

Systematic Construction Of Criminal Articles In Complete Systematic Land Registration Program (PTSL) & Juridical Consequences

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Abstract

The purpose of this study is to analyze the systematic construction of Article 8 and Article 12 letter e of Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Article 385 paragraph (3) of Act No. No. 23 of 2014 concerning Regional Government and Article 242 of the Criminal Code. Then explained the juridical consequences of these articles in relation to the implementation of the PTSL program. The method used is normative juridical, both in the narrow sense and in the broad sense. While the analysis orientation is in the form of a conceptual approach (Concept Approach) and a statutory approach (Statue Approach). The results of the research obtained explain that the systematic construction of criminal articles related to the implementation of the PTSL program is more dominant in its address, namely civil servants, state administrators or state civil servants. In addition, the juridical consequences of applying these criminal articles are punishable by imprisonment and fines. It appears that the system of applying criminal sanctions is balanced between imprisonment and fines. Because PTSL is a strategic policy that contains elements of state financial losses and detrimental to economic development (descriptor for fines). It is recommended that there is a need for inherent supervision during the program socialization process considering the common legal culture of the community needs protection.

Keywords: Complete; Systematic; Land; Registration; Criminal; Policy.

1. Introduction

The development of criminal law is closely related to the changes and developments of crime. The Complete Systematic Land Registration Program (PTSL) is one of the government's policies in the field of land registration, which is a constitutional mandate. However, the PTSL policy without exception contains a crime factor (disgraceful act) when it is implemented in the public sphere.

The means of statutory regulations (PUU), especially the systematic construction of criminal articles, in guarding the PTSL program are interesting to study for various reasons including: first, the PTSL program involves government officials down to the downstream level, which are directly related to the customers of this program, namely the people who own the land. Second, the length of the chain of bureaucracy guarding

the PTSL program from the Central Government to the Village Government leaves room for disgraceful acts/potential crimes during the implementation of the program.

As a national strategic program, PTSL is natural to get the public spotlight. The government has also prepared a means of control in the form of PUU, as an effort to keep the program running in accordance with PTSL's policy objectives. The means of penal policy (Criminal Policy) in the PTSL program are spread out in the PUU room related to PTSL. For example, Act No. Number 23 of 2014 concerning Regional Government (Law on Regional Government), Law of the Republic of Indonesia Number 31 of 1999 in conjunction with Act No. Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (UU PTPK) and Technical Guidelines Systematic Complete Land Registration Number 1/Juknis-100.Hk.02.01/I/2021 Dated January 4, 2021.¹ Juridically, the implication of the Constitutional Court's decision regarding state financial losses is that every effort to enforce the law on corruption, especially those using Article 2 paragraph (1) and Article 3 (Corruption Loss to the State) must have a calculation of state losses by the auditor prior to the determination of the suspect.² In addition, in another study, it was found that in determining the size of the charges against the accused of corruption, the public prosecutor paid attention to the role of the defendant in the corruption crime, namely as an actor who wrongly uses power or influence, causes losses to state finances, and pays attention to mitigating circumstances for the defendant, namely that the defendant has returned part of the state's losses due to the defendant's actions, as well as aggravating circumstances for the defendant, namely that the defendant does not respect the judiciary by not being present at the trial and not exercising his right to defend himself.³ Research on corrupt behavior can also be seen from the study of corrupt behavior that begins with a corrupt mentality which begins with a lack of understanding of the values of the perpetrators⁴.

Referring to the PUU facility above, the author examines in more depth the systematic construction of criminal articles and their juridical consequences. So the purpose of this research is to find out and analyze the systematic construction of criminal articles and their juridical consequences in guarding the PTSL program.

This paper is limited to the criminal articles in the PUU: the Regional Government Law, the Corruption Eradication Act and the PTSL Technical Guidelines. The entrance to the systematic construction of criminal articles (penal policy) which is formulated in the PUU, then analyzed its operations so as to produce criminal sanctions against acts or crimes that are not in accordance with the initial objectives of the PTSL program. The author only tries to be as rational as possible in reviewing the criminal article, so that

¹Qomar, Amir Akbar Nurul , 2020, *Fungsionalisasi Undang-Undang Tipikor Dalam Putusan Hakim Peradilan Pidana (Studi Kasus di Pengadilan Tindak Pidana Korupsi pada Pengadilan Negeri Semarang)*. Master thesis, Universitas Islam Sultan Agung Semarang

²Arif Setiawan, Umar Ma'ruf, *Penerapan Unsur Dapat Merugikan Keuangan Negara Dalam Tindak Pidana Korupsi*, Jurnal Hukum Khaira Ummah, Vol. 12. No. 3 September 2017

³Yosy Budi Santoso, Umar Ma'ruf, *Kebijakan Pembuktian dan Penuntutan Oleh Jaksa Penuntut Umum Dalam Pemberantasan Tindak Pidana Korupsi*, Jurnal Hukum Khaira Ummah, Vol. 12. No. 2 June, 2017

⁴ Ira Alia Maerani, Nuridin , *Upaya Pemberantasan Tindak Pidana Korupsi Melalui Model Pendidikan Akhlak Guna Membangun Masyarakat Anti Korupsi*, dalam ADIL Indonesia Journal Vol 2 No 2, 2020

the benefits of this research can be taken in the form of information on the usefulness of the criminal article in the a quo PUU in the PTSL implementation process.

2. Research Methods

The study method in formulating a solution uses normative juridical. Method use normative juridical, leading researchers to be able to find the truth by using inductive methods and criteria for measuring a fact in accordance with an appropriate legal study.⁵ If discussing the juridical formulation in the PUU provisions related to PTSL, the approach used is normative juridical through literature study.

This research uses a qualitative approach, which is an approach that emphasizes inductive analysis, descriptive analysis, and the study of people's perceptions or opinions.⁶ Secondary data in the form of laws and regulations related to the research theme were analyzed through conceptual thinking orientation. Inductive thinking method went through a series of stages⁷: discovery of legal problems, classification, analysis and conclusions (discovery of rules). Meanwhile, the analysis orientation uses a conceptual approach (Concept Approach) and a statutory approach (Statue Approach).

3. Results and Discussion

Complete Systematic Land Registration, hereinafter abbreviated as PTSL, is a Land Registration activity for the first time which is carried out simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia in one village area or other names equivalent to that, which includes physical data collection and data collection juridical regarding one or several objects of Land Registration for the purposes of registration⁸.

Identification of PTSL implementation problems in relation to criminal law facilities can be seen as follows:

a. PTSL Budget Division

The budget sector in question is the PTSL implementation budget sourced from the Budget Usage List (DIPA) of the State Revenue and Expenditure Budget (APBN). This means that the PTSL program operates using state finances. For this reason, the PUU facility related to the control of state finances is through the criminal article formulated in the PTPK Law. Offenses that are threatened with criminal articles concerning offenses against abuse of power of civil servants or state administrators and embezzlement offenses.

The juridical formulation of the criminal offense of embezzlement is formulated in Article 8 of the PTPK Law as follows:

⁵Koko Arianto Wardani dan Sri Endah Wahyuningsih, *Kebijakan Formulasi Hukum Pidana Mati Terhadap Pelaku Tindak Pidana Korupsi Di Indonesia*, Jurnal Hukum Khaira Ummah, Vol. 12. No. 4 Desember 2017, p. 953.

⁶Moleong, L.J, 2004, *Metodologi Penelitian*, Remaja Rosda Karya, Bandung, p. 3

⁷ Artidjo Alkostar, 2018, *Metode Penelitian Hukum Profetik*, FH UII Press, Yogyakarta, p.38

⁸ PTSL Technical Guidelines, 2021, p.11

"Sentenced to a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of IDR 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of IDR 75,000,000.00 (seven hundred and fifty million) a civil servant or a person other than a civil servant who is assigned to carry out a public office continuously or temporarily, intentionally embezzles money or securities that are kept due to his position, or allows the said money or securities to be taken or embezzled by another person, or assist in carrying out the act"

Meanwhile, the criminal article for the offense of abuse of power by civil servants or state administrators is formulated in Article 12 letter e as follows:

"Shared with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah);

e. Civil servants or state administrators who with the intention of unlawfully benefiting themselves or others, or by abusing their power force someone to give something, pay, or receive payment at a discount, or to do something for themselves."

b. Field of Legal Action for ASN in Local Government

The Regional Government Law regulates Legal Actions against State Civil Apparatus in Regional Agencies. Article 385 paragraph (3) is formulated that:

"Law enforcement officers carry out examinations of complaints submitted by the public as referred to in paragraph (1), after first coordinating with the Government Internal Supervisory Apparatus or non-ministerial government agencies in charge of supervision."

Meanwhile, paragraph (1) of Article 385 of the Regional Government Law regulates:

"The public can submit complaints on alleged irregularities committed by state civil apparatus in regional agencies to the Government Internal Supervisory Apparatus and/or law enforcement officers."

c. Land Ownership Juridical Data Field

Criminal law facilities are used in the realm of legal events. Physical Data Receipt of PTSL Measurement and Mapping, which is formulated as follows⁹ :

"Section 2

1. THE SECOND PARTY is fully responsible for the data obtained from the FIRST PARTY.

2. THE SECOND PARTY will not provide data to other parties and maintain the confidentiality of the data provided by the FIRST PARTY.

3. THE SECOND PARTY is willing to accept sanctions both civil and criminal if misusing the data."

The first party in question is (Structural Official of the Land Office) and the second party is the Physical Task Force (ASN/SKB/KJSKB/Company Legal Entity)¹⁰.

⁹ PTSL Technical Guidelines, 2021, p.90

¹⁰ Ibid

Referring to the research results, identified legal events that have implications for the use of criminal law facilities, namely:

- a. Abuse of power
- b. Acts of Embezzlement
- c. Acts of Giving False Information

In the 1st and 2nd legal events, the criminal offense is threatened in the Corruption Eradication Act, while the 3rd legal event is threatened with perjury and false statements as formulated in the Criminal Code:

Article 242 (1) Whoever, in a situation where the law dictates to give information under oath or to have legal consequences for such a statement, intentionally gives false information under oath, either orally or in writing, personally or by his proxies who are specially appointed for this, shall be punished by a maximum imprisonment of seven years.”

In connection with the data set from the results of the literature study above, further discussion of criminal articles in the PTSL Program can be described as follows.

3.1. Systematic Construction of PTSL Program Criminal Articles

The definition of systematic construction of criminal articles that the author means is a criminal provision that contains a formulation that states criminal penalties for violations of provisions containing prohibition norms or orders¹¹. Construction is the arrangement and relationship of words in a sentence or group of words¹², while systematic means regular according to the system; use the system; in a well-organized way¹³. Thus, the essence of a criminal article that is systematically constructed contains a juridical formulation: the criminal act and criminal sanctions for the act. In addition, between articles in the PUU which contain criminal provisions, there is a systematic relationship between articles, which are often referred to as the main article and its derivative articles. In this subchapter, the author examines the substantive criminal system contained in the criminal article in guarding the PTSL program. The substantive criminal system is essentially a criminal provision in the legislation under study which is part of the overall criminal system or criminal law system currently in force in the Criminal Code.¹⁴

Based on the definition or limitation above, it can be explained the systematic construction of the PUU criminal article *a quo* on:

- a. Article 8 PTPK Law

The juridical formulation of Article 8 of the PTPK Law is formulated as follows:

"Sentenced to a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of IDR 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of IDR 75,000,000.00 (seven hundred and fifty

¹¹ Barda Nawawi Arief, 2012, *Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan*, Pustaka Magister, Semarang, p.12

¹² Kamus Besar Bahasa Indonesia, 2008, Pusat Bahasa Departemen Pendidikan Nasional, p.822

¹³ Ibid, p.1495

¹⁴ Barda Nawawi Arief, Op.Cit, p.3

million) a civil servant or a person other than a civil servant who is assigned to carry out a public office continuously or temporarily, intentionally embezzles money or securities that are kept due to his position, or allows the said money or securities to be taken or embezzled by another person, or assist in carrying out the act”

The pattern of punishment is a guideline for making or compiling or formulating a crime¹⁵ the article above explains that:

- Legal subjects: civil servants or people other than civil servants who are assigned to carry out a general position continuously or temporarily.
- Acts that are criminalized: intentionally embezzling money or securities stored because of their position, or allowing the money or securities to be taken or embezzled by others, or assisting in carrying out such acts.
- Criminal sanction : Sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of IDR 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of IDR fifty million rupiah)

It seems that the systematic construction of Article 8 of the PTPK Law has a pattern of formulating criminal sanctions in the form of imprisonment and fines, then the address is formulated, namely civil servants or people other than civil servants alternatively. Adresat status in the form of being assigned to run a general position continuously or temporarily. Meanwhile, the formulation of the act that is being punished shows an act in the form of intentionally embezzling money or securities that are kept because of their position, or allowing the money or securities to be taken or embezzled by another person, or assisting in carrying out the act. This criminal act shows the formulation of a disgraceful act that is formulated alternatively (the word "or") includes intentionally (1) embezzling....

Thus the pattern of punishment in Article 8 of the PTPK Law has a systematic construction: criminal sanctions, legal subjects (adresat) and acts or criminal acts.

b. Article 12 letter e of the PTPK Law

Following the same pattern as Article 8 of the PTPK Law, the systematic construction of Article 12 letter e can be seen as follows:

- Criminal sanction: Sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000. .000,00 (one billion rupiah)
- Legal Subject : Civil servant or state administrator
- Criminal action: with the intention of unlawfully benefiting oneself or others, or by abusing one's power to force someone to give something, pay, or receive a discounted payment, or to do something for himself.

The pattern of punishment in Article 12 letter e of the PTPK Law, it is very clear that the address is civil servants or state administrators. Meanwhile, the criminal acts formulated include: benefiting oneself or others unlawfully, abusing one's

¹⁵ Ibid, p.20

power, forcing someone to give something, pay, or receive a discounted payment, to do something for himself. This offense is qualified to abuse power by extortion.

c. Article 242 of the Criminal Code

The pattern of punishment in Article 242 of the Criminal Code can be explained as follows:

- Legal Subject: Whoever. To be placed in a situation where the law stipulates to give information under oath or to have legal consequences for such information,
 - Criminal act: intentionally giving false information on oath, either orally or in writing, personally or by his proxies specifically appointed for that purpose
 - Criminal Sanctions: punishable by imprisonment for a maximum of seven years.”
- If examined more deeply, the formulation in the Criminal Code is simpler and has a pattern: legal subjects with their status, criminal acts, then criminal sanctions are formulated.

3.2. Juridical Consequences of PTSL Program Criminal Articles

Criminal requirements generally include requirements relating to the aspect of action and the aspect of person. Meanwhile, in these prerequisites, there are two pairs of principles, namely the principle of legality concerning the aspect of action and the principle of culpability (principle of error) concerning the aspect of people. The principle of legality requires that there be definite provisions beforehand, both regarding prohibited acts that can be punished and regarding the crime itself. While the principle of guilt requires that only people who are truly guilty can be subject to punishment¹⁶.

Referring to this concept, it can be explained about the juridical consequences of criminal articles on the implementation of the PTSL program, including:

a. Criminal Articles in the PTPK Law (Article 8 and Article 12 Letter e)

The two articles, which are juridically constructed by Law Enforcement Officials in this case of PTSL program deviation, have legal sanctions in the form of imprisonment and cumulative fines. This means that the defendant or the perpetrator of the crime will be sentenced to imprisonment and a fine together. The level or weight of imprisonment is higher in Article 12 letter e because it is formulated in life imprisonment, a minimum of 4 years and a maximum of 20 years. Meanwhile, the fine is set at a minimum of 200 million rupiah and a maximum of 1 billion rupiah.

b. Criminal Articles in the Regional Government Law (Article 385 paragraph 3)

Article 385 paragraph (3) is an article "entrance" to criminal law actions against state civil servants in regional governments. The legal conditions or events that allow the imposition of legal action for ASN are public complaints against program irregularities which are "screened" first by the Government Internal Supervisory Apparatus (APIP). Cases in the administrative realm are resolved by APIP. Meanwhile, cases containing criminal elements are submitted to law enforcement officers (police/prosecutors). Thus, the juridical consequences of Article 385 (3) are

¹⁶ Ibid, p.127

only meaningful when legal events involving ASN in the area are indicated as criminal cases in the implementation of the PTSL program.

c. Article 242 of the Criminal Code

The legal sanction that is formulated in article 242 of the Criminal Code is a maximum imprisonment of 7 years. The address (the maker) is general, not only civil servants or state administrators but everyone regardless of their status. In the application of PTSL, this article has the potential to be used when the handover of physical evidence of land contains a disgraceful act, namely providing false information.

4. Closing

Systematic Complete Land Registration Program (PTSL), is a government policy that utilizes land functions to be more productive. On the other hand, the regulation of land management is a constitutional mandate. Answering the problem questions in this article, the author can conclude as follows: Systematic construction of criminal articles that can be applied to deviations from PTSL objectives is essentially based on legality (determined in advance through criminal legislation) and the principle of culpability which requires an element of error (person aspect). Several criminal articles that can be applied include Article 12 letter e and Article 8 of the Corruption Eradication Law, Article 242 of the Criminal Code and Article 385 paragraph (3) of the Regional Government Law. In general, in the systematic construction of the article, the addresses are civil servants, state administrators or state civil servants. Meanwhile, the juridical consequences of applying the article in an effort to guard the goals of PTSL are formulated with criminal sanctions in the form of imprisonment and fines. Only article 242 of the Criminal Code carries a maximum sentence of 7 years.

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