

LAW ENFORCEMENT OF LAND GRACE

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Abstract

This study aims to analyze legal protection for acts of land grabbing and to analyze the prevention and handling of acts of land grabbing. The type of research used is normative legal research, relying on and using library data, namely secondary data in the field of law. The technique of obtaining legal materials is by means of library research by collecting legal materials by reading, quoting, recording and understanding various legal literature and laws. The results of the study show that 1) The legal provisions themselves have accommodated land grabbing in both criminal and civil aspects. 2) Enabling legal sanctions in forcing someone's obedience to the law as above contains aspects of prevention and enforcement aspects.

Keywords: Law, Land Claims, Prevention

Abstrak

Penelitian ini bertujuan untuk menganalisis perlindungan hukum atas tindakan penyerobotan tanah dan untuk menganalisis pencegahan dan penanganan atas tindakan penyerobotan tanah. Tipe Penelitian yang digunakan adalah tipe penelitian hukum normatif, dengan mengandalkan dan menggunakan data Pustaka yakni data sekunder pada bidang hukum. Teknik memperoleh bahan hukum dengan cara penelitian kepustakaan (Library Research) dengan mengumpulkan bahan hukum yang dilakukan dengan cara membaca, mengutip, mencatat dan memahami berbagai literatur hukum dan Perundang-Undangan. Hasil penelitian menunjukkan bahwa 1) Dalam ketentuan hukum itu sendiri telah mengakomodir tindakan penyerobotan tanah baik dalam aspek pidana maupun aspek perdata. 2) Mengfungsikan sanksi hukum dalam memaksakan ketaatan seseorang pada hukum seperti di atas mengandung aspek pencegahan dan aspek penindakan.

Kata Kunci: Hukum, Penyerobotan Tanah, Pencegahan

Introduction

In the dynamics of legal development, the law will be said to function when the law collides with actual events that occur in the midst of society, because the true essence of law is when the law can be applied in the real life of society. On the other hand, society by nature will need law to achieve the common goal of living in society in the form of optimal law enforcement.

Law enforcement is an attempt to realize the ideas and concepts that society expects to become a reality. Soerjono Soekanto stated that law enforcement is synonymous with harmonizing the relationship of values which are spelled out in a perfect rule and a series of final stages of value elaboration to create, maintain and maintain social peace in society¹. The ideal synchronization of law enforcement will not be separated from how the law guarantees and protects citizens' rights. One of these legal protections concerns land rights holders.

In accordance with the Mandate of the 1945 Constitution which is the highest law in the Republic of Indonesia as in Article 33 Paragraph (3) which explicitly states that the Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. In addition to Article 33 paragraph (3) of the 1945 Constitution above, state recognition of individual and community land rights is also related to the objectives of the Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

Awareness of the special position of land in the minds of the Indonesian people is also contained in the Basic Agrarian Law (UUPA) Number 5 of 1960, where in the Basic Agrarian Law it is stated that there is an eternal relationship between the Indonesian people and land. The agrarian reform that had been proclaimed with the issuance of the Basic Agrarian Law Number 5 of 1960, however, in reality it was still very difficult to implement in the field due to various legal and non-legal issues. The Basic Agrarian Law was even more difficult to implement in the New Order era until today's reform era as a result of the implementation of a capitalistic liberal economic system which began with the issuance of the 1967 Domestic Investment Law (PMDN) and the 1968 Foreign Investment Law (PMA). In the last decade, a number of laws have been issued, some of which contradict the Basic Agrarian Law and the mandate of the 1945 Constitution.

In the agrarian scope, land is part of the earth, which is called the surface of the earth. The land referred to here does not regulate land in one aspect, namely land in a juridical sense which is called rights. Land as part of the earth is stated in Article 4 paragraph (1) of the UUPA, namely "On the basis of the right to control from the State as meant in Article 2 it is determined that there are various kinds of rights over the surface of the earth, called land, which can be given to and owned by people, both alone and together with other people and legal entities"².

Soil is a natural resource that is very important for human life. Apart from being used for farming and settlements, the land is also a location for infrastructure development such as office buildings, toll roads and airports. As a result, competition in land use is getting tighter, and often creates conflicts between parties who have different interests. One of the most common forms of disputes is land grabbing. Land grabbing is an illegal act that is carried out by building buildings or infrastructure on land belonging to other people without permission. This action can cause material and non-material losses for the legal owner, as well as harm to society as a whole.

According to Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), land grabbing is an act of forcibly taking over land by a person or group who has no right to the land. This action is also known as land grabbing or coercion of land rights by parties who do not have the right to do so. Land grabbing can take many forms, such as the construction of buildings or infrastructure without permits, taking people's land for personal gain, or illegal taking by land mafias. Land grabbing is regulated in the Criminal Code and Perppu 51/1960, which stipulates the prohibition of using land without the rightful permission or a valid proxy. The party entitled to the land can take criminal and civil law steps to prosecute acts of land grabbing. If you want to ensnare in criminal law, then you can be subject to punishment contained in the Criminal Code

¹ Sapto Hadi and Dkk, 'Kajian Hukum Terhadap Kasus Pengaduan Dan Penyeroobotan Tanah Di Kota Samarinda', *Jurnal de Jure*, 12.1 (2020).

² Santoso. U, *Hukum Agraria Dan Hak-Hak Atas Tanah* (Jakarta: Kencana, 2010).

and in Perppu 51/1960. Perppu 51/1960, for example, regulates the prohibition of using land without the rightful permission or a valid proxy. Using land is occupying, working on and/or relating to a plot of land or owning plants or buildings on it, regardless of whether the building is used alone or not. Using land without the rightful permit or legal proxy is an act that is prohibited and punishable by imprisonment and/or a fine. On the other hand, in civil law, if the party entitled to the land feels aggrieved by land grabbing, the legal steps that can be taken are to file a civil lawsuit on the basis of an unlawful act.

Along with the times, land grabbing is not something new and is happening in Indonesia. Unlawful land grabbing is an act against the law, which can be classified as a criminal act. As is well known, land is a very valuable asset, considering that land prices are very stable and continue to rise with the times. Unlawful land grabbing can harm anyone, especially if the land is used for business purposes. There are various problems of illegal land grabbing that often occur, such as physical land occupation, land cultivation, sale of a land right, and so on³.

The rise of cases of land grabbing today requires a legal settlement that can be carried out from two aspects of legal review, whether the perpetrators of land grabbing are directed at being prosecuted under criminal law or can be sued based on civil law.

In view of the study of legal studies on land grabbing cases, it requires targeting two different elements in the study of criminal law and civil law. Criminal law in such cases will always lead to subjective elements or actors who are proven to have committed a criminal act of land grabbing. Meanwhile, from the point of view of civil law, we will look at it objectively or what is at issue is land ownership as evidenced by proof of land ownership.

The perpetrators of the criminal act of land grabbing can be subject to Article 385 paragraph (1) of the Criminal Code (KUHP) which reads: "Anyone who with the intention of unlawfully benefiting himself or others, sells, exchanges or burdens with creditorband a land right certificate, a building, planting or seeding on land that has not been certified, even though it is known that someone else has or shares the rights over it", shall be punished with a maximum penalty of four years⁴.

Meanwhile, the civil law in articles 1365 and 1366 can ensnare people who carry out land grabs, because it can be seen that in cases of land grabbing there are parties who are harmed and require compensation for the losses suffered by these parties, and also land grabbing is an act against law in which a person unlawfully enters another person's land, or causes a person, or causes another person or object to enter another person's land, or causes a person or other person or certain object to remain in another person's land.

Tackling the crime of land grabbing does require a comprehensive approach, namely by looking at the real root of the problem. If not, then there is concern that criminal law will be used indiscriminately, as if criminal law could completely solve social problems. Criminal law, with sanctions in the form of criminal penalties, is indeed not the best and first means to tackle the problem of land grabbing. If criminal law is forced to be used, the limits of its use must be taken into account. And for that prevention must be aimed at the actions of people who can potentially cause land grabbing problems. Despite the various weaknesses inherent in criminal law, it is still necessary for efforts to tackle crime. The presence of criminal law in the land sector always intends to compel people's obedience to the law, so it is also relevant to discuss the issue of the functionalization of criminal law to protect the public interest which is the aim of policy in the land sectors.

In the context of civil law, land grabbing is considered a violation of fundamental property rights, which violates a person's legal ownership rights to land land. In civil law, property rights are exclusive rights granted to individuals or legal entities to own, use and control a property. This includes land and everything attached to it, such as buildings or plants. These property rights are protected by law to ensure legal certainty for the owner, and involve rights

³ Zainal Arifin and Dkk, 'Pertanggungjawaban Hukum Pelaku Penyerobotan Tanah Milik Pemerintah Daerah Kabupaten Penajam Paser Utara Di Kelurahan Nipah-Nipah', 2.1 (2020).

⁴ R.Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP)* (Bogor: Politea, 1986).

⁵ Satria Sukananda, 'Analisis Hukum Bentuk Penanggulangan Tindak Pidana Penyerobotan Tanah Di Indonesia', *Indonesian Journal of Criminal Law and Criminology*, 2.3 (2021).

such as the right to own, the right to use, the right to enjoy, the right to transfer, and the right to protect the property from encroachment or encroachments⁶.

In cases of land grabbing, the aggrieved owner can take civil law steps to recover their ownership rights. The first step that must be taken is to collect strong evidence showing that they are the legal owners of the land. This can include land certificates, deed of sale and purchase, lease agreement documents, or proof of tax payments. After having sufficient evidence, the aggrieved owner can file a civil lawsuit against the perpetrator of the expropriation.

Today, cases of land grabbing cannot be resolved. The many regulations governing land grabbing in our country have not been able to make cases of land grabbing easily resolved at the judicial level. This can be seen when there is a court decision on a criminal case regarding land grabbing, it cannot be used to execute disputed or expropriated land, because the criminal decision is to punish the person who carried out the land grab, so that the right to control over the land in general still has to be resolved. through a civil suit.

RESEARCH METHODE

This type of normative legal research (Doctrinal legal Research) is where law is conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as rules or norms, which are benchmarks for human behavior that are considered appropriate⁷. The technique of collecting legal materials is carried out by applying library research to legal materials.

Legal materials that have been collected and arranged systematically are then analyzed using descriptive qualitative analysis methods, namely analyzing and describing problems to be solved through various data and materials that have been collected, then the data and materials obtained are translated into variables to be carried out. compiling and making discussions and drawing conclusions so as to find meaning, explain problems and describe what happened and how it was done⁸.

DISCUSSION

1. Legal Protection in Actions of Land Grabbing

Land issues have long been a complicated and complex legal issue and have broad dimensions, so it is not easy to solve quickly. This is because land does not only have a juridical dimension, but also has an economic, political, social, religious-magical dimension, even for the state land has a strategic dimension.

Land as a gift from God Almighty is one of the most basic needs of human life, it can be said that almost the activities of human life, both directly and indirectly, provide livelihood for humans in terms of housing, as livelihoods such as agriculture, plantations, housing, offices and even industry is increasing from year to year. But the problem that often occurs is population growth continues to increase, while the availability of land is very limited. Due to the limited availability of land and the increasing need for land, this will naturally lead to conflicts of interest in land which will result in problems. This land issue will directly intersect with problems in the legal field, especially in the perspective of civil law and criminal law.

The law exists as a guide and at the same time provides legal protection for all aspects of society in collaboration with law enforcement agencies and the legal community which forms a system for firm answers to the efficiency of the law itself. However, the law itself sometimes does not always produce the results desired by many people, one of which is in the polemic that exists regarding land issues which lead to acts that are against the law such as land grabbing⁹.

⁶ Irsan Rahman and Dkk, 'Analisis Hukum Perdata Terhadap Kasus Penyerobotan Tanah', *Jurnal Tana Mana*, 3.1 (2022).

⁷ Amiruddin and H. Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2018).

⁸ Soekanto, *Meninjau Hukum Adat Indonesia (Suatu Pengantar Untuk Mempelajari Hukum Adat)* (Jakarta: Rajawali Press, 1981).

⁹ Ivor Ignasio Pasaribu, 'Penyerobotan Tanag Secara Tidak Sah Dalam Perspektif Hukum Pidana', 2013.

Land grabbing is an act of taking rights or assets arbitrarily or by ignoring laws and regulations, such as occupying someone else's land or house that is not their right. Unlawful land grabbing is an act against the law, which can be classified as a criminal act.

Expropriation appears as one of the domains of juridical study because it contains elements of unlawful acts. Expropriation occurs because there are persons or parties who commit acts or acts of expropriation, and there is an object (material) that is confiscated. Entering a house/building or yard with the intention to take or damage something without the owner's knowledge or permission can be categorized as trespassing. So, expropriation also contains an element of the act or delict of theft. As Article 167 of the Criminal Code states that the act or act of entering objects (houses/buildings or buildings, yards) with the intention of controlling their ownership rights from other people, can also be categorized as usurpation.

The problem is that there are certain persons or parties who enter an object because they think or claim the object is their property. Claims for ownership rights are based on evidence, either in the form of letters or testimonies from people around them. The claim was challenged by parties who also felt they had rights over the object being confiscated based on the good evidence they had. As a result, disputes or conflicts are unavoidable. So that disputes between two parties who both claim ownership of a land object require a legal settlement.

Land grabbing is not something new in Indonesia and in daily life there are certainly many incidents that occur, one of which is the grabbing and destruction of other people's land, either intentionally or unintentionally in Indonesia. Land grabbing by a person or group of people against land belonging to other people often occurs in various regions in Indonesia. In reality, land grabbing in Indonesia is unavoidable especially in the current metropolitan city area, where vacant land is increasingly difficult to find but more and more migrants are arriving to risk their fate even though they do not have a clear place of residence or relatives and this is what drives so many state land grabs occur as well as land owned by individuals or companies.

In summary, land grabbing is an unlawful act and has a serious impact on the rightful owners and social stability. A strong legal response and strong protection of property rights are needed to prevent and deal with land grabbing. Only with joint efforts between the government, the community and landowners can this problem be overcome and land ownership rights can be properly protected.

In dealing with acts of land grabbing, the initial effort taken is an attempt to settle in a criminal manner by looking at the elements of the act committed by a person or unscrupulous land grabber on the elements that fulfill an act of land grabbing.

The elements of land grabbing are strictly regulated in Article 167 of the Criminal Code (KUHP) and also in Article 6 paragraph 1 of Regulation in Lieu of Law (Perpu) Number 51 of 1960 concerning Prohibition of Land Use Without Permission of the Rightful Person or Proxy.

As the provision states: "Whoever unlawfully enters by force into or unlawfully is in a house or a closed place or a closed yard, which is used by another person and does not immediately leave that place, at the request of the person entitled or a request on behalf of the rightful person, shall be punished with imprisonment for a maximum of nine months or a maximum fine of four thousand five hundred rupiahs¹⁰."

Based on this article, it can be concluded that the elements contained include:

- a Anyone who violates the law
- b Forced entry
- c A closed place or yard
- d Not immediately leaving the place at the request of the person who is entitled or the person on behalf of the person who is entitled.

Then this has also been regulated in Article 6 of Regulation in lieu of Law Number 51 of 1960 concerning Prohibition of Use of Land Without a Permit with the Right or Their Proxy which basically emphasizes that a person or group who uses land without permission from the

¹⁰ R.Soesilo.

owner or their proxy can be punished with imprisonment a maximum of 3 months and/or a maximum fine of five thousand rupiahs.

The Criminal Code also clearly stipulates Article 385 Paragraph 1 which is the only article that is often used by investigators (police) and public prosecutors (prosecutors) to indict "perpetrators of land grabbing" and is categorized as a criminal offense which reads: "Anyone who intention to benefit oneself or another person unlawfully, to sell, exchange or burden with creditor band a certificated land right, a building, planting or seeding on land that has not been certified, even though it is known that someone else has or has the right over it ", can be sentenced to a maximum of four years.

This illustrates the readiness of the Legislative Regulations to provide prevention efforts in the aspect of criminal acts. However, in this case, it is not that easy to be able to stop cases of expropriation considering that the criminal sanctions themselves only ensnare the perpetrators of criminal acts while the land issue which is the object of the problem still has to be resolved based on civil aspects.

Settlement of the problem of land grabbing by criminal law is still ineffective, because the criminal process is only punishing the body for the perpetrators of land grabs that do not belong to them and a court decision in a criminal case cannot execute the usurper to get out of the land he has seized. Even if it is proven criminally that someone has carrying out land grabbing, has not guaranteed its ownership, and must also file a civil legal process through a lawsuit and after obtaining legal certainty through a civil decision, then requesting execution to the court, then ownership of the land that has been confiscated by someone can be owned again.

In cases of land grabbing, the aggrieved owner can take civil law steps to recover their ownership rights. The first step that must be taken is to collect strong evidence showing that they are the legal owners of the land. This can include land certificates, deed of sale and purchase, lease agreement documents, or proof of tax payments. After having sufficient evidence, the aggrieved owner can file a civil lawsuit against the perpetrator of the expropriation. This lawsuit was filed. In reality, land grabbing in Indonesia is unavoidable especially in the current metropolitan city area, where vacant land is increasingly difficult to find but more and more migrants are arriving to risk their fate even though they do not have a clear place of residence or relatives and this is what drives so many state land grabs occur as well as land owned by individuals or companies.

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Civil liability is regulated in Article 1365 of the Civil Code if a person is harmed because of the actions of another person, while there is no agreement between them, then based on the law a legal relationship arises or occurs between the person who caused the loss. By reviewing the broad formulation of an unlawful act (Onrechmatige daad), what includes an unlawful act is any action:

- a Contrary to the rights of others
- b Contrary to its own legal obligations
- c Contrary to decency
- d Contrary to the imperative that must be heeded in society regarding other people or objects.

Article 385 of the Criminal Code, which is a crime against the right to immovable property, such as land, houses and rice fields. This crime is commonly referred to as stellionaat crime, which carries a maximum imprisonment of four years: anyone who, with the intention of unlawfully benefiting himself or another person, sells, exchanges or encumbers with credit

verband a certified land right, a building, a structure, planting or seeding on land that has not been certified, even though it is known that someone else has or has the rights over it.

In some cases, settlement through civil law can be time consuming and expensive. Through this process, however, the legitimate landowners have a better chance of obtaining justice and having their rights restored to the land that has been confiscated. However, cases of land grabbing have unique factors, and legal process may vary depending on jurisdiction and applicable law.

2. Prevention and Handling of Land grabbing.

Enabling legal sanctions in imposing one's obedience to the law as above contains aspects of prevention and enforcement aspects. The prevention aspect aims so that in the future it will not cause many land acquisition disputes which lead to land grabbing. Meanwhile, the enforcement (repressive) aspect is aimed at giving law enforcers the authority to take action against people who commit crimes related to land issues.¹¹

The birth of a provision of Legislation that covers an act so that when the act is out of the context of the regulation of the Legislation it is a form of prevention in an action because basically the law is binding in nature and contains prohibitions.

For example, in the provisions of criminal law, the substance of the rules will at least always provide clarity on sanctions as a form of enforcement of the enforceability of norms. The existence of sanctions is a very important part and is difficult to separate as a description of actions that are permitted, prohibited, and which must be carried out with a threat as a combination of a deterrent effect and a benefit for society.

Meanwhile, prevention efforts based on Civil Law will basically provide protection for property owned by those who are entitled or their proxies. The aspect of land ownership is very pressing in terms of saving ownership from an act of land grabbing.

Tackling the crime of land grabbing does require a comprehensive approach, namely by looking at the real root of the problem. The emphasis is not only on the aspect of how to take action against someone who commits an act of land grabbing but also on the aspect of ownership of the land itself.

But basically, because this problem is a problem that is not easy to solve, prevention and handling at least requires a comprehensive approach, namely by looking at the real root of the problem. To prevent land grabbing, efforts are needed that involve all parties, both the government and the community. Some early prevention efforts that can be done include:

- a Improving land security. The government needs to improve supervision and protection of land rights, including by issuing valid land certificates and strengthening law enforcement against land grabbing.
- b Education and outreach. Communities need to be educated and socialized about the importance of having legal land rights and the legal consequences of land grabbing.
- c Law Enforcement Actions. Law enforcement officials must take firm action against perpetrators of land grabbing and respond quickly to community reports.

The increasing population in the Republic of Indonesia, at least also affects the desire which also increases in terms of land ownership. Today's society will compete in obtaining or buying land to be used as building houses, offices, and it can become an investment in the future considering that land prices are increasing every year. This is a big influence on the occurrence of various acts of appropriation of ownership of objects by other people, one of which is the occurrence of various cases of land grabbing.

Therefore, in cases of land grabbing that has occurred, handling can be done through the following steps:

¹¹ M. Pardede, 'Aspek Hukum Pemberantasan Tindak Pidana Korupsi Korporasi Dalam Bidang Perpajakan (Legal Aspect of Eradication of Corruption Criminal Act in Taxation)', *Jurnal Penelitian Hukum de Jure*, 20.3 (2020).

- a Identification of legal land owners. Law enforcers need to identify legal land owners and ensure that their proof of ownership is valid.
- b Building demolition, if land grabbing is carried out through the construction of buildings or infrastructure without a permit, the authorities can start the process of demolishing the building.
- c Restitution. The legal owner can apply for restitution of the confiscated land and receive compensation for the losses suffered.
- d Prosecution, perpetrators of land grabbing need to be charged with criminal sanctions in accordance with applicable law.

In relation to solving the problem of land grabbing, the involvement of the legal owner in the process of identification and restitution is very important. The legal owner must be able to prove legal ownership of the land and show sufficient evidence to substantiate his claim. In addition, when it comes to law enforcement against land grabbing, investigations and prosecutions by legal institutions are no less important.

CONCLUSION

- 1 Land grabbing is an act that can no longer be categorized as new considering the impact of increasing the capacity of citizens to obtain land ownership rights. The legal provisions themselves have accommodated acts of land grabbing in both criminal and civil aspects. In criminal studies, land grabbing is considered as an unlawful act committed by individuals or groups or persons in the form of seizing or occupying the land of other people or those who are entitled to it. Meanwhile, in civil studies, it is considered as an aspect to prove legal ownership of land and is supported by convincing evidence.
- 2 In an effort to prevent acts of land grabbing, this can be done by increasing land security, education and outreach, as well as law enforcement measures. Meanwhile, in terms of handling cases that have occurred, this can be done by identifying the legitimate land owner, demolishing buildings, restitution and legal prosecution.

SUGGESTION

In order to maintain the continuity of sustainable land use, it is hoped that the role of all parties including the government, landowners, communities and law enforcement agencies can establish good cooperation to be able to overcome land grabbing and maintain legal land rights.

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