



## LAW ENFORCEMENT STRATEGIES IN ADDRESSING CRIMINAL ACTS OF LAND GRABBING

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**Abstract:** Land grabbing is a severe problem because it is typical for someone or a group to take over or grab other people's land and claim it as their own. If preventive legal action is not immediately taken, this can threaten the community's rights and sustainable development in Indonesia. This journal looks at the criminal law enforcement strategy in combating the crime of land grabbing by referring to Article 385 of the Criminal Code. The research method used in this journal is the normative juridical analysis research method, which, in this case, observes the effect of existing laws and how challenges arise in their application in society. The study results have shown that the legal regulation needs to be considered adequate to answer Indonesia's land-grabbing problem. The verdict in the case of criminal land grabbing cannot be used to execute the disputed land because the criminal verdict is intended to punish the perpetrator of land grabbing. Meanwhile, a separate court, namely the civil court, must be established to restore victims' rights.

**Keywords:** Criminal Law; Land Grabbing; Law Enforcement

### 1. Introduction

Land is one of the most valuable assets for humans. Land has economic value and can be an indicator of the prosperity of the Indonesian population. However, land-related conflicts often occur. Land problems or disputes have yet to emerge recently. The most common type of land conflict in Indonesia is land grabbing. Land grabbing is using someone else's property or rights without their consent, as when someone claims someone else's property without the person's permission. Land grabbing is included in illegal behavior because it deprives others of their rights illegally.<sup>1</sup> This can include encroaching on property, installing fences on land that is not one's own, evicting real landowners, and others. Land grabbing can cause material and immaterial losses to the party who will be harmed, so the perpetrator of the grabbing can be tried by criminal law.<sup>2</sup>

Land, as everyone knows, is also regarded as a place where many people live and grow, and it is a precious resource for the survival and interests of society. Consequently, the restricted land area will impact the land's sale value, which will undoubtedly rise in response to the growing demand for land for public infrastructure, including hotels and residential complexes.<sup>3</sup>

<sup>1</sup> Adi Marsono, Irwan Yulianto, and Ide Prima Hadiyanto, "Tinjauan Yuridis Penegakan Hukum Terhadap Pelaku Tindak Pidana Penyerobotan Dan Pengerusakan Tanah," *Jurnal Ilmiah Akses* 2, no. 1 (2024): 36–47, DOI:<https://doi.org/10.36841/akses.v2i1.4451>.

<sup>2</sup> *Ibid.*

<sup>3</sup> Kinaria Afriani and Enni Merita, "SANKSI HUKUM TERHADAP PELAKU TINDAK PIDANA PENYEROBOTAN TANAH," *Jurnal Hukum Tri Pantang* 5, no. 2 (December 20, 2019): 9–18, DOI:<https://doi.org/10.51517/jhtp.v5i2.205>.



The definition of land, as referred to in Article 4 paragraph (1) of the Basic Agrarian Law (UUPA), is “a surface of the earth that can be given to and owned by people either alone or together with other people and legal entities.” Meanwhile, Article 4 paragraph (2) of the Basic Agrarian Law (UUPA) confirms that the lands referred to in paragraph (1) authorize the use of the land concerned just as needed for the interests directly related to the use of natural land and its boundaries according to the Basic Agrarian Law (UUPA) and other higher regulations.

According to Regulation No. 1 of 2010 on Service Standards and Land Use Regulations issued by the Head of the National Land Agency of the Republic of Indonesia, the transfer of land rights can be done in various forms, namely:

1. Transfer of purchase and sale rights;
2. Transfer of inheritance rights;
3. Transfer of rights of exchange;
4. Transfer of assignment rights;
5. Transfer of the right of inheritance;
6. Transfer of rights for division of joint rights transfer of rights for auction;
7. Incorporation into a company/inbred.

Despite the existing regulations, legal entities and individuals still try to control land through transfers that should be legal but are illegal. To ensure legal certainty and protection from the state, which in this case refers to the transfer of land rights based on Article 19 paragraph (1) of Law No. 5 of 1960 concerning Agrarian Principles, or what we can call UUPA, land registration is held throughout the territory of the Unitary State of the Republic of Indonesia by the provisions in government regulations.

The government faces the problem of autonomy, for example, capitalist networks that want control over capital and land as corporate investments that operate globally, nationally, and locally. In the end, many things will lead to land disputes and social conflicts caused by land grabbing in rural and urban areas, which can also occur in the plantation, mining, and housing sectors. With the delegation of authority from the central government to local governments, local governments are expected to be more effective and efficient in managing existing land, considering the surrounding environment to balance land area with economic and social functions to ensure proper land planning.<sup>4</sup>

The main issue in this study is the strategy and view of criminal law on criminal acts of land grabbing and how legal sanctions will be applied to the perpetrators of the crime, in this case, whether it is appropriate and has a significant impact or deterrent effect on the perpetrators of criminal acts of land grabbing or not. This article will go into depth on the role of criminal law in such circumstances.

## 2. Research Method

The type of research used in this article is normative juridical research. This research is conducted by studying criminal law concepts, written regulations, and other legal materials.

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<sup>4</sup> Elita Rahmi, “Tarik Menarik Antara Desentralisasi Dan Sentralisasi Kewenangan Pemerintah Daerah Dalam Urusan Pertanahan,” *Jurnal Hukum IUS QUIA IUSTUM* 16 (2009): 137–54.

This normative juridical research is used to understand the criminal law strategy against the crime of land grabbing in Indonesia. This research uses a statute approach. The statute approach is an approach through legislation related to this research by examining regulations interrelated with the legal issues to be studied. Data collection is accomplished by gathering written information on the subject of the study, which relates to legal principles, doctrines, laws, and regulations that serve as legal facts for the study of the management of criminal acts of land grabbing in Indonesia.

### 3. Discussion

In this case, the rise of criminal acts of land grabbing has caused many significant losses. It is impossible to estimate how much loss the injured parties bear. However, law enforcement is expected to be able to overcome this despicable act. Land-grabbing disputes are frequently motivated by interest. In the course of a dispute, these interests have significant influence, allowing one or more sides to commit the crime of land grabbing. In this situation, the criminal aspects must be apparent, such as illegally acquiring, controlling, and occupying land belonging to others.<sup>5</sup>

As the power holders, the state and government should regulate land use in the people's interest and not in any particular group's interest. This mandate is mentioned in Article 33(3) of the 1945 Constitution of the Republic of Indonesia, and then it was concretized in Law No. 5/1960 on the Basic Regulation of Agricultural Principles (UUPA). Law No. 5/1960 on the Basic Regulation of Agricultural Principles (UUPA), which in this case contains the essential elements of Indonesian land law regulation. However, as it is a basic regulation, more detailed rules are still needed to implement the UUPA system.

Land grabbing is outlawed by law, and anybody who continues to do so will face punishment. Regarding time, land grabbing is classified into two types: acquisition and recognition of without rights. In this regard, even if a person is considered to have committed an act of criminal land grabbing, it does not guarantee that the perpetrator will be punished; in other words, not everyone who makes a mistake can be punished before it is determined that the conditions specified in the law have been met.

According to current legal research, virtually all instances of land grabbing are accompanied by other crimes that fall under the purview of the Criminal Code. Within the Criminal Code. One or more of the following criminal offenses are frequently perpetrated by land grabbers:

1. Criminal actions of destroying commodities, burning factories, buildings, and office assets, as well as chopping down firm plants;
2. Persecution and murderous crimes can be done alone or in groups, and they are typically directed towards laborers, enslaved people, and other workers. Typically directed at workers, supervisors, guards, or other corporate personnel who attempted to impede the business's operations. Workers at the firm who tried to stop the grabbing's perpetrators;

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<sup>5</sup> Satria Sukananda, "Analisis Hukum Bentuk Penanggulangan Tindak Pidana Penyerobotan Tanah Di Indonesia," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 3 (2021): 160–69, DOI:<https://doi.org/10.18196/ijclc.v2i3.12466>.

3. Theft, including both business property and plants growing on the disputed ground;
4. Criminal actions of limiting someone's freedom (hostage-taking) involving workers, supervisors, security personnel, and company personnel.

Several (criminal offenses) might be associated with land grabbing, each distinct. Each of these actions doesn't. When someone commits an act of land grabbing, they may also be involved in murder, persecution, hostage-taking, theft, vandalism, or arson. This is an example of the absence of a link between actions (meedaadse samenloop). The same goes for offenders who involve many people by the theory of involvement. In addition, it is necessary to handle the law through criminal law enforcement to eradicate the perpetrators of land grabbing so that things like unauthorized land occupation and fencing land without permission do not happen again in Indonesia. There is a need for criminal law sanctions that make a deterrent so that the perpetrators of the criminal act of land grabbing do not dare to do this illegal thing.

### 3. 1 Indicator of the causes of land-grabbing crime

One of the reasons why land problems or conflicts, in this case, the criminal act of land grabbing, still occur frequently in regions of Indonesia, particularly in villages, is the weakness of the content and regulation of the applicable criminal law. Moreover, the complaint procedure seems equally tricky. Not surprisingly, companies or businesses act this way for their benefit. The weakness of the content and regulation of criminal law about land grabbing can be seen in the unsynchronized articles of rules and regulations related to land grabbing. In addition, the threat of the articles imposed on perpetrators of criminal acts is not high. It does not deter perpetrators, making it easier to repeat their acts. As a result, the aggrieved community wants to avoid taking the case to court.

Typically, one of the following factors can lead to a land-grabbing crime: (1) The lack of concern the proprietor has for their property, (2) The victim's lack of awareness regarding who owns the land that their parents or relatives have sold or given to someone else (3) The costly cost of land. According to the elements above, the victim frequently significantly impacts the commission of a crime, whether directly or indirectly, knowingly or unintentionally.<sup>6</sup> Crime wouldn't exist if there weren't a victim. The victim's participation in this situation affects and impacts the victim, other people, and the surrounding environment.

The role of the victim in the occurrence of crime should not be ignored. The victim's role can be in the form of intentional or unintentional actions that invite the perpetrator to commit a crime.<sup>7</sup> This inviting action can be interpreted as the attitude or behavior of the victim in situations and conditions that reduce the occurrence of crime.

### 3. 2 Regulation of land-grabbing crimes by law

Government instead of Law Number 51 of 1960 On the Prohibition of the Use of Land Without the Permission of the Rightful Owner, which reads:

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<sup>6</sup>Jaminuddin Marbun et al., "Tindak Pidana Penyerobatan Tanah Dalam Perspektif Hukum Pidana," *Jurnal Rectum Tinjauan Yuridis Penanganan Tindak Pidana* 3, no. 2 (2021): 226–38, DOI:<http://dx.doi.org/10.46930/jurnalrectum.v3i2.1179>.

<sup>7</sup> *Ibid.*

- a. Without prejudice to the applicability of the provisions in Articles 3, 4, and 5, then the person may be punished by a sentence of confinement for a maximum of 3 (three) months and a fine of up to Rp. 5,000,- (five thousand rupiah);
  1. Whoever uses land without the permission of the rightful owner or his permission, with  
Provided that if concerning land plantations and forests, they shall be exempted that will be resolved according to Article 5 paragraph 1;
  2. Whoever interferes with the entitled or his authorized in the exercising his right over a parcel of land;
  3. Whoever orders, invites, persuades, or advocates orally or in writing to commit the act referred to in Article 2 or sub b of paragraph 1 of this article;
  4. Whoever assists by any means any manner whatsoever to committing the act mentioned in article 2 or letter b of paragraph 1 of this article;
- b. Provisions regarding settlements held by the Minister of Agrarian Affairs and Regional Ruler as referred to in Articles 3 and 5 may contain a punishment of imprisonment of not more than 3 (three) months and a fine of as much as Rp 5,000,- (five thousand rupiah) against anyone who violates or does not fulfill.
- c. The criminal offense mentioned in this article shall be offense.

Article 167 of the Penal Code:

- 1) Any person who forces his way into a house, room, or enclosed yard used by another person unlawfully, or being therein unlawfully, and at the request of the rightful party or his order does not leave with shall be punished by a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs;
- 2) Any person who enters by breaking or climbing in, by using false keys, false orders, or false costume of office or who does not have the prior knowledge of the entitled first and not by mistake enters and is found there at night, shall be deemed to have forced entry;
- 3) If issuing threats or using means that may cause fear to people, the punishment shall be a maximum of one year and four months;
- 4) The punishments mentioned in paragraphs 1 and 3 may be enhanced by one-third if the perpetrators of the crime are two or more persons within concert.

For example, suppose land belonging to C is appropriated and managed by someone without C's permission as the land owner. In that case, the person in question is only sentenced to three months and a fine of up to Rp 5,000 (five thousand rupiah) as stipulated in Article 6 of Law No. 51 PRP of 1960. (five thousand rupiah) as specified in Article 6 of Law No. 51 PRP of 1960 on the prohibition of using land without the rightful owner's consent. Suppose the stolen land is land that does not yet have a certificate, and the offender leases or sells the land. In that case, the penalty for this offense category is more severe, four years imprisonment, as stipulated in Article 385 of the Penal Code.

### 3.3 Criminal law strategy against land grabbing crime

Land-grabbing offenses committed by a person or group on another's land can be defined as unlawful possession, occupation, or appropriation of another's land contrary to their rights or violating applicable laws. The criminal law, therefore, has strategies to condemn or criminally

prosecute such acts. The criminal strategy to combat land grabbing is set out in Article 2 of Law No. 51 PRP of 1960 on the prohibition of unauthorized use, which is still in force today. This article stipulates that a person who uses land without the consent of the legitimate party or who interferes with the legitimate party is liable to a maximum prison sentence of three months.<sup>8</sup>

In addition, in dealing with this issue, the criminal justice system must comply with relevant provisions, such as the existence of material evidence that a person has planted crops or cultivated land and erected buildings on land belonging to others. In addition to the laws above, criminal law enforcement strategies against perpetrators of land-grabbing crimes are contained in the provisions of Article 368(1) of the Criminal Code. A person who intends to take over someone else's land usually intimidates or threatens the rightful owner. This can be punished by the establishment of evidence in the form of photos or videos when the perpetrator makes threats and is witnessed by two people; all or part of the land belongs to that person or another person; or to incur debt or cancel debt, punishable by extortion, with a maximum prison sentence of nine years.

Criminal law has controlled the consequences of illegal land snatching; however, some people still engage in land-grabbing incidents; therefore, the approach applied by the law to combat this crime may not be deemed effective. It takes a complete approach to tackling the crime of land grabbing, namely examining the actual cause of the issue by examining the issue's source. If this is not the case, there is the worry that the application of criminal law would be indiscriminate, treating social problems as though they are insurmountable. Criminal law has the power to resolve societal issues.

Other components (social sub-systems) that should logically participate in the fight against land grabbing are not operating in the interim. The offense of appropriation of land is not working effectively. The core of the issue is, however, actually rather complicated, involving issues with poverty, ignorance, the refusal to address corruption, aberrant political conduct, and other factors. The criminal justice system is not concerned with any of these underlying issues, and even if the criminal code is applied haphazardly, the outcome will be terrible. People would genuinely find themselves in situations that do not constitute maltreatment if criminal law is used haphazardly.

As stated above, preventive and enforcement measures are combined when criminal penalties are allowed to ensure that individuals follow the law. Included here are elements of both enforcement and prevention. By preventing future land acquisition issues that result in land grabbing, the preventative element seeks to avoid numerous land purchase problems. Twenty land grabbing is the goal of the repressive element in the meantime. Law enforcement officials are meant to have the power to act through the enforcement (repressive) element. In the

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<sup>8</sup> Fransisko Rohanda Rebong, "Efektivitas Sanksi Pidana dan Kendala Penegakan Hukum Tindak Pidana Penyerobotan Tanah Berdasarkan Pasal 385 KUHP dan Undang-Undang (PERPU) Nomor 51 Tahun 1960 Tentang Larangan Pemakaian Tanah Tanpa Izin yang Berhak atau Kuasanya," *Justitia Omnibus Jurnal Ilmu Hukum* 3, no. 2 (2022): 54–69.

meantime, the repressive element aims to empower law enforcement to use force against those who violate land-related crimes.

An integrated criminal justice system must also be created, which requires criminal legislation. An integrated criminal justice system fosters collaboration among various justice subsystems, including the police, prosecutor's office, courts, and correctional facilities. Additionally, external subsystems such as the Ministry of Environment and Spatial Planning/National Land Agency, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the Ministry of Environment and Forestry, local government, academia, and non-governmental organizations are also included in this attempt to foster integration. The law's boundaries can be determined with the assistance of the criminal justice system's coherence. Assist in determining the extent to which the application of the criminal law is reasonable.

In terms of criminal strategies to eradicate land grabbing, which is very detrimental to society, it must be done with complete seriousness. Why? If criminal law does not provide severe penalties for perpetrators of land grabbing, it is feared that more and more cases of this kind will occur in every region in the future. Land-grabbing cases usually occur in villages, and, as we know, people in rural areas rarely understand the law. In more remote regions, socialization is needed so that people become more aware of the consequences of land grabbing.

#### 4. Conclusion

Legal sanctions given against perpetrators of criminal acts of land grabbing can be based on the provisions of Article 2 of Law No. 51 PRP of 1960 on the Prohibition of Use of Land Without the Permission of the Rightful Owner or his Power of Attorney, which states that the use of land without the permission of the rightful owner or his legitimate attorney is an act that is prohibited and can be punished with imprisonment of up to a maximum of 3 (three) months or a fine of up to Rp 5,000 (five thousand Rupiah) as stipulated in Article 6 of Law No. 51 PRP 1960. In addition, the provisions of Article 385 of the Criminal Code can also be applied, where the article is the only article that regulates crimes directly related to land ownership.

To prevent criminal acts related to land, which in the present case is the criminal act of "land grabbing," the community must have a land title (title deed), which will provide legal certainty and also legal protection to land title holders so that they can easily prove that they are the rightful owners of the land in question if at some point something undesirable happens to their land. In particular, it is necessary to review the hierarchy of laws and regulations governing the powers of local authorities in the land sector to make implementing the land administration system in the regions more effective and efficient, as we all hope. According to the description given above, it is clear that efforts to stop land grabbing are not as easy as most people believe. Instead of relying solely on the application of criminal sanctions, successful efforts must also consider the extent to which criminal law is deemed reasonable or appropriate to stop this illegal activity. In addition, further laws outside of criminal law may be required to address and resolve issues that are thought to be beyond the purview of criminal law.

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