

Criminal Law Enforcement Against Land Grabbers in the Jambi Regional Police Jurisdiction

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Abstract. Based on the provisions of the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Regulations was drafted. One of the objectives of the Basic Agrarian Law (UUPA) is to provide legal certainty regarding land rights held by the community. An individual or legal entity wishing to have their land ownership officially recognized by the state and their rights guaranteed must register the land to obtain written proof, in the form of a land certificate. A land certificate can be obtained through land registration. Land registration can help determine the status, ownership, rights, area, and use of the land. According to Santoso, proof of land rights is indicated by the existence of a certificate. In reality, the land registration process is still far from perfect. In Indonesia, only about 44 million plots of land have been registered out of approximately 125 million plots of land, calculated from the emergence of the UUPA until 2016. Then in 2017, the Complete Systematic Land Registration Program (PTSL) was formed by the Ministry of ATR/BPN with a target of certifying 126 million plots of land by 2025 in Indonesia. Land certificates serve as a guarantee of legal certainty, as long as no other party can deny it. In general, besides certificates, there are other formal documents that function as documents of land ownership rights, namely ownership deeds. In the negative land registration system, the formal document is referred to as a "deed" of ownership, while in the positive land registration system, the formal document is referred to as a "certificate" of rights. The purpose of land owners in registering land is to obtain a land certificate, so the general public only knows the term certificate in terms of land registration. Meanwhile, the term "deed" refers to an authentic deed prepared by a Land Deed Official (PPAT) and a notary, whose function is to mark land transfers such as inheritance deeds, waqf pledges, sales and purchases, and so on. In Indonesia, cases of land grabbing have long been commonplace, even dating back to the colonial era. The word "encroachment" can mean occupying land or buildings owned by another person without regard to legal regulations. In Latin, this offense is called *stellionat*, which means embezzlement of rights over immovable objects. In this case, what is meant is land, houses, rice fields, buildings, and so on.

Keywords: Criminal Law; Land Grabbing; Perpetrator.

1. Introduction

Based on the provisions of the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Regulations was drafted. One of the objectives of the Basic Agrarian Law (UUPA) is to provide legal certainty regarding land rights held by the community. An individual or legal entity wishing to have their land ownership status officially recognized by the state and their rights guaranteed must register the land to obtain written proof, in the form of a land certificate. A land certificate can be obtained through land registration. Land registration can help determine the status, ownership, rights, area, and use of the land. According to Santoso, proof of land rights is indicated by the existence of a certificate.¹

In reality, the land registration process is still far from perfect. In Indonesia, only about 44 million plots of land have been registered out of approximately 125 million plots, counting from the enactment of the Basic Agrarian Law until 2016. Then in 2017, the Complete Systematic Land Registration Program (PTSL) was established by the Ministry of ATR/BPN with a target of certifying 126 million plots of land by 2025 in Indonesia. Land certificates serve as a guarantee of legal certainty, as long as no other party can dispute them. In general, besides certificates, there are other formal documents that function as documents of land ownership rights, namely ownership deeds. In the negative land registration system, the formal document is referred to as a "deed" of ownership, while in the positive land registration system, the formal document is referred to as a "certificate" of rights. The purpose of land owners in registering land is to obtain a land certificate, so the general public only knows the term certificate in terms of land registration. Meanwhile, the term "deed" refers to an authentic deed made by a Land Deed Making Officer (PPAT) and a notary whose function is to mark the transfer of land such as inheritance deeds, waqf pledges, sale and purchase, and so on.²

In Indonesia, land grabbing has been a long-standing issue, even dating back to the colonial era. The word "land grabbing" can mean occupying someone else's land or building without regard to legal regulations. In Latin, this offense is called stellionat, which means the embezzlement of rights to immovable objects. In this case, what is meant is land, houses, rice fields, buildings, and so on. The following is a diagram of land conflict data in Indonesia over the past 10 years, published by an official portal that contains maps and data for all regions of Indonesia:³

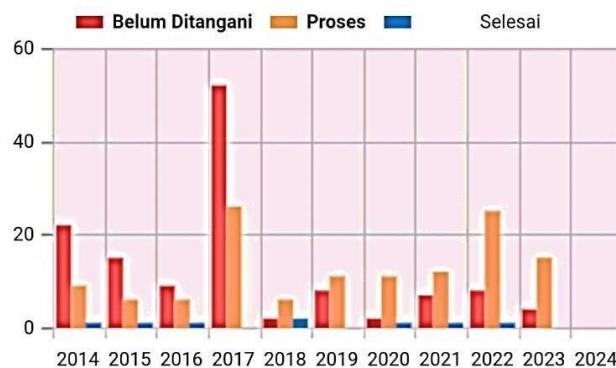
Gambar 1.1 :

Diagram Data Konflik Tanah di Indonesia dalam 10 Tahun Terakhir

¹ Dian Aries Mujiburohman, Potensi Permasalahan Pendaftaran Tanah Sistematis Lengkap (PTSL), *Bhumi, Jurnal Agraria dan Pertanahan*, Volume 4, Nomor 1, 2018

² Elza Syarief, *Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan*, Jakarta: KPG Kepustakaan Populer Gramedia, 2014

³ *Dashboard Sebaran Konflik Dan Wilayah Kelola*, TanahKita.id, diakses pada 30 September 2024



sumber: tanahkita.id

The diagram shows that land conflicts occur annually, but only a small percentage of cases are resolved in court. The ability of the judiciary to resolve land disputes is considered unsatisfactory.

The issue of land grabbing (claims) is not new and is common in Indonesia. The word "land grabbing" itself can be defined as the act of taking rights or property arbitrarily or without regard for laws and regulations, such as occupying someone else's land or home to which they are not entitled. Illegal land grabbing is an unlawful act. Land grabbing is not new and is common in Indonesia. Land grabbing is an unlawful act that occurs when the perpetrator takes another person's land or property without obtaining the landowner's permission. Illegal land grabbing is an unlawful act. The main regulations governing the crime of land grabbing are Article 385 of the Criminal Code (which focuses on the sale, rental, or mortgaging of land owned by others) and Government Regulation in Lieu of Law (Perppu) Number 51 of 1960, specifically Articles 2 and 6 (which prohibit the use of land without the permission of the rightful owner). Law Number 5 of 1960 concerning Basic Agrarian Principles also serves as a legal basis, as it affirms the rights of ownership and control of land.⁴

2. Research Methods

The approach used regarding this problem is an empirical legal research process, namely research is an approach that studies law from the perspective of social reality in society, with a focus on how the law is applied, implemented, and complied with in real life. Empirical legal research is used to consider laws and rights to be considered as social behavior that often occurs in a nation. Empirical legal research is essentially a study of norms and laws that have used territorial facts obtained from the behavior of citizens, for verbal behavior has been obtained through interviews or actual behavior will be obtained by clearly observing.

⁴ Satria Sukananda, Analisis Hukum Bentuk Penanggulangan Tindak Pidana Penyerobatan Tanah di Indonesia, *Indonesian Journal of Criminal Law and Criminology Volume 2, Nomor 3, 2021*

Master of Law, UNISSULA

Experimental research can be used to see the explanation of human behavior such as heritage and documents.⁵

3. Results and Discussion

3.1. Concept of Criminal Law Enforcement

Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the relationships between values outlined in solid and embodied rules and attitudes as a series of final-stage value interpretations, to create, maintain, and preserve social peace. This philosophically grounded concept requires further explanation to become more concrete.

Criminal law enforcement is the process of applying criminal law to prosecute violations of the law, with the goal of creating order, justice, and protecting society. The following agencies are involved in criminal law enforcement:

- a. The Indonesian National Police (POLRI), as the gateway, tasked with conducting investigations, hearings, receiving reports, seeking evidence, and arresting suspects (in accordance with Article 7 of the Criminal Procedure Code).
- b. The Attorney General's Office of the Republic of Indonesia: acting as public prosecutor, submitting files to the court, issuing indictments, and enforcing legally binding decisions (in accordance with Article 14 of the Criminal Procedure Code).
- c. Courts: examine, try, and decide cases based on valid evidence and unwavering conviction, ensuring a fair process (as stipulated in Article 1, point 8 of the Criminal Procedure Code).
- d. Advocates: assist suspects/defendants in ensuring their legal rights are fulfilled and guarantee a fair trial (as stipulated in Article 54 of the Criminal Procedure Code).

These harmonized values require further concrete elaboration, as they are typically abstract in nature. This more concrete elaboration occurs in the form of rules, in this case legal rules, which may contain commands, prohibitions, or permissibility. In Indonesian constitutional law, for example, there are such rules that contain commands or orders to perform or refrain from performing certain actions. Most criminal law rules contain prohibitions on certain acts, while in civil law, there are rules that contain permissibility.

These rules then become guidelines or benchmarks for behavior or attitudes that are considered appropriate, or appropriate. These behaviors or attitudes aim to create, maintain, and preserve peace. This is the conceptual concretization of law enforcement.

Fundamentally, law functions to protect human interests. To protect human interests, the law must be enforced. Law enforcement can occur normally and peacefully, but it can also occur

⁵ Joko Subagyo, *Metodologi Penelitian Dalam Teori Dan Praktek*, Rineka Cipta, Jakarta, 1994

Master of Law, UNISSULA

due to violations of the law. In this case, the violated law must be enforced.¹³ Law enforcement is an effort to make these ideas (justice, legal certainty, and benefit) a reality. The process of realizing these ideas is the essence of law enforcement.⁶

In upholding the law, there are three elements that must always be considered: legal certainty (Rechtssicherheit), utility (Zweckmassigkeit), and justice (Gerechtigkeit). First, legal certainty is justifiable protection against arbitrary actions, meaning that a person will be able to obtain what is expected under certain circumstances. Society expects legal certainty because with legal certainty, society will be more orderly.⁷

3.2. Concept of Criminal Acts

The word criminal act comes from the word strafbaar feit. Regarding the meaning of strafbaar feit, Western scholars provide different definitions/limitations, such as:

1) Simons

Simons defines strafbaar feit as a criminal act (action/deed) punishable by law, contrary to the law (onrechtmatig), and carried out through error (schuld) by a person capable of being held responsible. Simons then divides this into two groups of elements: objective elements, which are prohibited/required actions resulting from certain circumstances/problems, and subjective elements, which are the fault (schuld) and the ability to be responsible (toerekeningsvatbaar) of the perpetrator.⁸

2) Van Hamel

Van Hamel formulated strafbaar feit similarly to Simons', only adding the phrase "an act which is criminally punishable."

3) Vos

Vos defined strafbaar feit as a prohibited human behavior (gedraging) and punishable by law.

4) Pompe

Pompe defined strafbaar feit as a violation of the rules (disruption of legal order), for which the perpetrator is guilty and for which punishment is appropriate to maintain legal order and ensure the public welfare.

A criminal act is an act prohibited by a legal rule, a prohibition accompanied by a threat (sanction) in the form of a specific penalty for anyone who violates the prohibition. It can also

⁶ Sudikno Mertokusumo, *Mengenal Hukum (Sebuah Pengantar)*, Liberty, Yogyakarta, 2007

⁷ Satjipto Rahardjo, *Penegakan Hukum Suatu Tinjauan Sosiologis*, Ctk. Pertama, Genta Publishing, Yogyakarta, 2009

⁸ E.Y.Kanter, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*, Storia Grafika, Jakarta, 2002

Master of Law, UNISSULA

be said that a criminal act is an act prohibited by a legal rule and punishable by law, provided that it is remembered that the prohibition is directed at the act.

3.3. Concept of Land Grabbing

Definition of Land Grabbing: Land grabbing is an unlawful act that occurs when a perpetrator takes another person's land or property without obtaining the landowner's permission. The term "serobot" is widely used in everyday life. "Serobot" comes from the word "serobot." A "serobot" is a person who grabs, a land grabber, while "serobot" is the process, method, or act of grabbing (Indonesian dictionary). From a legal perspective, "serobot" is defined as follows:

- a. Taking rights or property arbitrarily or without heeding laws and regulations (such as stealing, seizing, occupying another person's land or home to which they are not entitled).
- b. Attacking (violating, crashing) recklessly or secretly.
- c. Committing an act (such as entering someone's home without permission, trespassing on land or a yard without the proper permission, etc.) The crime of land grabbing by an individual or group of individuals on another person's land can be defined as the act of controlling, occupying, or taking over another person's land illegally, against their rights, or in violation of applicable laws.

Therefore, such acts can be sued under civil law or prosecuted under criminal law.

Government Regulation in Lieu of Law Number 51 of 1960 concerning the Prohibition of Land Use Without the Permission of the Authorized Person or Their Authorized Representative states that land use without the permission of the authorized person or their authorized representative is prohibited and punishable by criminal penalties (Articles 2 and 6). These two articles read as follows:

a. Article 2, which reads: "Using land without the permission of the authorized person or their authorized representative is prohibited." The elements of Article 2 are: - Using land without permission - Without the permission of the authorized person.

b. Article 6 states: Without prejudice to the provisions of Article 3, Article 4, and Article 5, any person who uses land without the permission of the rightful owner or his/her legal representative, provided that in the case of plantations and forests, those who will be resolved according to Article 5 paragraph (1) are excluded.

1) Any person who interferes with the rightful owner or his/her legal representative in exercising their rights to a plot of land.

2) Any person who orders, invites, persuades, or encourages, verbally or in writing, to commit the acts referred to in Article 2 or sub-article b of paragraph (1) of this article.

Master of Law, UNISSULA

3) Any person who provides assistance in any way to commit the acts referred to in Article 2 or sub-article b of paragraph (1) of this article. b. The provisions regarding the settlement made by the Minister of Agrarian Affairs and Regional Authorities as referred to in Articles 3 and 5 may contain criminal threats with imprisonment of up to 3 (three) months and/or a maximum fine of Rp 5,000 (five thousand rupiah) for anyone who violates or fails to comply with them. The crime in this article is a violation. Elements of Article 6: Anyone who: Uses land without permission, Regarding plantation land, their rights to a plot of land, Provides assistance in any way.

The crime of land grabbing is also regulated in the Criminal Code (KUHP), which is regulated in several articles in the KUHP, Article 167 of the KUHP, which states: "Any person who forces their way into a house, room or enclosed yard used by another person unlawfully or is there unlawfully, and at the request of the authorized person or his order does not leave immediately, is threatened with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah."

Any person who enters by breaking or climbing, using a false key, a false order, or false clothing, or who, without prior knowledge of the right of entry and not through error, enters and is found there at night, is considered to have forced entry. If they make threats or use means capable of intimidating others, they are subject to a maximum prison sentence of one year and four months. The penalty referred to in paragraphs 1 and 3 may be increased by one-third if the crime is committed by two or more persons in league.

From the above description, it can be concluded that the crime of land grabbing is an unlawful act involving the encroachment of land belonging to another person with the intent to control it without right. Article 385 of the Criminal Code, which constitutes the crime of embezzlement of rights to immovable property, such as land, houses, and rice fields. This crime is commonly referred to as the crime of stellionaat, which carries a maximum prison sentence of four years:

- a. Any person who, with the intention of unlawfully benefiting himself or another person, sells, exchanges or encumbers with credit verband a right to Indonesian land, a building, structure, planting or seedling, even though it is known that it is someone else who owns or also participates in having the right thereto.
- b. Any person with the same intention sells, exchanges or encumbers with credit verband, an Indonesian land right which has been encumbered with credit verband, or a building, structure, planting or seedling on land which has also been so encumbered, without informing the other party of the existence of such encumbrance.
- c. Any person with the same intention enters into a credit card regarding an Indonesian land right, by concealing to another party that the land to which the said right relates has been mortgaged.

Master of Law, UNISSULA

d. Any person with the same intention mortgages or leases land with Indonesian rights, even though it is known that another person owns or also has rights to that land.

e. Anyone who, with the same intent, sells or exchanges land for Indonesian rights that have been mortgaged, without informing the other party that the land has been mortgaged.

f. Anyone who, with the same intent, sells or exchanges land for Indonesian rights for a period, knowing that the land has been leased to another person for that period. 18 Based on the provisions above, Articles 167 and 385 of the Criminal Code are the articles frequently used by investigators (police) and public prosecutors (prosecutors) to charge "land grabbers" and are categorized as criminal offenses.

The crime of land grabbery, when viewed from a temporal perspective, is divided into two: the time of acquisition and the time of recognition without rights. Therefore, even if someone is suspected of committing a criminal act of land grabbery, this does not guarantee that the perpetrator will be punished. In other words, not every person who commits a crime can be punished until they have truly fulfilled all the requirements stipulated in the law.⁹

Regarding prohibited or required actions. In short, it is necessary to determine which actions are prohibited or required and to establish their criminal penalties in legislation. Imposing penalties on violators is intended not only to uphold justice but also to restore psychological balance in society.

P.A.F. Lamintang stated that a perpetrator of a crime is "not enough if there is only a crime; there must also be a person who can be punished if the crime is not of a legal nature and is committed either intentionally or unintentionally".¹⁰

4. Conclusion

Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the relationships between values outlined in solid, embodied rules and attitudes as a series of final-stage value interpretations, to create, maintain, and preserve social peace.¹² This philosophically grounded concept requires further explanation to become more concrete. Criminal law enforcement is the process of applying criminal law to prosecute violations of the law, with the goal of creating order, justice, and protecting society. The following agencies are involved in criminal law enforcement:

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⁹ Yusrizal Amri, Abdul Halim, Ramlah, *Problematikan Penegakan Hukum Pidana Terhadap Pelaku Penyerobatan Tanah Perspektif Hukum Pidana Dan Hukum Islam Di Wilayah Hukum Polda Jambi*, *Journal Of Law Education And Business*, Vol. 3 No. 1 April 2025.

¹⁰ P. A.F. Lamintang, *Delik-delik Khusus Kejahatan Terhadap Harta Kekayaan*, Cet. 2, Jakarta: Sinar Grafika, 2019

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