



Land and property mafia issues in Indonesia

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ABSTRACT

Background: Land disputes in Indonesia have escalated, with nearly 90 million land areas affected and 8,000 cases still unresolved. The issue is largely due to inadequate supervision by stakeholders, weak law enforcement, and insufficient regulations. Additionally, land mafia cases are often concealed by involved parties. This research aims to provide insights, reduce, and prevent the duplication of land certificates, which contributes to the ongoing land disputes. **Methods:** This research employs a qualitative descriptive approach. Data were collected from consumer complaints submitted to the National Consumer Protection Agency (BPKN) and Focus Group Discussions (FGD) with various stakeholders, including developers, banks, the Attorney General's Office, Regional Legislative Council, Indonesia National Land Office, Batam Authority, and KLH of Batam City. The study also reviews relevant laws and regulations, with analysis conducted through descriptive methods. **Findings:** The study finds that the land mafia practices in Indonesia violate consumer rights as stipulated in Article 4 sections (3), (5), and (7) of the Consumer Protection Law No. 8/1999. These sections address consumers' rights to accurate, clear, and honest information regarding goods or services; the right to advocacy, protection, and dispute resolution; and the right to fair treatment without discrimination. The problem spans the pre-development (pre-transaction), development (transaction), and post-development (post-transaction) stages of property transactions. Addressing the land mafia issue requires significant efforts in education, control, and prevention to safeguard consumer rights. **Conclusion:** Land mafia practices pose a serious threat to consumer rights in Indonesia, affecting all stages of property transactions. The government must take decisive action to enhance supervision, strengthen law enforcement, and prevent the duplication of land certificates. A bold and firm approach is necessary to ensure proper consumer protection and resolve land disputes effectively. **Novelty/Originality of This Study:** This research highlights the intersection of land disputes and consumer protection, emphasizing the need for robust regulatory frameworks and effective enforcement mechanisms. It provides a unique analysis of the legal violations linked to land mafia practices, offering practical recommendations to prevent further abuses and protect consumer rights in Indonesia's property sector.

KEYWORDS: consumer right; land mafia; land dispute; property.

1. Introduction

Land is one of the most valuable assets and has high economic value because it can accelerate development in every place in a country, especially Indonesia. Land is one of the vital objects in human life and has various values such as social, economic, aesthetic and cultural values.

This has led to many cases related to land, one of which is a land dispute. This situation makes it necessary for Indonesia to have laws that regulate land ownership and use. Prior to Indonesia's independence, colonial agrarian law still applied in Indonesia until UUPA was finally passed and changed the application of the previous colonial agrarian law.

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The natural wealth in Indonesia attracted the interest of nations in Europe, especially the Dutch, to come to Indonesia. The Dutch formed a trading company called Vereenigde Oostindische Compagnie (VOC) in 1602. The VOC practiced receptive agriculture and imposed taxes on income and forced labor that were not in accordance with Indonesian society (Krisnantoro, 2022). However, since the leadership of Herman Willem Daendels (1800-1811), there has been a change in the structure of land control and ownership with a strategy of selling land in Indonesia to the Chinese, Arabs and Dutch. The land was called *elgendom* land (absolute ownership). During the time of Thomas Stamford Raffles (1811-1816), all land under government control was one of the government's priorities and all land became subject to taxation. Agrarian law in the independence era began in 1947-1960, but land ownership became complicated until after the recognition of sovereignty by the Netherlands, the Indonesian government began to reform land use. On September 24, 1960, Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles was passed, which contained the government's authority in the land sector. The state does not own land, but has a relationship with land for the public interest. The land sector is a sector controlled by the state for the greatest prosperity of its people.

Based on the legislation stipulated in Article 19 Paragraph 2 letters (a), (b) and (c) of Law No. 5/1960 on Basic Agrarian Principles, it is stated that land registration throughout the territory of the Republic of Indonesia must include measurement, mapping and bookkeeping of land; registration of land rights and the transfer of those rights; and the provision of proof of rights, which serves as a strong means of proof. However, in reality there is still a land mafia that escapes scrutiny, which has led to the rise of multiple certificate cases. With these multiple certificates, the land mafia can then file a lawsuit against the actual landowner to the court with convincing arguments so that the judge can favor the land mafia.

Until now, the problem of multiple land certificates or better known as land disputes is still rampant and is an old problem that has not been resolved. The causes of multiple land certificates include an invalid database, so that the settlement of the second certificate and so on may not be selective. From the community side, land issues, especially the problem of multiple land certificates, have not been fully realized, and they only realize it after someone else also has a certificate for the land they own. Because of their ignorance of the existence of multiple land certificates, they are unable to take preventive action. The purpose of this paper is to provide information, reduce and prevent the occurrence of multiple land titles. To prevent this, it must be done simultaneously in all lines related to land data. The government as the party responsible for the occurrence of multiple certificates must have the courage and assertiveness in enforcing land law. In addition, the government should be able to provide regular information about the certificate so that people know the possibilities that cause the occurrence of multiple certificates.

With the frequent cases of land mafia/multiple certificates, it is clear that there is still weak supervision by stakeholders, especially in terms of land registration. Article 30 Paragraph 1 of GCPL No. 8/1999 on Consumer Protection states that supervision of the implementation of consumer protection and the implementation of the provisions of laws and regulations is carried out by the government, the community, and non-governmental consumer protection organizations. The land mafia case has violated consumer rights as stated in Article 4 Paragraphs (3), (5) and (7) of GCPL No. 8/1999 on Consumer Protection, namely the right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services; the right to obtain advocacy, protection, and efforts to resolve consumer protection disputes properly; and the right to be treated or served correctly and honestly and non-discriminatory.

The government in 2017 has launched a complete systematic land registration acceleration program that started nationally by providing free land certificates for Indonesian citizens starting with making 125 million certificates in all land parcels by 2025 as a first step to reduce land dispute conflicts. This program is carried out by the government with the aim of providing a guarantee of legal certainty or land rights owned by the community. In its implementation, this program still experiences many obstacles,

such as disputes and overlapping land ownership. As is well known, Indonesia has nearly 90 million parcels of land with 8,000 of them still in dispute. Another problem with the land certification and agrarian reform program is the overlapping laws and regulations. Since 2010 to date, the government has made efforts to address overlaps in spatial planning and agrarian conflicts by using the one map policy. The background of the One Map Policy (KSP) is because the existing Thematic Geospatial Information (IGT) still overlaps with each other. According to the Ministry of Administrative Reform, currently the implementation of the One Map Policy has only reached 68.57%, which is considered not optimal, because there are still many problems that arise related to ownership disputes and duplication of land ownership evidence. This condition creates a gap for the practice of land mafia or multiple certificates.

In this case there are two legal aspects needed to control the land mafia in duplicating land certificates. First, the consumer protection aspect by requiring the application of strict standardization provisions for land registration in Indonesia, and second, the aspect of supervision by stakeholders. It was found in the field that there are still people who take advantage of existing loopholes to duplicate certificates, building and land legality, and land disputes. Things that can cause multiple certificates include inaccuracy and carelessness of officers in checking and researching the land being applied for, mistakes by landowners who do not use their land as it should be, at the time of measurement the applicant intentionally or unintentionally shows the location of the land and the boundaries of the wrong land, the intention of the landowner to re-register a certificate that actually already exists, and invalid data and the unavailability of land registration maps in the area.

In this study, BPKN-RI tried to initiate the first step by discussing and exchanging ideas and exploring the development of the current condition of consumer protection as a framework for anticipating efforts to prevent land mafia, for which the involvement, cooperation and coordination between related Ministries / Institutions are needed. In this activity, BPKN-RI presents resource persons who are experts in their fields to proactively communicate, develop research and studies related to regulations, implementation in the field, as well as suggestions and recommendations related to Consumer Protection in Indonesia.

2. Methods

This research uses qualitative analysis to explore the phenomenon more comprehensively. This study obtained primary data from consumer complaints and secondary data from relevant agencies. From the primary data of consumer complaints, limited meetings with stakeholders and interviews with a number of related parties were conducted. Secondary data was obtained based on the results of investigations and clarifications to enrich the findings in the form of facts and documents.

In collecting data, prior to the field visit, interviews were conducted with various parties including experts to obtain an overview of the handling and supervision of land mafia incidents. Discussions were also held to get an overview of the situation and conditions in the field together. Discussions were conducted with developers, banks, prosecutors, local parliament, BPN, Batam Authority, central MOE, and Batam City MOE.

3. Results and Discussion

A land mafia is an individual, group or legal entity that intentionally commits a criminal offense that can hinder the implementation of land case handling. The characteristics of land mafia are: 1. issuing and/or using more than one certificate on the same piece of land; 2. issuing and/or using a certificate that is indicated to be forged; 3. unauthorized occupation

or control of land belonging to another person, either whose rights have expired or whose rights are still valid; 4. changing/moving/removing land boundary markers; 5. applying for a replacement certificate because it is lost, while the certificate still exists and is still held by the owner or another person in good faith, resulting in two certificates on the same piece of land.

Recently, there has been a lot of news about land mafia cases that have occurred in various places. The ways in which the land mafia usually operates include falsifying documents (for rights), seeking legality in court, occupying illegally/without rights (*wilde occupatie*), fabricating cases, colluding with unscrupulous officials to obtain legality, corporate crimes such as embezzlement and fraud, falsifying the authority to manage land rights, and removing land certificates.

There are several issues related to the land mafia as follows: 1) Duplication of girik copies, making a certificate of no dispute, making a physical possession certificate or making more than one land certificate for several parties on the same piece of land; 2) Provoking farming communities to illegally occupy or cultivate on HGU Plantation land, both those that will expire and those that are still valid. 3) Falsification of land-related documents such as eigendom card, girik/kikitir, land certificate, land redistribution certificate, measurement letter. 4) Changing/moving/removing land boundary stakes. 5) Deliberately using the services of thugs to physically control certified land objects owned by others, fencing and locking them, then erecting buildings on them, and when there are complaints from people who own the land, they reason that they have physically controlled the land for a long time. 6) Applying for a replacement certificate due to loss when the certificate is not lost and is still held by the owner, resulting in the circulation of two certificates on the same land parcel boundary. 7) Legalizing land ownership, by: a. Filing a false lawsuit in court to obtain land rights, when both the plaintiff and defendant are part of the mafia group and the actual land owner is not involved as a party; b. Purchasing land that is being litigated in court; c. Filing an endless lawsuit, resulting in many court decisions with permanent legal force, the contents of which contradict each other, so that the decision cannot be executed and the land cannot be utilized; d. Filing a lawsuit in court using false rights, so that the decision cannot be executed. Conducting a lawsuit in court using false rights, so that the false data becomes valid with a court decision with permanent legal force.

On the other hand, there are still problems related to housing/property that has been purchased by consumers either in cash or credit. The purchase of housing units or housing land is generally through financing institutions, and the problems experienced by consumers in the housing sector are divided into 3 parts: 1. Pre-Development Process (Pre-Transaction): in this case the problems faced by consumers start from promises / advertisements that do not match reality, unclear land status, no licensing (IMB); 2. Development Process (Transaction): the weak position of consumers related to aspects of the sale and purchase agreement / contract between developers, consumers and financing institutions (banks) and also related to building quality as well as related to Social Facilities and Public Facilities; 3. Development Process (Post-Transaction): many consumers are disadvantaged due to actions taken by developers, consumers, and financing institutions (banks). Post-Development Process (Post-Transaction): many consumer rights are held hostage due to the actions of business actors related to management rights and problems in flats regarding the Association of Owners and Residents of Flat Units (PPPSRS), electricity management and in general the problem in the housing sector is that the certificate becomes a lien on another party or in other words the business actor cannot provide a guarantee of ownership rights to the flat unit that has been paid for by the consumer, even though it has been paid in full through an institution.

3.1 Consumer complaints at BPN related to land ownership rights

In 2018 BPN received 355 housing consumer complaints related to imperfect construction and installation after the house was completed and consumers signed the handover agreement. Some houses had leaking pipes under the floor and walls and gutters

that were not connected to the drain pipe to the water channel. The peak of the problem occurred when a number of housing residents had paid off the purchase of housing units either in cash or mortgage loans. Until now, a number of residents who have paid off the payment have not received ownership certificates as promised by the developer. Residents feel aggrieved over the purchase of a house that has been more than 6 years since the credit agreement through a banking financing institution until now the Sale and Purchase Deed has not been carried out, the Guarantee Certificate which is credit collateral does not exist at the lending bank, there has been double financing, there is a confiscation order issued by the court against 204 housing units at the request of a third party related to debt collateral from the developer who allegedly broke his promise.

In 2018, BPKN-RI received 60 complaints representing hundreds of housing consumers in East Jakarta. Their main problem was the legality of land built on land plots that were being litigated in court. Related to this, the process of distributing certificates to consumers is still hampered because it is still in the possession of the Attorney General's Office related to its financing. Developers work with several banks to provide home ownership credit facilities to consumers.

In 2019, BPKN RI received around 2,7000 complaints from residents of Batam city who suffered losses in the case of fake lot houses where these residents are low-income people. Some consumers have paid off gradually to the developer through cash payments but until now consumers do not get clarity on the legality of the promised land title certificate and consumers are asked to pay a fee of Rp35,000,000 for the permit. In this case, the perpetrator has been arrested and is being prosecuted on charges of illegally selling protected forest land.

Land mafia is still rampant in Indonesia due to several factors, among others: low supervision from stakeholders; lack of law enforcement and weak regulations; land mafia cases are often covered up by unscrupulous stakeholders.

Some indications of how the land mafia works include document forgery, case engineering, embezzlement and fraud, seeking legality in court, falsification of land rights management cases, collusion with officials to obtain legality, allegations of high-level engineering in the land mafia involving many officials.

There are several modes of land mafia that can be traced as follows: The first mode is a classic mode that is often used by land mafia groups. This action is organized starting from the existence of funders, the main actors involving unscrupulous officials. This mode is usually carried out by creating fake letters or documents used to take over assets in the form of land and buildings owned by victims for profit; The second mode, the initial scheme is generally almost the same as the first mode, where the perpetrator determines the target in the form of vacant land abandoned by the owner and then contacts the authorities to get information related to the land plot. The perpetrator cooperates with unscrupulous officers to falsify documents by changing physical and juridical data and then registering them in the KKP system program.

This violates the procedure because it is not registered with the application document; The third mode with the initial scheme is almost the same as the second mode, but here the perpetrator directly applies for the issuance of a certificate on a plot of land owned by the target which is known to be uncertified. The subscriber's data is then changed to the name of another perpetrator; Fourth mode, the juridical data and physical data of the certificate for a plot of land have been changed and then the certificate is issued without any application documents and certificate attachments being submitted to the subscriber; Fifth mode, the main perpetrator is a person who is close to the victim, for example a person who works as the victim's household assistant. The perpetrator cooperates with someone who has prepared a figure who plays the role of the victim and then makes a deed that reads as if there has been a transfer or grant of power of attorney over property rights to the perpetrator so that he can easily take over the assets (land and buildings) belonging to the victim to belong to the perpetrator.

3.2 Results of investigation and follow-up of consumer complaints

Based on the investigation and follow-up of complaints from housing consumers who felt aggrieved after the construction (post-transaction), it was found that the bank could not provide guarantees or legal certainty to residents regarding the existence of ownership certificates for houses that were being paid in installments by residents. At the time of clarification, the majority of applicants did not have IMB. Law No. 8 of 1999 concerning Consumer Protection in Article 7 regarding the Obligation of Business Actors is to act in good faith in carrying out their business activities, by providing correct, clear and honest information at the beginning of the provision of credit. The Consumer Protection Law regulates Consumer Rights in Article 4 of the Consumer Protection Law regarding the right to correct, clear and honest information. The incident of transferring/transferring house collateral objects (certificates) totaling approximately 204 certificates that should have been under the control of the bank as a financing institution caused losses to consumers.

Based on the investigation and follow-up of housing consumer complaints in the East Jakarta area, BPKN-RI together with developers, banks and other relevant stakeholders have held a limited meeting and obtained the results that the land in the housing was originally a girik land which became confiscated evidence in a corruption case. Banks that provide mortgages continue to monitor developments and conduct follow-up related to land legality cases for the consumer certification process as debtors.

Based on investigation and follow-up on complaints from consumers of fake house lots in Batam City, it was found that the residents' land lots still have protected forest status and no Land Management Rights have been issued. Although the developer does not currently have legal ownership of the land plot, the developer has controlled and sold it to the community for 4 years. The government must be present in the settlement of cases experienced by residents and BPKN-RI has provided recommendations to the President, Police Criminal Investigation, and the Central Ministry of Environment and the Ministry of Environment of Batam City to encourage the process of legal action against business actors and restore consumer rights.

3.3 Recommendation

In 2014, BPKN-RI provided recommendations to the Ministry of Public Works and Public Housing to issue a new Government Regulation to replace Government Regulation No. 48 of 1988 and its Implementing Regulations as well as to make more detailed technical guidelines regarding the preparation of the Standards of Association of Owners and Occupants of Flat Units and the Articles of Flat and if there are changes in the Articles of Association and Articles of Flat to be known by the Regional Head.

In 2018, BPKN-RI provided recommendations to banks to immediately temporarily stop the process of collecting consumer installments; banks and developers to immediately complete their obligations to submit certificate documents to consumers; and all housing consumers who are still in the KPR process to postpone payments (installments) to banks and developers until there is a guarantee of the existence and certainty of receiving a certificate. BPKN-RI provides recommendations to OJK together with the Ministry of PUPR to control and supervise the implementation of standard agreements; and establish control mechanisms at banks to ensure certificate control.

BPKN-RI's recommendations to the Ministry of Trade are to issue Minister of Trade Regulations on the supervision of advertising, supervision of sales methods, and supervision of standard clauses; Minister of Trade together with the Minister of PUPR to develop a Joint Regulation on Transaction Security; Minister of Trade together with the Minister of PUPR to develop PPJB Standard. BPKN-RI's recommendations in 2018 to the Minister of PUPR are to issue PP and its implementing regulations in accordance with the mandate in Law No. 1 Year 2011 and Law No. 20 Year 2011; issue Ministerial Regulations on the Arrangement of Residential Flats; intensify supervision and provide strict sanctions to developers who do not comply with regulations.

Based on the Consumer Protection Law Article 4 Letter (C), it is stated that consumers are entitled to correct, clear, and honest information regarding the condition and guarantee of goods and/or services. BPKN-RI advises consumers to be more careful in conducting home purchase transactions by asking the BPN and financing institutions to obtain additional information regarding the clarity of the status of the housing land to be purchased.

BPKN-RI also advises business actors to provide accurate and clear information in brochures, how to sell, and advertise marketed housing to consumers. Meanwhile, BPKN-RI's advice to the government needs to provide the latest information channels related to information on the availability of housing needs. In addition, it is also necessary to prepare a supervision scheme for developers in order to provide early warnings to consumers, as well as enforce regulations and apply appropriate sanctions for developers.

3.4 Recommended pre-transaction consumer actions

Prerequisites for consumers to be safe in buying property must pay attention to the formal legality of the company such as: deed, SK Menkumham, Business Identification Number (NIB); have a good track record; including membership in the housing developer association. Aspects of land legality that need to be considered are object certainty (the project has legal validity regarding the location and boundaries of the land concerned), subject certainty (the project is on land that has clear land ownership certainty and is proven by a valid land ownership certificate), the project is not on land that is or has the potential for dispute. The licensing aspect that needs to be considered is that the project has the necessary formal permits such as a Land Use Designation Permit (SIPPT) from the developer as proof of credibility. This letter is a guarantee that consumers have the certainty of buying property with a clear object.

Check the Building Permit (IMB) before buying a property. Developers cannot build without an IMB. Make sure it's the parent IMB or the unit IMB. Both must be owned by the developer. Building quality is also a prerequisite before consumers buy property by ensuring the property is not located in a disaster-prone area, checking the quality of sample houses and houses that have been built at the project site, knowing the physical development process of the property, including construction work, infrastructure, infrastructure and facilities and utilities or construction of public facilities and social facilities, for apartments ensuring the construction process has started with a minimum progress of 30% (the higher the safer). The last prerequisite before buying a safe property is to check the financing aspects such as ensuring cooperation with well-recognized bank financing institutions, making gradual payments according to development progress, avoiding projects that offer bombastic and unusual financing schemes such as offering interest-free non-bank financing loans

4. Conclusions

Land is considered as one of the valuable assets that has high economic value because it can encourage the acceleration of state development. The Land Mafia is an individual, group and/or legal entity that deliberately commits a criminal offense that can hinder the implementation of land case handling. Problems are also experienced in the housing sector starting from the pre-development, development process, and post-development stages. The above problems arise because there is still not optimal supervision from stakeholders and weak law enforcement and regulations. The usual modus operandi of the land mafia ranges from falsification of documents (for rights), seeking legality in court, illegal occupation / without rights (wilde occupatie), case engineering, collusion with unscrupulous officials to obtain legality, corporate crimes such as embezzlement and fraud, forgery of power of attorney for land rights management, and removal of land certificates.

BPKN-RI recommends the need for education, supervision, and prevention related to land mafia issues in protecting consumer rights. In addition, the government must have the courage and assertiveness to supervise and enforce land laws. Then, the government must be able to provide regular and up-to-date information so that people know the possibilities that cause multiple certificates. BPKN-RI also advises consumers to be careful and thorough in digging up information about the legality and status of land and in conducting property purchase transactions. Business actors must also provide accurate and clear information regarding the property being sold.

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