



Legal Protection of Land Grabbing Right in Indonesia

Apri Amalia¹, Jarnawi Hadi Saputra²

^{1,2}Program Studi Ilmu Hukum, Universitas Al-Azhar, Medan. E-mail: apriamalia03@gmail.com

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ABSTRACT

Land grabbing is a form of unlawful act in civil law and is indicated as a criminal act in the act of someone taking someone else's property rights by occupying someone else's land. So legal protection is needed in land grabbing acts. The formulation of the problem is what the consequences of unlawful acts are regarding land grabbing and what is the legal protection for land ownership rights from Land Grabbing. The aim is to determine the consequences of unlawful acts and legal protection of land ownership rights from land grabbing. The result is that the consequences of unlawful acts are regulated in Article 1365 of the Civil Code where land grabbing is an unlawful act that causes losses to other people, requiring the person at fault to compensate for the loss, whereas in Article 385 of the Criminal Code, anyone who sells or exchanges land that has not been certified whose property rights are not known are subject to a maximum sentence of four years. Legal protection of land ownership is carried out by issuing land title certificates which provide legal certainty to land owners, based on Article 19 of the Basic Agrarian Law which is preventive legal protection.

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Corresponding Author:

Apri Amalia,
Program Studi Ilmu Hukum,
Universitas Al-Azhar,
Jalan Pintu Air IV No. 214 Kwala Bekala, Padang Bulan, Medan
Email: apriamalia03@gmail.com

1. Introduction

Land is a natural resource that has strategic value in people's lives, both from an economic, social and cultural perspective. So, land cannot be separated from human life. Where everyone needs land in their lives, both in carrying out daily activities and in order to carry out development. Land also has an important role as a source of well-being, prosperity and life (Dewi et al., 2024). Based on Article 33 paragraph (3) of the 1945 Constitution, it is stated that: "Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." Apart from that, land is also stated in paragraph 2 paragraph (3) of Law no. 5 of 1960, that land must be used for the greatest prosperity of the people in the sense of happiness, prosperity and freedom in society and the Indonesian legal state which is independent, sovereign, just and prosperous".

Various historical experiences have proven that land is very closely related to people's behavior and how important land is as a living resource for creating prosperity which is implemented appropriately and there is an obligation to maintain and increase the fertility of the land used

(Silalahi & Djajaputra, 2024). The important role of land in human life means that the need for land will continue to increase over time. This is what causes the desire to control land and one way to obtain land can be done in various ways. The desire to control land can also cause problems that harm other people if the action is against the law or or the desire violates statutory regulations (Malau et al., 2023).

News about the phenomenon of various land problems, one of which is land grabbing or what is known as land grabbing. Many parties are worried about emerging land grabbing, where land mafias emerge who acquire land by occupying, controlling or giving it to entrepreneurs for profit. In reality, land grabbing in Indonesia is something that is difficult to avoid, where empty land is increasingly difficult to find for immigrants and entrepreneurs who want to build their businesses for profit. This was found where illegal buildings and empty land that did not belong to them were taken, confiscated and occupied by those that were not their rights (Marbun et al., 2021).

Various cases that have emerged regarding land grabbing, one of which was quoted from the online media *kompas.com* which is hotly debated, is the land mafia case against the family of public figure Nirina Zubir, where the land of Nirina Zubir's late mother was annexed by the land mafia which owns six assets in the form of land and buildings. worth up to Rp. 17 billion rupiah. The actions of the land mafia have spread and are rampant everywhere, as reported in the popular media, so that the land mafia is a crime that really requires cooperation from the various parties involved.

The case of land confiscation is a legal violation with complex problems. This phenomenon is not only limited to one geographic area or certain community group, but is spread across various regions in Indonesia and involves various parties, both from the public and private sectors. Land grabbing can occur in various forms, ranging from forced evictions by the government for the purposes of development projects, illegal land ownership claims by companies or individuals, to agrarian conflicts between indigenous communities and parties who want to control the land (Amalia, 2024b).

In practice, land rights violations often occur which lead to cases of land confiscation, which is a serious problem in the Indonesian legal system. One of the roots of problems related to land grabbing is weaknesses in the system of granting land rights and land use regulations that are not yet optimal. Thus, there are overlapping land ownership claims and injustice in the distribution of natural resources. Indigenous communities and farmers are often the main victims in land grabbing, as they tend to have more limited access to political and economic power to defend their rights to land (Nadya et al., 2023).

This is what the community feels in Bah Damar Village, a village in Dolok Merawan District, Serdang Bagadai Regency, North Sumatra Province. Administratively, Bah Damar Village is one of the 243 villages in Dolok District, Serdang Bedagai Regency, with an area of 190 hectares, part of which is agricultural land. The main livelihood of the community is farming, this is the issue of land control for the community which is their hope as a source of life. As a production land factor, land is capital that is expected to improve people's welfare, farming must be used as optimally as possible for people's prosperity. However, individuals emerged who wanted to control land in Bah Damar Village for the construction of a factory project. So the people of Bah Damar Village rejected the construction of the factory project by taking land belonging to the community which they thought was theirs. As a result, the environment they live in is damaged, agricultural land is damaged and their agricultural land is narrowed, because the livelihood of the people of Bah Damar village is farming and some of the community's land is disappearing.

In civil law, this land issue is an unlawful act contained in Article 1365 of the Civil Code (Indonesia, n.d.) , which is an act of taking rights or property arbitrarily or ignoring laws and regulations, such as occupying someone else's land or house that is not their right. Apart from that, confiscation of land that is not their right is also regulated in Article 385 of the Criminal Code with a maximum sentence of four years in prison. Where this article states that every person who unlawfully seizes or detains by force or items above it, is threatened with imprisonment and a fine (Datau et al., 2023). Therefore, ownership of land rights is very important to provide legal certainty in the legal protection of land. Legal protection of land is carried out through land registration or by having a land certificate. This is regulated in Article 19 UUPA no. 5 of 1960.

In the national context, land grabbing is the acquisition of land for agricultural businesses, and is the practice of controlling land on a large scale by corporations. Corporations generally use the pretext of development in their business activities to justify their land control practices, so that an agrarian policy is needed in handling land grabbing. Current agrarian policy in the national context through registration of property rights certificates. What the Bah Damar village community needs is an agrarian policy in registering land rights by having authentic proof of certificate.

Based on the information above, researchers taking research in Bah Damar Village show that part of the Bah Damar village community adheres to customary or kinship law, including ownership of land rights based on customary law. Ownership of land rights in Bah Damar Village is carried out with a letter from the village head or sub-district head's letter. The people of Bah Damar village who are still left in the village are blind about Indonesian law, including agrarian law, so they still carry out customary law in their activities. So the emergence of land mafias in the Bah Damar Village environment is due to not having proof of certificate. Where the public's ignorance about national law in terms of legal consequences and legal protection makes researchers interested in conducting research in overcoming the land grabbing phenomenon in the Bah Damar Village Environment.

Therefore, it is important to identify the problem in knowing what the consequences of unlawful acts are regarding land grabbing and how legal protection is for land rights owners from land grabbing in Indonesia. Where this research aims to determine the consequences of unlawful acts regarding land grabbing and legal protection for land rights owners from land grabbing in Indonesia.

2. Method

This research method uses normative - empirical juridical research where this research is carried out by collecting direct data from legal facts that exist in society which are directly observed to produce results that can be verified with legal theories and legal rules. (Marzuki, 2011). This research approach is directed at a case approach and a statutory regulatory approach, namely the Civil Code, Criminal Code and Basic Agrarian Law No. 5 of 1960. The data collection techniques used in this research are field studies and literature studies, namely research carried out by collecting literature with data sources in the form of primary legal data and/or secondary legal data that are related to the problems discussed in this research (Ali, 2010).

Primary legal data was obtained from the first source through field studies by conducting interviews with the village head and the people of Bah Damar Village, while secondary legal data consisted of primary legal materials, namely legal materials that are binding in terms of

statutory regulations in the form of the Civil Code, Criminal Code and Laws. No. 5 of 1960. Secondary legal materials are legal materials that provide explanations of the primary legal materials above regarding land grabbing, such as books, seminar results, results of scientific journals, opinions of scholars, legal cases relating to unlawful acts, land grabbing, land ownership and land registration, and supported by interviews with sources to develop, relate and explain this research. Meanwhile, tertiary legal materials are data materials that provide more in-depth instructions and explanations for primary and secondary data materials. Tertiary data materials are used in this case for learning such as dictionaries, encyclopedias and so on to strengthen primary data and secondary data.

This research analyzes data using a qualitative analysis approach, because the data required is not in the form of numbers, this research analyzes the data by providing a verbal description of the facts and findings which prioritizes the quality of the data collected. This research analysis was carried out by collecting primary and secondary data and analyzing it in depth using legal theories which will be related to laws and regulations based on facts and phenomena that exist in the Bah Damar community.

3. Analysis and Results

3.1 Consequences of unlawful acts against land grabbing

An unlawful act in civil law is an action or failure to do something that causes harm to another person without previously having a legal relationship, an obligation which is directed towards every person in general and by not fulfilling this obligation, compensation can be requested (Prodjodikoro, 2018). The meaning of an unlawful act in Dutch is called "onrechtmatige daad" or in English it is called "tort". The word tort actually only contains "wrong". The emergence of the term unlawful act from various other countries means that Indonesia as a former Dutch colony, the Dutch state also follows codified law from the Netherlands, Indonesia uses the formulation contained in the Civil Code Articles 1365, 1366 and 1367 concerning unlawful acts to resolve disputes that occurred in Indonesia (Fuady, 2013). Unlawful acts as regulated in Article 1365 of the Civil Code, namely every act that violates the law and brings loss to another person, requires the person who caused the loss through his fault to compensate for the loss.

Legal acts have elements that must be fulfilled in order for someone to be said to have committed a legal act, namely (E. Sari, 2022): (a) The act must be against the law; (b) The act must cause harm; (c) The act must be done in error; (d) There must be a causal relationship between the act and the loss that arises.

In the realm of civil law, land grabbing is considered an unlawful act that harms the land owner. Land grabbing is one of the land conflicts that often occurs is the use of land without proper permission or what is usually called confiscation of land belonging to other people, whether intentional or unintentional, carried out by individuals or groups which is detrimental to the land owner. Land grabbing is not a new conflict phenomenon. Land grabbing is a phenomenon that refers to the actions of a person or group of people who take over or control land that does not actually belong to them without permission (I. Sari, 2020). This phenomenon involves serious legal violations and has significant implications in the field of legal science.

Land grabbing is said to be an unlawful act, where the action causes losses, both material losses and immaterial losses. The act of confiscating land is included in material losses where the losses are material in the form of control over land (Auli, 2023). In legal practice, the truth of the statement above can be proven, that in general the injured party always receives compensation from the perpetrator of the illegal act, not only for actual losses, but also for the profits he should have received. According to civil law, a person can be said to be guilty if it is regrettable

that he has committed/not committed an act that should have been avoided. Actions that should be done/not done cannot be separated from whether or not those things can be predicted. It can be estimated that it must be measured objectively, meaning that normal humans can calculate that in certain circumstances an action should be done/not done (Lubis, 2019). Based on the opinion above, it means that an unlawful act is an act that intentionally or negligently commits an act that can be estimated or calculated by the normal human mind as an act that has been carried out or not carried out. Thus, doing or not doing can be categorized into a form of error. Another opinion states that "errors can occur, because: intentional and unintentional". An act that is intentional means that there was an intention on the part of the perpetrator or maker. The act of grabbing land carried out by unscrupulous individuals was an intentional mistake (Dewi et al., 2024).

Article 1365 of the Civil Code, this causal relationship can be seen from the sentence of an action which, due to its fault, causes loss. So that the loss arises due to an action, or the loss arises due to an action, or the loss is the result of an action. What matters here is whether the loss was the result of an action, to what extent this can be proven to be true. If there is a causal relationship between the loss and the action, then it can definitely be said that every loss is the result of an action. The consequences arising from these unlawful acts will be realized in the form of compensation for losses to victims who experience them, if their actions cause harm to other people then they must comply with the terms and elements (Rahendra & Aprilya, 2018). Compensation for material and immaterial losses is usually calculated in terms of money or having to replace goods or objects that have been damaged/confiscated according to the value of the goods/objects damaged or confiscated.

Based on Article 1366 of the Civil Code, it is stated that "every person is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness." Based on this article, there is an illustration regarding the limitations of the scope of the consequences of an unlawful act. The legal consequences of unlawful acts have consequences for the perpetrator and people who have a legal relationship that causes the unlawful act to arise (Apriani, 2021). So, the consequences of legal unlawful acts in land grabbing are: (a) Nominal compensation, where the act of land grabbing is an act that contains an element of intention which causes loss to the original land owner, then the land owner can be given a certain amount of money for material and immaterial losses. (b) Compensatory compensation, which is compensation that pays the amount of loss that has actually been experienced by the victim of an unlawful act in which the land and/or land was damaged. (c) Compensation in the form of punishment, where compensation is in a large amount that exceeds the actual amount of loss. This punitive compensation can be reported for serious or sadistic intentional offenses in the form of destruction, forgery, trespassing or fraud. Where the deliberate mistake of deceiving, taking and confiscating other people's land.

Based on the explanation above, land grabbing can be categorized as a criminal act based on Article 385 and on Article 385 of the Criminal Code which regulates criminal acts of land grabbing. This article states that every person who unlawfully seizes or forcibly detains land or goods located on it, is threatened with imprisonment or a fine. Apart from that, in the provisions of Article 167 paragraph (1) of the Criminal Code: "Any person who forces entry into a house, room or closed yard used by another person against the law or is there unlawfully, and at the request of the rightful person or his order does not leave." immediately, be 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)" (Aditya, 2020).

Meanwhile, in Article 385 of the Criminal Code, it is a crime of embezzlement of rights to immovable property, such as land, houses and rice fields. This crime is usually called the crime of *stellionaat*, which carries a maximum prison sentence of four years. Article 385 of the Criminal Code is the only article that is often used by investigators and public prosecutors to prosecute perpetrators of land grabbing. In particular, Article 385 paragraph (1) of the Criminal Code which reads: "whoever, with the intention of benefiting himself or another person unlawfully, sells, exchanges or encumbers with credit verband a right to Indonesian land, a building, structure, planting or seedling, whereas it is known that the person who has or also has the rights to it is another person (Marbun et al., 2021).

Based on this explanation, the aggrieved party can take a criminal approach that is more effective and has a deterrent effect, even though the main problem is a land issue that falls within the area of civil law, it clearly contains a person's criminal action which can be processed and charged under the Articles contained in The Criminal Code. Apart from this article, Article on Threats (if there is an element of threat in taking up land, Article on Forgery (if the perpetrator falsifies existing correspondence), Article on Vandalism (If the perpetrator destroys plants, fences, stakes belonging to the owner lawful, Article of land grabbing (If the perpetrator sells land belonging to another person legally), Article of Fraud (If there is an element of deceiving other people by deception and is against the law. Provisions of Article 406 of the Criminal Code (KUHP), a person who If it is against the law to destroy or damage something that belongs to someone else, it is punishable by a maximum prison sentence of two years and eight months (May et al., 2024).

Land grabbing that occurred in Bah Damar Village is an unlawful act that is very detrimental to some people in that area. However, the people of Bah Damar Village do not really know about land grabbing because some people in Bah Damar Village are unfamiliar with land law in Indonesia. So some of the community's land has documents, while some of it doesn't, where some of the land is customary land and some has become proprietary land. So that land mafia elements arbitrarily confiscate land for their interests. As a result, land disputes occurred between the community and elements of the land mafia.

Therefore, this research provides knowledge to the Bah Damar community that the consequences of land grabbing are that the legal owner or land owner who feels disadvantaged can apply for compensation based on Article 1365 and Article 1366 of the Civil Code. Apart from that, in the context of a land dispute, the owner can file a lawsuit to regain land rights through two civil law mechanisms, namely a lawsuit for unlawful acts or a lawsuit for vacating the land in court. Demolition of illegal buildings or other people's houses standing on someone's land can be carried out based on a court decision that has permanent legal force. The building owner can file a lawsuit against the law in the local court. Apart from that, criminal offenses can be committed under Article 136 and Article 385 of the Criminal Code.

3.2 Legal Protection of Land Tenure Right From Land Grabbing in Indonesia

Legal protection is a universal concept of a legal state. Legal protection is provided if there are violations or actions that are contrary to the law carried out by the government, whether the actions of the authorities violate the law or the public must pay attention to it. From a formal point of view, breaking the law is a form of crime. Therefore, any action that is prohibited by law must be avoided and anyone who violates it will be subject to sanctions in accordance with applicable law. Violation of land rights is taking or confiscating ownership rights to land that does not belong to them but belongs to someone else (Turnip & Amalia, 2024). One of the crimes of land grabbing is a criminal crime involving confiscation of someone else's land that is not their ownership right.

So, legal protection of land tenure rights from land grabbing in Indonesia is a very important issue in the context of agrarian law. In the formal legal framework, violations of land rights are considered criminal acts and are subject to sanctions in accordance with applicable law. This includes various illegal activities carried out by parties who try to seize or illegally obtain land rights, such as land mafia practices. Where if someone commits an act related to land, they will be threatened with a criminal offense according to the law and any form/method of obtaining rights to the land from someone that does not comply with the applicable laws and regulations (Permadi, 2023).

In the Basic Agrarian Law, land grabbing has not been regulated effectively. Thus, legal protection is needed from law enforcers in Indonesia who have an important role in enforcing the law and providing protection to land rights owners. Law enforcers also often face various challenges when discovering land mafia problems, because they not only find out about land mafia problems, but also report problems with legalizing land ownership documents. Legal certainty regarding punishment for land mafias in the form of resolving conflicts and land disputes is very important for the community to guarantee the security of their land rights and provide fair legal certainty for the community. Overcoming this difficulty requires cooperation between various government institutions, including the Ministry of Agrarian Affairs and ATR/BPN, the Indonesian Police and the Attorney General's Office. One step that can be taken to strengthen legal protection for land rights owners is to increase public awareness about their rights and the procedures that must be followed in land transactions (Nadya et al., 2023).

Land rights are a guarantee and legal protection for the rights of citizens, as is known the aim of law is order, justice and certainty, including legal protection for holders of land rights. Ownership of land rights is regulated in the Basic Agrarian Law No. 5 of 1960. Land rights are rights that give authority to someone who has the right to use or take advantage of the land. In law no. 5 of 1960, Article 4 paragraphs (1) and (2) states that on the basis of the right to control from the State, various types of land rights are determined, which can be granted to individuals, groups or legal entities, where these land rights provide authority. to exploit and use it which is directly related to the land, within the limits of UUPA and other higher regulations (Yusrizal, 2017).

One important aspect of protecting land rights in the UUPA is land registration which aims to protect citizens' ownership rights to their land. Boedi Harsono stated that the aim of UUPA is to strengthen the position of individuals in relations with their community and other community members, namely by providing written legal regulations and providing proof of land ownership, through the implementation of land registration. This is because one aspect of UUPA is land registration which is very important because it is related to the protection of citizens' property rights to their own land and the protection of legal land owners. In other words, certified land rights are very important in subjects who have land rights, because the certificate is legal evidence and an authentic deed of ownership of an object, namely land that is protected by law (Arba, 2018).

Land registration is regulated in Article 19 of the UUPA, namely to ensure legal certainty by the Government, registration is carried out throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations. Land registration is a series of actions carried out by the government to collect information about the location, boundaries, area and status of land ownership by individuals. This process involves making maps to record the location of the land, measurements to establish its boundaries and extent. As well as identifying individuals who have rights to the land by considering the evidence submitted by the party applying for rights to the land. After all physical and juridical information about the

land is registered and verified without any disputes, a land title certificate is issued as official evidence showing legal certainty regarding ownership of the land. Therefore, having a land title certificate is not only important to protect the owner's rights, but also to provide legal certainty to other parties involved in transactions or contracts involving land (Amalia, 2024a).

Based on the explanation above, legal protection for ownership of land rights from land grabbing in Bah Damar Village is carried out by land registration. Based on the results of an interview with Misran Purba, who is also the Village Head, so far some people only use the belief system and, if they register, it is done through the village head or a letter from the sub-district which legally does not have strong legal force.

So, legal education to the public about the importance of having a valid land certificate and their rights as land owners can help reduce the risk of land mafia practices in land grabbing crimes. Apart from that, there is a need for law enforcers who are funded to eradicate the land mafia in a fair and transparent manner. So that ownership rights to land can be enjoyed freely and treated as the perfect owner of the rights wishes. The owner can use it, enjoy it, destroy it, throw it away and sell it.

4. Conclusion

Land grabbing in Indonesia reflects the system's failure to protect land rights, including the land rights of the Bah Damar Village community. Where the practice of handling land grabbing carried out by the land mafia is often carried out arbitrarily which is detrimental to land owners. It is known that land grabbing is an unlawful act regulated in Article 1365 of the Civil Code and Article 385 of the Criminal Code. However, in its implementation in the Bah Damar Village community there is no balance between the sacrifices of the community and government officials in a fair manner, where there is no compensation for community losses, this is done based on power and does not follow the precautionary principle. Apart from that, the Basic Agrarian Law does not regulate land grabbing, but regulates ownership of land rights and land registration. That this is a loss for some people in Bah Damar Village in their ignorance of agrarian law. So there needs to be legal reform and positive publicity ideas in the form of land administration with socialization and cooperation is needed between the community, local government and law enforcement officials to eradicate the land mafia in land grabbing firmly and fairly.

Legal protection of ownership of land rights is carried out by land registration as regulated in Article 19 of Law no. 5 of 1960 concerning the Basic Agrarian Law. The legal protection provided to the people of Bah Damar Village is in the form of preventive protection by providing efforts to prevent legal violations by providing knowledge about the importance of land certificates as strong authentic evidence to obtain justice and legal certainty. This idea is preventative and eradicating so that it can close the loopholes of land mafia crimes against the community.

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