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Errors in Purchasing Land Rights Which Result in Criminal Liability (Case Study of the Application of Article 385 Paragraph 1 of the KUHP in Cases of Land Grabbing)

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ABSTRACT

Basically, the difference in court decisions in land grabbing cases is a problem related to the fulfillment of the elements of the crime in Article 385 paragraph (1) of the Criminal Code that can be criminally accounted for. The fulfillment of the elements of the crime in question certainly has a correlation with the determination of the defendant which is the consideration of the Panel of Judges in the case. Therefore, in this study there are problems, namely: 1. Can the act of purchasing land rights be categorized as an error that can be criminally accounted for? 2. How is the legal consideration of the Panel of Judges in applying Article 385 Paragraph 1 of the Criminal Code that can cause differences in criminal decisions in land grabbing cases viewed from the theory of legal certainty? The research method used is a normative juridical research that will examine court decisions regarding land grabbing cases that have permanent legal force. The court decision will be examined based on the legal provisions contained in the Old Criminal Code. The results of the study conclude that: 1. Actions that can be categorized as criminal acts, namely: a. Actions intended to benefit oneself or others unlawfully; b. Selling, exchanging, or encumbering with a right to land, a building, structure, planting, or seeding. Meanwhile, the aspect of error in criminal acts in the crime of land grabbing as regulated in Article 385 Paragraph 1 of the Criminal Code relates to "even though it is known that the one who has or also has rights to it is another person". 2. There are different views from the Panel of Judges in the decision of the crime of land grabbing as regulated in Article 385 Paragraph 1 of the Criminal Code in the Decision of the Palangkaraya District Court Number: 53 / Pid.B / 2018 / PN.Plk dated May 7, 2018, which emphasizes more on the legal position of the Defendant as a land buyer, while in the Decision of the Supreme Court Number: 683 K / PID / 2018.

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INTRODUCTION

Land is no longer considered solely an agrarian issue, as it was previously identified with agriculture. Instead, land has evolved significantly in terms of its benefits and uses, resulting in increasingly complex negative impacts. In fact, land often causes social unrest and

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hinders development. Many criminal offenses related to land, one of which is taking land without the owner's permission, occur due to the mismatch between human needs for land and the limited availability of land. In everyday life, many people take control of land belonging to others, whether intentionally or unintentionally. Land ownership rights are rights of control based on a right or a power of attorney that in reality grants the authority to carry out legal acts as befits a person who has the right. (Boedi Harsono, 2008:23)

However, in reality, there are situations where unauthorized individuals engage in land grabbing. This can be seen when a court decision in a criminal case regarding land grabbing cannot be used to enforce the disputed or seized land. Because a criminal decision punishes the person who committed the land grabbing, the right to control the land generally still has to be resolved through a civil lawsuit (Robert, 2013: 167)

Land grabbing is the act of taking rights or property arbitrarily or without regard for laws and regulations, such as occupying another person's land or house to which one is not entitled. The act of illegal land grabbing is an unlawful act, which can be classified as a crime. Based on the definition above, land grabbing is a form of unlawful taking of another person's rights. This can take the form of occupying land, installing fencing, evicting the actual landowner and so on. Land grabbing will harm other parties, so the perpetrators can be prosecuted under criminal law instruments. In general, the term land grabbing can be interpreted as the act of controlling, occupying or taking over another person's land unlawfully, against rights or in violation of applicable legal regulations.

Land grabbing cases occur due to several reasons, namely a. intentional or unintentional actions that invite perpetrators to commit a crime. b. high land prices that cause people to start looking for their land and also make it difficult to obtain land to cultivate. c. selling parental land in the past using a trust system so that there is no evidence regarding the transfer of land rights. d. negligence or negligence carried out by the land owner, in this case the victim, in the form of allowing his land when it is grabbed or used by others (Dwi, 2019).

In criminal law enforcement, Article 385 of the Criminal Code is an article that is often used by investigators (Police) and public prosecutors (Prosecutors) to charge perpetrators of land grabbing and is categorized as a criminal act. Specifically Article 385 Paragraph (1) of the Criminal Code: "Anyone who with the intention of unlawfully benefiting himself or another person, sells, exchanges, or burdens with a right to land, a building, structure, planting, or seeding, even though it is known that the person who owns or co-owns the right to it is another person, is threatened with a maximum prison sentence of 4 (four) years."

Conceptually, the term "encroachment" itself can be defined as the act of taking rights or property arbitrarily or without regard for laws and regulations, such as occupying another person's land or home to which they have no right. Unlawful encroachment on land is an unlawful act and can be classified as a crime.

Based on the description of the background to the problem above, the problem that is the focus of the research is formulated as follows: Can the act of purchasing land rights be

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categorized as an error that can be criminally accounted for?. What are the legal considerations of the panel of judges in applying Article 385 Paragraph 1 of the Criminal Code which can lead to differences in criminal decisions in cases of land grabbing?

METHOD RESEARCH

The type of research used in this study is descriptive. According to Abdulkadir Muhammad, descriptive legal research is explanatory in nature and aims to obtain a complete picture (description) of the legal situation that applies in a particular place and at a particular time that occurs in society (Abdulkadir, 2004:52). For this reason, this study will describe clearly, systematically, and in detail the case of the crime of land grabbing, especially regarding the application of Article 385 paragraph (1) of the Criminal Code which can be held criminally accountable.

DISCUSSION

Actions in Purchasing Land Rights that Can Be Categorized as Mistakes

One of the cases of criminal acts of land grabbing as regulated in Article 385 paragraph (1) of the Criminal Code and which has been decided by the court includes the Palangka Raya District Court Decision Number 53/Pid.B/2018/PN Plk dated May 7 2018, and the Supreme Court Decision Number 683 K/PID/2018. In the Palangka Raya District Court Decision Number 53/Pid.B/2018/PN Plk dated May 7 2018, the court decided that the defendant "was not legally and convincingly proven guilty of committing the crime of land grabbing", while in the Supreme Court Decision Number 683 K/PID/2018 it was decided that the defendant "was legally and convincingly proven guilty of committing the crime of land grabbing". In Legal Science, there is a known unlawful act (PMH). Usually unlawful acts are identified with acts that violate the law, acts that conflict with the rights of others, acts that conflict with moral and decency values and acts that violate general principles in the legal field (Indah, 2020: 53).

In Memorie van toelichting or the history of the formation of the Criminal Code in the Netherlands, it is not found what is meant by the word "law" in the phrase "against the law". If referring to the postulate contra legem facit qui id facit quod lex prohibit; in fraudem vero qui, salvis verbis legis, sententiam ejus circumuenit, then it can be interpreted that a person is declared to be against the law when the act committed is an act that is prohibited by law (Eddy, 2016:232).

The definition of unlawful itself, is put forward by Simons as follows: "What meaning should be given to the term unlawful in these provisions? Whereas according to the view of many people, the term is nothing other than without one's own rights. In my opinion, there is only one acceptable view regarding the existence of unlawful, namely that there is behavior that is contrary to the law. Without law has a different meaning than contrary to the law, and the term unlawful refers only to the latter meaning. The law aimed at by the act does not have to be a subjective right but can also be a right in general. Which is correct,

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depends on the nature of the criminal act and depends on the formulation of the legislator for the term).

One of the main objective elements of a criminal act is its unlawful nature. This is linked to the principle of legality implied in Article 1 paragraph 1 of the Criminal Code. In Dutch, "unlawful" is wederrechtelijk (weder: contrary to, against; recht: law). In determining whether an act is punishable, lawmakers make the unlawful nature a written element. Without this element, the formulation of the law would be overly broad. Furthermore, blameworthiness is sometimes included in the formulation of a crime, namely in the formulation of the crime of culpa (Teguh, 2017: 67).

The principle of unlawfulness holds a crucial position in criminal law, alongside the principle of legality. This principle comprises both formal and material unlawfulness. The principle of material unlawfulness in Indonesian criminal law is found in unwritten law, namely customary law. However, the recognition and application of the principle of material unlawfulness only took place in 1965, and its far-reaching implications include the escape of corruptors because they have paid for the state's losses in corruption cases. Over time, this principle of unlawfulness was formalized in legislation such as Law No. 31 of 1999 and the Criminal Code.

If we examine the articles in the Criminal Code, the words unlawful (wederrechtelijke) will be included to indicate the legality of an action or an intention. The use of the word wederrechtelijke to indicate the illegal nature of an action is found in Article 167 paragraph (1), 168, 179, 180, 189, 190, 198, 253-257, 333 paragraph (1), 334 paragraph (1), 335 paragraph (1) number 1, 372, 429 paragraph (1), 431, 433 number 1, 448, 453-455, 472 and 522 of the Criminal Code. Meanwhile, the use of the word wederrechtelijke to indicate an intention or cogmerk can be found in Articles 328, 339, 362, 368 paragraph (1), 369 paragraph (1), 378, 382, 390, 446, and 467 of the Criminal Code .

Unlawful Elements in Criminal Law:

1) Formal view

   According to the formal view, the unlawful element is not an absolute element of a criminal act. Unlawfulness is an element of a criminal act if it is expressly stated in the formulation of the crime. One person who holds this opinion is Pompe. In his handbook, Pompe expressly states, "wederrechtelijkheid is dus in het algemeen geen bestandeel van het strafbare feit, tenzij uitdrukkelijk in de wettelijke omschrijiving opgenomen" (unlawful nature is generally not an element of a criminal act, unless expressly stated in the formulation of the law). For example, Article 338 of the Criminal Code states, "Anyone who intentionally takes the life of another person, is threatened with murder with a maximum imprisonment of fifteen years." If referring to Pompe's opinion, then in this article there is no unlawful element because it is not mentioned in the formulation of the crime. Compare with Article 362 of the Criminal Code which states, "Anyone who takes something that belongs wholly or partly to another person, with the intention of possessing it unlawfully, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of sixty rupiah." Thus,

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based on Pompe's view, Article 362 of the Criminal Code contains an element of unlawfulness because it is written expressly verbis in the formulation of the crime.

2) Material View

In contrast to the formal view is the material view which states that unlawfulness is an absolute element of every criminal act. This view is held by Vos and Moeljatno, among others. Hazewinkel Suringa's comment on this material view is as follows: (It should be noted that the unlawful nature is a constant and permanent element of every criminal act if it is called, as is responsibility. A criminal act is not only behavior that fulfills the formulation of a crime but both are needed, first is the unlawful nature and second is that the perpetrator can be held accountable. The consequence of the teaching that states that unlawful behavior and the perpetrator can be held accountable is a constitutive element, the prosecutor must include it in his accusation and prove it, if the act is in accordance with the law, the perpetrator cannot be held accountable and must be released is a consequence).

3) Middle View

In addition to the formal and material views on the elements of unlawfulness, there is still a third view called the middle view. This view is put forward by Hazewinkel Suringa as follows, "The nature of unlawfulness is an absolute element if it is mentioned in the formulation of the offense, if not, being unlawful is only a sign of an offense...).

This affirmation is further clarified in Article 18, which states: " Every criminal act is always contrary to statutory provisions or contrary to the law, unless there is a justification or excuse." From the words "contrary to the law," it can be interpreted that the unlawful nature is not only recognized formally, but also materially. This is nothing more than to accommodate customary law, which to this day remains in effect in various regions and is mostly unwritten.

In his book, Andi Hamzah, 2014, Principles of Criminal Law, states that: unlawful in the formal sense is interpreted as being contrary to the law. If an act has matched the formulation of a crime, then it is usually said to be formally unlawful. Unlawful in material terms must only be interpreted in a negative sense, meaning that if there is no unlawful (material) action, it is a justification. In sentencing, unlawful in formal terms must be used, meaning that which is contrary to written positive law due to the reason of nullum crimen sine lege stricta as stated in Article 1 paragraph (1) of the Criminal Code.

Meanwhile, a criminal act is an act that, according to law, is threatened with criminal sanctions for anyone who commits the prohibited act. Likewise, the threat of punishment is directed at the act, while the threat of punishment is directed at the person who caused the incident. This means that there must be a close relationship between the prohibition and the threat of punishment, between the incident and the threat of punishment, and also between the incident and the person who caused the incident. Criminal law does not prohibit the death or injury of people, but what is

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prohibited by criminal law is the death or injury caused by the actions of others. According to Moeljatno:

Such actions carry the consequence of criminal liability. Being responsible for a crime means that the person concerned can legally be punished for the actions they have committed. A penalty can be legally imposed if there is a regulation for that action in a law, and the law applies to the actions they have committed. Therefore, according to Moeljatno, "the principle of responsibility in criminal law is that there is no punishment if there is no fault." Meanwhile, according to Roeslan Saleh, (Roeslan, 1983:11).

"An act that is reprehensible by society is held accountable to the perpetrator, meaning that objective condemnation of the act is then passed on to the accused. A person who commits a crime will be punished if they are guilty. If there is a crime that results in the defendant being convicted, then the defendant is the one responsible."

In principle, criminal law, criminal acts are also related to mistakes that can be seen from the perpetrator's mental attitude towards the act and its consequences. The existence of mistakes can determine the existence of responsibility. Jan Remmelink defines mistakes as: "reproach directed by society that applies ethical standards that apply at a certain time to humans who carry out deviant behavior that can actually be avoided"(Jan, 2003: 142), behaving contrary to the demands of the legal community not to cross the specified line and avoid actions that are publicly criticized, which is emphasized by Jan Remmelink, namely behaving by avoiding egoism that is unacceptable to life in society.

Meanwhile, regarding the element "With the intention of benefiting oneself or others unlawfully, selling, exchanging or making a debt collateral for a people's right to use government land or private land or a house, work, plants or seeds on land where people exercise the people's right to use the land", that because the actions referred to in the elements of this article are alternative, so that they have fulfilled the elements if one of the elements has been proven then the other elements do not need to be proven again and this element has been considered proven. Based on the facts revealed in the trial based on the statements of witnesses and the defendant's statement connected with the evidence presented in the trial, starting with the defendant buying land owned and handing over the SKT for the land, where at the time of the purchase of the land there were no witnesses who saw and knew directly only the defendant and the seller's witness, but only those who knew based on the Statement of Handover of a Plot of Land from the seller were handed over to the defendant. In addition, that the defendant with the basis of the purchase of the land, at the end of 2013 the defendant entered the house and cultivated/planted crops in the form of vegetables and fruit trees on the land.

Furthermore, the panel of judges considered that it was true that the Defendant was the buyer of a plot of land as stated that: "Considering, that based on the legal considerations above, because the Defendant was only the buyer of the land as mentioned above, then "the element of With the intention of benefiting oneself or another person in an unlawful manner, selling, exchanging or making a debt security for a people's right to use

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government land or private land or a house, work, plants or seeds on land where a person exercises the people's right to use the land" is not fulfilled by the Defendant's actions ."

Subjective blame refers to the perpetrator of the prohibited act, or it can be said that subjective blame refers to the person who commits an act that is prohibited or contrary to the law. If the act committed is a reprehensible act or an act that is prohibited, but if there is a mistake in the person that causes him to be unable to be held responsible, then criminal responsibility is impossible. In criminal responsibility, the burden of responsibility is placed on the perpetrator of the criminal act in relation to the basis for imposing criminal sanctions. A person will have the nature of criminal responsibility if something or an act he does is against the law, but a person can lose his sense of responsibility if an element is found in him that causes a person to lose the ability to be responsible. Basically, a crime is the principle of legality, while the perpetrator can be punished based on error, this means that a person will have criminal responsibility if he has committed an act that is wrong and contrary to the law. In essence, criminal responsibility is a form of mechanism created to react to violations of certain agreed-upon acts.

Differences in Court Decisions Regarding the Determination of Article 385 Paragraph 1 of the Criminal Code

The crime of land grabbing when viewed from the perspective of time is divided into two, namely at the time of acquisition and at the time of recognizing without rights. In this regard, even if someone is suspected of having committed a crime of land grabbing, however, it is not a guarantee that the perpetrator can be punished, or in other words, not every person who makes a mistake can be punished before being declared to have fulfilled all the conditions stipulated in the law. On that basis, according to PAF Lamintang, the perpetrator of a crime is "It is not enough if there is only a strafbaarfeit, but there must also be a strafbaar persoon or someone who can be punished if the strafbaarfeit carried out is not wederchttelijk and has been done either intentionally or unintentionally"

A person to be punished must fulfill the elements contained in the crime. The elements of the crime of land grabbing according to Article 385 paragraph (1) of the Criminal Code are: anyone who with the intention of unlawfully benefiting himself or another person, sells, exchanges, or burdens with credit a right to land, buildings, structures, planting, or seeding, even though it is known that the one who has or also has the right to it is another person. Therefore there are subjective elements and objective elements. Subjective elements relate to With intent: The perpetrator has the intention or goal to benefit himself or another person, Unlawfully: The act is carried out without rights or against the law. Meanwhile, the Objective Element relates to Selling, exchanging, or burdening with credit, The perpetrator carries out one of these acts against the right to land, buildings, structures, planting, or seeding. Rights to land, buildings, structures, planting, or seeding: The object of the act is the right to one of these objects. Even though it is known that the person who has or shares rights over it is another person: The perpetrator knows that there is another party who has or shares rights over the object.

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Analyzing the sense of justice in sentencing by judges requires a relevant theory of justice that is directly connected to the judge's inherent authority as the decision-maker in the criminal courts. Aristotle's theory of justice is relevant in this study as it serves as a foundation for thinking about sentencing by judges.

Aristotle defines justice as everything that is based on law or in accordance with the law (*lawful*) and everything that is just, wise, and honest (*fair*) (Aristotle, 2009: 81). So a person who is said to be just is a person who does something based on the law (statute) and acts fairly, wisely, and honestly. According to Aristotle, justice is a complete virtue . Aristotle said that in justice all goodness is truly understood / understood. Why goodness (*virtue*) becomes complete in justice *is* because those who have justice can carry out their goodness not only to themselves but also to others, because most people can only carry out goodness for their own interests but cannot in their relationships with others.

Meanwhile, from the aspect of legal certainty theory, the difference in the Palangkaraya District Court Decision Number: 53/Pid.B/2018/PN Plk dated May 7, 2018 with the Supreme Court Decision Number 683 K/PID/2018 gives rise to the issue of legal certainty in the application of Article 385 Paragraph 1 of the Criminal Code, in this case legal certainty is also needed to realize the principles of equality before the law without discrimination. From the word certainty, it has a meaning closely related to the principle of truth. This means, the word certainty in legal certainty is something that can be strictly syllogized by formal legal means. With legal certainty, it will guarantee that a person can carry out a behavior in accordance with the provisions of applicable law and vice versa. Without legal certainty, an individual cannot have a standard provision to carry out a behavior. In line with this goal, Gustav Radbruch also explained that legal certainty is one of the goals of the law itself .

In other words, the difference in court decisions regarding the application of Article 385 Paragraph 1 of the Criminal Code gives rise to a difference between legal issues that are das sollen and das sein. Legal issues that are das sollen relate to ideal law in law enforcement against the crime of land grabbing, especially in Article 385 Paragraph 1 of the Criminal Code. Meanwhile, legal issues that are das sein relate to criminal responsibility for perpetrators of criminal acts of land grabbing, especially in this case there is an error that can result in criminal responsibility in the form of the imposition of criminal sanctions on the perpetrator.

CONCLUSION

The case of the crime of land grabbing as regulated in Article 385 Paragraph 1 of the Criminal Code, that "Whoever with the intention of unlawfully benefiting himself or another person, sells, exchanges, or burdens with a right to land, a building, structure, planting, or seeding, even though it is known that the one who owns or co-owns the right to it is another person, is threatened with a maximum prison sentence of 4 (four) years", then there are acts that can be categorized as criminal acts, namely: a. Acts intended to benefit oneself or another person unlawfully; b. Selling, exchanging, or burdening with a right to land, a

building, structure, planting, or seeding. Meanwhile, the aspect of error in criminal acts in the crime of land grabbing as regulated in Article 385 Paragraph 1 of the Criminal Code relates to "even though it is known that the one who owns or co-owns the right to it is another person". There are different views from the panel of judges from the District Court and the Supreme Court regarding the fulfillment of the elements of a criminal act in the case of the crime of encroachment as regulated in Article 385 Paragraph 1 of the Criminal Code in the Decision of the Palangka Raya District Court Number 53/Pid.B/2018/PN Plk dated May 7, 2018, which emphasizes more on the legal position of the defendant as a land buyer, while in the Decision of the Supreme Court Number 683 K/PID/2018, the panel of judges emphasizes the documents of ownership of land rights, where the defendant only has documents in the form of a Land Certificate, while there are other people who have documents of ownership of land rights in the form of a Land Ownership Certificate for the land that was encroached by the defendant, in addition to the defendant having been proven to have committed an act in the form of land control even though the land belongs to another person who has documents in the form of a land ownership certificate. It is necessary to increase public knowledge and understanding in the field of land buying and selling, especially regarding the validity and strength of land ownership documents in order to reduce the occurrence of criminal acts of land grabbing. There needs to be a unified view of law enforcers, especially judges who will try land crime cases related to the elements of the crime regulated in Article 385 paragraph 1 of the Criminal Code in order to better fulfill the aspects of justice and legal certainty in the field of criminal law enforcement, especially land crimes. and it is necessary to have a common perception of law enforcers, in this case the police, prosecutors, and court judges regarding the application of Article 385 Paragraph 1 of the Criminal Code, especially evidence that supports the fulfillment of subjective elements and objective elements of the crime of land grabbing in order to achieve the aspects of justice and certainty in the application of Article 385 Paragraph 1 of the Criminal Code.

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