



Reconstruction of criminal liability regulations against land-object crimes based on justice value

Enand Hatorangan Daulay^{1*}, Gunarto², Alpi Sahari³

¹ Doctorate Student, Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

² Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

³ Faculty of Law, North Sumatra Muhammadiyah University Medan, Indonesia

Abstract

The focus of this research study is to identify and analyze the weaknesses of the regulation of accountability for land object crimes, as well as to determine the reconstruction of criminal liability regulations against land object crimes based on the value of justice. This research is a normative-legal type of research that is used to examine the function of a norm that lays the law as an instrument that regulates and controls society. The approach used in this research is conceptual, a statute approach, a philosophical approach, and a comparative approach. The analysis used in this research is descriptive-qualitative.

The results of the study indicate that the regulation of the responsibility for criminal acts of land objects has not been based on the value of justice because of the low criminal sanction given as stated in Article 385 of the Criminal Code, so law enforcement efforts against criminal acts of land objects, in this case, the Police as the front guard, receive complaints from the public as victims. crimes against land objects, to be transferred to court, but in practice, the threat of criminal penalties applied does not create a deterrent effect for perpetrators of crimes against land objects so that crimes against land objects often occur repeatedly. The Police as law enforcement officers related to problem-solving sometimes carry out restorative justice efforts, namely the settlement of minor criminal cases carried out by investigators at the investigation stage, by involving the perpetrators, victims, families of perpetrators/victims, and related community leaders to jointly seek solutions. and the government must reform punishment as a form of the reconstruction as a form of reforming criminal law, it is necessary to have the role of the government together with the legislature in making a policy or called legal politics because the essence of law is basically a political statement from the government that is poured into a norm. And the government must overcome obstacles in law enforcement by accommodating the needs of law enforcement, namely the National Police as the front guard who initiates a law enforcement process on public complaints in this case crimes against land objects.

Keywords: reconstruction, crime, land object, justice

Introduction

The problem of land ownership from a juridical point of view is very difficult to solve. The emergence of legal disputes regarding land begins with a complaint from one party, an individual or an entity, which contains objections and claims for land rights, either to the status of the land or to the priority of ownership in the hope of obtaining an administrative settlement in accordance with the provisions of the applicable regulations.

Therefore, the law serves as the protection of human interests. In order for human interests to be protected, the law must be implemented, seriously and professionally. The implementation of law enforcement can take place normally, peacefully, but it can also occur due to violations of the law. In this case, the law that has been violated must be enforced. It is through law enforcement that this sense of justice becomes a reality. In enforcing the law there are three elements that are always considered, namely legal certainty (*Reshtssicherheit*), expediency (*Zweckmassigkeit*), and justice (*Gerechtigkeit*) (Vidal, 2020) ^[6].

Legal certainty is a form of direct protection by the State against its people, so that no arbitrary action can be taken by anyone, thus the existence of legal certainty for everyone will have a positive and orderly impact. As is the case with the occurrence of criminal acts of land grabbing, with the regulated Government Regulation in Lieu of Law (Prp) No. 51 of 1960 is a form of legal certainty and the responsibility of the State to its people in order to get justice and a sense of security. So that from legal certainty that has been implemented properly and correctly, the community will feel the benefits of the law, so that in the end the community will feel justice.

The seizure as referred to in Article 167 paragraphs (1), (2), and (3), is still very narrow. Encroachment is still within the scope of the yard, entering by force. The yard here is given the meaning of a place that is around the house, whether it is an open yard or a closed yard. A closed yard is a yard that clearly has boundaries, such as a fence, around the yard. Therefore, Article 167 of the Criminal Code cannot be applied to the occurrence of arbitrarily occupying a land. An example of a land-grabbing case whose case has not yet been completed is the

case that occurred in North Labuhan Batu Regency, North Sumatra Province. Two oil palm plantation companies operating in this district, namely PT. Grahadura Laidong Jaya and PT. Sarwita Laidong Jaya was accused of having taken over state land which at that time was being worked on as agricultural land by local farmers (Rahmaswary, 2019) ^[2].

The land which was taken over by the two private oil palm plantation companies was unmitigated, reaching 14,000 hectares. The land belonging to the state, which is still included in the protected forest area, was originally cultivated by the community, then 'annexed' by the two companies. And now, on that land, it has now been 'remodeled' into an oil palm plantation. The North Labuhan Batu (Labura) district administration has repeatedly asked the owners of these two oil palm plantation companies to return the state land they had occupied. However, the efforts made by the Labura Regency Government seem to have been ignored by officials from PT Grahadura Laidong Jaya and PT Sarwita Laidong Jaya. The proof is that the two companies are still 'exploiting' the production of their oil palm plantations located in the protected forest area in question.

The National Police as an element of government that carries out the main tasks as stated in Article 2 of Law Number 2 of 2002, National Police also plays a role in resolving land cases, both in terms of law enforcement and prevention efforts. The characteristics of a pluralistic or heterogeneous Indonesian society must be taken into consideration in understanding the function of the National Police as a functional institution, in which the National Police functions as an operational institution capable of bridging and accommodating various social, political, economic, and crime problems from various ethnic groups living in the Republic of Indonesia.

In relation to this, The National Police as a functional institution according to Parsudi Suparlan (1999) stated that

“The Indonesian National Police will function in various shades and levels of cultural heterogeneity of its people which is manifested in various social, political and economic problems, and crimes that can differ from one city to another, from one village to another and from one region to another in the Republic of Indonesia. this”.

The management of natural resources related to land in North Sumatra Province is currently causing several conflicts, both in the community and outside the community, between the community and public legal entities, between the community and private legal entities. These cases have the potential for Sociocultural Animosity and Social Disorder/Chaos.

The Social disorders arising from land problems require prevention because they have a very negative impact on the stability of society. Seeing this condition, in accordance with the main tasks and functions of the National Police in general, namely maintaining the society's stability, as well as the Grand Strategy of the Police Phase III, the National Police are required to be able to develop the potential and organizational strength in countering, preventing and overcoming all forms of contingent threats that affect high-level disturbances of society's stability, violation of the law and other forms of disturbance that can disturb the community, especially in anticipating mass riots arising from land issues as high-level society's stability disturbances.

The complexity of land issues in Indonesia cannot be handled and resolved by using a legal approach alone, but by using a holistic approach (comprehensive) such as politics, socio-culture, economy (welfare), and ecology. The holistic approach started from the beginning as a preventive measure, namely when formulating agrarian regulations and policies, including drafting a blueprint for agrarian reform.

The complexity of land issues in Indonesia can be seen from the facts related to land ownership and changes in spatial planning, problems related to land grabbing have become legal problems that always appear and are actually from time to time, along with the increase in population, advances in science and technology, and various business interests. This problem is what urges the author to study it further in a research with the main problem as follows:

1. What are the weaknesses of criminal liability regulations for land-object crimes?
2. How to reconstruct the regulation of criminal responsibility for land-object crimes based on the value of justice?

Method of Research

In this study, the research method that the author uses is a normative, juridical method. With the method, researchers examine issues based on the juridical aspect, i.e. norms, regulations, legislation, legal theories, opinions of legal experts (Faisal, 2010) ^[3]. The specification of research used in this study is descriptive-analytical: it provides a relevant description of the nature or characteristics of a problematic situation in research to be analyzed based on legal theories and general practices of implementing positive law on solving problems.

The type of data used in this research is secondary data, obtained from laws and regulations, official documents, textbooks, academic papers concerning with the research problems (Pratama, 2020) ^[11].

Research Result and Discussion

1. Weaknesses Of Criminal Liability Regulations For Land-Object Crimes

Obstacles in handling cases of criminal acts of land grabbing must be overcome by enforcing the law in the community. A society without the law will never be a good society that even in a traditional society, there must

be laws with forms and styles that are in accordance with the level of civilization of that society where the law regulates any actions or actions that should not be done along with the sanctions if violated. The law is coercive, with these sanctions, so that in acting, people will be more careful, whether their actions are detrimental to other parties or not.

Law enforcement in cases of land grabbing crimes must also prioritize the values of justice, in addition to legal certainty and benefit. This means that Land that is not used by the state to then used by the citizens, so that the land does not become barren and damaged, then of course, what is done by the citizens must also be respected and cannot be put aside (Syam, 2021) ^[9]. Law enforcement and justice in a fair or just legal process are enforcement guaranteed by the 1945 Constitution of the Republic of Indonesia which provides protection and benefits for every citizen in the context of upholding the supremacy of the constitution as the basic law of the state. Therefore, a series of principles of a fair and complete legal process that shows the goodness and perfection of the 1945 Constitution of the Republic of Indonesia and laws and regulations will not mean much for any citizen or society, if it is not enforced or applied correctly and fair, and will create a bad image for Indonesia as a democratic legal state (*Rechtstaaten Democratische*).

In order for the land conflict resolution process to be implemented effectively, supporting factors are needed, one of which is the criminal sanction factor provided by the regulation. Criminal sanctions are here defined as a means to protect the interests of individuals or entities by threatening punishment as a sanction for any violation of the law

Criminal sanctions against perpetrators of crimes against land objects that are stated outside the codification of criminal law in resolving land conflicts are very low, only in the form of imprisonment and or fines whose values are no longer relevant. The low level of criminal sanctions that are threatened is due to the inaccurate qualification or classification of criminal acts in the substance of the legislation outside the codification of criminal law which states that criminal acts in land conflicts are classified as "violations". The low threat of criminal sanctions in the statutory provisions has a very large influence on the application of sanctions as one of the factors that affect the effectiveness of the law both as a threat, and to provide a deterrent effect to perpetrators of land object crimes. In addition, the low level of criminal sanctions in statutory provisions The invitation affects the protection for victims of land conflicts and the community in general.

The low criminal sanctions threatened in this regulation make the implementation of the criminal sanctions less effective. Based on the literature obtained, these conditions are what causes the lack of land conflicts case processed based on statutory provisions outside the codification of criminal law. The reality in the field is that there are several cases that meet the elements of Articles in the statutory provisions outside the codification of criminal law, but because the criminal sanctions threatened in the law outside the codification of criminal law are very light so that these cases are more directed at other articles in the codification of criminal law (KUHP) or through the civil process. Factors that become obstacles in law enforcement against perpetrators of land grabbing crimes that make it difficult to resolve land grabbing cases are internal factors and external factors. Internal factors are factors that come from within the police body. These factors are: 1) Limited Police Investigator Personnel. 2) Lack of Facilities and Fund, 3) Weak Rules and Legal Sanctions. Then there are also External Factors which include: 1) Difficulty in summoning witnesses, 2) Difficulty in presenting expert witnesses, 3) Difficulty in providing documentary evidence, 4) The complexity of physical evidence of land objects (Hutabarat, 2021).

As part of the legal construction, the police occupy the main position in law enforcement because they are in direct contact with the community. With a very wide network down to the sub-district level, the police are more competent in tackling criminal acts of usurpation or unauthorized use of land than other law enforcement agencies. In carrying out its role in enforcing the law, the police carry out or receive reports, investigations, which are then continued with the transfer of files to the public prosecutor to be continued in the examination of cases in court which follows these steps: 1) Receiving Reports or Complaints, 2) Conducting Investigations, 3) Delegating Files to the Public Prosecutor, 4) Delegating Files to Courts Related to Light Crime (*Tipiring*).

2. Reconstruction Of The Regulation Of Criminal Responsibility For Land-Object Crimes Based On The Value Of Justice

To tackle criminal acts in the land sector so that they do not occur frequently, there must be an effort to renew criminal threats, because the criminal threats contained in the Criminal Code or outside of the codification of criminal law are very low, and do not provide a deterrent effect to every criminal. ground object.

The Criminal Code that is currently used by the Indonesian government is a legal product of the Dutch East Indies government which is considered irrelevant to be applied today. However, until now the Government of Indonesia has not ratified the new Criminal Code. According to Galuh Faradhilah Yuni Astuti (2015) ^[4], the reform of the criminal law itself is simply a change or reform of the criminal law, which started as a criminal law inherited from the Netherlands into criminal law derived from a study of the legal values of the Indonesian nation.

To reform a rule of law or also called finding the law, there are several sources that must be considered so that the law that will be made can be biased according to what is needed with the circumstances experienced. The sources of law below are considered to be biased as reasons for the creation of a good legal form that can run fairly in the community.

The Criminal Code is considered unable to accommodate various problems and the development of new forms of criminal acts, which of course are in line with the development and dynamics of society. This raises concerns, especially with regard to the dogmatic and substantial nature of the Criminal Code which is closely tied with classical and western schools, although it is not always that the smell of the west is bad. Thus, in studying dogmatic or substantial matters in the Criminal Code, it should be accompanied by wisdom and vigilance. That is, if things that smell like a dogma in the Criminal Code are used rigidly (without wisdom), then the resulting output will of course hinder the purpose of criminal law enforcement, and it is even possible to hinder the ideas of reforming Indonesian criminal law which is always a most recently discussed topic. So it is appropriate for the Indonesian state to mobilize reforms in Indonesian criminal law that originate from basic values and socio-philosophical, socio-political and socio-cultural values that live in Indonesian society.

Reforms related to criminal law threats against land object crimes can certainly not be separated from the politics of criminal law. In determining the politics of criminal law, the penal police or the politics (policy) of criminal law, in essence, how the criminal law is formulated properly and provides guidance to legislators (legislative policy), application policy (judicial policy), and the implementation of criminal law (executive policy).

The reason for sociological legal reform is related to the regulation in criminal law which is a reflection of the political ideology of a nation in which the law develops. This means that the social and cultural values of the nation have a place in the regulation in the field of criminal law. The measure to criminalize an act depends on the values and collective views that exist in society about what is good, right, beneficial, or otherwise. Several provisions in the current Criminal Code are considered unable to accommodate the needs of the Indonesian nation in the implementation of criminal law, so the urgency of reforming criminal law is, among others, as an effort to embody sociological values regarding a criminal law rule that can be in line with the needs of the nation (Widodo, 2018) ^[12].

From a political point of view, an independent Indonesian state should naturally have its own Criminal Code. This is seen as a symbol and is a pride of a country that has been free from the snares of political colonialism. On the other hand, KUHP from other countries can be seen as a symbol of colonization by the country that made the KUHP. Thus, from a political point of view, it is time for the state to have its own National Criminal Code as the political identity of an independent country.

Although the Government of Indonesia has already drafted the Draft on the new Criminal Law, which until now has undergone two amendments to the draft, from the most recent draft, namely 2004, there is not a single article regarding material crimes regarding land crimes such as burglary as regulated in Article 167 of the Criminal Code. In this case, the criminal law policy should actually look at the mode and facts of crimes in the land sector, so it is necessary to develop the concept of the crime of usurpation with the concept of occupying.

Reconstruction of criminal law policy (Criminal policy) is the result of the government's policy to implement criminal sanctions starting from the sentencing process. The Criminal policy is not possible only on normalization alone, but the important thing is how to enforce the crime as a form of law enforcement policy. Law enforcement, of course, must have an effect on social life, as social policies have an impact on decreasing or increasing criminal acts.

Reconstruction of criminal policy (criminal policy) should influence the public's view of the crimes committed and the punishments made. Criminal policy (criminal policy) also substantially contains crime as a criminal act, the application of the law can be applied and the act is truly a form of crime which if committed injures a universal sense of justice. However, the criminal policy is not just the fulfillment of qualification for a criminal act and punishment for an act, but more than that, The criminal policy also contains what is behind it as a form of preventing the occurrence of a criminal act without any punishment.

Crimes against land objects can be committed by people and or groups against other people's land, customary land or customary rights as long as they still exist. If there is none, the party who will claim the land is included in the qualification of a criminal act for occupying the land. Likewise by the government and corporations on community land without appropriate compensation or not at all. Reconstruction of criminal law reform essentially implies an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies. in Indonesia,

In order to determine whether or not a criminal act needs to be included in the criminal law, according to Barda Nawawi Arief (1996) ^[1], there are 2 (two) central issues that need to be considered in the criminal law policy (penal policy), especially in the formulation stage, namely the problem of determining the action, what should be a criminal offense and the problem of determining what sanctions should be used or imposed on the violator.

In this case, if you look at the reality that is happening in the community regarding land issues with the category of usurpation, then the Criminal Code by using the term usurpation, it is necessary to look back at the term usurpation or "*Huisvredebreuk*" in article 167 of the Criminal Code which is only limited to elements related to the household.

Likewise, the provisions of Article 385 of the Criminal Code, concerning embezzlement of immovable objects with the intention of unlawfully benefiting oneself in the form of selling, exchanging, burdening with *Creditverband* including mortgaging which he knows does not belong to him.

Different things that happen in the community, crimes against land objects are still not effective and useful considering that the articles of the Criminal Code have not been able to accommodate so that crimes against land objects will decrease or create a deterrent effect for perpetrators. So by looking at the reality in the midst of a

society in a concrete form, it is more appropriate as a criminal act of "*Occupying*" land or land whose ownership is by the community or an individual. The term occupying is considered more appropriate, because the land is extensive and not just a yard as formulated in Article 167 of the Criminal Code concerning land grabbing, 263, 264, 266, the Criminal Code relating to falsification of land rights documents, as well as Article 385 of the Criminal Code which contains elements of embezzlement of immovable objects. This includes how to protect the law on land that is categorized as customary land or customary rights as long as the law or the community still adheres to the customary law that applies in their environment. Of course, this is driven by the mandate contained in Article 18 letter B of the 1945 Constitution.

Reconstruction of the formulation of the crime of land object crime in which the main element is "occupation", then according to Sudarto (1997), in dealing with the first central problem above, which is often called the problem of criminalization, the following main points must be considered:

- a. The use of criminal law must take into account the objectives of national development, namely realizing a just and prosperous society that is materially and spiritually evenly distributed based on Pancasila. In this regard, the use of criminal law is aimed at tackling crime and imposing crimes against the countermeasures themselves, for the welfare and protection of the community;
- b. Actions that are attempted to be prevented or overcome by criminal law must be "undesirable acts", namely actions that cause harm (material and or spiritual) to members of the community;
- c. The use of criminal law must also pay attention to the principle of "cost and benefit principle";
- d. The use of criminal law must also pay attention to the capacity or ability of the workforce and law enforcement agencies, that is, there should not be an overload of duties.

Reconstruction of the formulation of crimes against land objects in written law needs to consider the values that live in society. This means that unwritten law is a consideration that is made in the renewal of criminal law in this case formulating land crimes. This is as stated by Karl O. Christiansen in Nyoman Serikat Putra Jaya (2006), that: "the conception of problem crime as a punishment is an essential part of the culture of any society".

The discussion above states that the concept for imposing criminal sanctions on land objects is based on the basic things, namely culture and the people themselves. So that concerning the issue of land criminal law, it is seen as very important and has been very concerning for the cases that occur in the current state of development. Then it is directed by the inclusion of the formulation of the criminal act of "*Occupying*" strengthened by the element of intention (*Voornement*), then it can be categorized as a crime against land objects.

As a reconstruction formulation in determining land crimes, it can be seen from several elements, namely:

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

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

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

It is hoped that legal reforms against crimes against land objects can be an answer so that perpetrators of crimes against land objects can be given criminal penalties that provide a deterrent effect, it is hoped that in the future law enforcement in cases of land grabbing and other crimes in the land sector will be more effective. Because in fact, land issues in Indonesia from year to year are increasingly complex and complicated

Based on this, the reconstruction of criminal liability for crimes against land objects based on the value of justice is to reconstruct article 385 of the Criminal Code, by adding to criminal acts in the form of occupying land or houses. Therefore, linking crimes against land objects whose penalties are very low so that they do not provide a deterrent effect, then with the government's policy in issuing a political policy to reconstruct Article 385 of the Criminal Code, it becomes a criminal law policy related to the threat of criminal punishment in crimes against land objects, as a form of desire or necessity, then by looking at the times and the effectiveness of a rule of law, it becomes useful for legal certainty so that a sense of justice is realized.

Reconstruction of Article 385 of the Criminal Code related to the threat of criminal law as a form of effort to overcome criminal acts in the field of land, it is hoped that crimes against land objects will no longer occur frequently, so that there is an effort to renew criminal threats, considering that the criminal threats contained in the Criminal Code are very low, the result is to not provide a deterrent effect to every perpetrator of land object crime.

Conclusion

1. Factors that become obstacles in law enforcement against perpetrators of land grabbing crimes that make it difficult to resolve land grabbing cases, namely internal factors, and external factors. Internal factors are factors that come from within the police body. These factors are as follows: 1) Limited Police Investigator Personnel. 2) Lack of Facilities and Facilities, 3) Weak Rules and Legal Sanctions. External Factors: 1) Difficulty in summoning witnesses, 2) Difficulty in presenting expert witnesses, 3) Difficulty in providing documentary evidence, 4) The complexity of physical evidence of land objects. As part of the legal construction, the police occupy the main position in law enforcement because they are in direct contact with the community. With a very wide network down to the sub-district level, the police are more competent in tackling criminal acts of usurpation or unauthorized use of land than other law enforcement agencies. In carrying out its role in enforcing the law, the police carry out or receive reports, investigations, which are then continued with the transfer of files to the public prosecutor to be continued in the examination of cases in court. 1) Receiving Reports or Complaints, 2) Conducting Investigations, 3) Delegating Files to the Public Prosecutor, 4) Delegating Files to Courts Related to light crime.
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