

EFFECTIVENESS OF THE CRIMINAL ACTION OF COLLECTIVE PROPERTY LAND CLAIMS

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Abstract

The act of illegally grabbing land is an act that can be classified as a criminal act. Land grabbing will harm other parties, so the perpetrators can be prosecuted with criminal legal instruments. Land grabbing in reality in Indonesia is something that is difficult to avoid, especially in metropolitan areas, where empty land is increasingly difficult to find but more and more immigrants are arriving to risk their fate even though they do not have a clear place to live or relatives and this is what drives this. There are many cases of grabbing of state land and land controlled by individuals or companies. The formulation of the problem is: What is the ratio decidendi made by the judge in making considerations regarding the decision in the criminal case of land grabbing as contained in Decision Number 4/Pid.C/2021/PN.Sdr and Decision Number 05/Pid.C/2016/PN.BS? and What is the effectiveness of the land grabbing crime carried out by the perpetrators in Decision Number 4/Pid.C/2021/PN.Sdr and Decision Number 05/Pid.C/2016/PN.BS?. The research method used is normative legal research. The results of the research show that the Ratio Decidendi is made by the judge in making considerations regarding the decision in the case of criminal land grabbing as contained in Decision Number 4/Pid.C/2021/Pn.Sdr and Decision Number 05/Pid.C/2016/Pn.Bs In of the two decisions explained, it can be concluded that these are the main points or reasons that form the basis of the judge's ratio decidendi decision in deciding the case and the effectiveness of the crime of land grabbing carried out by the perpetrators, as explained in the Both decisions show great attention to the protection of the rights of legal land owners. In analyzing the effectiveness of criminal land grabbing, it was found that the legal system must continue to develop to overcome existing challenges and weaknesses.

Keywords: Legal Effectiveness, Land Grabbing, *Ratio Decidend*

INTRODUCTION

Article 1 point 9 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration explains: "Land Registration is a series of activities carried out by the Government continuously, continuously and regularly including collecting, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding plots of land, above-ground space, underground space and apartment units, including providing letters of proof of rights to plots of land, space Over the land, basement which already has rights and ownership rights over the condominium unit as well as certain rights that encumber them."

In reality, until now the implementation of land registration has not been fully realized, in fact it is said that the number of land plots that have been registered is only around 31% of the 85 million land plots in Indonesia. One of the proofs of ownership rights to land is a certificate, a certificate is a strong and authentic piece of legal evidence. The strength of the certificate is a guarantee of legal certainty for the certificate holder as perfect evidence as long as no opposing party proves otherwise. Although the main function of a land title certificate is as evidence, the certificate is not the only proof of land title. It is still possible to prove a person's land rights by other means of evidence, such as a register deed issued by the village government where the land is located.

Land disputes in the country have become a structural problem. These disputes arise mainly from hegemonic processes through political, development and policy processes. These hegemonic processes are much more prominent than natural processes. This means that the main trigger for land disputes is the political order and process, development and land policy.

One example of a land-related dispute is land grabbing, land grabbing is an act of taking rights or property arbitrarily or without paying attention to laws and regulations, such as occupying someone else's land or house that is not their right. The act of illegal land grabbing is an unlawful act, which can be classified as a criminal act.

Land grabbing will harm other parties, so the perpetrators can be prosecuted with criminal legal instruments. In general, the term land grabbing can be interpreted as an act of controlling, occupying or taking over land belonging to another person unlawfully, against rights or in violation of applicable legal regulations. Land grabbing is one type of criminal act that occurs in community life. Land grabbing in reality in Indonesia is something that is difficult to avoid, especially in metropolitan areas, where empty land is increasingly difficult to find but more and more immigrants are arriving to risk their fate even though they do not have a clear place to live or relatives and this is what drives this. There are many cases of grabbing of state land and land controlled by individuals or companies.

In this research, the author examines the case of Decision Number 4/Pid.C/2021/PN.Sdr with Defendant I Ilesse Binti La Tasakka and Defendant II Ibari Binti La Tasakka. The defendants have been brought to trial by the public prosecutor on charges of Article 6 paragraph (1) letter a of Perpu Number 51 of 1960 concerning Prohibition of Land Use Without the Permission of the Entitled or Their Authorized Person.

RESEARCH METHODS

This research is included in normative juridical research. Normative juridical research methods (library law research) are methods or methods used in legal research which are carried out by examining existing library materials. This research refers to legal norms contained in statutory regulations and court decisions.

This type of research is prescriptive in nature because it describes the applicable laws and regulations and is linked to legal theories in the practice of implementation related to the problem, as well as outlining/describing what in this case is a criminal act of usurping

proprietary land carried out jointly with case study of Decision Number 4/Pid.C/2021/PN.Sdr and Decision Number 05/Pid.C/2016/PN.BS.

DISCUSSION

***Ratio Decidendi* Made by Judges in Making Considerations on Decisions in Cases of Criminal Land Grabbing as Contained in Decision Number 4/Pid.C/2021/Pn.Sdr and Decision Number 05/Pid.C/2016/Pn.Bs**

Ratio decidendi (Plural: rationes decidendi) is a Latin term that is often translated literally as "the reason for the decision", "the reason" or "the rationale for the decision." Black's Law Dictionary states ratio decidendi as "the point in a case which determines the judgment" or according to Barron's Law Dictionary it is "the principle which the case establishes." itself defines as genuine factors (material facts, essential factors which actually lead to such a decision.

Ratio decidendi is not only important in a system where judges are bound by the previous judge's decision (precedent), but also in countries with a civil law system tradition such as Indonesia. This legal term is used in the legal community to refer to the legal, moral, political and social principles that courts use to make such decisions. So every case has a ratio decidendi, determining reasons or core elements that determine the decision. Sometimes the ratio decidendi is clearly visible, but sometimes it also needs to be explained. Usually, in practice, these essential matters are in the interests of the parties in the case to prove or disprove them or according to the author are "the center of the lawyer's battle to be proven".

When looking at a court decision, the ratio decidendi stands as the legal basis on the basis of which the decision was handed down. Ratio decidendi is legally binding on lower courts through the doctrine of "stare decisis", unlike obiter dicta, such as comments made in connection with a case that may be relevant or interesting, but do not draw from the legal decision. Ratio decidendi can be said to be binding for the future. All other statements of law in a court opinion – all statements that do not form part of the court's ruling on the issues actually decided in a particular case (whether they are true statements of law or not) are called obiter dicta. According to the opinion, a dissenting opinion also includes obiter dicta. However, it can occur in development, which was originally obiter dicta in other cases or later became ratio decidendi.

Ratio decidendi, which is something more abstract and absorbed into the body of law (an organized and systematic collection of legal regulations). The term ratio decidendi was first used in John Austin's jurisprudence lectures. This term is influenced by the German legal scholar Thibout who uses it differently from ratio legis. Apart from that, the term was also used by the famous Scottish judge and legal writer, Lord Kames. The court never tried to create a definition of ratio decidendi, but simply used it as a means to bridge the gap between analogy and reasoning with regulations. In the absence of an authoritative understanding perhaps the solution is to develop a technique for identifying a ratio in a special case.

Goodhart created an approach that centered on the facts as material to the trial judge. He summarized the rules for finding the ratio decidendi of a case as follows: The principle of a case is not found in the reasons given in the opinion.

1. Principles are not found in legal rules written in opinions.
2. Principles are not necessarily found in consideration of all the ascertainable facts of the case, and the judge's decision.
3. The principles of the case are discovered by taking account of (a) the facts treated as material by the judge, and (b) the judge's rulings as the basis for them.

In seeking principles it is also necessary to establish what facts are held to be immaterial by the judge, for principles may depend on exceptions as much as inclusions. Goodhart attempts to provide a guide to the method which he believes is followed by most courts in

England when attempting to determine the ratio decidendi in a doubtful case. However, he acknowledged that not all courts apply this. As Sir Rupert Cross said, this must be tested regarding the way in which the case was argued and appealed, in this case the thought process adopted by the judge and its relationship to other cases and decisions. In addition, consideration must also be given to the status of the court itself, because there is an increasing tendency for lower courts to adopt a more elastic view of what binds them when an issue is argued by a higher court.

The term ratio decidendi is very well known in the context of the common law legal system. Literally the term means "the reason for the decision". Ratio decidendi, according to Michael Zander in his book 'The Law Making Process' (2004), can be interpreted as "A proposition of law which decides the case, in the light or in the context of the material facts." (case seen from the point of view or from the context of material facts). So, the format of the ratio decidendi in the judge's decision is expressed in a legal proposition. Propositions in this context are premises that contain the judge's considerations. This proposition can be expressed explicitly or implicitly. This reminds us of another definition of ratio decidendi from Sir Rupert Cross in the book 'Precedent in English Law' (editor JW Harris, 1991) which states, "Any rule expressly or impliedly treated by the judge as a necessary step in reaching his conclusion" (Any express or implied rule applied by the judge as a necessary step in reaching a conclusion). Please read the word "rule" here from the perspective of the common law system in England, so that it is not merely a statutory rule, but rather a legal proposition resulting from the judge's rational considerations.

In the common law system, the previous judge's decision is the main source of law that is absolutely necessary to pay attention to when we face a similar case. The word 'similar' here indicates that there are similarities in the characteristics of the facts that occur between these cases. The facts here must be material facts, which are used as a basis by the judge when he builds his considerations towards a conclusion. So, there is a descriptive part of the ratio decidendi that must be looked at and then compared between the previous case and the case currently being faced.

Based on research on two decisions on criminal cases of land grabbing issued by the District Court, this can involve an analysis of the "ratio decidendi" made by the judge. Ratio decidendi refers to the legal basis or principle that the judge considers to be the main basis for deciding the case. In the context of Decision Number 4/Pid.C/2021/Pn.Sdr and Decision Number 05/Pid.C/2016/Pn.Bs, we can develop the analysis as follows.

In Decision Number 4/Pid.C/2021/Pn.Sdr the Judge decided that the Defendant was charged with Article 6 paragraph (1) letter a of Perpu Number 51 of 1960 concerning Prohibition of Using Land Without the Permission of the Entitled or Their Authorized Person. Based on the facts obtained from the trial examination, the garden land which is the object of the dispute has been controlled by Djawariah Binti Made since 1961, then its management was handed over to witness Lanti Bin Labalulu. The defendant worked on the land without permission from the legal owner. Attempts to meet between the Defendant, witness Mulyani alias Muli, and his family did not reach an agreement. Even though they had met, the Defendant continued to work on the land because he considered the land belonged to his parents. The defendant did not have documentary evidence, and the claim of ownership was based on a sign in the form of a mango tree.

Furthermore, based on the Article Relating to the Indictment The judge detailed the contents of Article 6 paragraph (1) letter a of Perpu Number 51 of 1960, which states that a person can be punished if they use land without the rightful permission or legal proxy. In emphasizing Tenure Rights and Good Faith, the Judge noted that the rights in question were not solely property rights, but involved other rights including tenure rights. The judge introduced the concept of bezitter (those who have good intentions to control an object) and

presumption *justie causa* (the presumption that those who control an object are deemed to have good intentions).

Based on the documentary evidence and the lack of clarity regarding the owner of the land, the judge noted that the documentary evidence submitted did not clearly state the owner of the land, it only showed Djawariah Binti Made's control over the land. Therefore, the confirmation of Djawariah Binti Made's right to control was that the judge confirmed that Djawariah Binti Made, who controlled the land, had control rights and directed that the defendant use the land without proper permission. Confirmation that the Decision Does Not State the Owner of the Land Object is The judge emphasized that this decision does not state who owns the land in question, but rather questions the defendant's actions in imposing his will. Based on the Criminal Decision and Mitigating Considerations the Defendant is declared guilty and sentenced to a crime. The judge considers mitigating circumstances, namely the Defendant's good faith which may be based on a lack of understanding of the law. The judge imposed a suspended sentence as a warning and lesson for the defendant. The defendant is also charged with paying court costs.

Thus, the "ratio decidendi" of Decision Number 4/Pid.C/2021/Pn.Sdr is that the Defendant was found guilty of using the land without proper permission, with emphasis on the control rights of Djawariah Binti Made. This decision also confirms that the problem is not related to land ownership, but rather the defendant's actions in imposing his will.

Meanwhile, the Ratio decidendi in the decision of the Batu Sangkar District Court Number : 05/Pid.C/2016/PN.BS. The legal fact of land grabbing is that the judge has identified the legal facts related to land grabbing. This includes the location of the incident, time of the incident, and witnesses who provided information. Furthermore, the judge stated that the land that was seized belonged to witness Botnil, who was also said to be the biological father of witness Bambang. The proof of ownership recognized by the judge was a land certificate in Botnil's name.

Based on the Criminal Elements According to the Act, the Judge detailed the criminal elements charged against the defendant, namely the perpetrator's (defendant's) intention or intent to control the land as his own without permission from the legal owner. The judge referred to Article 2 of Law no. 51/Prp/1960. The judge explained his considerations based on Article 2 and Article 6 of Law No. 51 of 1960 and Law No. 8 of 1981 concerning the Criminal Procedure Code as well as other related articles. In this way, a legal conclusion was reached, namely that the defendant had been proven to have committed the criminal act of "Using/Occupying Land Without the Permission of the Entitled or His/Her Authorized Person" based on the legal facts described, including documentary evidence in the form of a land certificate.

Thus, the "ratio decidendi" from the decision of the Batu Sangkar District Court Number: 05/Pid.C/2016/PN.BS. This is that the defendant has been proven to have taken land without legal permission, especially based on evidence of a land certificate which was recognized by the judge as authentic proof of someone's ownership of rights. The judge details the criminal elements involved, refers to the applicable laws, and imposes a sentence and obligation to pay court costs based on proven guilt.

Effectiveness of Criminal Land Grabbing by the Perpetrators in Decision Number 4/Pid.C/2021/Pn.Sdr and Decision Number 05/Pid.C/2016/Pn.Bs

Land grabbing is not something new and has happened in Indonesia. The word invasion itself can be interpreted as the act of taking rights or property arbitrarily or without paying attention to laws and regulations, such as occupying someone else's land or house, which is not their right.

In the investigation and investigation process, investigators always use Article 167 paragraph 1 of the Criminal Code which states: "Anyone who forces entry into a house, room or closed yard used by another person against the law, and at the request of the rightful person or his order does not leave immediately, is threatened with imprisonment for a maximum of 9 (nine) months or a fine of a maximum of Rp. 4,500,- (four thousand five hundred rupiah), so that Article 167 of the Criminal Code is categorized as an article that regulates land grabbing (the act of illegally grabbing land is an unlawful act, which can be classified as a criminal act.

Furthermore, if during the investigation or investigation by the investigator it is discovered that there was an intentional act committed by a person who invaded someone's land, then the investigator will immediately determine that person as a suspect as intended by Article 167 of the Criminal Code, which will then be made into an Investigation Report (BAP). And if it turns out that the land grabbing was carried out by the suspect with the intention of controlling it and then selling or exchanging it to another party, then the suspect (the invader) will be punished by a criminal offense (KUHP), with a maximum penalty of four years, where: with the intention of benefiting himself or another person unlawfully sells, exchanges or encumbers with credit a right to land that has not been certified, even though he knows that another person has the right or also has the right to it.

Meanwhile, civil law in Article 1365 and Article 1366 can ensnare people who carry out land grabbing, because it can be seen that in cases of land grabbing there are parties who are harmed and need compensation for the losses experienced by that party, and also land grabbing is an unlawful act. where a person enters land belonging to another person without right, or causes a person, or causes another person, or another object to enter another person's land, or causes a person or other person or certain objects to remain on land belonging to another person.

The effectiveness of criminal land grabbing carried out by the perpetrators, as explained in the "ratio decidendi" of decision Number 4/Pid.C/2021/Pn.Sdr and Decision Number 05/Pid.C/2016/Pn.BS. reflects law enforcement against these illegal acts. The following is a development regarding the effectiveness of criminal land grabbing based on these two decisions, namely Decision Number 4/Pid.C/2021/Pn.Sdr The Importance of Tenure Rights. The judge emphasized the importance of Djawariah Binti Made's tenure rights as the legal owner of the land. This reflects the need to protect legal tenure and control rights over land, which is the basis for assessing land grabbing violations.

The introduction of the concept of *bezitter* (those who have good intentions to control an object) and *presumption justie causa* (the assumption that those who control an object are considered to have good intentions) helps understand the aspect of good faith in land use. This strengthens the argument that the perpetrator should have permission or legal rights before controlling the land. Probation and Learning Sentences The judge considers mitigating circumstances, such as the Defendant's good faith which may be based on a lack of understanding of the law. The suspended sentence was imposed as a warning and lesson for the defendant. This reflects a rehabilitative approach to reduce similar offenses in the future.

Meanwhile, Batu Sangkar District Court Decision Number: 05/Pid.C/2016/PN.BS: Admitted Evidence of Ownership, this recognition shows that the judge gave a serious assessment of legal documents as a basis for termination, which is important for creating legal certainty. The Judge's Confirmation of Proven Mistakes details the criminal elements based on applicable law, including Article 2 of Law no. 51/Prp/1960. Sentences are awarded based on proven guilt, ensuring a direct correlation between the perpetrator's actions and the violation of the law. Consideration of Sentences and Case Costs The judge imposes a sentence and the obligation to pay court costs as a consequence of the actions proven to have been committed by the Defendant. This creates a deterrent effect and confirms that serious violations of land tenure rights will be dealt with seriously.

Based on general research, **Protection of the Rights of Legal Owners.** The effectiveness of land grabbing crimes includes protection of the rights of legal owners. Law enforcement must prove and ensure that land grabbing is not only unlawful, but also detrimental to the legal owner. The imposition of criminal sanctions imposed must have a deterrent effect in order to prevent similar actions in the future. Appropriate and proportional punishment creates deterrence and sends a signal that violations of land tenure rights will not be tolerated.

Furthermore, the Importance of a Strong Evidence System such as land certificates, emphasizes the importance of a strong evidence system in cases of land grabbing. Strong evidence is the basis for judges to make fair and accurate decisions. This development reflects that the effectiveness of land grabbing crimes includes aspects of protecting tenure rights, providing relevant punishments, and the important role of strong evidence in law enforcement.

On the other hand, Law Enforcement and Criminal Effectiveness Analysis can be carried out regarding the effectiveness of the punishment imposed in preventing land grabbing in the future. Does the punishment given have a deterrent effect and be able to act as a deterrent for other perpetrators? Dig deeper into the importance of tenure rights and legal protection for legal land owners. How does this decision support the principles of justice and human rights in the context of land ownership.

Investigate how land grabbing crimes support the enforcement of agrarian law, including how these decisions maintain and protect the rights of land owners. Analyze more deeply the application of Article 2 and Article 6 of Law no. 51/Prp/1960. How does the judge view the perpetrator's intention or purpose and how is it related to land grabbing? To identify the role of the Criminal Procedure Code Law and Law no. 8 of 1981 concerning the Criminal Procedure Code in this court. The extent to which the legal process follows the provisions of criminal procedural law and the defendant's rights are guaranteed. The extent to which the obligation to pay court costs is considered an effective additional penalty.

Based on the implications of the decision for society and the legal environment, does this decision give a strong signal that land grabbing will not be tolerated and can have an impact on legal certainty? Reflection on Legal Protection for Land Owners, Digging deeper into how this decision responds to legal protection for land owners. Does this decision provide legal certainty for legal land owners and become a precedent that can be applied in similar cases? By delving into these aspects, analysis of the effectiveness of land grabbing crimes can provide more comprehensive insight into the impact and consistency of decisions in realizing justice and legal protection.

CONCLUSION

Ratio Decidendi made by the judge in making considerations regarding the decision in the criminal case of land grabbing as contained in Decision Number 4/Pid.C/2021/Pn.Sdr and Decision Number 05/Pid.C/2016/Pn.Bs In the two decisions explained, it can be concluded that it is the main point or reason that forms the basis of the judge's ratio decidendi decision in deciding the case. The following is a summary of the conclusions of the "ratio decidendi" on both decisions:

In Decision Number 4/Pid.C/2021/Pn.Sdr the Judge decided that the Defendant was charged with Article 6 paragraph (1) letter a of Perpu Number 51 of 1960 concerning Prohibition of Using Land Without the Permission of the Entitled or Their Authorized Person. Based on the facts obtained from the trial examination, the garden land which is the object of the dispute has been controlled by Djawariah Binti Made since 1961, then its management was handed over to witness Lanti Bin Labalulu. The defendant worked on the land without permission from the legal owner. Attempts to meet between the Defendant, witness Mulyani alias Muli, and his family did not reach an agreement. Even though they had met, the Defendant continued to work on the land because he considered the land belonged to his parents. The

defendant did not have documentary evidence, and the claim of ownership was based on a sign in the form of a mango tree.

Furthermore, based on the Article Relating to the Indictment The judge detailed the contents of Article 6 paragraph (1) letter a of Perpu Number 51 of 1960, which states that a person can be punished if they use land without the rightful permission or legal proxy. In emphasizing Tenure Rights and Good Faith, the Judge noted that the rights in question were not solely property rights, but involved other rights including tenure rights. The judge introduced the concept of *bezitter* (those who have good intentions to control an object) and presumption *justie causa* (the presumption that those who control an object are deemed to have good intentions).

These two decisions show that " *ratio decidendi* " does not only cover formal legal aspects, but also considers facts relevant to the case. The judge emphasized the importance of tenure rights and the rights of legal land owners. In cases of land grabbing, both decisions emphasize the need to respect legal land tenure rights and ensure that acts of land grabbing without permission can be subject to criminal sanctions.

The effectiveness of criminal land grabbing carried out by the perpetrators, as explained in Decision Number 4/Pid.C/2021/Pn.Sdr and Decision Number 05/Pid.C/2016/Pn.BS, both decisions show great attention to the protection of owners' rights legal land. In analyzing the effectiveness of criminal land grabbing, it was found that the legal system must continue to develop to overcome existing challenges and weaknesses. The application of punishments to perpetrators of land grabbing needs to be tightened and adjusted to the level of losses caused by these actions. The effectiveness of dealing with land grabbing does not only depend on the legal system, but also involves the active role of the community and government. The existence of policies that encourage community participation in protecting land can increase the effectiveness of prevention and action.

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