



Using Other People's Land without Permission Which Is Reviewed from a Criminal-Legal Aspect

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Abstract

The land has several dimensions, including social dimensions, political dimensions, economic dimensions, and ecological dimensions. Problems in the land sector from the colonial era to the millennium era have never been resolved conflicts over land rights tend to increase. Therefore, it is necessary to study law enforcement against perpetrators who use land belonging to other people without proper permission. The study aims to conduct a study of perpetrators who use land belonging to other people without permission which is entitled to be reviewed by criminal law. The method used in this study is a normative juridical research method and is analyzed descriptively. Data collection through a literature study of reading sources, namely the Criminal Code Law, books and journals as well as scientific legal experts in academics related to the study. The results of the research show that land that is controlled by another party unlawfully from the perspective of criminal law is qualified as a perpetrator of the crime of land grabbing, so law enforcement is resolved through a court process to obtain justice, and Land grabbing can be subject to article 385 of the Criminal Code which is punishable by a maximum prison sentence of 4 (four) years.

Keywords:

Crime, land grabbing, criminal sanctions.

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1. INTRODUCTION

Indonesia is a legal state, so every state administrator, society, and legal entity must comply with applicable laws. However, in reality, there are still many people who violate applicable laws and regulations. People who commit a crime or violation in the field of criminal law are called criminal acts.

One of the basic human needs for life is land, land has several dimensions including social dimensions, political dimensions, economic dimensions, and ecological dimensions. The Land is the main medium for resources in human life so every human being will always try to own it or control land rights. The Agrarian Principles Law in Article 4 paragraph (1) states that land is the surface of the earth which can be given to and owned by people either alone or together with other people and legal entities.

Problems in the land sector from the colonial era to the millennium era have never been resolved conflicts over land rights tend to increase. One of them can also be caused by the existence of policies by the state that perceive land as a commodity in the continuity of human life. Sustainability in human life can make land a very important commodity that can be managed as production land. The government perceives itself as the owner of land resources which are expressed in legal products.

Land has an important role in the life of the Indonesian nation and in the implementation of national development which is carried out as a sustainable effort to create a just and prosperous society. Therefore, the regulation of control over ownership and use of land needs to be more directed at ensuring greater order in the administration of land rights, land use, land maintenance, and the environment, so that legal certainty in general can be realized. The realization of one of the objectives of the basic agrarian regulations is that land rights must be registered so that the basis for land rights is issued, namely proof of land rights called a land certificate, which guarantees legal certainty of land ownership. Increasing sustainable national development requires support for legal certainty in the land sector. As regulated in Government Regulation Number 24 of 1997 concerning land registration in Article 3 and Article 4 which essentially states that to provide legal certainty and legal protection to holders of rights to a plot of land, apartment units, and other registered rights so that you can easily prove yourself as the holder of the rights in question.

The act of controlling or using the rights to land belonging to another person unlawfully can be said to be a crime, namely land grabbing. Trespassing is taking another party's rights or property in an arbitrary manner or by ignoring existing laws or regulations, for example seizing or occupying someone else's land or yard to which they do not have rights. The act of grabbing other people's land is very vulnerable to occurring in society because land is one of the basic needs of human life and the demand for it is increasing all the time.

That the party carrying out land grabbing has committed an act against the law because it was done arbitrarily. Article 385 paragraph (1) of the Criminal Code (KUHP) states that a maximum prison sentence of 4 (four) years shall be punished: any person to benefit himself or another person by violating the right to sell, exchange or making a debt-dependent on a people's right to use government land or private land or a house, job, plant or seedling on land where a person exercises the people's right to use that land, while he/she knows that another person has the right or is also entitled to the property.

Apart from being regulated in the Criminal Code, land grabbing is also regulated in Article 6 paragraph (1) of Government Regulation instead of Law Number. 51 of 1961 concerning the Prohibition of Using Land without the Authorized Person's Permission or Proxy, it is stated that anyone who uses land without the authorized person's permission or authorized agent will receive a maximum prison sentence of 3 (three) months.

Infringement of land rights occurs as a result of claims from other parties who consider that the rights to the land are their legal ownership rights. For this reason, landowners must have land documents or proof of ownership of land rights, namely in the form of a valid land title certificate by carrying out land registration for land that has not been certified or changing the name of the certificate for land that has been certified but there is a transfer of land rights. Land registration is intended to provide legal protection and legal certainty for owners of land rights and to achieve land administration regulations, to avoid claims from other parties related to ownership of land rights.

The Criminal Code in article 385 in principle states that perpetrators of criminal acts of land grabbing or using land without proper permission are threatened with imprisonment for a maximum of 4 (four) years. Using someone else's land without the owner's permission is a crime of land grabbing which can be punishable by imprisonment. This criminal act, namely the act of unlawfully controlling, occupying taking over, selling, exchanging, or making a debt dependent, is considered a violation of the law because it violates and harms the rights of other people. Taking or using someone else's land without permission is an act that can be categorized as a crime.

The study aims to conduct a study of perpetrators who use land belonging to other people without permission which is entitled to be reviewed by criminal law.

2. THEORETICAL FRAMEWORK

2.1. Overview of Land

Increasing national development which focuses on the land sector requires the provision of large enough land so that a guarantee rights institution is also needed which can provide legal certainty for interested parties and can encourage community participation in development. The goal of development is to create a prosperous, just, and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) mandates that all land rights have a social function and in order not to harm the public interest, ownership or control of land rights that exceed the limits is not permitted. Basic Agrarian Principles is a legal regulation that is by the personality of the nation and national regulations and aims to lay the foundations for establishing unity and simplicity in the field of law governing land, providing legal certainty regarding land rights for the entire Indonesian people.

Efforts to provide legal certainty regarding land rights are carried out by holding recht cadaster land registration, namely land registration that is oriented towards guaranteeing legal certainty. Through land registration, owners of land rights can obtain legal protection and legal certainty over their rights. Registration of land rights is a very important legal process in the land ownership system in Indonesia. So that he can prove the rights to the land he owns.

Legal registration of land rights is based on applicable laws and regulations which is the basis of legality and provides guarantees for land rights, namely providing legal certainty and legal protection to the owner. Landowners who register their land will obtain a land certificate as proof of legal ownership of their land rights.

2.2. Legal Review of Criminal Offenses

The term criminal act is used as a translation of the term *strafbaar feit* or delict, or some even term it a criminal act or criminal act. Evil acts are actions or actions that are very bad, bad, despicable, and very bad. The subject of a crime is a person or corporation that commits a criminal act. The nature of the criminal act committed by the perpetrator is that it is contrary to applicable laws and regulations, both those regulated in the Criminal Code (KUHP) and those spread outside the Criminal Code.

A criminal act or *strafbaar feit* in Dutch is a criminal act, delict, criminal act, or punishable act. A person can be said to have committed a criminal act, if it is by the Principle of Legality in Article 1 paragraph (1) of the Criminal Code which states that no act can be punished except on the strength of criminal regulations in existing legislation, before the act is committed. According to Moeljatno (2008), a criminal act is an act that is prohibited by a prohibitive legal regulation which is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition.

According to Rubai (2001), criminal acts are one of the terms to describe an act that can be punished. Other terms that have been used to describe acts that can be punished are criminal incidents, criminal acts, criminal offenses, and acts that can be punished. Furthermore, it was stated by Prasetyo (2010) that criminal acts are acts that are prohibited by law and are punishable by criminal law, where the meaning of acts here is apart from active acts (doing something that is prohibited by law) as well as passive acts (not doing something that is prohibited required by law).

The nature of law is to regulate and compel which are "rules of social life that can force someone to obey the rules in society and provide strict sanctions in the form of punishments for people who do not comply so that the legal rules can be obeyed because not everyone wants to obey the rules -these legal rules" (Teguh and Saefullah, 2016).

Law is interpreted as essentially having to be certain and fair. The word definite can be used as a guide to power and the word fair means that behavior must support an order that is considered reasonable and because it is fair and implemented with certainty, the law can carry out its function. Certainty and justice are not only moral demands but factually characterize or are the hallmarks of law. A law that is uncertain and unjust is not bad but not a law at all. Every human being can say that these two characteristics include his understanding of the law (*den Begriff des Rechts*).

Certainty of orientation requires that there be procedures for creating and inaugurating things that are prohibited and required or not required by law. The law must be so clear that it requires judges to be guided by the applicable law. Justice demands that everyone be in the same situation and treated equally, there are no exceptions, but that every person can be treated according to applicable law, every person who because of their position, function, or behavior meets the description in a legal norm will be treated according to that legal norm.

Before the law, all people are equal and everyone has the right to legal protection, as in the Constitution of the Republic of Indonesia in article 28-D paragraph (1) that every person has the right to recognition of guarantees of fair legal protection and certainty as well as equal treatment before law.

In terms of criminal liability related to land grabbing, it is determined based on fault and not only on the fulfillment of the elements of the act. So, error as a determining element of criminal responsibility is not only a mental element in criminal acts. Thus, criminal liability is a legal subject that is declared guilty of violating obligations. That people cannot be held accountable and punished if they have not committed a crime. As stipulated in the principle of legality in Article 1 paragraph (1) of the Criminal Code, an act cannot be punished, except based on the strength of existing criminal law provisions.

2.3. Using Land Belonging to Other People without Proper Permission

The land is a basic human need and has a basic importance for humans in the world from birth to death. How important land is for human life on this earth. In living their daily lives, humans need land both as a place to live and to use for other activities as a source of life. The land is related to economic, political, social, and cultural aspects. In the economic aspect, land has high economic value, for example, land as a long-term investment, as collateral for a loan, as a place to live, and as a source of livelihood. In the political aspect, for example through policies that regulate the allocation and use of land to increase the welfare and prosperity of the community which encourages economic activity. In the socio-cultural aspect, land plays an important role in influencing the socio-culture of the surrounding community. Because land is a natural resource that has a significant impact on human life patterns. Therefore, parties who own land are obliged to register their land rights to ensure legal certainty, namely having land documents as proof of ownership or control of land rights, so that it is easier for someone to maintain rights to the land they control or own. Legally and obtain legal protection against interference by other parties with their land rights.

The State's recognition of community land rights correlates with the objectives of the Basic Agrarian Law Number 5 of 1960, one of which is to guarantee legal certainty for holders of land rights. So the founder of the Unitary State of the Republic of Indonesia formulated the substance of land in the 1945 Constitution of the Republic of Indonesia in Article 33 paragraph (3) stating that the earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. Earth and water and the natural wealth contained in the earth are the principles of people's prosperity. Because it must be controlled by the State and used for the prosperity and welfare of the people. Therefore, law enforcement regarding natural resources, especially land, must be firm without discrimination. Law enforcement and justice in a fair or just legal process is enforcement guaranteed by the 1945 Constitution of the Republic of Indonesia which provides protection and benefits for every citizen in the framework of upholding the supremacy of the constitution as the basic law of the state (Marbun, et al, 2021).

Using someone else's land is an unlawful act, namely violating statutory regulations, and can even be categorized as a criminal act. For seizing other people's property or rights arbitrarily or against the law, namely occupying land/yards that do not belong to them and

without the permission of the owner or his proxy. In the Criminal Code, it is regulated in Chapter XXV, namely fraudulent acts involving occupying land belonging to another person without the rightful permission or authority, which is an intentional act that harms another party. Using land belonging to another person without proper permission can be interpreted as an act of controlling, occupying, or taking, grabbing land belonging to another person against the rights, against the law, or in violation of applicable land law provisions. So the act of controlling land belonging to another party unlawfully can also be said to be an act of land grabbing. Therefore, perpetrators who commit criminal acts of taking land belonging to other people unlawfully can be prosecuted in criminal cases. The law regulates what actions or deeds cannot be carried out along with sanctions if they are violated. The law is coercive, with these sanctions, so that in acting, people will be more careful, whether their actions harm other parties or not (Rodliyah, 2019).

Sanctions are a coercive tool for perpetrators who are proven to have committed a criminal act. "Criminal sanctions which in English are called criminal sanctions, while in Dutch they are called *strafrechtelijkesancties* are punishments imposed on perpetrators who commit criminal acts." Sanctions in criminal law are defined as punishment, namely torture imposed on people or legal subjects who violate the law or decision handed down by a judge.

3. RESEARCH METHODS

The method used in this study is a normative juridical research method and is analyzed descriptively. Data collection through a literature study of reading sources, namely the Criminal Code Law, books and journals as well as scientific legal experts in academics related to the study.

4. RESULTS AND DISCUSSION

4.1. Law Enforcement against Perpetrators Who Use Other People's Land Without Appropriate Permission

The process of law enforcement for perpetrators who commit acts against the law is an application of the law carried out by authorized parties, namely law enforcers, to ensure whether the law or a rule can be implemented and obeyed by citizens to realize justice and maintain order. And protect the rights of citizens. Legal regulations in society can be realized well if the law can be accepted and recognized by society because of its fairness, certainty, and benefits to individuals and society in general.

Indonesia is a state of law (*rechtsstaat*) as stated in the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (3) which states that the State of Indonesia is a state of law. The identity of a legal state is that it provides legal guarantees and protection for the rights of its citizens. Article 28-D paragraph (1) states that every person has the right to recognition, guaranteed protection, and legal certainty as well as equal treatment before the law.

Land is a very important human need, because land has enormous benefits for human life, whether used for residence, farming, or other activity needs. As important as land is for human life, conflicts often occur between one party and another. Land problems that arise in

society are very diverse, starting from overlapping certificates of ownership of land rights or letters of ownership of land rights to controlling land that is not one's own in contravention of existing legal regulations, causing harm to other parties and giving rise to disputes or conflicts over rights. The landIn this case, land has economic, social, cultural, political, and ecological dimensions (Sutedi, 2007). Therefore, it is not surprising that land is a very valuable asset and has a very high asset value, so land is used as a special asset that never stops and always triggers complex and complicated social conflicts. Even though Basic Regulations on Agrarian Principles Number 5 of 1960 has been issued, in reality, it is still very difficult to implement in the field because of various existing legal issues.

Using land belonging to another person without the rightful permission or authority can be qualified as a criminal case in which intentionally harming another party by arbitrarily seizing, controlling, or occupying land belonging to another party for personal or group interests which in criminal law is classified as land grabbing. Land grabbing is using land or taking control of someone else's land unlawfully, so this is an act or deed that does not heed the provisions of criminal law, which in Dutch is called *wederrechtelijk*. Unlawful acts are acts that violate the law, conflict with the rights of other people, and violate moral values and general principles of law. As the nature of criminal law is public law, with criminal acts, there are public interests that are violated as well as individual or group interests.

Land that is occupied or controlled by another party illegally or without the permission of the rightful person or owner, the owner can report it to law enforcement, namely the authorized party, namely the police. The report must be accompanied by authentic evidence of the case being reported.

One of the reasons for land rights crimes is economic factors where land can be used as an asset or investment, where the perpetrator does so because he is motivated by material gain so he has the intention to control the land without the owner's permission. Another factor is that the perpetrators do not understand the law, due to the lack of socialization from land institutions to the public about land law.

Arbitrary possession of land without the right by a person or legal entity to enjoy or use land that is not their land unlawfully and without any basis of rights falls into the category of land grabbing as regulated in the Criminal Code Article 385 paragraph (1) states that in principle that a maximum prison sentence of 4 (four) years is threatened with anyone who intends to benefit himself or another person by violating the right to sell, exchange or make debt security for a right to use government land or private land or a house, work, plants or seeds on land where another person knows that another person has the right or is also entitled to the goods. Meanwhile, in Law Number 51 /Prp/1960, namely concerning the Prohibition of Using Land Without Entitled Permission, article 6 paragraph (1) essentially states that anyone who uses land without the rightful permission or his/her legal representative can be subject to a maximum prison sentence. 3 (three) months and/or a fine of IDR 5,000 (five thousand rupiah). If the invasion of someone else's land is carried out by selling, exchanging, charging land for credit, mortgaging, or renting out land, then it is punishable by criminal articles in the old Criminal Code which was still in effect at the time this article was published or Law 1/2023 concerning the new Criminal Code which valid for 3 years from promulgation, namely 2026.

Most of the perpetrators of land grabbing are usually carried out deliberately and the perpetrators also have capital, access, and power. So if the perpetrator commits an arbitrary act that is contrary to the law against a weak party, an act that violates the law can be identified which must be given criminal sanctions so that it has a deterrent effect. These actions conflict with other people's land rights, conflict with the values of decency and decency as well as actions that violate general principles in legal regulations and also conflict with human rights. And for criminals as legal subjects, of course, there are legal consequences too.

Crime in the land sector overshadows the structure of land law caused by various legal factors such as land conflicts due to falsification of land documents, unlawful control or ownership of land, and legal loopholes used to carry out crimes and collaboration with certain individuals. Crimes in the land sector, namely misusing, and illegally controlling property rights over other people's land, are using other people's land without proper permission, which can be classified as land grabbing, this can be carried out by individuals or organized groups or what are called land mafias.

The perpetrators of the land grabbing, of course, used various methods to occupy the land that was their target object. It is not uncommon for land conflicts to involve violence that can potentially threaten lives.

Illegal possession of land is an act that violates the law and can be subject to criminal sanctions. Criminal sanctions are a type of punishment like suffering that is threatened or imposed on acts or perpetrators of criminal acts or criminal acts that can disturb or endanger legal interests. Criminal sanctions are a cause-and-effect punishment, where the cause is the case and the effect is the punishment. People affected will receive sanctions, be it prison or other punishment from the authorities (Roni et al, 2023).

According to Article 6 of Law Number 51 PRP 1960, some actions can be punished (https://bphn.go.id/data/documents/uu_51_prp_1960.pdf), namely (1) anyone who uses land without the rightful permission or authority. It is valid, that regarding plantation and forest lands, they are excluded which will be resolved according to Article 5 paragraph 1; (2) anyone who interferes with the rightful person or their legal representative in exercising their rights over a plot of land; (3) anyone who orders, invites, persuades or recommends verbally or in writing to carry out the acts referred to in article 2 or sub b of paragraph 1 of this article; and (4) anyone who assists in any way to carry out the acts mentioned in article 2 or letter b of paragraph 1 of this article.

According to the Criminal Procedure Code, a person who commits a criminal act cannot be immediately punished but must go through a process first. Apart from that, the perpetrator must have an element of guilt, that there is no crime without error. "Because to be able to impose a crime on a person, it is not enough to commit a criminal act, apart from that, it must also fulfill the requirement that the person who committed the act has a fault or is guilty." From the explanation above, it can be stated that the perpetrator of a criminal act must be responsible for His actions or actions carried out must be accountable. According to Moeljatno, it is stated that inner attitudes can be criticized, in this case, it is known as the principle of not being punished without fault, which in Dutch is called *geen straf zonder schuld* (Setyadi, 2010).

Mistakes (schuld) according to the general and juridical meaning are differentiated, namely according to the general understanding it is that "error in the social-ethical sense (schuld in social ethische zin) which means the relationship between the soul of a person who commits an act and the action he performs or with the consequences of his action is such that actions or the consequences of those actions can be held accountable to him." Meanwhile, mistakes in the sense of criminal law (schuld in *strafrechtelijke zin*) which take the form of intent (dolus) (opzet) and negligence (culpa) (Setyadi, 2010).

4.2. Legal Steps If Land Grabbing Occurs

If land grabbing occurs by certain parties, the steps that the legal owner of the land can take include:

1. Report to the Police

Landowners can report land grabbing to the police where the land is located, by attaching documentary evidence in the form of a valid land title certificate and bringing witnesses who have direct knowledge of the land ownership.

2. Suing a civil lawsuit

The land owner can file a lawsuit based on an unlawful act against the perpetrator of the land grab to the local court where the land is located based on Article 1365 of the Civil Code: Every act that violates the law and causes loss to another person requires the person who caused the loss through his fault to compensate the loss. In this case, the land owner as the plaintiff must have strong evidence in the form of a letter or certificate of legal land rights and can also present witnesses who have direct knowledge of the ownership of the land to be presented before the trial.

If the perpetrator of the land grabber also has a certificate issued by an official state institution or body, namely the National Land Agency, then the land owner must also be able to ensure that the certificate he owns was issued earlier than the certificate held by the land grabber.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. Conclusion

1. Land that is controlled by another party unlawfully from the perspective of criminal law, is qualified as a perpetrator of the crime of land grabbing, then law enforcement is completed through a court process to obtain justice, which begins with reporting to the police to be followed up by carrying out investigations, investigations and if If the case files are complete, then the complete case files and the suspect are handed over to the Public Prosecutor who is then handed over to the court for examination.
2. Land grabbing can be subject to article 385 of the Criminal Code (KUHP) which is punishable by a maximum prison sentence of 4 (four) years.

5.2. Suggestion

1. Law enforcers land institutions and other related institutions can increase information to the wider community by carrying out continuous outreach, advice, and understanding in the land sector, such as regarding ownership or control of land through registering land rights.
2. Strict law enforcement by providing criminal sanctions against perpetrators of land grabbing who harm other people so that it can have a deterrent effect in punishing the perpetrators, maximum fines and adjusted to current developments and can be given concurrently.
3. Land owners must register their land at the National Land Agency office to obtain proof of land documents in the form of a land title certificate as proof of land ownership provides legal protection and guarantee legal certainty for holders of land rights. Land registration is an obligation for the government and land rights holders.

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