

The Law Enforcement against Offenders Owning Land and Buildings Without Own Permits

Renanda Bagus Wijaya^{*)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: renandawjy@gmail.com

Abstract. *The purpose of this study is to find out and analyze law enforcement against perpetrators of criminal acts controlling land and buildings without permission. To find out and analyze the obstacles to law enforcement against perpetrators of criminal acts controlling land and buildings without permission and the solutions. This study uses a normative legal approach. Normative legal research is research conducted by researching literature (secondary data) or library law research. Typethe study in this research is more descriptive analysis in nature. The sources and types of data in this study are secondary data obtained from literature studies. Data were analyzed qualitatively. Based on the results of that researchLaw Enforcement Against Perpetrators of the Crime of Owning Land and Buildings Without Own Permits is carried out with the stages of the criminal justice process which begins with the police receiving reports from the complainant, then continues with investigations and investigations, and ends with the handing over of the case files and the suspects to the public prosecutor. Obstacles to Law Enforcement against Perpetrators of the Crime of Owning Land and Buildings without Own Permits is the weakness of the legal substance that regulates criminal acts of land grabbing.*

Keywords: Building; Enforcement; Land; Permits.

1. Introduction

Indonesia is a country of laws. This has been regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which has become the basic guideline for the system of the Unitary State of the Republic of Indonesia. This system is the background to the life of every existing layer of society, where the system has a coercive nature and consists of several rules that must be obeyed,

these rules include elements of how the system of society is for a state, how people behave to distinguish what is allowed and what is not allowed. done.

The rule of law requires that the law must always be upheld, respected and obeyed by anyone without exception. This aims to create security, order, prosperity in the life of society, nation and state. The concept of a rule of law cannot be separated from the concept of its own pillar, namely the sovereignty of the people which later gave birth to the notion of democracy. Therefore, a rule of law and democracy cannot be separated.¹

Land as a gift from God Almighty is a natural resource that is needed by humans to meet their needs, both directly for their lives such as cultivating land or living quarters or carrying out businesses, such as trade, industry, agriculture, plantations, education, construction of other facilities and infrastructure. .²

Land in family tradition has become a symbol of the noble relationship between ancestors and owners (heirs), as a means of dialogue with elders or ancestors (who have died), as a sign that their ancestors are always present among them.³

Such a large human dependence on land, both for settlements and as a source of livelihood, while the supply of land is increasingly limited, both in number and area, it remains constant and does not increase in all dimensions of human needs. The imbalance between the number and area of available land and the increasing need for use causes land to have a very important meaning, so that the intervention of the state through its apparatus in the land law order is absolute.⁴

Land is one of the main elements in human life and is a source of natural wealth which has an important function for the economic development of the Indonesian people. Land is needed, among other things, for residence as well as for business activities which are increasingly varied according to economic, social, cultural and technological developments. In addition, land is part of the basic needs of human life. Humans live and reproduce and carry out activities on the ground, so that every time humans are in contact with the land.⁵

¹Sri Kusriyah, 2022, The Principles of the Welfare Law State in an Islamic Perspective, *Journal of Daulat Hukum*, Volume 5 Issue 4, Unissula, p. 288, <http://jurnal.unissula.ac.id/index.php/RH/article/view/26590/7687>

²Suardi, 2005, *Agrarian Law*, Iblan, Jakarta, p. 1.

³Dwi Anas Rudiyanoro and Sri Kusriyah, 2020, Mechanism for Handling of Criminal Action Prohibiting the Use of Land Without Permission, *Law Development Journal*, Volume 2 Issue 4, Unissula, p. 519, <http://jurnal.unissula.ac.id/index.php/ldj/article/view/13632/5184>

⁴Hambali Talib, 2009, *Criminal Sanctions in Land Conflicts*, Kencana, Jakarta, p. 1

⁵Mariot Pahala Siahaan, 2003, *Fees for Acquisition of Land and Building Rights*, Raja Grafindo Persada, Jakarta, p. 1

Government efforts continue to be realized for the community to resolve land conflicts, one of which is by making legal arrangements. Even though it has a legal basis, in the development of people's lives, the problems that arise are increasingly complex and complicated and in reality it is often not possible to find solutions that can resolve them properly.⁶

The purpose of this study is to find out and analyze law enforcement against perpetrators of criminal acts controlling land and buildings without permission. To find out and analyze the obstacles to law enforcement against perpetrators of criminal acts controlling land and buildings without permission and the solutions.

2. Research Methods

This study uses a normative legal approach. Normative legal research is research conducted by researching literature (secondary data) or library law research.⁷ Typethe study in this research is more descriptive analysis in nature.⁸ The sources and types of data in this study are secondary data obtained from literature studies. Data were analyzed qualitatively.

3. Result and Discussion

3.1. Law Enforcement against Offenders Owning Land and Buildings Without a Permit

Law enforcement as a process is essentially the exercise of discretion which involves making decisions that are not strictly regulated by the rule of law, but have an element of personal judgement. Thus, in essence, discretion is between law and morals (ethics in the narrow sense).⁹

Formal criminal law that regulates how material criminal law can be implemented. The term law enforcement is very broad, because it includes those who are directly and indirectly involved in law enforcement.

The law can be enforced if it pays attention to three elements, namely legal certainty, expediency, and justice. However, the three elements cannot be

⁶Soedjono Didjosisworo, 2008, Introduction to Law, Raja Grafindo Persada, Jakarta, p. 17.

⁷Ediwarman. 2009. Monograph on Legal Research Methods, 2nd edition, Medan, p. 24

⁸Bambang Waluyo, 1996, Legal Research in Practice, Sinar Graphic, Jakarta, p.8

⁹Soerjono Soekanto. 2014, Factors Influencing Law Enforcement, Raja Grafindo Persada, Jakarta, p. 7

focused on just one element, because it is not always easy to seek a balance between the three elements.¹⁰

The crime of land acquisition without a permit or land grabbing is still a legal issue today. This conflict or problem will continue because of the weak legal substance governing this crime. Not only that, the proceedings at the level of inquiry and investigation are very troublesome. That's why when such a crime occurs by seizing the rights of citizens or customary land by a corporation, it is increasingly mushrooming and rampant which in the end results in deadly horizontal conflicts simply because of the illegal seizure and/or occupation of land. It should be noted that there are two types of land occupation, namely legal and illegal occupation.

The basis for the existence of a crime is the principle of legality, while the basis for the punishment of a maker is a mistake. This means that the perpetrator of a crime will only be punished if he has a fault in committing the crime. This means that the perpetrator of a crime will only be punished if he has a fault in committing the crime. Based on this, that: A person's sentence is not enough if that person has committed an act that is against the law or is against the law. So even though the act fulfills the formulation of an offense in the law and is not justified (an objective breach of a provision panel), it does not yet meet the requirements for a criminal conviction.¹¹

One of the main issues that has been felt to be prominent today is the use of land without proper permits, or more popularly known as land tenure without rights. This problem always gets the attention of the people who are very critical of social problems.¹² The function of land and the increasing economic value of land, as well as the orderly administration of land that is not yet optimal, seems to have become a driving factor for the occurrence of land tenure without rights. The crime of land tenure without rights apparently does not only occur in urban areas, but also in developing rural areas.

Crimes against land owned by other people have created complicated issues in criminal law in Indonesia. This is due to the large number of lands controlled by the state or by private legal entities that are not managed professionally, do not have clear boundaries and are mostly neglected. This condition causes the people who live around the land to cultivate or manage the land to support themselves and their families. Another problem also arises when previously uncertified lands, which have been occupied by residents for decades or hundreds of years, later

¹⁰ Sriyono and Amin Purnawan, 2020, Legal Protection of Participants Applications for Land Certificates through Complete Systematic Land Registration (PTSL) In Blora Regency, *Daulat Hukum Journal*, Volume 3 Issue 1, Unissula, p. 174, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/RH/article/view/8431/4066>

¹¹ Teguh Prasetyo, 2011, *Criminalization in Criminal Law*, Nusa Media, Bandung, p. 38

¹² Effendi, E, 2011, *Indonesian Criminal Law, An Introduction*, Refika Aditama. Jakarta, p. 67

certificates appear in the name of a certain corporation or certain legal entity. Conflict is inevitable,

In the UUPA it can be found that the highest land tenure rights are the rights of the nation. We can conclude this based on the provisions of Article 1 paragraph (1), (2) and (3) which state: (1) the entire territory of Indonesia is the united homeland of all Indonesian people, who have united as the Indonesian nation. (2) The entire earth, water and space, including the natural wealth contained therein within the territory of the Republic of Indonesia as a gift from God Almighty, is the land, water and space of the Indonesian nation and constitutes national wealth. (3) The legal relationship between the Indonesian people and the earth, water and airspace as referred to in paragraph (2) of this article is a personal relationship.¹³

The stages in processing the criminal act of occupying land and buildings without permission in the criminal justice process stage are as follows:

1. There is a report or complaint
2. Inquiries and investigations
3. File sharing
4. Prosecution
5. Examination of Court Cases

Law Enforcement against Perpetrators of the Crime of Owning Land and Buildings Without Own Permits is carried out with the stages of the criminal justice process which begins with the police receiving reports from the complainant, then continues with investigations and investigations, and ends with the handing over of the case files and the suspects to the public prosecutor. Law enforcement must begin with a report from the complainant, because cases of using land parcels without rights are a complaint offense, where the police can only act to handle land cases if there are reports from the complainant reporting someone who is considered to have committed a crime for violating the rights he experienced. The next step is investigation and investigation, which consists of examining reports and initial evidence, examining the witnesses presented, question the suspect. The suspect's statement is very important considering that there are many land cases where the suspect can prove himself as the legal owner of the rights. In this regard, the arrest and detention of suspects is rarely carried out unless the suspect does not have good intentions or is not cooperative in fulfilling the investigator's

¹³Umar Ma'ruf, 2006, Legal Politics of the State's Control over Land, Journal of Law, Vol. 16 No. 3, Unissula Semarang

summons. After the case dossier is declared complete, the next step is to hand over the dossier and the suspect to the public prosecutor.

3.2. Barriers to Law Enforcement against Perpetrators of Crime Owning Land and Buildings Without Permits and their solutions

Realizing and enforcing criminal law in Indonesia is not as easy as writing and saying it. This is due to the many obstacles and challenges that are no longer just rhetoric, but have become a reality that cannot be avoided if it is delayed. In law enforcement through the penal system that has been in effect in Indonesia, there are constraints or obstacles that are substantial and classic in nature. One of these obstacles is the principle of legality which emphasizes that the law is not retroactively applied to criminal acts that occurred before the law was issued or enacted.

The substance of laws and regulations is incomplete and has many loopholes, thus providing opportunities for abuse of authority by law enforcement officials. Other fundamental obstacles include the still weak awareness and responsibility of the nation and state in producing laws and regulations which in the end are inseparable from rampant corruption, collusion and nepotism (KKN). Weak law enforcement in following up on cases of land grabbing has made the public more convinced that the scope of the law enforcement apparatus has its own interests to prolong this case.

Deviant Legal Behavior is a behavior that is subject to social control. In other words, social control defines what is meant by deviant. And the more social control to which the behavior must be subject, the more deviant the behavior will be. In this sense, the seriousness of deviant behavior is limited by the quantity of social control to which the behavior is subject. The quantity of social control also defines the degree of deviant behavior, whether it is a crime that must be punished, a debt that must be paid, a situation that requires treatment, or a dispute that requires resolution. In short, deviant behavior is an aspect of social control.¹⁴

Community land grabbing activities have broad dimensions, basically reflecting collective dynamics or collective behavior.¹⁵ One of the component bases is the presence of a push/trigger caused by facility and situational feasibility. Feasibility of facilities in the form of something that stimulates/encourages collective dynamics or collective behavior. In this case it is land grabbing.

Land grabbing itself can be interpreted as an act of taking rights or property arbitrarily or in an unlawful way, such as occupying another person's land or

¹⁴Puspa, Yan Pramadya. 1997. Legal Dictionary. Various Sciences, Semarang, p. 419

¹⁵Smelser, NJ, 1962, Theory of Collective Behavior. The Free Press. New York, pp. 1-2.

house, which is not his right. Unlawful land grabbing is an act that can be classified as a criminal act.¹⁶

Obstacles to Law Enforcement against Perpetrators of the Crime of Owning Land and Buildings Without Own Permits is the weakness of the legal substance that regulates criminal acts of land grabbing. Apart from being weak, procedural procedures at the level of inquiry and investigation are also very troublesome.

In terms of efforts to tackle crime against land grabbing, in essence it is not only focused on the efforts of the police in tackling the crime in question, but also requires the role of all parties. To overcome obstacles to law enforcement against perpetrators of criminal acts of controlling land and buildings without ownership permits is in the formulation of legal rules against criminal acts of land grabbing more specifically and determining in advance the qualifications of the form of crime that will be imposed when wanting to indict someone for committing a crime land grabbing was carried out.

4. Conclusion

Law Enforcement Against Criminal Acts of Owning Land and Buildings Without Own Permits is carried out with the stages of the criminal justice process which begins with the police receiving a report from the complainant, then proceeds with investigation and investigation, and ends with Delegation of case files and suspects to the public prosecutor. Obstacles to Law Enforcement against Perpetrators of the Crime of Owning Land and Buildings Without Own Permits is the weakness of the legal substance that regulates criminal acts of land grabbing.

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¹⁶Weku, RL 2013. Study of land grabbing cases in terms of criminal law and civil law aspects. Lex Privatetum, 1(2). p.1.

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