



Fair Legal Protection for Actual Land Owners Against Land Grabbing Disputes

Lucky Putri Selomitha

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami street, No. 36 Ketingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
Luckyselomitha8@gmail.com

Lego Karjoko

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami street, No. 36 Ketingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
legokarjoko@staff.uns.ac.id

Abdul Kadir Jaelani

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami street, No. 36 Ketingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
jaelaniabdulkadir@staff.uns.ac.id

Abstract— Land grabbing is an illegal act and has serious impacts on the rightful owner. The purpose of this study is to analyze the regulation of land grabbing as regulated in the legislation and to analyze efforts to resolve land grabbing disputes that realize fair legal protection for the actual landowner. The method used by the researcher is a qualitative research method with a normative research type. The literature study research method is a research method that is carried out by studying various library sources to obtain information and data needed in the research. Library sources in the literature study research method include books, scientific journals, papers, research reports, and other documents that are relevant to the research topic to be carried out. The literature study research process begins by determining the research topic to be studied, then searching for and collecting literature sources that are relevant to the topic. After that, the researcher evaluates and analyzes the library sources that have been collected to gain a deeper understanding of the research topic to be carried out. The findings in this study The regulation on land grabbing is regulated in Government Regulation in Lieu of Law Number 51 of 1960 Article 2 and Article 6, Law Number 39 of 2014 concerning Plantations Article 55 and Article 107, in addition, land grabbing can be classified as a criminal act and can also be classified as an Unlawful Act regulated by civil law. According to criminal law, land grabbing can be charged with Article 167 paragraph 1 and Article 385 of the Criminal Code, while according to civil law, the perpetrators in land grabbing cases can be charged with unlawful acts based on Article 1365 and Article 1366 of the Civil Code. Land grabbing cases are more effectively resolved through civil law because in civil law there is a mechanism that specifically regulates issues of ownership, transfer of rights, and settlement of land disputes between individuals or private parties. In the civil legal process, a party who feels that their land has been seized can file a lawsuit with a civil court to obtain justice and restore legitimate ownership rights. The civil court will consider the evidence and arguments presented by the parties involved in determining its decision.

Keywords— Justice, Legal Protection, Land Grabbing.

I. INTRODUCTION

One of the identities of a country based on law is to provide legal guarantees and protection for the rights of its citizens. As is known, the purpose of law is order, justice and legal certainty, including legal protection for land rights holders. Basically, land is a basic human need, from birth to death. Realizing the importance of the value and significance of land, the Constitution of the Republic of Indonesia in Article 33 paragraph (3) stipulates that "The land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The provisions of Article 33 paragraph (3) of the 1945 Constitution are the mandate for the formation of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA). Article 2 of UUPA stipulates that "On the basis of the provisions in Article 33 paragraph (3) of the Constitution, the land, water

and space, including the natural resources contained therein at the highest level are controlled by the State, as an organization of power for all the people. The authority derived from the right to control from the State is used to achieve the greatest prosperity of the people" [1].

One of the land conflicts that often occurs is the use of land without permission or commonly called land grabbing belonging to others, whether intentionally or unintentionally, whether carried out by individuals or groups of people. Land grabbing is a phenomenon that refers to the actions of a person or group of people who take over or control land that is not actually theirs without permission or legal rights [2]. This phenomenon involves serious violations of the law and has significant implications in the field of legal science. According to Sukananda, Land grabbing can occur for various reasons. One of the main motives is financial gain. Some people see land as a valuable resource and want to obtain it without having to pay a fair price or go through a legal process. They can falsify ownership documents, use violence or threats, or exploit weaknesses in an ineffective land administration system [3].

The consequences of land grabbing are very diverse and complex. First, the act violates the rights of the legitimate owner and can cause significant financial and psychological losses. Affected owners must face legal uncertainty, loss of income, and high legal costs to restore their rights. In some cases, land grabbing can also result in forced eviction or loss of housing [4]. Land grabbing is an illegal act and has serious impacts on legitimate owners and social stability. A firm legal response and strong protection of property rights are needed to prevent and address land grabbing. Only with joint efforts between the government, the community, and landowners can this problem be resolved and land ownership rights can be properly protected.

In this context, this study aims to examine and analyze the regulation of land grabbing as regulated in laws and regulations and efforts to resolve land grabbing disputes that realize fair legal protection for the actual landowners. By understanding the legal framework governing land and efforts to improve legal handling of land grabbing, it is hoped that this study can provide comprehensive insights to understand and overcome the problems that arise so that answers are obtained regarding fair legal protection for the actual landowners against land grabbing disputes. The study of legislation is the main focus in exploring the legal aspects related to land grabbing.

II. LITERATURE REVIEW

A. Legal Protection

Legal protection is a protection given to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten. Legal protection as a description of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace. Legal protection is one of the most important things in the elements of a state of law. This is considered important, because in the formation of a state, laws will also be formed that regulate each of its citizens. In its development, a reciprocal relationship will be established between a state and its citizens, which results in the existence of rights and obligations between each other, and legal protection is one of the rights that must be given by a state to its citizens.

If a state ignores and violates human rights intentionally and causes suffering that cannot be resolved fairly, then the state cannot be said to be a state of law in the true sense [5]. Legal protection is an act to protect the interests of legal subjects with applicable regulations or rules. to the person to take actions that can fulfill their interests [6]. Meanwhile, Philipus M. Hadjon is of the opinion that legal protection is an action to protect or provide assistance to legal subjects, by using legal instruments [7].

B. Land Grabbing

Land grabbing is an unlawful act in which a person or group of people take over or control land that is not actually theirs in an illegal manner or without legal permission. In the context of civil law, land grabbing is considered a violation of fundamental property rights, which violates a person's legal ownership rights to land. In civil law, property rights are exclusive rights granted to an individual or legal entity to own, use, and control a property. This includes land and everything attached to it, such as buildings or plants. Such property rights are protected by law to ensure legal certainty for the owner, and involve rights such as the right to own, the right to use, the right to enjoy, the right to transfer, and the right to protect the property from disturbance or grabbing [8].

III. METHOD

The research methodology used in writing this law is normative legal research. Normative legal research is a research methodology that is carried out by looking at secondary data or library materials as the main analytical tool [9], so that it focuses on the analysis of relevant laws and regulations with the aim of finding out fair legal protection for the actual landowner against land grabbing disputes. The research approach used by the author is the legislative approach and the conceptual approach. The legal materials used in the research are primary legal materials, which are legal materials that have binding legal force such as laws and regulations and secondary legal materials such as books, journals, scientific works that are relevant to the problems being studied.

The technique of collecting legal materials using library study techniques or library research includes collecting data and information from literature and normative law as the main source [10]. Data review is carried

out by referring to existing facts or additional sources, then linked to applicable laws and regulations. The data analysis used in this study is qualitative analysis. The focus of qualitative analysis is to show the gap between what should be and what is actually scientifically so that it requires photographing, mapping and in-depth understanding [11], which can be used to overcome problems regarding land grabbing disputes so as to produce an answer in the form of fair legal protection for the actual land owner if there is land grabbing by another party without rights.

IV. RESULT AND DISCUSSION

A. Land Grabbing Regulations Regulated in Legislation

Land grabbing is not something new and occurs in Indonesia. The word grabbing itself can be interpreted as the act of taking rights or property arbitrarily or without heeding the law and regulations, such as occupying someone else's land or house, which is not their right. The act of illegal land grabbing is an act that is against the law [12]. In Article 2 of the Government Regulation in Lieu of Law Number 51 of 1960 concerning the Prohibition of Land Use Without Permission from the Rightful Owner or His/Her Attorney (hereinafter referred to as Perpu Number 51 of 1960) it states that the use of land without permission from the rightful owner or his/her legal attorney is a prohibited act, and can be punished with a maximum imprisonment of 3 (three) months, or a maximum fine of Rp. 5,000 (five thousand Rupiah) as regulated in Article 6 of Perpu Number 51 of 1960. The acts that can be punished according to Article 6 of Perpu Number 51 of 1960 are:

- 1) Anyone who uses land without permission from the rightful party or their legal representative,
- 2) Anyone who disturbs the rightful party or their legal representative in using a plot of land,
- 3) Anyone who orders, invites, persuades or suggests verbally or in writing to use land without permission from the rightful party or their legal representative, or disturbs the rightful party or their legal representative in using a plot of land, and
- 4) Anyone who provides assistance in any way to use land without permission from the rightful party or their legal representative, or disturbs the rightful party or their legal representative in using a plot of land.

In relation to land grabbing, it is also regulated in the Republic of Indonesia Law Number 39 of 2014 concerning Plantations (hereinafter referred to as Law Number 39 of 2014 concerning Plantations) Article 55, which stipulates that any person is prohibited from illegally:

- 1) Working on, using, occupying, and/or controlling Plantation Land;
- 2) Working on, using, occupying, and/or controlling Community Land or Customary Land Rights of Customary Law Communities with the intention of Plantation Business;
- 3) Cutting down plants in the Plantation area; or
- 4) harvesting and/or collecting Plantation Produce.

Any person who violates the provisions of Article 55 of Law Number 39 of 2014 concerning Plantations mentioned above shall be punished with imprisonment for a maximum of 4 (four) years or a maximum fine of IDR 4,000,000,000.00 (four billion rupiah) as regulated in Article 107 of Law Number 39 of 2014 concerning Plantations.

Land grabbing can be classified as a criminal act and can also be classified as an Unlawful Act regulated by civil law [13]. In the Criminal Code (KUHP) Article 167 paragraph 1 states "Anyone who forces their way into a house, room or closed yard used by another person unlawfully or is there unlawfully, and at the request of the authorized party or his order does not leave immediately, is threatened with a maximum imprisonment of 9 (nine) months or a maximum fine 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. 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 according to Article 385 of the Criminal Code, the perpetrator can be threatened with a maximum imprisonment of 4 (four) years:

- 1) Whoever with the intention of unlawfully benefiting himself or another person, sells, exchanges or encumbers with a credit verband an Indonesian land right, a building, structure, planting or seeding on land with Indonesian rights, while it is known that the owner or co-owner of the rights thereto is another person;
- 2) Whoever with the same intention sells, exchanges or encumbers with a credit verband an Indonesian land right that has been encumbered with a credit verband, or a building, structure, planting or seeding on land that has also been encumbered in this way, without notifying the other party of the existence of the encumbrance;
- 3) Whoever with the same intention enters into a credit verband regarding an Indonesian land right, by concealing to the other party that the land related to the right has been mortgaged;
- 4) Whoever with the same intention, mortgages or rents land with Indonesian rights, while it is known that another person owns or co-owns the rights to the land;

5) Whoever, with the same intention, sells or exchanges land with Indonesian rights for a period, even though it is known that the land has been leased to another person for that period also.

Meanwhile, civil law in Article 1365 and Article 1366 of the Civil Code (KUH Perdata) can ensnare people who commit land grabbing, because it can be seen in cases of land grabbing there is a party who is harmed and requires compensation for the losses experienced by the party, and also land grabbing is an unlawful act in which someone without the right enters another person's land, or causes someone, or causes another person or another object to enter another person's land, or causes someone or another person or certain object to remain on another person's land. So according to civil law, the perpetrator in a land grabbing case can be charged with an unlawful act based on Article 1365 of the Civil Code which states that "Every act that violates the law and causes loss to another person, requires the person who caused the loss due to his mistake to replace the loss." In addition to Article 135 of the Civil Code, regarding land grabbing, Article 1366 of the Civil Code also applies, which stipulates that "everyone is responsible not only for his actions but also for his negligence and lack of caution". From the wording of the Article, the law means that everyone is required to act with caution towards others. Therefore, even though the perpetrator of land grabbing does not admit his actions and negligence to the actual landowner, Article 1366 of the Civil Code applies to him because his negligence in carrying out his duties resulted in losses to others.

B. Efforts to Resolve Land Grabbing Disputes that Achieve Fair Legal Protection for Actual Land Owners

Land issues have become a complicated legal issue and are difficult to resolve quickly. Land has legal, economic, political, social, and religious, as well as strategic consequences. Land disputes decided in court often take a long time. The time required to resolve a civil lawsuit case in Court because if the District Court decides the lawsuit, people who are dissatisfied with the decision can appeal. After the appeal file is sent to the High Court through the District Court, the Appellate Panel of Judges will examine the appeal file and then decide to However, if there is a party who is dissatisfied with the appeal decision, they can file an appeal. The cassation process is initiated by the disputing party and then carried out by each party. The cassation applicant submits a Cassation Memorandum, while the other party submits a Counter Cassation Memorandum. After the filing is complete, the case is sent to the Supreme Court of the Republic of Indonesia through the court. After the Supreme Court of the Republic of Indonesia receives the file, the Chief Justice of the Supreme Court of the Republic of Indonesia will form a panel of Supreme Court Justices to examine and decide the case that was filed. If there is a party who feels unfair in the decision of the Supreme Court of the Republic of Indonesia, there are legal remedies that can be taken.

In the trial process, civil cases must go through the following stages: a) Filing a Land Encroachment Lawsuit: This lawsuit is filed by the head of the district court whose jurisdiction includes the defendant's residence or place of residence. The HIR does not specifically regulate immovable objects as objects of the lawsuit; however, the RBg gives priority, because the lawsuit is filed through the Head of the District Court whose jurisdiction includes movable objects. The most important thing in filing a land encroachment lawsuit is that the person who owns the encroached land has strong evidence, such as a certificate for the encroached land or a Certificate of Ownership (SHM), letters explaining the origin of the land he owns, and the chronological order of the acquisition of the land. This is intended to help the plaintiff or landowner in the evidentiary hearing stage of the land encroachment case to convince the panel of judges who will examine the landowner's lawsuit and decide based on the trial evidence. In the same way, people who encroach on other people's land must explain why they did it and why they control the land. It is important to explain these things during the trial because the panel of judges handling the land grabbing case will use legal considerations when they make their decision.

After the filing of a land encroachment lawsuit, the registration process begins with registration of the down payment of the case and the appointment of a panel of judges with a substitute clerk. Next, the Chief Justice or his Deputy, or the Panel of Judges who will examine the lawsuit, sets a trial date immediately and gives an order to the clerk or bailiff to summon both parties—the plaintiff and the defendant—to appear before the panel of judges. In civil procedure law, a summons is a summons issued by a bailiff on the orders of a panel of judges, which is based on Article 12 Paragraph (1) HIR; only summons issued by a bailiff officially and properly are considered valid and official. A summons letter is also called a *relaas*.

The trial arrangement process, which begins before the trial and lasts until the trial is completed, is carried out by an officer appointed to do so. Implementation activities include preparing trial equipment, writing the trial schedule on the notice board provided according to the order of case registration, calling the parties and witnesses to enter the courtroom, and carrying out other actions. However, when the trial is taking place, the Panel of Judges does it themselves. In preparation for the trial, a trial report, also known as the verbal process, must be prepared. This trial report, which is officially made by an authorized official, explains the process of examining a case in court and serves as a basis for the Panel of Judges to make a decision on the case being tried.

At this stage, the panel of judges will ask the plaintiff whether the lawsuit has been changed or not. If there is no change, the chairman will read the lawsuit filed by the plaintiff. After it is read, the panel of judges will ask

the defendant whether he understands the contents of the lawsuit or not. If the defendant does not understand, the panel of judges will explain the important points in the lawsuit. The panel of judges asks the defendant to answer the question verbally or in writing if the defendant already understands the contents of the plaintiff's lawsuit. At that time, the examination process enters the response stage. At this step, the defendant must refute or admit the plaintiff's arguments. To be clear, the answer must be made based on the arguments of the Plaintiff's lawsuit. In addition, to provide an answer, the evidence of the lawsuit must be repeated first before the evidence of the response. Actually, there are two types of responses given by the defendant: (1) indirect responses related to the issue of rebuttal or exception; and (2) direct responses related to the ongoing problem. Proof is an action taken by the parties in a civil dispute with the aim of establishing the law between the two parties related to a right so that the truth is obtained which has a value of justice. In civil cases, the truth is considered formal truth; in other words, judges are prohibited from exceeding the limits set by the parties to the case. Article 178 paragraph (3) HIR, Article 189 paragraph (3) RBG, and Article 50 paragraph (3) RV expressly prohibit judges from issuing decisions on cases that do not meet the requirements or from passing more than requested. Anyone who claims to have rights or to assert their own rights or to deny the rights of another person by pointing to an event must prove the existence of the right or event, because the proof is intended to establish the law between the two parties to the dispute. The plaintiff, defendant, and third party who intervenes can accept the burden of proof in the lawsuit process. Basically, a person must prove what he says.

The resolution of the problem of land grabbing through criminal law remains ineffective, because the criminal process only punishes the perpetrators of the grabbing of land that is not theirs and the court decision in a criminal case cannot execute the grabber to leave the land that they have grabbed. Even though it is proven that someone has criminally grabbed land, it does not guarantee ownership, and must also file a civil legal process through a lawsuit and after obtaining legal certainty through a civil decision, then request the execution of the court, only then can ownership of the land that was grabbed be re-owned. From the results of this study to resolve land grabbing cases through civil law [14].

The mechanism of litigation that takes too long in civil law makes land owners feel that the legal certainty in our country does not guarantee that their land rights are protected with certainty, on the other hand, the encroacher can still enjoy the right to control the land they occupy before there is a court decision that has permanent legal force, only then can the land owner file an execution request through the court. Also, a civil court decision cannot punish the encroacher because a civil court decision only guarantees the plaintiff's land ownership. The resolution of the land encroachment problem through criminal law remains ineffective, because the criminal process only punishes the perpetrator of the encroachment on land that is not theirs and the court decision in a criminal case cannot execute the encroacher to leave the land that they have encroached on. Even though it is proven that someone has committed a criminal encroachment on land, it does not guarantee their ownership, and they must also file a civil legal process through a lawsuit and after obtaining legal certainty through a civil decision, then apply for execution to the court, only then can ownership of the encroached land be repossessed [15].

Land grabbing cases are most effectively resolved through civil law. Land grabbing is an act involving the illegal seizure or takeover of land by an unauthorized party. In this case, settlement through civil law can be an effective approach to resolving the problem. Civil law, also known as civil law, regulates the relationship between individuals or legal entities in society.

The process of resolving land encroachment cases through civil law involves the following steps: 1. Proof of land ownership: In the initial stage, the legitimate landowner must prove that they have legal rights to the land controlled by another party. Proof of ownership that can be accepted by the civil court includes land certificates, proof of tax payments, or valid deeds of sale. In some cases, expert services may be required to help strengthen the proof of land ownership. 2. Civil lawsuit: Once land ownership is proven, the legitimate landowner can file a civil lawsuit against the encroaching party. The lawsuit is filed with the competent civil court in the area. In the lawsuit, the landowner can ask for restitution or return of the land, as well as compensation for losses incurred due to the encroachment. 3. Examination of evidence: The civil court will examine the evidence presented by both parties, including evidence of ownership and evidence of encroachment. The court will consider all the facts and laws related to the case to make a fair and objective decision. 4. Court decision: After considering all the evidence and arguments presented, the court will issue a decision. If the court finds that encroachment has occurred, the rightful landowner will likely receive a judgment ordering the return of the land and may also receive compensation for the losses incurred. However, court decisions can vary depending on the law and facts relating to each case. 5. Enforcement of the judgment: Once a judgment is issued, the encroaching party is required to comply with the judgment. If they do not comply with the court's decision, the landowner can seek the assistance of law enforcement or court execution officers to enforce the judgment.

V. CONCLUSION

Land grabbing is an unlawful act. The regulation regarding land grabbing in the legislation is regulated in Government Regulation in Lieu of Law Number 51 of 1960 concerning the Prohibition of Land Use Without Permission from the Authorized Person or His/Her Attorney Article 2 and Article 6, Law Number 39 of 2014

concerning Plantations Article 55 and Article 107, in addition, land grabbing can be classified as a criminal act and can also be classified as an Unlawful Act regulated by civil law. According to criminal law, land grabbing can be prosecuted under Article 167 paragraph 1 and Article 385 of the Criminal Code, while according to civil law, the perpetrator in a land grabbing case can be charged with an unlawful act based on Article 1365 and Article 1366 of the Civil Code.

Land grabbing cases are more effectively resolved through civil law because civil law has a mechanism that specifically regulates issues of ownership, transfer of rights, and settlement of land disputes between individuals or private parties. In the civil law process, a party who feels that their land has been grabbed can file a lawsuit with a civil court to obtain justice and restoration of legitimate ownership rights. The civil court will consider the evidence and arguments submitted by the parties involved in determining its decision. The civil law process also allows parties who feel aggrieved to file a claim for compensation for losses suffered due to land grabbing. The civil court can issue a binding decision and provide legal protection to the party who truly has the rights to the land. In addition, through civil law, the parties involved can also mediate or resolve disputes outside the court. In mediation, the disputing parties can seek a mutually beneficial solution with the help of a neutral and competent mediator.

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