

Juridical Review of The Criminal Action of Land Expropriation

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Abstract. Discussing about the regulation of land, of course, cannot be separated from the rules and regulations that have been prepared and formed as a form of law enforcement, regarding various problems and problems with land issues that are currently occurring in society. Expropriation appears as one of the domains of juridical study because it contains elements of unlawful acts. Expropriation occurs because some persons or parties commit acts or acts of expropriation, and there is an object (material) that is confiscated. This research includes normative juridical research or often referred to as library research which means research conducted by tracing or tracing and analyzing library materials or documents. Of the problems related to land disputes as described above, the National Police in the process of investigating land issues, of course, cannot be separated from testing the basis of rights or proof of ownership, because the matter must be examined in civil law, and not in the realm of criminal acts, the authority provided by the provisions of laws and regulations only on the limits of criminal acts, and not on determining who has the most rights over the land which is the object of land disputes. The National Police here will conduct an in-depth investigation of the land ownership rights by referring to the existing land law.

Keywords: Land Disputes, Crime, Sanctions

1. Introduction

The development of history for human life is rapid that causes changes in what is meant by law from time to time before humans are familiar with laws, the law is, of course, synonymous with habits and traditions that guide their lives.[1] Land as a gift from God Almighty is one of the most basic needs of human life, it can be said that almost the activities of human life, both directly and indirectly, provide a livelihood for humans in terms of housing, livelihoods such as agriculture, plantations, housing, offices, and even industry is increasing from year to year.

But the problem that often occurs is population growth continues to increase, while the availability of land is very limited. Due to the limited availability of land and the increasing need for land, this will naturally lead to conflicts of interest in land which will result in problems.[2] This land issue will directly intersect with problems in the field of law both from the perspective of civil law, constitutional law, and criminal law.

Law is regulation in the form of norms and sanctions made to regulate human behavior, maintain order, and justice, preventing chaos. The law must ensure that there is legal certainty

in society. Therefore, every citizen has the right to obtain a defense before the law. The law can be interpreted as a written or unwritten regulation or provision/stipulation to regulate people's lives and provide sanctions for people who break the law.[3]

The law and its functions regulate all aspects of the life of the nation and state and can make a maximum contribution to the implementation of development if the legal apparatus and all levels of society obey and comply with legal norms. But, not all elements in society are ready and prepared to obey the existing rules. As a result, unlawful acts such as criminal acts of land expropriation arise.

The 1945 Constitution as specified in Article 33 section (3) of the 1945 Constitution orders that all that connected with land as a component of the earth, water, and normal assets contained in that in Indonesia endlessly should be overseen and used for the best success of the Indonesian public.[4] Talking about the regulation of land, of course, cannot be separated from the rules and regulations that have been compiled and formed as a form of law enforcement, regarding various problems and issues regarding land issues that are currently occurring in society.

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

The problem is that some certain persons or parties enter an object because they think or claim the object is their property.[5] Claims for ownership rights are based on evidence, either in the form of letters or testimonies from people around them. The claim was challenged by parties who also felt they had rights over the object being confiscated based on the good evidence they had. As a result, disputes or conflicts are unavoidable. So that disputes between two parties who both claim ownership of a land object require a legal settlement.

Especially at this time, it is difficult to deny that the criminal act of land expropriation is a phenomenon that often occurs and tends to increase among the community. As is the case in Sinjai District, criminal acts of land expropriation often occur in various forms such as occupation, fencing, or carrying out activities on land belonging to other people or which the perpetrator claims as his own, or making a statement of counter-ownership rights and so on. Nonetheless, the occupiers generally have the same motive, namely the desire to control the ownership of a plot of land or to obtain benefits from the land being confiscated.

The planning of the Essential Agrarian Regulation/UUPA (Regulation Number 5 of 1960) went through an interaction that was difficult and went through a long cycle in light of the fact that before the sanctioning of the UUPA, sway over land was not completely constrained by the Indonesian nation since there were as yet numerous provincial legacy grounds and utilize the pioneer framework. So it is important to promptly make an Agrarian Regulation which is a Public Regulation that applies similarly to all locales of Indonesia.[6] The BAL reduces the concept of state control over land to various land rights granted to other individuals or legal entities. The state grants a variety of different kinds of land rights to individuals or legal entities with the intention that the rights holder manages the land in accordance with these rights so long as they do not conflict with the state's boundaries.[7]

In this case, the government has established a legal policy as stated in Article 167 of the Criminal Code (KUHP). Paragraph (1) states that "anyone who forces his way into a closed

house, room or yard that is used by another person with violates the law or is present there unlawfully, and at the request of the person entitled to or the messenger does not leave immediately, shall be punished by a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs". In Article 167 paragraph (3) of the Criminal Code states that "if a threat is issued or uses advice that can frighten people, it is punishable by a maximum imprisonment of one year and four months". Moreover, in paragraph (4) of the Criminal Code states that "the crime is increased by one third if who commits a crime of two or more people by allying."

From the description above, the writer is interested in conducting research related to how legal sanctions are in cases of expropriation of another people's land.

2. Research Method

This research includes normative juridical research or often referred to as library research which means research conducted by tracing or analyzing and analyzing library materials or documents.[8] The value of science in a study is highly dependent on the approach used, if it is not precise then the weight of the research is less accurate.[9] This research was used based on a conceptual approach, namely the type of approach that provides a settlement analysis point of view in legal research seen from the legal concepts behind it or seen from the values contained in the normalization of a regulation relating to the concepts used.

The method used in this research is a qualitative research which is used to obtain data so that conclusions can be drawn, and presented descriptively, and graphs and diagrams by explaining the problem.[10] The research approach used is the statute approach, in which the approach is taken by examining all laws and regulations concerned with issues related to land.

3. Findings and Discussion

3.1 Review of the Crime of Land Expropriation

The term " Expropriation" is basically used a lot in everyday life. Harry comes from the root word "scratches". Entrepreneurs are people who steal, are grabbers, while expropriation is a process, method, act of expropriation. Harry in a legal perspective, is defined or interpreted as follows :

- a. Taking rights or assets arbitrarily or by ignoring laws and regulations (such as stealing, seizing, occupying other people's land or houses that are not theirs, kidnapping);
- b. Attacking (breaking, bumping into) recklessly or secretly;
- c. Performing actions (such as entering someone's house, interrupting someone's speech, and so on);
- d. Using the road at will without heeding the rules.[1]

Article 385 paragraph 4 of the Criminal Code defines the crime of appropriation. If a person with similar intent mortgages or leases land where a person exercises the rights of the people to use the land while he knows that another person has the right or is entitled to the land, he can be sentenced to four years in prison. In the Criminal Code Book II Chapter XXV, fraudulent acts such as land expropriation can be punishable by a maximum prison sentence of four years. Article 385 consisting of 6 paragraphs clearly defines the crime. All forms of crime contained in article 385 are referred to as "*Stellionaat*" crimes, which are acts of embezzlement

of rights to immovable property belonging to other people, such as land, rice fields, gardens, buildings, and so on. In summary, the entire contents of the article state that all unlawful acts such as deliberately selling, renting, exchanging, pawning, making debt dependents, using other people's land or property to seek personal or other people's benefits illegally or against the law applicable.[11]

Article 2 and Article 6 of PERPU Number 51 of 1960, which specifically regulates the prohibition of using land without a permit with the right or proxy, both refer to land expropriation of land rights in a broader sense than Article 385 of the Criminal Code. The party entitled to the land can pursue the perpetrators of land expropriation in civil and criminal court under clear legal rules. In this case, the element that must be fulfilled is the element of "benefiting oneself or others unlawfully, selling, exchanging" which means more or less the act of someone selling or exchanging land that does not belong to another party and obtaining profit from his actions. Another article, mentions Article 167 Passage (1) of the Criminal Code which states: "Whoever against the rights of other people enters by force into a house or closed room or yard used by another person, or is there without any rights, does not immediately leave the place at the request of the rightful person or on behalf of the rightful person, punishable by a maximum imprisonment of nine months or a maximum fine of Rp. 4,500".[3]

PERPU Number 51 of 1960 concerning Prohibition of Use of Land Without Permit of the Rightful Person or Proxy states that the use of land without permission of the rightful person or their legal proxies is an act that is prohibited and is punishable by criminal penalties. Article 2 reads as follows: "It is prohibited to use the land without the permission of the rightful person or their legal proxy".[12]

The elements of Article 2 are: "Using land without permission, without the right permit". Without reducing the validity of the provisions in Article 3, Article 4, and Article 5, they can be punished with imprisonment for a maximum of 3 (three) months and or a fine of up to Rp. 5,000, - (five thousand rupiah). "Whoever" uses the land without the rightful permission or their legal proxies, provided that if plantation land and forests are excluded they will be settled according to Article 5 paragraph (1) "Whoever" interferes with those who have the right or their legal proxy's rights over a plot of land. "Whoever" orders, invites, persuades, or recommends orally or in writing to commit the act referred to in Article 2 or sub b of Paragraph (1). "Whoever" assists in any way to commit the act mentioned in Article 2 or letter b of Paragraph (1);

It is possible to draw the conclusion from the preceding description that the illegal act of expropriating another person's land in order to control it without rights is the criminal act of land expropriation. "If a person with the intent to benefit himself or another person against the right to illegally sell, exchange, or make dependents on the debt of another person's right to use state land, then he can be punished with imprisonment for 4 (four) years in prison," reads Article 385 of the Criminal Code. This is the law that governs it. in the form of the crime of stealing rights to immovable property like rice fields, houses, and land. The term "stellionaat" is used to describe this offense, which carries a maximum sentence of four years in prison.

- a. Anyone who sells, exchanges, or encumbers (credit *verband*) a right over Indonesian land, a building, construction, planting, or seeding, even though it is known that the person owning or co-owning the right is others, to illegally benefit himself or another person;
- b. Whoever with the same intent sells, exchanges, or encumbers (credit *verband*), an Indonesian land right that has been encumbered (credit *verband*), or a building, structure, planting, or seeding on land that has also been encumbered in this way, without notifying about the existence of the burden on the other party;

- c. Anyone who has the same goal enters into (credit verband) regarding an Indonesian land right by omitting to inform other parties that the land associated with the right has been mortgaged;
- d. Despite the fact that it is known that another person owns or co-owns the land rights, anyone with the same intention mortgages or leases the land with Indonesian rights;
- e. Even though the other party has not been informed that the land has been mortgaged, anyone with the same intention sells or exchanges land with mortgaged Indonesian rights;
- f. Whoever with a similar aim sells or trades land with Indonesian privileges for some time, despite the fact that it is realized that the land has been rented to someone else for that period as well.

3.2 Settlement of Land Claims Disputes

A complicated problem that often arises in a society that needs special attention from law enforcement officials, in this case, the National Police, is the land issue, which we all know often becomes social conflict in society over unresolved land issues, giving rise to new problems. , this is what is often encountered in the stages and processes of investigations into criminal acts of expropriation. The investigation is a series of steps taken in accordance with this law to look for and gather evidence that sheds light on the crime that occurred and locate the suspect.[4]

Land expropriation is when rights or assets are taken arbitrarily or when laws and regulations are ignored, like occupying other people's houses or land without their permission. A violation of the law, illegal land expropriation can be considered a crime.[13]

The concept of investigating criminal acts by taking into account *Kapolri* Regulation Number 6 of 2019 concerning Investigation of Criminal Acts explains that in Chapter II, namely Police Reports and Part Two Investigations, namely Investigations in Article 5 paragraph (1) Investigations are carried out based on (a) reports and/or complaints; and (b) an investigation warrant,[12] furthermore in Article 9 paragraph (1) based on the team's report of the investigation's findings, a case must be conducted to determine whether the event is suspected of being (a) a criminal act or (b) not a criminal act. (2) If the title case finds that the event is suspected of being (a) a criminal act, proceed to the investigation stage; if it finds that it is not a criminal act, the investigation is closed,[12] then in Chapter III Investigation Part one Investigation activities In article 10 paragraph (2) in In the case of investigations of minor crimes and violations, investigative activities consist of; (a) Examination, (b) notifying the defendant in writing regarding the day, date, time and place of trial; (c) submitting files to the court and (d) bringing the accused and evidence before the trial court. 12 Furthermore, in Chapter III of the Investigation Part four of Article 23, namely (1) Examinations are carried out by Investigators and/or Assistant Investigators against Witnesses, Experts, and Suspects as outlined in the minutes of inspection signed by the Investigator and/or Assistant Investigator who carried out the examination and the person to be examined subsequently. paragraph (2) The examination as referred to in paragraph (1) aims to obtain evidence during the investigation process to obtain statements from witnesses, experts, and suspects as set forth in the minutes of the examination.

Settlement of problems regarding ownership disputes has been regulated for the resolution of land disputes, known and practiced so far through general court institutions because in general, is where all problems regarding land cases are brought by justice seekers. General justice is one of the implementations of judicial power for people seeking justice in general. Power in the general court environment is exercised by:[14]

- a. District Court which is a court of first instance,
- b. Court of Appeal which is a court of appeal level,
- c. Judicial power in the general court environment culminates in the Supreme Court of the Republic of Indonesia as the highest state court

Disputes over ownership of land rights are very likely to occur in society, especially if they involve business entities or companies with community members regarding efforts to control land only for personal or group interests which ultimately result in clashes between officials and civilians. Dissatisfaction in the judicial process over the legal settlement of land handling cannot be resolved in just a short time. Hence, it becomes a factor of social conflict in the community when it is ridden by irresponsible parties.

Ownership disputes arise due to an acknowledgment between each party over a land object, where proof of the existing rights still needs to be tested in a material legal way, because the parties to the dispute can independently prove the basis of their land ownership rights, based on history and origin of the land it owns.

Based on Law No. 5 of 1960 concerning Agrarian Principles, valid land certificates in the eyes of the law are Property Rights Certificates (SHM), Building Use Rights Certificates (SHGB), and Flats Unit Title Certificates (SHSRS). However, it turns out that other types of documents are often used by Indonesians as proof of land ownership. This form of tenure is recognized by Indonesian land regulations, while the forms of ownership are as follows: Girik, Petok D, Letter C, Surat Ijo, Detail, Wigendom or *Eigendom Verbonding*, *Hak Ulayat*, *Opstaal*, *Gogolan*, *Gebruik*, *Erfpacht*, *Bruikleen*.

Problems like this often arise, so that when civilians seek legal certainty over the land problems they face, they report or complain to the National Police, with the hope that they can be resolved quickly and without cost, and this is what the public thinks is that the Police in solving problems land professionally and transparently, but in reality, there are many obstacles and obstacles faced, one of which is regulated and legal rules that limit it so that when faced with forced measures or other legal remedies it results in the process of handling criminal acts concerning land issues being constrained.

Completion or handling of reports on alleged criminal acts of land expropriation which are followed up by the Police are of course based on legal regulations that give authority to process them, as stipulated in The use of land without a permit with the right or legal power of attorney is an act that is prohibited and punishable by criminal penalties (Article 2 and Article 6 of Government Regulation in Place of Law No. 51 of 1960 Concerning Prohibition of Use of Land Without Permits of the Entitled or His Proxy), and Crimes Against Land Expropriation are also regulated in the Criminal Code (KUHP), which is regulated in several articles in the Criminal Code, including: Article 167 of the Criminal Code, but in practice Police Investigators/Assisting Investigators are faced with the existence of other legal regulations in the form of the Supreme Court Regulation of the Republic of Indonesia Number 1 of 1956 which states, "If in the examination of a criminal case it must be decided that there is something civil law concerning a legal relationship between two certain parties, the examination of a criminal case may be postponed to await a court decision in examining a civil case regarding the presence or absence of such civil rights." the investigation process must be carried out first, waiting for another legal process, namely the Civil Court.

4. Conclusion

Of the problems related to land disputes as described above, the National Police in the process of investigating land issues, of course, cannot be separated from testing the basis of rights or proof of ownership, because these issues must be tested under civil law, and not in the realm of criminal acts, the authority provided by the provisions of laws and regulations only on the limits of criminal acts, and not on determining who is most entitled to a land which is the object of land disputes. The National Police here will conduct an in-depth investigation of the land ownership rights concerning the existing land law. The application of criminal sanctions to perpetrators of criminal acts of land expropriation based on Article 167 paragraph (1) of the Criminal Code has explained the elements of criminal acts of expropriation and the sanctions given are following material punishments considering that the criminal system in the Criminal Code uses the maximum criminal system.

Based on the conclusions that have been presented, it is hoped that the community will pay attention to and respect their respective ownership rights. This often happens, when a person does not want to recognize the ownership rights of other people and leads to various forms of crime, one of which is the crime of land expropriation as stipulated in article 167 of the Criminal Code.

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