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LEGAL PROTECTION OF NOTARY IN THE ERADICATION OF THE LAND MAFIA IN INDONESIA

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ABSTRACT:

The land mafia has undermined the legal order in Indonesia, not only at the level of investigations, but also at the end of the judicial system. Conflicts between the land mafia and the people often become conflicts between the strong and the weak. The rise of the land mafia shows that land is a high and promising economic investment community that attracts interest in owning and controlling it in various ways, resulting in lawlessness, disputes, and conflicts in the land sector. These land mafias have a variety of modes that can be used to be able to take over land owned by others. The eradication of the land mafia in Indonesia has been specially instructed by the President of the Republic of Indonesia Joko Widodo by deploying law enforcement officials and the Attorney General's Office to prevent the eradication of the land mafia in Indonesia. This research discusses law enforcement in the eradication of the land mafia in Indonesia and discusses the legal protection of Notaries /PPAT in the case of land mafia in Indonesia. This research is a normative juridical research using a statutory approach, a concept approach, and an analytical approach. Data collection techniques are obtained by means of literature research and data analysis using descriptive qualitative analysis. The establishment of the Anti-Land Mafia Task Force aims to eradicate criminal practices indicated by the land mafia and the modus mosud of the land mafia. The modes of the land mafia are very diverse such as falsifying data, entering the yards of houses without rights, taking away the property rights of others, etc. Law enforcement in the eradication of the land mafia should be a priority for the Government. The establishment of the Anti-Land Mafia Task Force is an instruction from the President of the Republic of Indonesia Joko Widodo, but the President who is the head of state should not only instruct but the President must also evaluate the performance of the Anti-Land Mafia Task Force. Notaries/PPAT do not have duties and obligations in eradicating the land mafia because Notaries/PPAT there are general officials and state officials who have the obligation to make an authentic deed. Notaries/PPAT need to protect themselves and their profession from land mafia cases. Notaries/PPAT need to apply the principles of accuracy and prudence in making authentic deeds. The principles of accuracy and prudence used by Notaries / PPAT are able to minimize the crime rate of the land mafia in Indonesia.

Keywords: *Legal Protection; Notary/PPAT; Land Mafia.*

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INTRODUCTION

The spread of the land mafia in Indonesia makes people need to be careful in entrusting something, especially their land certificates to others to prevent unwanted things from happening. The large number of land mafias in Indonesia cannot be assumed that Notaries/PPAT are part of the land mafia. Article 1 of Law Number 2 of 2014 amending Law Number 30 of 2004 states that a Notary is a general official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. Article 1 paragraph (1) of Government Regulation Number 24 of 2016 amending Government Regulation Number 37 of 1998 concerning Regulation of the Position of Land Deed Making Officer (PPAT) states that Land Deed Making Officers, hereinafter referred to as PPAT, are general officials who are authorized to make authentic deeds regarding certain legal acts regarding land rights or Property Rights to Flats Units.

One of the evidences of land rights is certificates. Sertipikat is a strong and authentic valid Evidence Tool of Sertipikat Is a guarantee of legal certainty for the

certificate holder as a perfect evidence as long as neither opposing party proves otherwise. A person or legal entity will easily prove himself as the holder of rights to a piece of land as well as the circumstances of the land, for example the area, boundaries, existing buildings, types of rights along with the burdens that exist on the rights to the land, and so on (Lubis & Lubis, 2012). Positive law in Indonesia already regulates criminal acts related to land crimes. It's just that these articles will not be able to be imposed easily because in reality, the land mafia conspired with individuals in the central and local governments, notaries and PPAT to law enforcement officials, to individuals in court, citing the opinion of the Coordinating Minister for Political, Legal, and Security Affairs of Indonesia Mahfud MD said that the land mafia has damaged the legal order in Indonesia, Not only at the level of investigation, but also to the end of the judicial system, that is, the courts. So often the conflict between the land mafia and the people is a fight between the strong and the weak. Especially if we see a lot of agrarian conflicts in forest and plantation areas, often small peoples / indigenous peoples have to

deal with large corporations with unlimited capital power (Karlina & Putra, 2022). The rise of the land mafia shows that land is a high and promising economic investment community that attracts certain interests to own and control it in various ways, resulting in lawlessness, disputes, and conflicts in the land sector. (Karlina & Putra, 2022).

RESEARCH METHODS

The research method used in this thesis research is a juridical normative research method, namely legal research where the law is conceptualized as what is written in laws and regulations (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate, therefore it can be concluded that the normative juridical approach is carried out based on the main legal material by studying theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this research.

RESULTS AND DISCUSSION

A. Law Enforcement in the Eradication of Land Mafia in Indonesia

1. Land Mafia Eradication Process

Soil has a very important meaning for humans. In addition to places to live, land also has high economic value and is a source of livelihood for humans such as farming,

gardening, where to run business activities, and so on. Some argue that land has sacred and religious value. Along with human development and increasing economic activities and increasing human needs, especially the need for higher land, there is often a gap for some individuals or individuals to commit a crime.

The importance of land and the high value of land are behind the current rampant land mafia cases which are very troubling and detrimental to the community (Nur'Ainiyah, 2022). In the KBBI mafia means a secret society engaged in crime. Therefore it can be concluded that the land mafia is an individual or a group, association or organization that commits a crime to seize or take by force the land rights of others that can make disputes over land (K. B. B. Indonesia, 2022).

However, not only law enforcement institutions are instructed to eradicate the land mafia, the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN) has also contributed since 2017 to establish an Anti-Land Mafia Task Force (Satgas) (Karlina & Putra, 2022).

Director General of Land Dispute and Conflict Handling RB Agus Widjayanto said the handling of these cases was carried out by his ministry by involving the police to the prosecutor's office with law enforcement being partners. As of today there are 242

cases handled, some have been P21, the courts have been decided and some have been resolved civilly because the land has been developed to the rightful victims (CNN, 2021). In 2021 the Criminal Investigation Unit of the Central Metro Jaya Police has arrested the land mafia in Serang Banten, the mode carried out by the perpetrators is to make false statements into authentic deeds, two of the perpetrators are former village heads and former sub-districts in Bendung Village, Kasemen District, Serang. The perpetrator has forged HGB since 2014, the village head has been in office since 1998-2017, during that period the perpetrator has forged 36 AJB Deeds with a land area of 11,000 hectares and seven Sertipakat which made the victim lose 670 million Rupiah (Achmad, 2021).

In 2021 the CID named ten suspected land mafia in Cakung. Director of the National Police Civic Center, Brig. Gen. Andi Rian Djajadi, said the case was related to false information in authentic deeds or forgery of PT Salve Veritate letters involving employees to retirees from BPN, out of ten suspects, eight from BPN, one retired BPN and one civilian. This case originated from a police report number: LP/B/0613/X/2020/Bareskim by the Director of PT Salve Veritate (Rahmawati, 2021). The Supreme Court decision number: 321

K/Pid/2021 dated March 22, 2021 stated that Paryoto as the Head of the East Jakarta BPN Measurement Team was found guilty of committing a criminal act of "participating in the forgery of letters" and the issuance of 20 SHM and its derivatives to 38 SHGB on behalf of PT Salve Veritate there was an administrative defect, because it has been proven that the issuance of 20 SHM which was reduced to 38 SHGB on behalf of PT Salve Veritate was not carried out according to the procedure, because the process of measuring the land carried out by Paryoto is only carried out against the expanse of land that has been tampered with, and only follows the instructions of Achmad Djufri without knowing the true boundaries of the land and whether the measured land really belongs to Benny Simon Tabalujan, in this case Achmad Djufri and Benny Simon Tabalujan in the status of People Search List (DPO). In addition to BPN individuals, Cakung Village was also entangled in criminal acts in this case, Ridwan Dulhadi, who at that time was the head of Cakung, made a letter number 183/-1,711.12 dated March 28, 2019 and a Letter of West Cakung Village No.306/-1,711.12 dated June 18, 2019 which became the basis for the Regional Office of BPN DKI Jakarta Province to cancel 20 SHM and its derivatives of 38 SHGB on behalf of the defendant, therefore, based on the Decision of the East Jakarta District

Court Number: 614/Pid.B/2021/PN Jkt.Tim dated November 16, 2021
Ridwan Dulhadi is subject to article 263 paragraph (1) of the Criminal Code Juncto Article 55 paragraph (1) 1 of the Criminal Code, which is proven legally and convincingly guilty of committing a criminal act of participating in making a false letter.

Borobudur University professor Faisal Santiago argued that it is unusual for BPN to appeal the decision of the court of first instance, especially civil cases rarely involve BPN. BPN should be in the middle, as the party to the determination of land rights following the final decision of the judicial process (M. Indonesia, 2022), and this judicial process BPN Cakung is only a co-defendant, the defendant is not directly involved in a case, but only has a relationship with a certain party or object of the case.

2. Land Mafia Modes

The land mafia is a land crime involving a group of people who work together to illegally own or control someone else's land. The perpetrators used unlawful means that were carried out in a planned, neat, and systematic manner. Unauthorized ownership and control of land often triggers conflicts or disputes that often cause casualties to human lives.

There are several modes of land mafia, namely forging documents, taking land rights illegally or without rights (wilde occupatie), seeking

legality in court, fabrication of cases, collusion with officials to obtain legality, corporate crimes such as embezzlement and fraud, forgery of power to manage land rights, buying and selling land that is carried out as if formally, and loss of land inheritance. In the land mafia mode, usually the loss of land warkah is a mode carried out by individuals in the Ministry of ATR / BPN in collaboration with the land mafia (Cahyaningrum & Nola, 2021).

Malicious alliances carried out in authentic deeds / certificates by the land mafia involving General Officers (Notaries or PPAT or Camat/Lurah or Kades) which result in disputes, conflicts and land cases with broad dimensions (Andari & Mujiburohman, 2023). Illegally access land ownership data recorded in the Land Work Computerization (KKP) system of the Ministry of ATR / BPN. So the perpetrators use illegal access, they can input data, authenticate, and validate changes in land data (Alfarizi, 2022).

3. The Concept of Law Enforcement to Eradicate the Land Mafia

The rise of the land mafia in Indonesia must be our common concern, especially the Indonesian government. In the Technical Guidelines for the Prevention and Eradication of Land Mafia issued by the Ministry of Agrarian and Spatial Planning / National Land Agency

Number: 01 / Juknis / D.VIII / 2018 is one of the guidelines in activities and efforts in the prevention and eradication of land mafia. The hope of researchers, both the Indonesian State Warg and the Indonesian government, is that no one is apathetic in eradicating the land mafia in Indonesia.

The PTSL program in 2017 succeeded in measuring community land as much as 5.2 million plots of land, in 2018 the Ministry of ATR / BPN issued 9.4 million certificates, and in 2019 the Ministry of ATR / BPN targeted 11 million free land certificates and completed the ratification of all land in 2025 (Leonard, 2023). Director of the General Criminal Investigation of the Metro Jaya Regional Police Hengki Haryadi through his press conference on July 18, 2022 regarding the land mafia case at the Metro Jaya Regional Police revealed that thirty suspects who became land mafias including BPN individuals, seven ASN individuals, non-permanent employees, banking service providers, and civil society (Sutrisna, 2022).

Member of the Regional Supervisory Council of South Tangerang City who is a Lecturer at Muhammdiyah University Jakarta Abdul Kahar Maranjaya said there must be seriousness from the anti-land mafia task force in eradicating the land mafia in Indonesia, because as we

know the modes of the land mafia are very diverse. Abdul Kahar Maranjaya also argued that the president should not only instruct or shape but must also evaluate the performance of the anti-land mafia task force, because when we form a concept or a certain thing, there are five things that must be understood so that we can apply it, namely (1) Planning for the concept. (2) Implementation of the concept. (3) Evaluation of the implementation of the concept. (4) Control of the concept. (5) Improvement of the concept (Mar & Anjaya, 2022).

B. Legal Protection of Notaries/PPAT in Land Mafia Cases in Indonesia

1. Legal Protection in the Indonesian State Order

Indonesia is a country of law that has a distinctive pattern that distinguishes it from other countries. As a country of law, Indonesia has a unique character in protecting human rights, namely prioritizing the harmony of relations between the government and the people. As already written in article 28 G paragraph (1) of the 1945 Constitution that everyone has the right to the protection of personal self, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from the threat of fear to do or not do something that is a human right. Philpus M Hadjon revealed that Indonesia's characteristic as a country of law is to protect human rights by

prioritizing the principle of harmony in the relationship between the government and the people.

The concept of a legal state in Indonesia based on Pancasila values, namely by establishing functional and proportional relationships (Utami et al., 2015) between the powers of the state. Dispute resolution is carried out by deliberation while the judiciary is the last resort. Human rights do not only emphasize rights and obligations, but the establishment of a balance between rights and obligations .

The protection of the law is present to enforce the law. Legal protections exist to protect human rights. Every victim, especially victims of the actions of the land mafia, must be protected and defended so that their rights to an object that is indeed their own can be restored. As explained in article 1365 of the Civil Code, people who violate the law and bring losses are obliged to compensate for losses arising from it. Legal protection becomes something important because it is to protect the rights of the subject of the law. Legal Protection exists to protect the human rights of those who commit crimes.

2. Legal Protection for Notaries in Indonesia

The Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution that guarantees certainty, order, and legal protection for every citizen. Provisions on the

Position of Notary are regulated in Law Number 2 of 2014 amendments to Law Number 30 of 2004 concerning the Position of Notary. Notaries are general officials who carry out their profession in providing legal services to the public and notaries also have the right to get protection and guarantees in order to achieve legal certainty. Article 1 paragraph (1) of Law Number 2 of 2014 explains that a notary is a general official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on the law.

The position of Notary is a position of trust, so the Position of Notary must be maintained, both when carrying out the duties of his position and the behavior of the Notary's life as a human being which directly or indirectly affects the dignity of the Notary position. The position of the Notary as a general officer and the authority that exists in the Notary is never given to other officials, as long as the authority does not become the authority of other officials in making authentic deeds and other authorities, then the authority becomes the authority of the Notary.

The number of land mafia cases in Indonesia must be our common concern and concern. Quoting from kompas.com the land anti-land mafia task force has handled 244 land mafia cases to date. Of the total cases handled, 80 are criminal cases, 25

cases have been convicted and the rest are under investigation. According to the Inspector of the Ministry of ATR/BPN Sunarizal, the losses from the land mafia case reached trillions (Fadli, 2021).

The notary needs to protect himself and his profession from the land mafia. And Notaries as general officials and state officials need to get legal protection from land mafia crimes. Article 1 paragraph (1) of Law Number 2 of 2014 explains that a Notary is a general official who is authorized and represents general power to make authentic deeds. Notaries are indeed supervised by the Ministry of Law and Human Rights and also the summoning of notaries must also go through the Honorary Notary Council. However, in this case, it does not make the notary immune to the law. The principle of equality before the law remains valid. If a Notary is found to have committed an unlawful act, the notary must also be prosecuted as fairly as possible.

3. Legal Protection for PPAT in Indonesia

Based on the Regulation of the Head of the National Defense Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Article 2 Number 37 of 1998 which regulates the Regulation of Land Deed Making Officials states that PPAT has the main task of carrying out land registration activities by making deeds as evidence

of certain legal actions against land rights and property rights to units of flats that can be used as a basis for registration of changes in land registration data caused by several kinds of things including buying and selling, exchange, grants, income into the company, division of joint rights, granting Building Use Rights / Right of Use to land, Property Rights, Dependent Rights, and Granting power of Attorney to impose Dependent Rights.

PPAT has a considerable role related to community services and increasing sources of state income that help the development of the country. Government Regulation Article 2 Number 1 Number 37 of 1988 concerning Regulation of Land Deed Making Officers states that in carrying out duties related to making land deeds as proof of land registration. PPAT must act independently, honestly, neutrally/impartially, and be responsible for deeds that have been made that can be used as evidence and have legal force and certainty.

Based on the Regulation of the Head of the National Defense Agency Number 1 of 2016 relating to the Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land-Deed Making Officials, it is stated that deviations from the requirements of both formal and material requirements carried out

by PPAT officials are included in the type of violations that are quite severe. In connection with violations that occur, a Head of the Indonesian National Defense Agency may be subject to administrative sanctions, namely disrespectful dismissal (Bazar & Silviana, n.d.).

The law is basically made for comfort, peace, as well as safety and a form of protection to Indonesian citizens. The law itself is made must be based on moral values, divine values, aesthetic values, manners so that goals towards every walk of life can be achieved. As a country of law, all aspects of life in society and nationality and state are the basis of laws made and in accordance with the national legal system in force in Indonesia. The law is also expected to be a means of anticipation in people's lives and is based on the Constitution of the Republic of Indonesia and Pancasila so that it has the aim of obtaining legal certainty of justice and expediency. (Bazar & Silviana, n.d.). Provisions regarding the legal protection of Land Deed Making Officers are not normatively regulated in the Regulations for the Position of Land Deed Making Officers (hereinafter to be called PJPPAT) (Din et al., 2017), therefore, the researcher contends that the Land Deed Making Officer in carrying out the functions of his office should not be subject to the principle of equality before the law, as long as in

carrying out his office he has followed the procedure prescribed by the laws and regulations.

Every country that adheres to the understanding of the state of law, always applies three basic principles, namely supermajority of law (supremacy of law), equality before the law, and law enforcement in a way that does not conflict with the law (due process of law). These three principles are the basis for law enforcement. In addition, another important principle in the state of law is equal protection as part of equality before the law. The principle of equality before the law is the main pillar of the development of a State of Law that prioritizes law above all else (supreme of law). Recognition of each individual's position before the law is placed in the same position regardless of social (Din et al., 2017).

4. Notary/PPAT Efforts in Protecting Their Profession from Land Mafia Cases in Indonesia

In fact, Notaries / PPAT do not have duties and obligations in eradicating the land mafia in Indonesia. Because a Notary/PPAT is a general official who makes an authentic deed regarding a land that is proof of legally valid ownership. Researchers argue that crime within a country cannot be eliminated but can be minimized.

It is undeniable that notaries/PPAT can also cooperate with

the land mafia like the recent case of being caught by the land mafia who cooperated with notaries, where the culprit was the art of the artist Nirina Zubir. We cannot blame the notary profession, but it is the notary individual who is wrong because he has misappropriated the mandate that has been given to his profession. Researchers argue that notaries/PPAT need to protect themselves and their profession from land mafia crimes in Indonesia. When the Notary/PPAT misappropriates the mandate that has been given to him, two trusts will be lost, namely trust in his personality and trust in his profession which will later eliminate public trust in his profession.

Member of the Regional Supervisory Council of South Tangerang City who is a Lecturer at the University of Muhammadiyah Jakarta Abdul Kahar Maranjaya said that in carrying out legal actions Notaries / PPAT did not examine material evidence but only formal evidence. Abdul Kahar Maranjaya explained that the way to interpret the Law is to expand the restrictive interpretation, meaning that even though the Notary/PPAT only checks formal evidence, the Notary/PPAT must still check and recheck the data it receives even though the Law does not regulate there, but the Notary/PPAT can do it as a form of caution and accuracy in carrying out their profession (Mar & Anjaya, 2022).

Expert in the field of root land law and Professor of the Faculty of Law UGM, Dr. Nurhasan Ismail, said that the land mafia tends to appear to be in "Space Exists and Nothing". That is, on the one hand the performance network of land mafia organizations is factually real exists and takes place with all its behaviors that are contrary to the law or unlawful including the losses suffered by the other party who is the victim. On the other hand, their organized, neat, and systematic network of performance has been able to hide the true facts beneath the surface (Nugroho, 2021).

In this case, the Coordinating Minister for Political Law and Security of Indonesia, Mahfud MD, also said that the land mafia is a collaboration between officials who have authority and other parties who have bad faith, such as harming the state and society with the aim of illegally owning or controlling land and generally the land mafia is carried out in corruptive ways, Mahfud MD argues that law enforcement officials must have a full commitment related to disputes in the land sector to optimize efforts to eradicate land mafia practices in Indonesia, this was stated by Mahfud MD at the Judicial Commission seminar on October 18, 2021 (Consulting, 2021).

Member of the Association of Land Deed Making Officials (IPPAT) of South Tangerang City who is a

Notary/PPAT of South Tangerang City Dr. Udin Narsudin said the land mafia is a network and most of it does not run alone. The land mafia is usually related to land disputes and land disputes that vary, there are transfers of rights, land conflicts, and land cases, but the land mafia occurs more in land disputes, what must be done by Notaries / PPAT in Indonesia is to obey and obey the laws and regulations and do not misappropriate them, because the cases that happen to some individuals from Notaries / PPAT are because they have violated the laws and regulations. Notaries/PPAT as general officials and state officials must always be careful in pouring everything into authentic deeds, because there is nothing that can be done by a Notary/PPAT unless acting carefully and conscientiously (Narsudin, 2022).

Member of the Regional Supervisory Council (MPD) of South Tangerang City who is a Lecturer at the University of Muhammadiyah Jakarta Abdul Kahar Maranjaya gave three suggestions to Notaries and PPAT so that they could not be deceived by the modes of the land mafia, namely:

1. Compliance with Laws and Regulations.
2. Participate in activities or socialization organized by the Indonesian Notary Association (INI) and the Association of Land Deed Making Officials (IPPAT).

- a. Building informal relationships such as establishing friendships and communication with fellow Notaries/PPAT peers (Mar & Anjaya, 2022).

This is also useful for notaries/PPAT who are beginners to continue to establish informal relationships such as establishing friendships and communication with fellow Notaries/PPAT. When a Notary/PPAT is involved, informal relationships are very important to find a solution to solve the problem. Participating in activities or socialization organized by this organization or IPPAT is also very important because socialization is usually related to the means of recognition and adjustment to values, norms, and social structures that must be known and understood by the Notars / PPAT profession in Indonesia.

CONCLUSION

Based on the results of the research and discussion that the researcher has analyzed in each sub-chapter of the discussion, then the researcher provides conclusions, namely the concept of law enforcement in the eradication of land mafia in Indonesia is divided into five (5) factors, namely legal factors (Law), law enforcement factors, factors Facilities and facilities that support the process of eradicating and preventing land mafia, community factors, and cultural factors. In this case, the Ministry of Agrarian and Spatial Planning / National

Land Agency in collaboration with the National Police formed an Anti-Land Mafia Task Force (Satgas) since 2017 with the aim of eradicating land crime practices, especially those indicated by the land mafia and ensuring law enforcement for land mafia actors in the hope of realizing legal certainty in the land sector.

Legal Protection of Notaries and PPAT in Land Mafia Cases in Indonesia is divided into two forms, namely preventive and repressive legal protection. Preventive and repressive legal protection apart from being a form of legal protection is also a form of law enforcement in the eradication of the land mafia which is contained in five factors, namely five (5) factors, namely legal factors (Law), law enforcement factors, facilities and facilities factors that support the process of eradicating and preventing land mafia, community factors, and cultural factors.

The suggestion from this research is that the concept of law enforcement in eradicating the land mafia in Indonesia must still be improved, as can be seen from the increasing victims of the land mafia every year in Indonesia. In its form, the Anti-Land Mafia Task Force cannot eliminate the land mafia as a whole but is able to minimize land mafia crimes. The presence of the Anti-Land Mafia Task Force has become a form of law enforcement in eradicating the land mafia in Indonesia. The Anti-Land Mafia Task Force aims to eradicate land crime practices in Indonesia, but the prevention and eradication of the land mafia in this country is not only the task of the Anti-Land Mafia Task Force, all Indonesians must take part

and not be apathetic in preventing and minimizing crime in the land world in Indonesia.

Notaries and PPAT need to protect themselves and their profession from the rampant land mafia crimes in Indonesia. Notaries and PPAT must always be careful and careful in making authentic deeds such as examining all the completeness and validity of evidence or documents shown to the Notary / PPAT and hearing the statements or statements of the interceptors carefully which will later be stated in the deed to be made. Notaries and PPAT must also carry out their positions properly and correctly so that there are no more notaries and PPAT who cooperate with the land mafia must carry out their positions properly and correctly so that there are no more Notaries and PPAT who cooperate with the land mafia.

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