



Formulation of Criminal Law against Criminal Acts in the Land Sector in Indonesia

Dodik Prihatin AN¹, Echwan Irianto², I Wayan Yasa³, Ajeng Pramesthy Hardiani Kusuma⁴

^{1,2,3,4}Lecturer of the Faculty of Law, University of Jember

ABSTRACT

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Soil is something that is very important for human life. Matters related to land require legal certainty for holders of land rights through a land registration activity. However, there are still problems in the land sector, namely the occurrence of land grabbing, so that the government makes legal rules which include criminal sanctions, such as land grabbing. in the Criminal Code is still too narrow, especially usurpation. Based on the legal issues, it is narrowed down in the formulation of the problem, namely: What are the forms of criminal acts in the land sector? How is the formulation of criminal law in dealing with crimes in the land sector? The term occupying is considered more appropriate, because the land is large and not just a yard as in Article 167 of the Criminal Code concerning land grabbing. Articles 263, 264, 266, of the Criminal Code are falsification of land rights documents, Article 385 of the Criminal Code contains elements of embezzlement of rights to immovable objects. The formulation is able to provide legal protection for individual land rights, legal entities, as well as for customary land or customary rights as long as the law or the community still adheres to the customary law applicable in their environment. Of course, this is driven by the mandate contained in Article 18 letter B of the 1945 Constitution. The objectives to be achieved are to describe the forms of actions that constitute criminal acts in the land sector and to find formulations of criminal law in dealing with crimes in the land sector.

Keywords:

Formulation, Criminal Law, Land Crime

I. INTRODUCTION

The existence of land has an important role in human life, therefore land should be controlled, managed and to obtain certain legality it is necessary to register the land with the aim that land rights remain attached and have legal force for the owner. This is manifested in the form of a certificate as a strong evidence, of course through the process of being registered with the party who has the authority (Bintara Sura Priambada, 2014). The important role of the land in question is of course in a broad interpretation, at least starting from the life and livelihood of humans who come from and will even return to the land. On the other hand, the increasing economic need for land which is inversely proportional to the availability of the amount of land because land tends to be static is one of the factors that triggers the increasing number of disputes, conflicts and land cases that occur in Indonesia (Rahmat Ramadhani, 2016).

Corresponding Author: Dodik Prihatin AN

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The form of land problems in the field of law has at least been widely studied juridically, both disputes, conflicts and land problems in terms of criminal acts. Problems that often arise insolving a legal problem, especially regarding criminal acts, are injustice and legal certainty. Sometimes in the process of resolving a criminal case in the land sector, it often creates polemics or dissatisfaction among justice seekers because the judge's decision is considered detrimental to one of the litigants in court. Likewise in the context of legal certainty which often raises problems due to the weakness of existing laws and regulations in regulating a settlement of legal problems, especially in criminal cases (Iwan Setiawan, 2018).

One of the problems that often occurs in social life in the perspective of criminal acts is the problem of land which tends to metamorphose in the social life of the community, land is no longer seen as a mere agrarian problem which is always identified as mere agricultural land, but is experiencing development, both in terms of benefits. as well as its use so that it has a negative impact that leads to the complexity of the case, even land issues often also cause

shocks in people's lives and become obstacles in the implementation of development.

In order to overcome these problems, the government took a policy in the agrarian sector by passing the Law on Agrarian Principles (hereinafter abbreviated as UUPA). This has become a very meaningful reform in the land sector for the life of the nation and state in an effort to regulate the granting and recognition of land rights to individuals and legal entities. Although the policy cannot be separated from legal politics towards agrarian matters with the enactment of the LoGA, it does not mean that problems in the land sector will not exist.

The problem after the ratification of the UUPA is whether the legal force of the legislation is able to provide legal protection to the law holders of land rights. Especially the existence of criminal sanctions norms for perpetrators who commit acts in the land sector as regulated by the law. Indeed, there is a punishment imposed on the perpetrator but it is low, but the norm in the law is qualified/classified as a crime. Likewise, a number of other laws and regulations include criminal sanctions (Hairan, 2020).

Qualifications for criminal acts are divided into Crimes contained in Book II and Violations as contained in Book III. Still related to the qualification, M.V.T Smit argues that the division of the two types of criminal acts is based on or based on a principle difference which gives the understanding that crime is *rechtsdelicten*, namely an act which, although not specified in the law, is called a criminal act which has been perceived as *onrecht*, namely: as an act that is contrary to the legal system (Leonie Lokollo, et al, 2021).

Through understanding which is then carried out with qualifications, there is one crime in the land sector, namely land grabbing. Terminologically, land grabbing is a form of unlawful taking of other people's rights. The form can be by occupying the land, doing fencing, expelling the actual land owner and others. The act of land grabbing will surely harm other parties so that the perpetrators can be dealt with with criminal law instruments.

Land grabbing in reality in Indonesia is something that is difficult to avoid especially in the metropolitan city area, where vacant land is increasingly difficult to find but more and more immigrants come to risk their fate even though they do not have a clear place of residence or relatives and this is what drives so many the seizure of state land or land controlled by individuals or companies (Jaminuddin Marbun, 2018).

Government Regulation in Lieu of Law Number 51 of 1960 concerning the Prohibition of Land Use without the Rightful Permit or Proxy states that the use of land without the rightful permit or legal proxy is a prohibited act and is punishable by criminal penalties. Article 2 of the regulation states that the use of land without a rightful permit or legal proxy is a prohibited act. Criminal sanctions or penalties are imposed on actions (*feits*) that are wider than the provisions

in the current Criminal Code. However, the act of occupying land or encroaching on the concept is extended not only to the yard. But occupy land in a very large area.

Land grabbing is also regulated in the Criminal Code, in the process of investigation and investigation always use Article 167 paragraph (1). So that the article is categorized as an article that regulates land grabbing and if the land grab is carried out with the intention of selling or exchanging it to another party, it can be threatened with Article 385 of the Criminal Code related to embezzlement of land with a maximum criminal penalty of four years, where anyone with the intent to profiting oneself or others unlawfully, selling or exchanging or burdening with creditverband a land right that has not been certified, even though he knows that other people have rights or also have rights or have rights to them (Nurindah Damai Lestari, 2017).

Therefore, in this background, the problem is focused on the forms of actions that constitute criminal acts in the land sector. While the next focus is on the formulation of criminal law in overcoming criminal acts in the land sector. The author is to raise it in the form of normative research related to the formulation of Criminal Law in overcoming land crimes. This is by looking at the conditions that occur today, often land problems by occupying the rights of others without rights. So that the goal to be achieved is actually to describe the forms of actions that are criminal acts in the land sector and find criminal law formulations in overcoming criminal acts in the land sector. Based on this description, the formulation of the problem to be studied is:

1. What are the forms of criminal acts in the land sector?
2. How is the formulation of criminal law in dealing with crimes in the land sector?

II. LITERATURE REVIEW

A. Criminal Law Concept

In principle, there are two different understandings of criminal law, which are called *ius poenale* and *ius puniendi*. *Ius poenale* is an objective understanding of Criminal Law. Criminal law in this sense according to Mezger are "legal rules that bind to a certain act that fulfills certain conditions an effect in the form of a crime".

The two types of criminal law cannot be separated in efforts to enforce criminal law. Material criminal law regulates the principle of guilt (guilt in principle), while formal criminal law regulates procedures for determining a person in fact guilty (guilty in fact). "In general terms, we can say that the substantive rules establihs'guilt in principle'. The Procedural rules determine whether individuals are 'guilty in fact'...". (George P. Fletcher, 1988).

B. Land grabbing

In the Criminal Code Book II Chapter XXV, fraudulent acts such as land grabbing can be threatened with

a maximum imprisonment of four years. Article 385 consists of 6 paragraphs which clearly define the crime. All forms of crimes contained in article 385 are called *Stellionaat* crimes, which are acts of embezzlement of rights to immovable property belonging to others, such as land, rice fields, gardens, buildings. In summary, the entire contents of the article state all unlawful acts such as intentionally selling, renting, exchanging, mortgaging, making debt dependents, using land or property belonging to others with the intention of seeking personal or other people's gains illegally or against the law. applicable.

The term "to grab" is basically widely used in everyday life. Snatching comes from the root word "serobot". An intruder is a person who grabs, a crook, while trespass is a process, method, act of robbing. Harassing from a legal perspective, is defined or interpreted as follows: a. Taking rights or property arbitrarily or by ignoring laws and regulations (such as stealing, seizing, occupying other people's land or houses that are not their rights, kidnapping); b. Attacking (breaking, crashing) recklessly or stealthily; c. Doing actions (such as entering someone's house, interrupting people's words, and so on); d. Using the road at will without heeding the rules (C. T. Simorangkir et al, 2002).

C. Criminal Law Formulation

In the context of efforts to overcome a crime (crime) can be reached by using penal and non- penal means. Efforts to overcome crime by using penal facilities are operationalized through several stages, namely: 1. The formulation stage, namely the stage of stipulation or formulation of criminal law by law-making apparatus, or also called the stage of law enforcement in abstracto by the legislature; 2. The application stage is the stage of applying criminal law by law enforcement officers from the police to the courts; and 3. Execution stage, namely the stage of criminal execution by the implementing apparatus of criminal execution.

Of the three stages mentioned above, the formulation stage is the most strategic stage of crime prevention and control efforts through the means of penalizing because errors or weaknesses in legislative policies are strategic mistakes that can hinder crime prevention and control efforts at the application and execution stages (Barda Nawawi Arief, 2002). The policy of overcoming crime by using penal facilities is centered on 2 (two) central problems, namely the problem of what actions should be made into criminal acts and what sanctions should be used or imposed on the violator.

D. Land law concept

Land law refers to the legal norms for the state to adjust various social and economic relations in the ownership, control, operation, use, protection and management of land. Its purpose was to protect the economic interests of the land from the ruling class and help stabilize the

socioeconomic order and political rule of the ruling class. This concept includes the following meanings: (1) Land law is a norm formulated or approved by the state and its implementation is guaranteed by the coercive power of the state. (2) Relevant land laws and regulations formulated or recognized by the state are universally binding on all members of society. All units and individuals must adhere to it strictly.

Any violation of land laws and regulations must be punished in accordance with the law to ensure that national land laws are implemented. (3) The objects of land law adjustment are various social relationships owned by the community in the process of building, using, renovating and protecting land, namely land relations, including land ownership relations, use relationships, income distribution relationships, rights and obligations. (4) Land law in a broad sense is a general term for legal norms governing land relations; Land law in a narrow sense refers to certain land laws, such as land management laws.

IV. METHOD

The type of research that the author does is to conduct research on the type of normative juridical research. This legal research approach uses a Conceptual approach. According to Peter Mahmud Marzuki, further explaining, the conceptual approach from what is actually stated in using a conceptual approach, researchers need to refer to legal principles. These principles can be expressed in the views of scholars or legal doctrines. Although not explicitly, the concept of law can also be found in the law. It's just that in identifying these principles, researchers first understand the concept through existing views and doctrines (Peter Mahmud Marzuki; 2016). One reason is that crimes in the land sector through the application of the articles in the Criminal Code cannot suppressor reduce land cases. This includes laws and regulations that specifically regulate sanctions in agrarian law.

IV. DISCUSSION

A. Forms of Crime in the Land Sector in Indonesia

Cases in the land sector nationally have always increased from data obtained by the author from the Ministry of Agrarian Affairs and Spatial Planning, the National Land Agency (ATR/BPN) noted that there were 3,230 cases of land disputes that were successfully handled throughout 2019. This number exceeded the initial target set. by the Ministry of ATR/BPN, namely 876 cases (Hairan and Rahmat Datau.2020).

Basically, land disputes in general arise due to several factors, including the following (Ibrahim Ahmad; 2010): a. Incomplete regulations; b. Non-compliance with regulations; c. Land officials who are less responsive to the need and the amount of land available; d. Inaccurate and incomplete data; e. Incorrect land data; f. Limited human resources tasked with resolving land disputes; g. erroneous

land transactions; h. Act of the right applicant i. There is a settlement from other agencies, so that there is an overlap of authority.

Starting from a conflict and then becoming a land dispute, it is clearly caused by several factors as mentioned above. Conflict can be interpreted as an opposition or conflict of opinion between people, groups or organizations (Winardi; 2007). Of course, the existence of these contradictions also leads to things that are very thick with the recognition of rights to objects. In this case the object in question is an immovable object, namely land.

According to Laura Nader and Herry F. Todd distinguish conflict and dispute through the dispute process (disputing process), as follows: (Laura Nader and Harry F. Todd Jr, 1978).

1. The pre-conflict stage or the complaint stage, which refers to a situation or condition that a person or group perceives as unfair and the reasons or grounds for that feeling. Violations of this sense of justice can be real or imaginary. Most importantly the party feels that their rights have been violated or mistreated;
2. Conflict stage, characterized by a situation where the party who feels that his rights have been violated chooses a confrontational path, throws accusations at the violator of his rights or informs the other party about the complaint. At this stage both parties are aware of the existence of disagreements between them;
3. Dispute stage, can occur because the conflict has escalated because because of the conflict it is generally stated. A dispute only occurs when the party with the complaint has escalated a dispute from an approach to something that has entered the public sphere. This is done intentionally and actively with the intention that there is some action regarding the desired demands.

This land issue of course also involves a criminal act (strafbaarfeit), not merely being in a civil position. But as long as there is a criminal act that can be seen from his actions. Crime in general can certainly occur due to many things, especially crimes in the field of land. But everything is also determined by law enforcement. Law enforcement is carried out with a stipulation that the law is regulating and coercive, so the sanctions are firm. According to Joseph Goldstein in Dellyana Shant, distinguishing criminal law enforcement into 3 parts, namely (Dellyana, Shant; 1988):

- 1) Total enforcement, namely the scope of criminal law enforcement as formulated by the substantive law of crime. This limited scope is referred to as the area of no enforcement.

- 2) Full enforcement, after the total scope of criminal law enforcement is reduced by the area of no enforcement in law enforcement, law enforcement is expected to maximize law enforcement.
- 3) Actual enforcement, according to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the necessity of discretion and the rest is what is called actual. enforcement These orders, prohibitions and permissibility in their application to Agrarian Law have been manifestly in the form of written law so that they become positive law in the form of the UUPA, several statutory regulations, and the Criminal Code (hereinafter abbreviated as KUHP). Law enforcement in the land sector is not only in the enforcement and implementation of the acquisition of land rights, but it is also necessary to regulate the enforcement of criminal law in the land sector related to crime.

It is no longer necessary to deny that our current Criminal Code is a legal product of the Dutch East Indies government which is considered irrelevant to be applied today. However, until now our government has not been able to ratify the new Criminal Code which is the result of our own nation. According to Galuh Faradhilah Yuni Astuti, the reform of the Criminal Law itself is simply a change or reform of the Criminal Law, which began as a criminal law inherited from the Netherlands into a criminal law derived from the study of the legal values of the Indonesian nation. (Galuh Faradhilah Yuni Astuti; 2015)

Land grabbing is an act of taking rights or assets arbitrarily or by ignoring the laws and regulations, such as occupying land or other people's houses that are not their rights. Illegal land grabbing is an act that is against the law, which can be classified as a crime. criminal act. Based on the above understanding, land grabbing is a form of unlawful taking of other people's rights. The form can be by occupying the land, doing fencing, expelling the actual land owner and others.

Land grabbing will harm other parties, so that the perpetrators can be dealt with with criminal law instruments. In general, the term land grabbing can be interpreted as an act of controlling, occupying or taking over land belonging to another person against the law, against the rights or violating the applicable legal regulations. Land grabbing is one type of crime that occurs in people's lives. This is often found where illegal buildings can be seen which are usually located on vacant lands to become shelters for those who continue to struggle to maintain their lives by being

forced to take land that is not their right and in the Criminal Code it is clearly regulated in Article 385. with a maximum sentence of 4 (four) years in prison.

Law enforcement and justice in a fair or just legal process are enforcement guaranteed by the 1945 Constitution of the Republic of Indonesia which provides protection and benefits for every citizen in the context of upholding the supremacy of the constitution as the basic law of the state. Therefore, a series of principles of a fair and complete legal process, good and perfect the 1945 Constitution of the Republic of Indonesia and laws and regulations will not mean much for any citizen or society, if it is not enforced or applied correctly and fair, and will create a bad image for Indonesia as a democratic legal state (*rechtstaaten democratische*) (Abdul Latif, 2014).

B. Formulation of Criminal Law in Handling Crimes in the Land Sector in Indonesia

The study and handling of land cases is aimed at providing legal certainty to the disputing parties, as regulated in Article 2 paragraph (2) of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2011 concerning Management of the Assessment and Handling of Land Cases, which stipulates the Assessment and Handling of Land Cases. Handling of Land Cases aims to provide legal certainty for the control, ownership, use and utilization of land in Indonesia.

This land criminal law reform is carried out, of course, it cannot be separated from the politics of criminal law. In determining the politics of criminal law, according to Teguh Prasetyo and Abdul Hakim Barkatullah, that: penal policy (policy) of criminal law, in essence, how criminal law is formulated properly and provides guidance to lawmakers (legislative policy), application policy (policy) judicial), and the implementation of criminal law (executive policy) (Teguh Prasetyo and Abdul Hakim Barkatullah, 2005).

Determining whether or not a criminal act needs to be included in the criminal law, according to Barda Nawawi Arief, there are 2 (two) central issues that need to be considered in the criminal law policy (penal policy), especially in the formulation stage, namely the problem of determining the act. what should be a criminal act and the problem of determining what sanctions should be used or imposed on the violator (Barda Nawawi Arief; 2002).

When viewed from the reality that occurs in the community regarding land issues with the category of confiscation, the Criminal Code by using the term usurpation or *stelleonaat*, it is necessary to look back at the term confiscation or *"huisvredebreek"* in article 167 of the Criminal Code is only limited to elements related to the household. Likewise, the provisions of Article 385 of the Criminal Code, concerning embezzlement of immovable objects with the intention of unlawfully benefiting oneself in

the form of selling, exchanging, burdening with *creditverband* including mortgaging which he knows does not belong to him.

Land crimes that the author views as a form of criminalization considering that the articles of the Criminal Code have not been able to accommodate. So that when the author sees the reality on the ground in a concrete form, it is more appropriate as a criminal act of "occupying" land or land whose ownership is by the community or an individual. The term occupying is considered more appropriate, because the land is extensive and not just a yard as formulated in Article 167 of the Criminal Code on land grabbing, 263, 264, 266, the Criminal Code relating to the falsification of land title documents, as well as Article 385 of the Criminal Code which contains elements of embezzlement of immovable objects. This includes how to protect the law on land that is categorized as customary land or customary rights as long as the law or the community still adheres to the customary law that applies in their environment.

Materially criminal law policy (penal policy) regarding this unlawful nature; Indonesian jurisprudence is not legalistic. Therefore, in formulating a land crime, it is fulfilled as regulated in the decision of the Supreme Court of the Republic of Indonesia dated January 8, 1996 Number

42/K/Kr/1965, stating: "An act in general can be lost as against the law, not based on any provisions in the legislation. invitation, but also based on the principles of justice or legal principles that are not written and are general in nature.

In terms of the formulation of the crime of land crime in which the main element is "occupation" (occupation), Sudarto argues that in dealing with the first central problem above, which is often called the problem of criminalization, the following main points must be considered:

- 1) The use of criminal law must take into account the objectives of national development, namely realizing a just and prosperous society that is materially and spiritually evenly distributed based on Pancasila. Regarding this
- 2) The use of criminal law is aimed at tackling crime and imposing crimes against the countermeasures themselves, for the welfare and protection of the community
- 3) Acts that are attempted to be prevented or overcome by criminal law must be "undesirable actions", namely actions that bring harm (material and or spiritual) to the community members.
- 4) The use of criminal law must also pay attention to the "cost and benefit principle"
- 5) The use of criminal law must also pay attention to the capacity or ability of the work force and law enforcement agencies,

that is, there should not be an overload of duties (overblasting). (Sudarto; 1977)

The formulation of land crimes in written law needs to consider the values that live in society. This means that unwritten law is a consideration that is made in the renewal of criminal law in this case formulating land crimes. This is as stated by Karl O.Christiansen in Nyoman United Putra Jaya, as follows: "the conception of problem crime an punishment is an essential part of the cultural of any society" (Nyoman United Putra Jaya, 2006). The above understanding states that the concept for the imposition of criminal sanctions is based on the basic things, namely the culture and society itself. Formulated in determining land crimes, it can be seen from several elements, namely:

1. There is a subjective element. From this element, we know that the subject in question is a legal subject, which consists of people (persoonrecht) and legal entities (natuurlijkrecht). This is aimed at anyone who fulfills the provisions of the law, namely the provisions of criminal law. Both in terms of legal status, legal personality, and legal capacity. The legal status in question is regarding the status seen from the identity of either citizenship identity or the identity of the legal entity it was founded. Included in this is the abuse of the authority of state officials in relation to land crimes. Especially regarding the existence and recognition of customary law or customary rights in the form of customary land whose existence is constitutionally recognized.
2. The existence of an element of good deeds in question is an act seen from intentional (dolus) or negligence (culpa). In this case, it is necessary to qualify the difference in actions seen from the presence or absence of good intentions or intentions. Included in the imposition of sanctions (punishment) on the perpetrator, considering that it must be complete what is meant by this act so that it does not cause double interpretation or interpretation by analogy.
3. The fulfillment of the next element, namely the object of action. In this case, what is meant by material is immovable objects, namely land, especially prioritized on the protection and recognition of ulayat rights or customary land. The object here should not be confused with what is contained in Articles 167 of the Criminal Code and so on as the author has mentioned above, namely the yard. But the land in question is related to land in a broad sense and there is a violation of basic rights to existing land (Soerjono Soekanto, 1983).

The next element concerning the sanctions imposed must be seen according to the subject or perpetrator, the presence or absence of an act, the presence of weighting in the form of intention (intentional or negligence). Criminal sanctions can also be seen in the form and duration based on the level of harm to the community at large (indigenous peoples). Among the perpetrators based on the quality of the criminal act, namely intentional need to be distinguished from negligence.

Included in the loss borne by the victim, which is interpreted here as the victim is the customary community if their customary rights are disturbed or damaged, their natural resources are taken and so on resulting in material and immaterial losses. But it also needs to be formulated for perpetrators who intentionally or subconsciously claim a land as their customary land so that the imposition of this sanction is distinguished from the severity and severity of an act.

Accountability for the accused for his actions is useless if the act itself is not against the law, so it can be said that first there must be certainty about the existence of a criminal act and then all the elements of the error must also be connected with the criminal act committed, so that there is an error. which results in the conviction of the defendant, the defendant must:

1. Commit a criminal act;
2. Able to be responsible;
3. By intention or negligence;
4. There is no excuse for forgiveness.

Associated with criminal responsibility for the perpetrators of the crime of land grabbing, the criminal sanctions for people who commit these crimes are as regulated in Article 385 of the Criminal Code which is the only article that is often used by investigators (police) and public prosecutors (prosecutors) to indict the perpetrators of burglary. land and is categorized as a criminal offense. In particular, Article 385 paragraph (1) of the Criminal Code reads: whoever with the intention of unlawfully benefiting himself or another person, sells, exchanges, or burdens with creditverband a right to land, a building, building, planting, or seeding, even though it is known that the owner has or also have rights to it are other people (Chairul Huda, 2014).

V. CONCLUSION

1. That the emergence of other forms of land crimes is heavily influenced by socio-economic values in modern society apart from land having religious magical value in the view of indigenous peoples and That a land criminal law formulation is needed, considering the provisions in Article 167, Article 263, Article 264, Article 266, Article 274, and Article 385 of the Criminal Code are unable to cope with the increasing land disputes. Moreover, specifically related to land grabbing by applying Article 167 of the Criminal Code, it is still in a narrow space, related to the yard. While the fact that

the land dispute has occurred is in a large land condition, so it has been included in the category of occupation (occupation), no longer entering the yard.

2. Law enforcement against the crime of land grabbing is subject to Article 385 of the Criminal Code which is the only article directly related to land grabbing and is categorized as a crime. Especially in Article 385 paragraph (1) of the Criminal Code which reads: "Whoever with the intention of unlawfully benefiting himself or others, sells, exchanges or burdens with credit verband a right to Indonesian land, a building, building, planting or seeding, even though it is known that another person owns or also has rights to it.

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