

Enforcement of Criminal Law against Land Grabbing Crimes in Indonesia

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ABSTRACT

Land is an important asset that has high economic, social, and cultural value for the people of Indonesia. The high value of land often triggers land conflicts, one of which is in the form of land grabbing. Land grabbing is an unlawful act carried out by controlling, occupying, or transferring rights to land belonging to others without the permission of the rightful party. This article aims to analyze law enforcement against the crime of land grabbing and examine the application of criminal sanctions based on Article 385 of the Criminal Code. The research method used is normative legal research with a legislative and conceptual approach. Legal materials are obtained through literature studies that include laws and regulations, legal literature, and relevant scientific journals. The results of the study show that although there are legal arrangements that regulate the crime of land grabbing, law enforcement still faces various obstacles, such as weak coordination between agencies, complexity of evidence, and the tendency to resolve land conflicts that overlap between criminal and civil channels. Therefore, it is necessary to strengthen more consistent criminal law enforcement, accompanied by preventive efforts through land registration and increasing public legal awareness to ensure certainty and legal protection of land rights.

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1. INTRODUCTION

Land is a resource that has strategic value for the lives of the Indonesian people, both from economic, social, and cultural aspects. Land not only functions as a means of residence and economic activities, but also has a social meaning that is closely related to the identity and survival of the community. High land values often trigger land conflicts, one of which is in the form of land grabbing. Land grabbing is basically an unlawful act carried out by controlling, occupying, or utilizing land owned by another person without rights or permission from the authorities (Harsono, 2008).

The phenomenon of land grabbing in Indonesia shows a trend that continues to increase along with population growth, infrastructure development, and increasing demand for land. Land conflicts often involve individuals, community groups, and legal entities, and often lead to prolonged disputes. In practice, land grabbing not only causes material losses for legitimate landowners, but also causes legal uncertainty and disturbances to public order (Santoso, 2016).

Juridically, the crime of land grabbing is regulated in Article 385 of the Criminal Code (KUHP) which regulates the act of illegal land grabbing or possession with criminal threats. This provision is intended to provide legal protection for land rights and ensure legal certainty for legitimate landowners. However, in law enforcement practice, the application of Article 385 of the Criminal Code still faces various obstacles, especially in terms of proving the elements of criminal acts and determining the status of land rights which often intersect with civil law and land administration law (Prodjodikoro, 2010).

Criminal law enforcement against land grabbing crimes is often faced with overlapping dispute resolution between criminal and civil routes. Law enforcement officials are often cautious in handling land grabbing cases because of the assumption that land disputes are in the realm of civil law. As a result, the criminal law enforcement process becomes less than optimal and often leads to the termination of cases or non-litigation settlements that do not necessarily provide justice for victims (Marzuki, 2017).

In addition to normative factors, low public legal awareness and weak land administration also increase the potential for land grabbing. Many people do not have land rights certificates or do not register land in accordance with the provisions of laws and regulations, thus opening up opportunities for other parties to illegally control land. This shows that criminal law enforcement against land grabbing cannot be separated from preventive efforts through orderly land administration and increasing public legal awareness (Santoso, 2016).

Based on this background, a study on criminal law enforcement against the crime of land grabbing is important to be carried out. This article aims to analyze the application of criminal provisions to the act of land grabbing and examine the obstacles faced in law enforcement practices. Thus, it is hoped that this study can make an academic and practical contribution in an effort to strengthen legal protection of land rights and realize legal certainty in the land sector.

2. METHODS

This research uses a normative legal research method, which is research that focuses on the study of legal norms that regulate the crime of land grabbing and its application in the Indonesian criminal law system. This method was chosen because the focus of the research is directed at the analysis of the provisions of the criminal law that govern land grabbing, especially Article 385 of the Criminal Code (KUHP), as well as its relationship with agrarian law and law enforcement practices in Indonesia (Soekanto & Mamudji, 2015).

The approaches used in this study include a statutory approach and a conceptual approach. The legislative approach is carried out by examining and analyzing various laws and regulations related to land grabbing, including the Criminal Code, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, and other relevant laws and regulations in the field of land. The conceptual approach is used to examine the concepts and principles of criminal law and agrarian law, such as the concept of unlawful acts, protection of land rights, and legal certainty.

The types of legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations that have binding force and court decisions that are relevant to land grabbing cases. Secondary legal materials are in the form of legal textbooks, scientific journals, results of previous research, and opinions of criminal law and agrarian law experts. Tertiary legal materials are used as supporting materials, such as legal dictionaries and legal encyclopedias, to clarify the legal terms and concepts used (Marzuki, 2017).

The collection of legal materials is carried out through library research by tracing laws and regulations, legal literature, and scientific works related to the crime of land grabbing. All legal

materials obtained are then analyzed qualitatively by descriptive-analytical method, namely by describing the applicable legal provisions and interpreting them systematically to answer research problems. The analysis was carried out by assessing the consistency of legal norms, their application in law enforcement practices, and the obstacles faced in criminal law enforcement against land grabbing crimes.

3. FINDINGS AND DISCUSSION

1. Characteristics of Land Grabbing Crime

The results of the study show that the crime of land grabbing is an unlawful act characterized by the possession, occupation, or use of land owned by another party without legal rights. Land grabbing is generally carried out deliberately with the aim of obtaining economic benefits, either through physical control of land, building construction, or transfer of rights to third parties. In practice, land grabbing is often carried out in stages and covertly, making it difficult for legitimate landowners to defend their rights.

Land grabbing has different characteristics from ordinary civil disputes. Even though it originated from a conflict of ownership or control of land, in land grabbing there is an element of intentionality and real unlawful acts. This distinguishes land grabbing as a criminal act as stipulated in Article 385 of the Criminal Code, not just a civil dispute. However, in law enforcement practice, these differences are often not explicitly understood by law enforcement officials.

2. Legal Framework for Criminal Law Enforcement against Land Grabbing

Normatively, the enforcement of criminal law against land grabbing is based on Article 385 of the Criminal Code which regulates the act of illegal land grabbing or possession. This provision aims to provide legal protection for land rights and ensure legal certainty for legitimate land owners. In addition, these criminal provisions cannot be separated from the framework of national agrarian law, especially Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles, which affirms the principle of certainty and protection of land rights.

The results of the study show that normatively criminal law arrangements related to land grabbing are already available, but they have not been supported by effective law enforcement mechanisms. The provisions of Article 385 of the Criminal Code are often seen as a "reserve" norm that is only applied when civil settlement is considered impossible. This view causes criminal law enforcement to be less optimal and tends to be avoided, even though the criminal elements have been fulfilled in real terms.

3. Criminal Law Enforcement Practices in Land Grabbing Cases

In law enforcement practice, the handling of land grabbing cases still faces various obstacles. Law enforcement officials, especially the police, are often very careful in handling reports of land grabbing on the grounds that the dispute is still related to the status of land ownership that must be resolved through civil channels first. As a result, criminal proceedings are delayed or even stopped.

The results of the analysis show that this approach has an impact on the weak legal protection for victims of land grabbing. Legal landowners often have to go through lengthy and costly legal processes, while encroachers still control and use the land illegally. This condition shows that criminal law enforcement has not fully functioned as a means of protecting rights and social control.

In addition, proving the elements of the crime of land grabbing is often the main problem. Law enforcement officials often face difficulties in proving the elements of "without rights" and "deliberately", especially when the status of land has not been registered or there is still overlap in land administration. This weakness in land administration indirectly weakens the position of victims in the criminal law enforcement process.

4. Overlap between Criminal and Civil Pathways

One of the important findings in this study is the overlap between dispute resolution through criminal and civil channels in land grabbing cases. In practice, many cases of land grabbing are stopped on the grounds that they are still civil disputes, even though there are strong indications of criminal acts. This shows that there is an unclear boundary between the criminal and civil realms in land cases.

This overlap not only creates legal uncertainty, but also opens up opportunities for land grabbers to avoid criminal liability. By taking refuge behind the pretext of a civil dispute, the perpetrator can continue to control the land without strict legal consequences. This condition is contrary to the purpose of criminal law which is supposed to provide a deterrent and protection effect for victims.

5. Factors Inhibiting Criminal Law Enforcement of Land Grabbing

Based on the results of the discussion, there are several main factors that hinder the enforcement of criminal law against the crime of land grabbing. The first factor is the legal factor, namely the lack of clear technical guidelines for law enforcement officials in applying Article 385 of the Criminal Code consistently. The second factor is the law enforcement apparatus factor, which is related to differences in understanding and courage in interpreting and applying criminal provisions.

The third factor is the land administration factor, especially the weak land registration system and the large number of land that has not been certified. This condition causes unclear land ownership status and makes it difficult to prove in criminal cases. The fourth factor is the community factor, namely low legal awareness and public understanding of the importance of land registration and correct legal procedures.

6. Critical Analysis and Law Enforcement Implications

From an analytical perspective, the results of this study show that criminal law enforcement against land grabbing crimes has not been able to provide optimal legal protection for legitimate landowners. Law enforcement that tends to be cautious and protracted has the potential to weaken the function of criminal law as a means of social protection and control. When the perpetrators of land grabbing are not acted upon immediately, public trust in the legal system can decrease.

The implication of this condition is the need to update the criminal law enforcement approach to land grabbing. Law enforcement officials need to have a firm understanding of the boundary between civil disputes and land grabbing crimes. In addition, strengthening coordination between law enforcement officials and land agencies is an important key to ensuring clarity on the status of land rights in the criminal proof process.

Based on the results of the normative study and the discussion that has been described, the author argues that the enforcement of criminal law against the crime of land grabbing in Indonesia is still not running optimally and consistently. Although normatively Article 385 of the Criminal Code has provided a legal basis to crack down on land grabbing, in practice its application still often faces obstacles, especially due to the complexity of proving the status of land rights and overlapping dispute resolution between criminal and civil channels. In many cases, law enforcement officials tend to view land grabbing as a purely civil dispute, so that the criminal handling becomes less firm and protracted.

The author also assesses that weak land administration and low legal awareness of the community also increase the chances of land grabbing. Unclear land ownership status, unregistered land rights, and lack of public understanding of correct legal procedures are often used by certain parties to illegally control land. This condition shows that criminal law enforcement cannot stand alone, but must be integrated with preventive efforts through orderly land administration and improving community legal literacy.

Furthermore, the author is of the view that the effectiveness of criminal law enforcement against land grabbing is highly dependent on the courage and consistency of law enforcement officials in applying criminal provisions in a proportionate and fair manner. An overly cautious approach on the grounds of civil disputes has the potential to ignore the real criminal element in the act of land grabbing.

Therefore, the author emphasizes the importance of a complete understanding of the character of land grabbing as an act that not only harms individual landowners, but also disrupts legal certainty and social order at large.

Thus, in the author's view, criminal law enforcement against the crime of land grabbing needs to be strengthened through synergy between law enforcement officials, land institutions, and local governments, and supported by policy reforms that affirm clear boundaries between the criminal and civil realms. This comprehensive and consistent approach is expected to be able to provide effective legal protection for land rights holders while realizing legal certainty in the land sector.

4. CONCLUSION

Based on the results of the study and discussion, it can be concluded that the crime of land grabbing is an unlawful act that not only harms the owner of land rights, but also disrupts legal certainty and social order in the community. Land grabbing has special characteristics that distinguish it from ordinary civil disputes, because there is an element of intentionality and control of land without rights as stipulated in Article 385 of the Criminal Code.

Normatively, Indonesia already has a sufficient legal basis to crack down on land grabbing through the provisions of criminal law and agrarian law. However, in law enforcement practice, the implementation of these criminal provisions has not been running optimally. Law enforcement officials still often face obstacles in the form of overlapping dispute resolution between criminal and civil channels, difficulties in proving the status of land rights, and weak land administration. As a result, legal protection for victims of land grabbing has not been fully fulfilled.

In addition, the low legal awareness of the community and the large number of land that has not been officially registered also increase the potential for land grabbing. This condition shows that criminal law enforcement against land grabbing cannot stand alone, but must be balanced with preventive efforts through orderly land administration, increasing community legal literacy, and strengthening coordination between law enforcement officials and land institutions.

Therefore, criminal law enforcement against the crime of land grabbing needs to be strengthened through the consistent and fair application of criminal provisions, accompanied by policy updates that affirm clear boundaries between the criminal and civil realms. This comprehensive and integrated approach is expected to be able to provide effective legal protection for land rights holders while realizing legal certainty in the land sector.

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