overlapping certificates, multiple certificates, and others, which can be resolved in several ways, such as mediation between village heads or through a court lawsuit.

Keywords: BPN; Land; Mafia; PPAT.

1. Introduction

The increase in the people's economy and an increasingly advanced national economy have resulted in an increase in the need for legal certainty in the land sector. More and more land is entangled in economic problems. In everyday life, land certificates often become disputes and even go to court. This arises because land has a very important function for people's lives, which makes people try to acquire land in various ways, even by taking other people's land. The settlement of disputes over land ownership rights through the courts is a decision that determines who owns the actual certified land ownership rights of the land in dispute¹.

Land problems have always been complicated and complex legal issues and have broad dimensions in both developed and developing countries, so they are not easy to resolve quickly.² Therefore, this land issue needs to be carefully and fully planned and managed wisdom. Article 20 of the Basic Agrarian Law explains that property rights are hereditary, strongest and fullest rights that people can have on land, keeping in mind the provisions in article 6.

It is the strongest right to land, which authorizes the owner to be able to give back another right on the plot of land owned by the owner (can be in the form of building rights or use rights, with the exception of cultivation rights), which is almost the same as the right to use land. The state (as ruler) to give land to its citizens.³

Certificates are the final result of land registration and are authentic evidence. The strength of the certificate is a guarantee of legal certainty for the certificate

¹ Syarifah Lia. Lathifah Hanim. Kepastian Hukum Dalam Penyelesaian Sengketa Timbulnya Tumpang Tindih Sertifikat Hak Milik (SHM) Atas Tanah (Studi Kasus Di Kantor Pertanahan/Agraria Dan Tata Ruang Kota Pontianak). *Jurnal Akta*. Vol. 4. No. 1. March 2017.

² Irawan Soerodjo. (2002). *Kepastian Hukum Hak Atas Tanah di Indonesia*. Surabaya: Arkola.

³ Kartini Muljadi and Gunawan Widjaja. (2008). *Seri Hukum Harta Kekayaan: Hak-hak atas tanah*. Jakarta: Kencana.

holder as a perfect evidence as long as no opposing party proves otherwise. A person or legal entity will easily prove himself/herself as the holder of the right to a plot of land and the condition of the land, for example the area, boundaries, existing buildings, types of rights along with the burdens that exist on the land rights, and so on.

The implementation of the transfer of land rights or land registration cannot be separated from the role of the Land Deed Maker Official (PPAT) and the National Land Agency (BPN). The main duties and authorities of the PPAT are actually as stated in Article 2 paragraph (10) and (2) of Government Regulation No. 37 of 1998 concerning the Regulation of the Position of Land Deed Maker Officials, namely carrying out part of land registration activities by making a deed as evidence that a legal action has been taken. certain rights to land or ownership rights to apartment units that will be used as the basis for registering changes in land data resulting from such legal actions, namely buying and selling, exchanging, grants, entry into the company.⁴

The making of the deed by the Land Deed Making Officer (PPAT) in the transfer of land rights is attended by the parties who carry out legal actions and is also attended by at least two witnesses who meet the specified requirements. In addition to PPAT, the National Land Agency (BPN) also plays an important role in land registration, including managing and developing land administration, which includes regulating the use, management and ownership of land, managing land rights, measuring and registering land and other related matters. The role of BPN is also regulated in the Regulation of the Head of the Land Agency of the Republic of Indonesia Number 4 of 2006 in conjunction with the regulation of the Head of the National Land Agency of the Republic of Indonesia Number 5 of 2006 in section 13, it is stated that the function of the BPN in dealing with disputes, Land conflicts and cases (SKP) are to realize land policies for justice and community welfare. BPN's role is to systematically handle and resolve cases, problems, disputes and land conflicts throughout Indonesia.

Along with human development and increasing economic activity, the need for land is increasing and the value of land is also getting higher. The importance of land and the high value of land are the background of the current rampant land mafia cases which are very disturbing and detrimental to the community. The Ministry of Agrarian Spatial Planning/National Land Agency (ATR/BPN) said that during the period 2018 to 2020, ATR/BPN had handled 185 land cases that indicated the existence of a mafia.

Many factors can encourage the rise of land mafia cases, one of which is related

⁴ Eko Puji Hartono. Akhmad Khisni. Peranan PPAT dalam Pembuatan Akta Peralihan Hak Atas Tanah dan/atau Bangunan Bekas Hak Milik Adat Berkaitan Dengan Pembayaran Bea Perolehan Hak Atas Tanah Dan/Atau Bangunan. *Jurnal Akta*. Vol 5 No 1 March 2018.

to the community's negligence to maintain the confidentiality of their land certificates. They should be more careful in terms of who they entrust the land certificate to, which is expected not to be misused of the land certificate or certificate. In addition, there are several factors that can make the land mafia more able to launch its actions in the midst of society. One of them is due to the lack of supervision and order in the administration of land, due to the overlapping of existing laws and regulations as well as the regulation of substances that have been regulated, making a lot of abandoned land escape the law.

The rise of cases of land disputes and ownership in the Tuban area made the Tuban Police immediately act quickly by maximizing the land mafia clean-up team. This is done to create legal protection and certainty in the land sector. To suppress the existence of the land mafia, the Tuban Police will also coordinate with related agencies, especially the PPAT and the National Land Agency.⁵

2. Research Methods

The approach method used in this study is an empirical juridical approach. The research specification used is descriptive analytical research. This type of data uses primary and secondary data sourced from interviews and literature studies. The data analysis method used in this research is qualitative data analysis.

3. Results and Discussion

3.1. The Role of Land Deed Officials (PPAT) and the National Land Agency (BPN) in Prevention of Land Mafia in Tuban Regency

The National Land Agency (BPN) of Tuban, in a coordination meeting (Rakor) with the local Resort Police (Polres) immediately submitted a case of land mafia which is still tough in its area. The decision was made after the signing of a memorandum of understanding between the Land Mafia Task Force, the Head of the BPN Office and the Tuban Police Chief. The cases that were deposited included falsification of selling power of attorney, falsification of sale and purchase receipts of six land objects and embezzlement of Property Rights Certificates (SHM), regarding land grabbing, falsification of land certificates, falsification of authentic deeds, about land grabbing, and disputes between residents and PT. TPU without a permit⁶.

Officials who play an important role in the transfer of land rights are the Land Deed Maker Official (PPAT) and the National Land Agency (BPN). As stipulated in

⁵ <https://www.halopantura.com/perjualan-pertanahan-kasat-reskrim-polres-tuban-buru-mafia-soil/>. accessed 19 April 2022

⁶ <https://kumparan.com/>. accessed on June 10, 2022. at 21:20 WIB

Government Regulation Number 24 of 2016 concerning Land Deed Making Officials, PPAT, Temporary PPAT and Special PPAT are officials who play a very important role. Therefore, it is only natural that someone who holds the position is considered to know and of course must have sufficient knowledge about land and/or building registration and related to it. The duties of the PPAT according to Government Regulation Number 24 of 2016 concerning Regulations for Land Deed Maker Officials are, among others, to maintain a list of the deeds it has made, including a reporterium (a list of the deeds it has made).

Another limitation of authority is that the deed of sale and purchase of land may not be carried out by PPAT who are not in their working area. Carelessness in purchasing land without going through PPAT will cause losses regarding the area of land purchased. Often the sale and purchase of land is carried out with witnesses and a letter of sale and purchase made by the village head. The area used is in the form of numbers which may very well come from *petuk* on other certificates that are not aware of cadastral measurements and calculations.

Therefore, when it will be certified, the land needs to be measured, calculated and drawn and then the area of the land is calculated. The agreement on the location of the boundary is measured by the National Land Agency and is evidenced by the signatures of the buyer and owner of the bordering land. The legal act of buying and selling land resulted in changes in the juridical data of land registration.⁷

One of the powers given to PPAT as a public official is to make authentic deeds in addition to other authorities determined by law.⁸ In addition to PPAT, BPN also has an important role in the process of transferring land rights. Based on the Presidential Regulation of the Republic of Indonesia Number 20 of 2015 concerning the National Land Agency, in carrying out its duties to carry out government duties in the land sector. The Land Agency has the authority to register rights and issue decrees on granting land rights that are applied for by a person or an entity.⁹ One of the activities in the BPN's strategic program is the acceleration of settlement of land cases. Land disputes are land disputes between individuals, legal entities or institutions that do not have a broad socio-political impact.¹⁰

⁷ Irawan, Op.cit.

⁸ Sandhy Aditya Nugraha. Aryani Witasari. Tanggungjawab dan Wewenang Pejabat Pembuat Akta Tanah (PPAT) dalam Pembuatan Akta Jual Beli Tanah di Kota Semarang. *Prosiding: Konferensi Ilmiah Mahasiswa Unissula (KIMU)* 2. 18 October 2019.

⁹ Endeng. Kewenangan Badan Pertanahan Nasional Dibawah Kementerian Agraria dan Tata Ruang Badan Pertanahan Nasional Kabupaten Karawang. *Jurnal Hukum POSITUM*. Volume 4. No. 1. June 2019.

¹⁰ Soerjono Soekanto. (1976). *Mengenal Antropologi Hukum*. Bandung: Alumni.

The authority of PPAT and BPN in the process of transferring land rights affects the legal certainty of rights holders. Juridically, authority is the ability given by laws and regulations to cause legal consequences. Philipus M. Hadjon argued that every government action must rest on a legitimate authority. Attribution authority is usually defined through the division of state power by law. The delegation's authority comes from the attributive delegation of authority, while in the mandate there is no transfer of authority at all.

Based on the theory of authority, the authority possessed by BPN and PPAT is an attributional authority, meaning that this authority is also obtained through law. It appears that the authority obtained by attribution is genuine and comes from the laws and regulations. In other words, government organs obtain authority directly from the editors of certain articles in a statutory regulation.

PPAT has a major role in the transfer of land rights because it has the task of assisting the Head of the Land Office in carrying out land registration activities by making a deed as evidence that certain legal actions have been taken regarding land rights which are authentic deeds. As an authentic deed, the PPAT deed must comply with the procedures for making the PPAT deed as determined by the law and other regulations.

Based on their important role in the process of registering land rights, PPAT and BPN also have an important role in preventing cases of land mafia. Role of Officials for Land Deed Makers (PPAT) and the National Land Agency (BPN) in preventing land mafias in Tuban Regency, namely:

- The Role of Land Deed Officials (PPAT)
 - PPAT must ensure that the parties who will carry out the transaction when making the deed of sale and purchase are really the rightful and authorized parties to carry out the sale and purchase transaction.
 - The parties who carry out the sale and purchase must be together before the PPAT when making the deed, the deed is read out. Thus, the parties truly believe in themselves.
 - The signing of the deed which is attended and read directly by the Notary/PPAT minimizes the risk of an appellant claiming to be the owner of the land and falsifying the signature of the land owner on the deed.
 - The PPAT must also examine the conditions for the validity of the legal action concerned by, among other things, matching the data contained in the certificate with the registers in the Land Office.

- Act carefully in making the deed, so that there is no gap for the land mafia to start their crime.

This preventive measure is the mandate of the legislation, specifically Article 22 of Government Regulation Number 24 of 2016 concerning the Regulation of PPAT Positions. In this procession, PPAT can also apply the Principle of Recognizing Service Users which has been mandated by the Minister of Law and Human Rights Number 9 of 2017 and other laws and regulations, as well as direct processions by all parties at the same time, can avoid or prevent acts of fraud which are the strategy of the land mafia in running it. The fulfillment of SOPs in laws and regulations by PPAT in the making of deeds and the procession of land administration by the ASN of the Ministry of Agrarian and Spatial Planning is the optimal strategy in suppressing the action of the land mafia in Indonesia.¹⁷

- The Role of the National Land Agency (BPN)
 - Making improvements to the Human Resources (HR) in BPN's internal.
 - Re-examine the files from PPAT, and BPN must examine whether there are defects in its administration or not.
 - Accelerate the PTSL program. PTSL is a registration activity for the first time that is carried out simultaneously and includes all land registration objects that have not been registered in a village or sub-district area. PTSL is very helpful in preventing the action of the land mafia which is very disturbing and detrimental, that there are many gaps in the emergence of land mafia from various parties. PTSL is a fast, safe, easy, and inexpensive way for residents to obtain land certificates to avoid disputes and disputes in the future.
 - Conduct organized and continuous socialization of electronic certificates to the community, so that people can manage their own land more easily and efficiently. Electronic certificate too can prevent double certificates, so as to reduce the opportunity for land mafias to commit crimes.

According to the Minister of ATR/Head of BPN, many cases of land mafia are related to criminal acts of corruption, involving state assets, BUMN assets, and involving government officials (ASN) in collaboration with certain individuals. that there are elements from BPN who are involved in land mafia practices, but action has been taken for those who are proven to be practicing land mafia and the Ministry of ART/BPN has taken firm steps to take action against land mafia

elements in the Ministry of ART/BPN by removing them and criminalize other than that there are also those who are warned depending on their mistakes and if anyone is proven to have violated the law we will submit it to law enforcement officials.¹⁸ The Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) also revealed, the practice of land mafia also involves Land Deed Making Officials (PPAT). Therefore, the Ministry of ATR/BPN will implement various measures to combat land mafia practices there are PPATs that lend accounts to other people. There are also PPAT elements who are accomplices of the land mafia. The Ministry of ATR/BPN will provide disciplinary punishment to PPAT persons who violate the code of ethics in accordance with the laws and regulations. The Central PPAT Board of Trustees and Supervisors (MPPP) and the Regional PPAT Supervisory and Supervisory Council (MPPW) play an important role in the development and supervision of PPATs.¹¹

3.2. Legal Protection for Victims Against Land Certificates under the pretext of the Land Mafia

Legal protection for land owners in UUPA Number 5 of 1960 concerning Basic Agrarian Regulations aims to regulate ownership of land rights, so that land rights holders feel protected. One of the aspects in the LoGA is land registration, this is very important, because it is closely related to maintaining citizens' ownership rights to their land and the protection obtained by legitimate land owners. Government Regulation Number 24 of 1997 which is a form of implementing land registration which aims to provide legal certainty and legal protection and legal protection for holders of land rights with evidence produced at the end of the land registration process in the form of a Land Book and Land Certificate consisting of a copy of the Land Book and Letter of Measurement.¹²

Legal certainty in question is legal certainty concerning physical data and juridical data regarding control over a land. From the results of the author's analysis, it is found that legal protection for land owners in Indonesia, especially in the Tuban Regency area is very strong, provided that the land owner has proof of ownership of the disputed land. The evidence is in the form of a land certificate which is the strongest evidence for ownership of a land right, as stated in Article 19 Paragraph (2) letter c of the BAL. Based on Article 1 Paragraph (3) of the 1945 Constitution, which means that the state guarantees the legal rights of its citizens to provide legal protection especially against the abuse of authority by the mafia against legitimate land owners.

The large number of land mafias in Indonesia also greatly affects the legalization system of land certification, due to the recent economic impact. The emergence

¹¹ <https://www.kompas.com/property/>. Accessed on June 8, 2022. at 19.00 WIB

¹²

of brokers is caused by land sellers who have no buyers or poor advertising. 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.¹³

Prevention of land mafia is very important to ensure legal protection for victims as legal land owners. Based on the theory of legal protection, efforts to prevent land mafias are a form of preventive protection for land owners. In addition, in the case of the land mafia itself, other preventive legal protection is the legal protection provided to land owners, in accordance with the Basic Agrarian Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles which has the aim of regulating someone's ownership of land that is owned by a person, so that land rights holders can be protected. Even so, the legal protection of land rights certificate holders needs to be considered again in the legal concept.

The legal protection 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, engagement or which is intended as evidence of something with the intention of using or ordering another person to use the letter as if the contents were true or not and not fake, is threatened if such use can cause harm, due to falsification of the letter, with a maximum imprisonment of six years. . Furthermore, paragraph (2) is explained, 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.

Based on Philipus M. Hadjon's theory of legal protection, repressive protection measures in the case of the land mafia related to overlapping certificates, multiple certificates, and others can be resolved in several ways, such as mediation between the village head and the disputing parties, then achieving an agreement between the parties through arbitration and alternative disputes is also one of the solutions. Prior to enforcing criminal sanctions themselves, the State Land Agency (BPN) offered a solution for solving land problems. In solving the problem, BPN took the first step through mediation, either the mediation was facilitated by BPN itself or BPN handed over the problem to each party to resolve the existing dispute. This itself can only be done if the problem can be resolved properly and the results of the agreement do not violate the provisions of land law. However, if both parties do not reach the opportunity, then civil law, state administrative law, as well as criminal law can be the ultimate goal for both

¹³ Aries S. Hutagalung. (2005). *Tebaran Pemikiran Seputar Masalah Hukum Tanah*. Lembaga Pemberdayaan Hukum Indonesia. Jakarta. p.81

parties to resolve existing land disputes. Set in the Regulation of the Minister of State for Agrarian Affairs or the Head of the National Land Agency No.1 of 1999, it is stated that BPN must handle the settlement of land disputes that have been attempted, if the problem is too complicated.

Only when the land dispute then touches the criminal realm will it be resolved in court. In the Criminal Code itself, in addition to Article 263, there are several other articles detailing land crimes as regulated in Articles 385, 389, 263, 264, 266 of the Criminal Code (Pre-acquisition), Article 425 of the Criminal Code (Control by extortion), Article 167 and Article 168 of the Criminal Code (Unauthorized control). That way, for anyone who violates the existing prohibitions and regulations, the criminal law can be enforced, although with the condition that the prohibition must refer to actions caused by people's behavior so that criminal sanctions can lead to people who commit these crimes¹⁴.

Land registration plays a role in providing legal protection for land rights certificate holders. The theory of legal protection provides protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be functioned to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice. Legal protection for holders of land rights in land registration can be realized if 3 (three) cumulative conditions are met, namely the issuance of land certificates that are 5 years old or more, the issuance process the certificate is based on good faith, and the land is physically controlled by the holder of the right or authority.

4. Conclusion

The role of Land Deed Maker Officials (PPAT) and the National Land Agency (BPN) in preventing land mafias in Tuban Regency is carried out to provide legal certainty and protection for the community. The role of the PPAT is to ensure that the parties who will carry out the sale and purchase transactions, read and sign the deed in front of the parties, check and match documents to the BPN, and act carefully in making the deed. Meanwhile, the role of BPN is to reform human resources, re-examine files from PPAT, accelerate PTSL, socialize electronic certificates. The authority possessed by BPN and PPAT is an attributional authority, meaning that this authority is also obtained through law. It appears that the authority obtained by attribution is genuine and comes from the laws and regulations.

¹⁴ Wida Wirdaniati.dkk., Model Legalisasi Sertifikasi Tanah di Perdesaan dan Proyeksi Terhadap Nilai Manfaat Kepemilikan. *Jurnal Hukum Unissula*. Volume 38 No. 2.

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