

## **Criminal Threats Against Personnel Control Of Land Without Rights**

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### **Abstract**

*The objectives of this research are 1) to find out and explain what is meant by the criminal act of control of land without a power permit or entitled and its elements, 2) Know and explain whether or not the criminal threat is relevant to the perpetrator in accordance with current developments. The results of this study concluded that: 1) Article 6 paragraph (1) letter a of the PRP Act No. 51 of 1960. The criminal act of using land without a permit with the right or legal proxy in the Criminal Code basically contains the following elements: as stellionate. b) It is known that there are other persons entitled to the land; The crime in this article is called Stellionate crime, which means "embezzlement of rights over immovable property", c) Failure to inform others that the land has been used as land for debt or has been mortgaged. 2) Factors Occurring Criminal Actions of Land Tenure Without Rights (a) Internal Factors 1) Educational Factors, 2) Individual Factors, (b) External Factors 1) Economic Factors 2) Environmental Factors, 3) Law Enforcement Factors, 4) Global Development Factors (Technology). 3) Based on the Supreme Court Decision Number 73 / Pid / 2015 / PT SMG has fulfilled the elements of error, the ability to be responsible, there is no excuse for forgiveness, against the law, and the manifestation of behavior and actions of subjective elements in error in practice is only aimed at everyone (whoever ) Article 6 paragraph (1) Act No. 51 Prp Of 1960 and no criminal threat against a legal entity or a corporation is regulated.*

*Keywords: Criminal Threats, Land Tenure Without Rights*

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### **1. Introduction**

In the life of the nation and state, security is a determining factor in the life of the nation and the state in implementing a sovereign and authoritative government, which is the main condition that supports justice and prosperity as well as life that exists in the civil society system based on Pancasila and the 1945 Constitution of the Republic. Domestically, the National Police carries out law enforcement efforts through a process of criminal investigation and investigation, acting as stipulated in Act No. 2 of 2002 concerning the Indonesian National Police.<sup>1</sup>

Even though land tenure activities have been maximized, it still raises land problems because land has very important functions and benefits. The rise of development in the era of development and industrialization has resulted in land becoming an object of high value. This condition causes the land needs of everyone

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<sup>1</sup> Ni Made Srinetri, Umar Ma'ruf, *Progressivity Of Criminal Handling Fraud And Disease By The Directorate Of The General Criminal Researcher Of Central Java Regional Police (POLDA)*, Jurnal Daulat Hukum Volume 3 Issue 1, March 2020 ISSN: 2614-560X

to continue to climb while the availability of land is limited, so that often land disputes occur in the form of ownership conflicts and disputes related to land use.<sup>2</sup>

Therefore, these acts can be sued according to civil law or prosecuted according to criminal law. From the point of view of criminal law, Article 2 of Act No. 51 PRP of 1960 concerning the Prohibition of Use of Land without a Rightful Permit or Proxy determines that: it is prohibited to use land without a permit whose right or legal proxy can be punished with a sentence of 3 (three) months and / or a fine of up to Rp. 5,000, as referred to in the provisions of Article 6 of the PRP Act No. 51 of 1960.

Based on the cases in land that often occur, it is very necessary to carry out land registration with the aim of providing legal certainty and legal protection to the holders of land rights. Land registration regulations in Indonesia fall under UUPA Article 19, and are implemented through Government Regulation no. 10 of 1961 and later replaced by Government Regulation no. 24 of 1997 which became effective since 8 October 1997. The registration system used is the registration system of rights, as used in the administration of land registration according to Government Regulation No. 10 of 1961 concerning Land Registration.<sup>3</sup>

## **2. Research Methods**

The approach method used in this research is as formulated in the background, so the researcher uses the normative juridical legal research method, namely research conducted by examining how a rule is implemented in the field, especially with regard to law enforcement of land tenure crimes at the Pati Resort Police.<sup>4</sup>

The type of research used is descriptive analytical research method. The nature of descriptive analysis research is to describe the object of research which is then analyzed through qualitative juridical analysis, which is then described in the analysis and discussion. Secondary data is data obtained indirectly. Secondary data in this study were carried out by means of literature study. The data analysis method used is descriptive qualitative, namely the decomposition of the data analysis which is based on the information obtained from the respondents to achieve clarity on the issues to be discussed.<sup>5</sup>

## **3. Results And Discussion**

### **3.1. Land Actions without Rights**

When viewed from a time frame, the criminal act of control of land without rights is divided into two, namely at the time of acquisition and at the time of admitting without rights. In this regard, even if a person is truly

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<sup>2</sup> Adrian Sutedi, 2010. *Peralihan Hak Atas Tanah Dan Pendaftarannya*, Ed.4, Sinar Grafika. Jakarta, p. 21-22

<sup>3</sup> General Explanation of Government Regulation No. 24 of 1997 concerning Land Registration

<sup>4</sup> Soerjono Soekanto & Sri Mamudji, 2001. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Rajawali Pers. Jakarta, p. 13-14

<sup>5</sup> Afifuddin, dkk, 2009. *Metodologi Penelitian Kualitatif*. Pustaka Setia. Bandung, p. 15

suspected of having committed a criminal act of land grabbing, this does not constitute a guarantee that the perpetrator can be sentenced, or in other words, not everyone who commits a mistake can be punished before it is truly declared that they have fulfilled everything. the conditions specified in the law.<sup>6</sup> To be punished, a person must fulfill the elements that are in the criminal act.<sup>7</sup> The criminal act of land grabbing contained in the Criminal Code basically contains the following elements:

- a. At the time of acquisition; and
- b. At the time admitted without rights.

### **3.2. Factors Occurring Criminal Actions of Land Tenure without Rights**

The causes of criminality, especially land tenure without rights, consist of internal and external factors. This factor can be said to be quite complex and varied.<sup>8</sup>

#### a. Internal Factors

##### 1) Educational Factor

The education factor is one of the driving factors for a person to commit a criminal act of land management without rights. This is due to their lack of knowledge of things such as the rules of social life.

##### 2) Individual Factors

A person whose behavior is good will result in that someone getting respect from society, but on the other hand, if someone behaves badly then that person will cause chaos in society.

#### b. External Factors

##### a) Economic Factors

Economic problems are the biggest reason for perpetrators of criminal acts of land tenure without the right to take action.

##### b) Environmental factor

Many things make the environment a factor in the occurrence of a criminal act of land tenure without rights. A person who lives / lives in an environment that supports land grabbing, then at one time he will also commit a criminal act of land tenure without such rights.

##### c) Law Enforcement Factors

The less than optimal application of the criminal law makes the perpetrators indifferent to committing criminal acts. Difficult to achieve justice for victims makes people gradually turn away or do not believe in the state as a protector of citizens' rights.

##### d) Global Development Factors (Technology)

Advances in technology, especially the mass media, also influence someone to do evil. The mass media provide stimulation to a person's thoughts in social life.

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<sup>6</sup> Harun, B, 2013. *Solusi Sengketa Tanah dan Bangunan*. Pustaka Yustisia. Yogyakarta, p. 32

<sup>7</sup> Article 184 (1) of Act No. 8 of 1981 on Criminal Procedure Code

<sup>8</sup> *Ibid.*

### 3.3. Criminal Threats from Acts of Land Tenure without Rights in Article 2 jo. Article 6 Act No. 51 PRP of 1960 Relevant to Current Developments

Regulations for prohibiting land tenure without rights are contained in Act No. 51 PRP of 1960 concerning the Prohibition of Use of Land without Permits Who Have the Right to Proxy (abbreviated as Act No.51 of 1960). Previously by the Chief of Staff of the Army as the Central Warlord for the Army area based on Act No. 74 of 1957 concerning Conditions of Danger, the Central War Ruler Regulation Number Prt / Peperpu / 011/1958 concerning the Prohibition of Use of Land without the Right of Permit or Proxy has been issued. Added and amended by Central War Ruler Regulation Number Prt / Peperpu / 04111959.<sup>9</sup>

The use of Act No. 51 PRP of 1960 is still considered relevant for its use but reaping the pros and cons of using this Law JJ Rizal, a historian, alluded to the dangerous phrase in the use of Act No. 51 PRP of 1960 concerning the Prohibition of Use of Unlicensed Land Right or Attorney. According to him, referring to the phrase 'a state of danger', the law should no longer be valid.<sup>10</sup>This was conveyed by Rizal in the court case Number 96 / PUU-XIV / 2016 led by the Chief Justice of the Constitutional Court Arief Hidayat, Tuesday (10/1) in the Court's courtroom. He explained that the state of danger in the country is actually nothing new. A dangerous situation in the colonial era around the 1920s and 1930s already existed and was called *Staat van Orlocht en Belach* (SOB). This means that the country is in a state of war and emergency.<sup>11</sup>

But why is Act No. 51 PRP of 1960 still in use because in that law it prohibits and will limit fraud in land ownership without the right or power of the owner because if the law is abolished or eliminated it will result in an individual winning land ownership rights that are not their rights, for example, people who have abundant assets or assets can occupy more land without paying attention to documents or valid proof of ownership.<sup>12</sup>

#### 4. Closing

In the Government Regulation in Lieu of Act No. 51 of 1960 concerning Prohibition of Use of Land without Authorized Permits or Proxy states that the use of land without a permit whose right or legal authority is an act which is prohibited and is punishable by criminal penalties, in accordance with Article 6 paragraph ( 1) letter a PRP Act No. 51 of 1960. The elements that exist in the criminal act are; At the time of acquisition, it is known that there are other people who have the right, not informing other people that the land has been turned into land for debt or has been mortgaged. The factors causing the criminal act of controlling land without rights consist of internal and external factors. Based on

<sup>9</sup> [http://endahlestari.dosen.narotama.ac.id/files\\_/2011/05/Modul-Hukum-Pidana-5-Pertanggung-Jawaban-Pidana-atas-penguasaan-tanah.pdf](http://endahlestari.dosen.narotama.ac.id/files_/2011/05/Modul-Hukum-Pidana-5-Pertanggung-Jawaban-Pidana-atas-penguasaan-tanah.pdf). Accessed on 20 June 2020

<sup>10</sup> <https://mkri.id/index.php?page=web.Berita&id=13530> Ahli Perpu Larangan Pemakaian Tanah Tanpa Izin Seharusnya Tidak Berlaku. Accessed on 20 June 2020

<sup>11</sup> Constitutional Court Matters Number Number 96/PUU-XIV/2016

<sup>12</sup> <https://www.hukum-hukum.com/2016/10/pidana-pakai-tanah-tanpa-izin.html>. Dipidana Memakai Tanah Tanpa Ijin Pemilik Tanah Yang Berhak. Accessed on 20 June 2020

the Supreme Court Decision Number 73 / Pid / 2015 / PT SMG has fulfilled the elements of error, the ability to be responsible, There is no excuse for forgiveness, against the law, and the manifestation of behavior and actions of the subjective element in practice is only aimed at everyone (whoever) Article 6 paragraph (1) of Act No. 51 Prp Of 1960 and no criminal threat against a legal entity or a corporation is regulated.<sup>13</sup>In this case at the same time as a weakness in the regulation of criminal acts of control of land in Article 385 of the Criminal Code and in Article 6 paragraph (1) of Act No. 51 Prp of 1960. In the use of Act No. 51 of 1960 it is still considered relevant to use because it is still considered capable of overcoming and preventing parties who arbitrarily occupy and use other people's land by relying on wealth or power.

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