



CRIMINAL LAW RESPONSIBILITY AGAINST NOTARIES AS LAND MAFIA OCCUPATIONS

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Abstract

Land mafia individuals are two or more people working together to seize other people's land or state land. It is not appropriate if only a Notary causes the exchange of original and fake certificates, embezzlement, fraud so that the action fulfills the elements of a legal violation. Using the Normative Juridical Research Method, which is close to legislation (Statue approach) and case approach (Cases approach) that the legal umbrella of Law no. 2 of 2014 regarding amendments to Law Number 30 of 2004 concerning the Position of Notary Public, there are no criminal provisions regulated so that this could potentially occur under the Criminal Code. In the context of Criminal Law Accountability for Notaries for the Deeds they make, as an alternative to provide protection for people who are harmed by Notaries as Land Mafia Persons. The results of this writing are that in the future the Government and the Minister of ATR/BPN (National Land Agency) together will immediately draft a law that provides regulations regarding the Eradication of Land Mafia Persons so that in dealing with Land Mafia Crimes they can be eliminated and carry out strict controls carried out by the Regional Supervisory Council of Notaries and The Central Notary Supervisory Council is to prevent Notaries who abuse negligence in carrying out their official duties so that there is no reproach for land mafia individuals to collaborate with Notaries.

Keywords: Notary, Land Mafia Personnel, Criminal Law Accountability

INTRODUCTION

A notary is a public official with the authority to make authentic deeds along with other authorities as intended in the Notary Position Law (UUJN). In providing qualifications as a public official, it is not just for Notaries. However, it is also given to Land Deed Making Officials (PPAT). Auction officials, namely notaries, are definitely public officials, but not every public official is necessarily a notary, because public officials can also be auction or PPAT officials.

In this case, it needs to be clarified regarding the application of Article 13 of the Law on the Position of Notaries (UUJN), whether it only applies to Notaries because they carry out actions related to carrying out office duties in line with their authority or whether it also applies to Notaries' actions related to carrying out their duties. position? In conclusion, the policy of Article 13 of the Law is applied when a Notary commits a related offense or carries out office duties which are in line with the authority of the Notary who created the deed (Article 15 paragraph (1) UUJN or authority (Article 15 paragraphs (2) and (3) UUJN). In the first case on November 18 2021, Polda Metro Jaya has determined five suspects named Riri Khasmita (RK), Erdianto (E), and 2 (two) PPAT Notaries who became suspects named Faridah (F), Ina Rosaina (IR) and Edwin Riduan (ER) regarding the land mafia case which caused losses to the family of artist Nirina Zubir, amounting to billions of Rupiah, Head of Public Relations of Polda Metro Jaya, Brigadier General Yusri Yunus, said that the main perpetrator's method of operation in this case which brought

losses to Nirina Zubir was through forgery. Initially, investigators were successful in securing three perpetrators, including two individuals, husband and wife, the perpetrators of whom were household members. Nirina's mother trusted Riri to carry out the PBB tax financing arrangements. She also gave a power of attorney because she trusted her so much, her late mother gave her a certificate, so the perpetrator's intention to carry out forgery emerged. authentic letter to become the authority for the certificate, then Riri as the suspect changed the name on the land certificate to her husband's name.

Meanwhile, the other five certificates which were changed to use Riri's own name were given a good life, not as part of a sibling, let alone a family. However, Nirina's mother still had a good heart in giving her a high place and a job, but in reality, what Riri gave her in return was actually forging her mother's letter which had apparently disappeared. Nirina Zubir also explained that there were six plots of land, all of which were changed to be in the names of Erdianto (E) and Riri Khasmita (RK), then four letters were mortgaged to the bank and the other letters were sold. Until he revealed that the various letters had been sold for the benefit of RK's family business. Thus, there were six letters that had been secretly changed in the suspect's name. Then, some of it was pledged as collateral to the bank and the rest was sold and it is suspected that the proceeds were used to provide capital for the suspect to run his frozen chicken business with more than five branches. This action resulted in Nirina Zubir's family feeling a loss of up to billions. At least IDR 17,000,000,000 (Seventeen Billion Rupiah) in Gunung Putri and Jakarta. Nirina also revealed that RK carried out this action supported by the help of a notary.

The land mafia case includes games carried out by the land mafia. In this case, there is falsification of documents or false information about the land owner's data and the signature of the Land Deed Official (PPAT). To obtain the legality of the required data, it is necessary to admit that the individuals involved are always looking for the slightest opportunity to achieve their goals. The high number of land cases that are occurring is indirectly interpreted as a reminder that the substance of the state's protection is weak, which is part of the social, economic and cultural aspects that are guaranteed by the constitution. Not only substance, substance officials, officials who have interests sometimes deviate from the rights of the community. Eradicating the land mafia is homework that needs to be completed as soon as possible by all relevant authorities, namely the Ministry of Agrarian Affairs and Spatial Planning, the Indonesian National Police, as well as all supporting elements who will always be involved in all land matters. Even though it is not a land issue, it is not a problem that is easy to handle, but it requires immediate preventive and eradicating action from the parties involved. Therefore, currently Indonesia as a legal state has regulated land matters in a complex way to protect the public from various problems that may occur at any time. Law can be said to be something that acts as a solution to violations that are said to be contrary or conflicting, which then occur in society, in this way the law can provide protection for society. In the case of the land mafia itself, the legal protection that is available is that given to land voters, in accordance with UUPA No. 5 Years. 1960 concerning the Basic Agrarian Regulations which have the aim of regulating a person's ownership of existing land, so that

the right holder to their land can be protected. However, legal protection for owners of land title certificates needs to be considered again in legal concepts. The theory of legal protection has the aim of coordinating and integrating various policies in society due to the many interests of protecting interests. Protection of an interest can only be implemented by limiting various interests on the other side, which means that the legal interest is to deal with the rights and interests of society. Seeing the case of Nirina Zubir, whose land certificate was manipulated or embezzled by her household assistant (ART), is an action that cannot be legally justified. referring to Article 28 H of the Republic of Indonesia Constitution Th.1945, as a result of the amendment, explained that every individual has the right to private property and his property rights cannot be taken over arbitrarily by anyone.

LITERATURE REVIEW

Based on the problems above, a problem formulation can be given, namely:

1. What is the criminal law's responsibility towards notaries as members of the Mafia?
2. What are the views of the figures regarding criminal law issues regarding notaries as members of the Mafia?

METHOD

Types of normative juridical legal research. to analyze legal issues regarding criminal law liability for notaries as land mafia perpetrators. Normative legal research methods mean scientific research procedures to carry out truth determination based on scientific logic from the existing normative part. The statutory approach is carried out through reviewing all laws and regulations relating to the legal problems being addressed.

The laws and regulations discussed in this case are clearly regulated in accordance with the Criminal Code (KUHP) and Law no. 2 Years. 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary Public, there are obligations and rights and prohibitions that Notaries have. The legal protection provided to land voters is in accordance with Law Number 5 of 1960, the main Basic Regulations providing protection for the public in cases of land mafia have the aim of regulating a person's ownership of existing land. And the case approach is carried out by considering examples of cases of land mafia individuals who relate to the problems being addressed and which have permanent legal force.

Legal collection methods that do not include literature related to legal dictionaries, textbooks, journals, opinions or comments. used in this research, in the form of reading materials or literature books which are written opinions of legal experts in the field of notary law and the National Land Agency (BPN), data and legal theory collected through various print media along with other sources related to the research object in question. will be discussed. The procedure for collecting legal materials begins with collecting materials obtained from library and literary studies, then analyzing them using a method of thinking which of the general statements can be drawn specifically, including conclusions.

RESULTS AND DISCUSSION

A. Criminal Law Accountability for Notaries as Land Mafia Persons

The Notary's position has the task of providing the parties with the evidence needed to take certain legal actions. The Notary will make a deed based on the request of the relevant parties. The task of the Notary in creating a deed for the Notary is based on evidence, statements or submitted by the parties. Notaries also have a role in providing legal advice to parties regarding existing issues. There is also a notary's advice given to the parties, which is then included in the relevant deed, this will be the will and statement of the parties, not a statement or statement from the notary. The position of Notary does not provide regulations regarding his responsibility from a criminal perspective for the deed he makes if he is proven to have committed an act that violates criminal law. UUJN simply provides regulations regarding civil and administrative legal witness policies. However, the Notary's responsibility is criminally liable if there is a criminal violation committed by the notary, meaning that the notary could be subject to criminal sanctions referring to the Criminal Code.

There are also various recordings that criminal acts can be imposed on notaries with restrictions, including: There are legal actions by individuals as notaries regarding the physical, material, formal elements of deeds intentionally, consciously and with the intention that they planned, namely deeds created in front of a notary simultaneously with the parties and those facing them there is an agreement to be used as a basis for carrying out criminal acts; There are legal actions carried out by the notary when making a deed that are not in line with the procedures for making a deed referring to UUJN. There are legal actions that are not in line with the evaluation carried out by the Notary Honorary Council.

In imposing criminal sanctions on a notary, it can be implemented if in carrying out the notary's office he violates the prohibitions stipulated in the UUJN, the notary's code of ethics and goes against the policies of the Criminal Code, these three components need to be fulfilled. The relevant notary cannot be held responsible when the fraud component or error is carried out by the person appearing. Because the notary simply records what the parties provide to be included in the deed, this is often referred to as a *partij deed*. False explanations given by various parties are the responsibility of these parties. This means that the notary only has responsibility if the fraud originates from the wishes or wishes of the notary. In UUJN, which provides regulations regarding sanctions for violations carried out by notaries, namely that the deed made by the notary has no force as an authentic deed but only has the force of being a private deed. In relation to the actions of notaries who carry out deed forgery offenses or false information offenses committed by various related parties, the UUJN does not provide specific regulations regarding criminal policies because they are based on the principle of legality as a principle in the Criminal Code.

Criminal responsibility (Criminal responsibility). Jefferson explained that the form of criminal responsibility usually comes from moral responsibility. What is conveyed is strongly related to the criminal liability of notaries relating to the process of making deeds. In other words, in every process of making a deed, the notary needs to be responsible both

from a moral perspective for the substance of each deed that is made. In criminal law, the parameter of criminal responsibility is the principle of error.

B. Figures' Views on the Criminal Law Problems of Notaries as Mafia

An offense or criminal act if there is no mistake (Geen Straf Zonder or Actus non facit reum nisi mens sit rea). In Law no. 48 Yr. 2009 concerning judicial power, Article 6 paragraph (2) stipulates "No one can be sentenced to a crime, unless the court, because of legal evidence according to law, is convinced that a person who is deemed to be responsible is guilty of the act with which he is charged." . Schaffmeister, through the perspective of content and scope, gives the term error (schuld), which includes:

1. The definition of error is used as a general requirement to be subject to criminal acts other than those that are against the law. Regarding this meaning, error is defined as the nature of being able to be blamed. This censure characteristic is meant to be used when we talk about non-sila (Avas in Dutch) related to various reasons for abolition of punishment.
2. The definition of error is also used for a special or specific part of the formulation of a criminal act, namely as a synonym for carelessness.

R. Maurach interprets the mistake as the husband's insult to the maker because of something psychological in nature. In order to achieve greater perfection, Maurach's opinion must be supplemented with normative errors, namely that the author can be criticized for his own actions or deeds. Mistakes or errors (Psychologisch) relate to the inner attitude of the maker which takes the form of negligence or deliberate. Meanwhile, normative error means an error that is external to the perpetrator or maker, namely regarding various available facts. Based on these various opinions, so from a general perspective. Mistakes are reproaches given by society or ethical standards to individuals whose actions are deviant. Then Jan Rammelink emphasized that in order to determine an error:

- a. Rechtsgesinnung (disgrace to the law or an action that constitutes a deviation)
- b. Strafwaaardigheid (the action is worthy of being punished)

In terms of doctrine, the reasons for forgiveness or pardon in criminal law can be implemented and adopted in the Nirina Zubir case due to the notary's ignorance and inadvertence, so it is assumed that there was no error on the part of the notary. This is especially related to the ignorance that can be excused regarding the essential facts for committing violations of the law of conduct, which gets a negative assessment, namely a notary who understands and knows the rules against such actions but still carries out his ignorance of the rules almost always cannot be excused, because for reasons like that, it never corrects justice without errors.

This also applies to each notary, who can be held criminally liable if he is proven guilty in the case of Notary Nirina Zubir of committing a criminal act as regulated in Articles 263 and 264 of the Criminal Code (Criminal Code). Article 263 of the Criminal Code paragraph (1) "Anyone who makes a fake letter or falsifies a letter which can give rise to a right, obligation or discharge of debt, or which is intended as proof of using or

ordering another person to use the letter as if the contents were true and not falsified, is threatened with: "if such use can result in loss, due to falsification of documents, with a maximum prison sentence of six years." Paragraph (2) "Subject to the same punishment, anyone who deliberately uses a fake or falsified letter, as if it were genuine, if the use of the letter could cause harm." In relation to the definition of "Letter" in Article 263 of the Criminal Code, R. Soesilo interprets it as follows: all letters whether written by hand, printed, or also written using a typewriter or so on. Then the forged letter needs to be a letter that:

- a. Can issue debt relief
- b. Can carry out the issuance of agreements
- c. Can carry out the issuance of rights
- d. Letters can be used to explain actions or phenomena.

Article 263 paragraph (1) of the Criminal Code has objective and subjective aspects. Objective aspects include, creating fake letters, forging letters, being able to issue rights, being able to issue agreements, and being able to be used as proof of certain things. Meanwhile, the subjective component is related to the intention, including the use and usage of the letter which can trigger the impact of loss, to use or make use of the letter as if it were genuine and not fake. Apart from that, Article 263 paragraph (1) "contains two types of prohibited acts, namely making fake letters and falsifying letters, both of which are called letter falsification." For example, there is a case where a notary creates a deed, and a copy has been issued. Then, there was a dispute and in front of the investigators one party revealed that the deed was created by his notary's assistant. Then, the notary's assistant takes the deed around so that the parties can sign it and when the notary's assistant does not meet one of the parties, it means that the deed is entrusted and after signing it is then taken away. After in-depth examination by the investigator, it turned out that the minutes of the deed were not available, but a copy of the deed had been issued and had been signed by the relevant notary.

What is meant by "making a fake letter" is carrying out content that is not supposed to be or is not true and creating a letter well, then showing the origin of the letter as not being true. Meanwhile, "falsifying a letter" means changing a letter properly so that the contents in it become different from what is real or authentic, so the letter becomes different from the truth (Soesilo, 1958). Article 264 of the Criminal Code paragraph (1), Forgery of documents is punishable by a maximum imprisonment of eight years, if committed against:

- a. Authentic Deeds
- b. Debt securities or debt certificates from a country or part thereof or from a public institution
- c. Letter of participation or debt or certificate of holding or debt from an association, foundation, company or airline
- d. Talon, proof of dividends or interest from one of the letters described in 2 and 3, or proof issued in lieu of those letters
- e. Letter of credit or trade letter intended for circulation.

Forging various letters as stipulated in Article 264 paragraph (1) of the Criminal Code based on R. Soesilo means endangering the public interest, so you are subject to a heavier penalty than falsifying an ordinary letter. Apart from that, an explanation must be given in the definition of an authentic deed. Referring to Article 1868 BW, it is explained that an authentic deed is a deed created in the form specified in the law by or in front of a public official who has authority regarding this matter at the location where the deed was created. Meanwhile, for people who use fake documents as stipulated in Article 264 paragraph (1) of the Criminal Code and can trigger losses for other individuals, so that person can be asked for criminal responsibility.

CLOSING

Conclusion

Land mafia is a crime involving land and involves a group of individuals who collaborate with each other to own or have control over land owned by other individuals illegally. Therefore, the land mafia is very detrimental to the victims, so it is necessary to eradicate various efforts to eradicate the land mafia, for example, taking firm action against the perpetrators, increasing the integrity and professionalism of the authorities, increasing coordination between the authorities in preventing and eradicating the land mafia, carrying out land certification, and increasing community participation/activity in maintaining and protecting their land.

Notaries must be held accountable under criminal law regarding their authenticity. Therefore, falsifying various documents in accordance with the regulations provided in Article 264 paragraph (1) of the Criminal Code and referring to Article 1868 BW explains that an authentic deed is a deed created in the form specified in the Law by or in front of a public official who has authority. related to this matter at the location where the deed was created. Meanwhile, for people who use fake documents as stipulated in Article 264 paragraph (1) of the Criminal Code and can trigger losses for other individuals, so that person can be asked for criminal responsibility.

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