

Control Over Land Owned By Others Reviewed From Criminal Law

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ABSTRACT

The purpose of this research is to determine the tenure over other people's land in terms of criminal law. The type of research in this paper is qualitative-normative with a legal (conceptual) approach. Meanwhile, the approach in this research is analytical descriptive. The data used are secondary and primary data. Primary data is in the form of laws and regulations such as the Criminal Code (KUHP), Law No. 51 of 1960 concerning the basis of Agrarian Principles. While secondary data is like the writings of scientists in the form of journals, theses, other scientific works related to the research title. The results of the study show that the control of land over other people's property is generally regulated in the Criminal Code Law Article 385 Land grabbing over land rights in a broad sense is also regulated in Law No. 51 of 1960 (Perpu) concerning the prohibition of using land without a permit Those who are entitled to the land are contained in Articles 2 and 6. So, in this case the act of controlling land over other people's property rights can be punished as regulated in the laws and regulations. Thus it is hoped that law enforcers will make decisions against the perpetrators of crimes in accordance with existing regulations.

ABSTRAK

Tujuan penelitian ini adalah untuk mengetahui penguasaan terhadap tanah milik orang lain ditinjau dari Undang-undang hukum pidana. Jenis penelitian dalam tulisan ini adalah kualitatif-normatif dengan pendekatan Undang-Undang (konseptual). Sedangkan pendekatan dalam penelitian ini ialah deskriptif analitis. Data yang digunakan adalah data sekunder dan primer. Data primer berupa peraturan perundang-undangan seperti kitab Undang-undang hukum pidana (KUHP), Undang-Undang No.51 Tahun 1960 tentang dasar Pokok-pokok Agraria. Sedangkan data sekunder adalah seperti tulisan para ilmuan yang berbentuk jurnal, skripsi, karya ilmiah lainnya yang berhubungan dengan judul penelitian. Hasil penelitian menunjukkan bahwa Penguasaan tanah terhadap milik orang lain secara umum diatur di dalam Undang-Undang KUHP Pasal 385 Penyerobotan tanah terhadap hak atas tanah dalam arti luas juga diatur dalam Undang-Undang No.51 tahun 1960 (Perpu) tentang larangan pemakaian tanah tanpa izin yang berhak atas tanah tersebut terdapat pada Pasal 2 dan 6. Jadi, dalam hal ini perbuatan penguasaan tanah terhadap hak milik orang lain dapat di pidana sebagaimana diatur di dalam peraturan Perundang-Undangan. Dengan demikian diharapkan bagi para penegak hukum mengambil keputusan terhadap para pelaku kejahatan sesuai dengan peraturan yang ada.

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I. INTRODUCTION

Land tenure is the act of taking rights or property arbitrarily or by ignoring laws and rules, such as occupying land or other people's homes that are not their right. The act of unlawful land tenure is against the law, which can be classified as a criminal offense (TARIGAN, 2019). The rights of land tenure can be interpreted as legal institutions, land tenure rights can also be concrete legal. Relations (Bakri, 2022) based on the above understanding, land control over other people's property is a form of criminal act by taking the rights of others unanlawfully.

In national land law there are various tenure rights over land rights, which can be arranged in the following levels of order or hierarchy: Rights of the Indonesian nation (Article 1 UUPA), The right to control from the state (Article 2 of the UUPA), Customary rights of customary law communities (Article 2 of the UUPA), Individual rights.

Land is an inseparable part of human life so that land rights are human Rights which legally contain control and ownership in Article 33 paragraph 3 States that "the earth, water and natural resources contained therein are controlled By the state and used for the prosperity of the people (Arisaputra & SH, 2021). In general, the term land Tenure can be interpreted as the act of controlling, occupying or taking over land Owned by others unlawfully, against rights or violating applicable legal Regulations. In this case there are often wild buildings that can be seen usually in Vacant land to become shelters, places of business, who continues to struggle to Maintain his life forcibly must control land that is not his right to it is regulated in The Criminal Code in Article 385 with a maximum penalty of 4 years in prison (Absori et al., n.d.).

The sanctions for possession and destruction are regulated in article 2 of Government Regulation in Lieu of Law No. 51 of 1960 concerning the Prohibition of Land Use Without a Permit that is entitled or its Power of Attorney Determines (Kesuma, 2016): It is prohibited to use land without a permit entitled to a valid power If this provision is violated, then it can be punished with a sentence of less than 3 Months and / or a maximum fine of IDR 5,000, (five thousand rupiah), as referred To in the provisions of Article 6 applies to acts: Interfere with the person entitled to his legitimate power of attorney in Exercising his right to a piece of land; Instruct, invite, persuade or encourage in writing or orally to do the actions Referred to in letters a and b; Provide assistance in any way to perform the acts in article 2 or letter b (Javier et al., 2022).

The Criminal Code does not provide a definition of the term criminal Offense or strafbaar feit (Ali, 2022). According to Fanhamel and M Hamdan, docmatically the Main problem related to criminal law is to discuss 3 things, namely: Criminal offenses threatened against violators of the prohibition; Prohibited acts; and People who commit acts are prohibited (Harefa, 2019).

If considered from the point of view of order, land tenure without rights Must be followed up in depth actions like this make losses to the state and other Communities, such as damage to land which is one of the important production Products in the country's economy (Sumarja, 2015).

II. RESEARCH METHOD

The research method used in this study is normative with a legal and Conceptual approach. While the specification of this study is descriptive Analytical, namely explaining the problem in accordance with the title of the Study (Sugiyono, 2013). The data used are secondary data from primary materials in the form of laws and regulations such as the Criminal Code (KUHP), Civil Code, Law No. 51 Year 1960 concerning the basis of Agrarian principles, and secondary legal materials in the form of expert writings from scientists in the form of journals and descriptions, other scientific works related to research. The analysis method used is qualitative, where this method manages data that has been systematically compiled from observations and interviews.

Existing data is then combined into units of information into the formulation of categories with holistic principles and can be improved without additional information. Data regarding information that felt alike lumped into one category, making that possible for the emergence of a new category from an existing category. (Ramdhan, 2021).

III. RESULT AND DISCUSSION

1. Overview of land tenure over other people's property

Land control over another person is an act of controlling, occupying, or Expropriating or taking land belonging to another person unlawfully (Anggalana et al., 2023). According to Article 1 Number 1 of Law No. 51 PRP of 1960 concerning the prohibition of Land use without the right permit or authority that land is land controlled by the State, and land not included in letter a that is owned with a right by an individual Or legal entity. The act of unlawfully controlling land against another person is an Unlawful act, which can be classified as a criminal offense (MOHAMAD AKBAR MEKUO, 2021).

Government Regulation in Lieu of Law no.51 of 1960 concerning the Prohibition of the use of land without a entitled permit or its power of attorney States that the use of land without a entitled permit or its legal power is a Prohibited act and threatened with criminal law (Karli, 2014). Article 2 of the government regulation in lieu of Law No. 51 of 1960 Concerning the prohibition of land use without the entitled permit or its power Which reads: a). Using land without permission; b). Without proper permission; c). The crime mentioned in this article is an offense.

The elements of Article 6 of Government Regulation in Lieu of Law No. 51 of 1960 concerning the prohibition of land use without a entitled permit or its Power are (Negara, 2021): a). Who's goods; b). Using land without permission; c). Regarding plantation land; d). His right to a piece of land; e). Give help in any way.

Based on the above rules, Article 385 of the Criminal Code is the only Article that is often used by investigators (Police) and public prosecutors (Jaksa) to Charge perpetrators of "Perpetrators of land tenure" and is categorized as a Criminal offense. Especially Article 385 paragraph (1) of the Criminal Code which reads: "Whoever with the intention of benefiting himself or others unlawfully, sells, exchanges or encumbers with crediet verband any right to Indonesian land, a building, building, planting or seeding, when it is known that the person who owns or co-owns the right to it is another person" (Pratomo, 2018), (Lubis, 2021).

2. Overview of criminal acts

In the term criminal act comes from a term known in Dutch criminal law, namely *Strafbaar feit* consists of three words namely *starf*, *baar* and *feit*. *Straf* translates to criminal and legal (WIGUNA, 2016). *Baar* translated can or can. *Feit* translates actions, events, transgressions and deeds (Zuki, 2016). Criminal acts are the basic understanding of criminal law (normative juridical). Evil crimes or deeds can be interpreted juridically or criminologically. Crime or evil deeds are defined juridically normative as actions that are manifested in abstracto in criminal acts (Franky et al., 2023).

Criminal acts are usually equated with *delict* which comes from the Latin *delictum*. *Delik* is listed in the big dictionary Indonesian as follows: *Delik Criminal Act*. So the definition of a criminal act is an act that is not only formulated by the Criminal Code. These things also cause a person not to do, but by not doing he has committed a criminal act (Riffai, 2021).

3. Laws and regulations governing land tenure crimes

Along with the occurrence of land tenure crimes that occur in Indonesia, in this case the Indonesian government formulates rules relating to land tenure a stipulated in Article 385 of the Criminal Code and Government Regulation in Lieu of Law No. 51 of 1960 concerning the

Prohibition of Land Use without a Permit that is entitled or authorized is described as follows (Wijaya et al., 2022):

Criminal Code, In Article 385 of the Criminal Code, the criminal act of land tenure regulated In Article 385 of the Criminal Code is a criminal act of embezzlement of Immovable objects such as land. The crime contained in Article 385 of the Criminal Code is called the crime of *stellionaat* which means embezzlement of Rights to immovable goods such as land, rice fields, buildings, and others (Hairan & Datau, 2020).

A person who commits a criminal act of land possession may be sentenced in Accordance with Article 385 of the Criminal Code if a person has been proven to Have committed the following crimes: (a) person aims to unlawfully control someone else's land. (b) A person does not inform that the land or building has been encumbered With *crediet verband*. (c) A person does not notify that the land or building to be sold or leased is Mortgaged. (d) A person does not inform that the land being sold or leased is someone se's. (e) A person who has title to the mortgaged land does not notify the Mortgaging party that the land has been sold or leased to another party. (f) A person rents the land controlled to the masses, but he knows that the Land has been leased to someone else before (Lamintang and Theo Lamintang, 2022).

The act of land tenure committed by a person can be charged with the Articles Stipulated in Government Regulation in Lieu of Law No. 51 of 1960 concerning The Prohibition of Land Use Without the Entitled Permit or its Proxy. When a Person performs the following actions: (a) A person sells land owned by another person that does not belong to him. (b) A person takes possession of someone else's land with threats. (c) Someone forged land papers. (d) A person commits destruction of another person's lawful property. (f) Someone commits fraud against others related to land (Suherman, 2022).

In this regulation, the Article that outlines the punishment for the criminal act Of land tenure is contained in Article 2 and Article 6. Article 2 reads: "It is forbidden to use land without a proper permit or its legal Authority".

The forms of prohibited acts related to land tenure in this regulation are Written in Article 6 which reads: (a) Without prejudice to the applicability of Article 3,4 and may be punished with Imprisonment for a maximum of 3 (three) months and/or a maximum fine of Rp.5,000,-(five thousand rupiah); (b) Whoever uses the land without his or her rightful permission or valid authority, provided that, if plantation and forest land is excluded, they shall be settled according to Article 5, paragraph 1; (c) Whoever interferes with his rightful or lawful authority, in exercising his right to a piece of land; (d) Whoever instructs, invites, entices or encourages orally or in writing to perform the acts referred to in Article 2 or sub B of paragraph 1 of this Article; (e)Whoever gives assistance in any way to commit the act in Article 2 or letter B of paragraph 1 of this Article; (a) The provisions regarding settlements held by the Minister of Agrarian Affairs and Regional Authorities as referred to in Article 3 and Article 5 may contain criminal threats with imprisonment for a maximum of 3 (three) months and/or a fine of up to IDR 5,000. (five thousand rupiah) against those who violate or do not fulfill it. (b) The offences referred to in this Article shall be offences.

The application of criminal sanctions to acts regulated in Article 2 and Article 6 of Government Regulation in Lieu of Law Number 51 PRP of 1960 Concerning the Prohibition of Land Use Without Entitled Permits or their Powers Is still used today to ensnare perpetrators who use land without the right permit or Interfere with the entitled party.

IV. CONCLUSION

From the results of the discussion of the research above about Land Tenure over the property rights of others in terms of criminal law is Land control Over others is an act of controlling, occupying, or taking over or taking land Owned by others unlawfully. According to Article 1 Number 1 of Law No. 51 PRP of 1960 concerning the prohibition of land use without the right permit or Authority that land is land controlled by the state, and land not included in the Foregoing which is owned with a right by an individual or legal entity. In this Case, a person who commits a criminal act such as land control over another Person will get sanctions as stipulated in Article 385 of the Criminal Law Laws And Regulations which reads threatened with a maximum prison sentence of 4 Years. So for that it is recommended to someone who commits a criminal act of Land control against others not to do so. Hereby we also advise law enforcers to give fair punishment to perpetrators of criminal acts as stipulated in the Laws and Regulations.

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