

# **Criminal Law in the Land Sector (Case Study in South Sumatra Regional Police)**

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## **Abstract**

One of the natural wealth or natural resources created by God Almighty that is needed for human life is land. Humans live on land and obtain food by utilizing land. Human life cannot be separated from the land. The emergence of a legal dispute is originated from the objection of the guideline of a land right both to the status of the land, its priorities and ownership in the hope of obtaining administrative settlement in accordance with applicable regulations. This study uses normative juridical research methods so that the sources used are sourced from literature and legal literature. the conclusion in this study is The modus operandi in the occurrence of land disputes usually involves a systematic network between financiers, land speculators, land certificate brokers, thugs, regional government officials, the police and of course BPN elements. Commonly used modus operandi: Use of falsified land rights; Counterfeiting Warkah; Provision of false information; Letter forgery; Fictitious buying and selling; Fraud or embezzlement; Lease; Suing land ownership; Mastering thug-style land.

### **Keywords:**

Criminal, investigators, land.

## **1. Introduction**

Land is an important natural resource for the survival of humanity, human relations with land are not just a place to live, but more than that land is a place where humans live and develop, land becomes a source for all the interests of human life. Crimes or criminal violations in land law, can be in the form of crimes and violations in the making of physical data and juridical data, for example the destruction of markers of land boundaries and changing them in other places, providing false data or false information relating to the existence of land and carried out by several people related, such as Village Heads, Sub district head, Notaries / PPAT, Camat and state administration officers at the BPN Office as well as people who request rights, they may be subject to criminal sanctions. To prove the element of error, can actually be associated with intentional acts (*dolus*) and negligence (*culpa*). Proving the existence of an element of intent is very necessary for example regarding physical data and juridical data in land registration, it is suspected that there is an error in determining the pillar / boundary stakes that meet the technical requirements in accordance with statutory regulations, because in many areas the boundary / stumbling pillars are what During this time it is believed that the community naturally be in the form of trees, river boundaries, and so on. Investigation as a series of investigation processes, intends to find a bright spot on which the perpetrators or suspects are. Article 1 point 2 emphasizes that:

"Investigations are a series of investigative actions in terms of and in the manner stipulated in this Law (read: Criminal Procedure Code) to search for and collect evidence which with evidence makes clear the criminal act that occurred in order to find the suspect. The investigation aims to protect the rights of a person suspected of being a criminal offense, where sufficient preliminary evidence is needed to make an arrest of an alleged criminal offense". (Prakoso, 2017)

The investigation process is the most crucial stage in the Criminal Justice System, where the investigation task assigned to the National Police is very complex, in addition to being an investigator as well as a supervisor as well as a coordinator for PPNS investigators. The complexity of the tasks of police investigators is increasing as the reforms in all spheres of life in Indonesia unfold. Investigators are required to successfully reveal all cases that have indicated violating the law they are handling. Besides that, investigators are also required not to violate Human Rights in conducting an investigation of someone suspected of committing a crime. Other challenges faced by police investigators not only stem from the success of bringing a case to court through the prosecutor's office, but also the possibility of being sued by the suspect and his family through a pre-trial lawsuit due to the mistake of the police investigator himself.

The land dispute case is actually a juridical area of the agrarian sector and therefore becomes part of the civil procedural law. However, it cannot be denied that in the process of violations of civil law, criminal offenses are often found by people who are related to the legal problems.

The number of cases of land disputes in which there are elements of criminal acts that occurred in the city of Palembang, as well as the importance of investigations conducted by the police in order to fulfill the rights of alleged perpetrators of criminal offenses in the field of land, the researchers felt interested in compiling research with the title "*Criminal Investigation in the Field Land (case study in South Sumatra Regional Police)*". Based on the background, the problems to be examined are:

1. What are the efforts of investigators in the South Sumatra Regional Police to uncover land crime?
2. What is the modus operandi of the perpetrators in committing crimes in the land sector?

## 2. Literature Review

### 2.1. Theoretical Basis

#### General review of criminal acts

The term "criminal offense" comes from a term known in the Dutch criminal law, *Stafbaar Feit*. Although this term is contained in the *Dutch WvS* and thus also the Dutch East Indies WvS (KUHP), but there is no official explanation about what is meant by stafbaar feit. Therefore legal experts try to give meaning and content to the term. But until now there has been no uniformity of opinion. The term *stafbaar feit* or sometimes referred to as *delict* is translated into Indonesian with various terms.

Moeljatno and Roeslan Saleh tended to translate the term criminal act, Tresna, E. Utrecht translated the term criminal event while Soedarto and various Special Criminal Laws used the term criminal act. (Wisnubroto, 2009).

Understanding or definition of the criminal according to some scholars has different opinions, but if drawn outline in essence they have the same thing in giving suffering to the criminal. While the meaning of criminal is derived from the translation of the word "Straf" which is also commonly translated as "punishment". The use of the term criminal seems more appropriate than punishment as a translation of the word *straf*, because if a *straf* is translated by law then "*Strafrecht*" should also be translated as punishment. (Hamzah, 2015).

The term criminal is often interpreted the same as the term punishment, but in actual implementation it is finally divided into 2 terms, namely:

1. Punishment, which is a general understanding as a sanction that tells or misses deliberately inflicted on someone;
2. Criminal, namely a special understanding relating to criminal law. Here the term criminal must be related to the provisions contained in article 1 paragraph 1 of the Criminal Code, commonly referred to as the principle "Nullum delictum nulla poena sine prae legi poenali". (Saleh, 2012)

Criminal is a characteristic of criminal law that distinguishes it from civil law. Dogmatically the criminal is imposed on people whose normal souls are capable of being responsible. Another difference is that in civil lawsuits the question generally arises as to how much if a defendant has harmed the plaintiff, and then what remedies are commensurate to compensate the plaintiff's loss. In criminal cases, on the other hand, how far did the defendant have harmed the community and what penalties need to be handed down to the defendant for violating the law?

Legal scholars in Indonesia distinguish the terms punishment and criminal which in Dutch is only known by one general term for all kinds of sanctions both civil, administrative, disciplinary, and criminal. Whereas the narrowly defined criminal term is related to criminal law. According to Dr. Muladi SH and Barda Nawawi Arief SH, in determining the sentence for a criminal event only concerns the area of criminal law but also concerning civil law and others. Furthermore, according to him, the term punishment can be narrowed, meaning that the punishment in criminal cases that are synonymous with punishment. In the end, he concluded that the term criminal was better than punishing the translation of the word *straf*.

From some of the definitions put forward by these scholars, a conclusion can be drawn that the criminal contains several elements and characteristics as follows:

1. The criminal nature is essentially the imposition of suffering or misery or other unpleasant consequences.
2. The criminal is intentionally given by a person or body that has the authority.
3. The crime is imposed on a person responsible for a criminal event according to the Law. (Mustafa Abdullah dan Ruben Achmad, 2016)

As for the types of crimes, their classification is contained in article 10 of the Criminal Code (Criminal Law Code) which consists of 2 types, namely:

1. Criminal principal, including:
  - a. Criminal death;

- b. Criminal imprisonment;
  - c. Criminal confinement;
  - d. Criminal fines.
2. Additional crimes, including:
    - a. Revocation of certain rights.
    - b. Confiscation of certain items.
    - c. Announcement of court decisions.

### **General overview of land**

Crimes in the land sector are often referred to as "land crimes". (Muhadar, 2011) Land crime in the Criminal Code is acts that are prohibited by statutory regulations accompanied by criminal sanctions for those who commit them. In the Criminal Code (KUHP) the forms of crimes against land and their elements are as follows: (Kazami, 2016). Delict destroys the boundary of the yard "Anyone who intends to benefit himself or others by violating the rights, destroying, moving, disposing or making so that no longer used goods used to determine the boundary of the yard, sentenced to prison for two years eight month".

There is an element of deceiving or deceiving people or the general public, namely by his actions on something that is used as a boundary markings that other people can be deceived, become mistaken about the boundaries and area of the plot of land, the act also results in unclear boundaries of the yard and change the extent of a yard from the area of origin. The criminal elements contained in this article include:

#### 1. Subjective Elements

With the intention of benefiting oneself or others and by breaking the law. Subjective elements of crime are the same as fraud (*opchtig*), extortion, threats that have a beneficial purpose. The word "with intention" denotes the "*naaste doel*" of the perpetrator, or what is also referred to in the doctrine as "*bijkomend oogmerk*" or "further purpose" of the perpetrator.

#### 2. Objective Elements

Whoever shows the perpetrators of the crime?

- a. To destroy, which is meant by destroying or an act which causes damage which results from the act cannot be used anymore;
- b. Move, an object that is used as a boundary of the yard is not in its original place, consequently it affects the area of the land;
- c. Dispose of, remove an object used as a boundary mark, and result in the escape of the boundaries and area of a yard;
- d. Making cannot be used anymore, that is an act that makes it cannot be used again as the purpose of the object made;
- e. The object, which is the boundary mark of the yard, all objects are made clearly to show the boundary of the plot of land.

### **Overview of the investigation**

The initial stage of the criminal law enforcement process or the operation of the criminal justice system (SPP) mechanism. Investigation has a very important and strategic position and role to determine the success or failure of the subsequent criminal law enforcement process. A good investigation will determine the success of the Public Prosecutor in carrying out the prosecution and subsequently make it easier for the judge to explore / find material truth in examining and trying in court. (Koto, 2011).

The definition of investigation as regulated under Article 1 Number 2 of the Criminal Procedure Code, namely:

"Investigation is a series of investigative actions in terms of and in the manner stipulated in this law to search for and collect evidence which with evidence makes it clear about criminal acts that occur and find the suspect."

Investigation is a preliminary examination activity (*vooronderzoek*) which should be focused on efforts to search for or collect "factual evidence" of arrests and searches, even if necessary it can be followed by detention of suspects and confiscation of goods or materials suspected to be closely related to criminal acts that happened. (Wisubroto A. , 2012)

The activities carried out by investigators in the investigation process as referred to in the Criminal Procedure Code, include:

1. Arrest

"Arrest is an act of the investigator in the form of a temporary restraint of the freedom of the suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and justice in matters and in the manner stipulated in this law." Arrests carried out against suspects are regulated in Article 18 through Article 19 of the Criminal Procedure Code and are carried out for the purpose of investigation or for the purpose of investigation.

2. Search

"A house search is an act of the investigator to enter a house of residence and other closed places to conduct an act of inspection and or confiscation and or arrest in the case and in the manner stipulated in this law."

Search conducted on suspects is regulated in Article 32 to Article 37 of the Criminal Procedure Code, for the purposes of investigation; investigators are authorized to conduct searches of homes, clothing and bodies. The purpose of the search was to obtain evidence, and at the same time to arrest the suspect.

3. Confiscation

"Confiscation is a series of investigative actions to take over and or keep under the control of movable or immovable, tangible or intangible objects for the purpose of proof in investigations, prosecutions and trials."

In the implementation of confiscations carried out for the purposes of criminal proceedings can be done in ways determined by the law. However, in a very necessary and urgent situation when the investigator must act immediately and it is not possible to obtain a permit in advance, the investigator can confiscate only movable objects, and for that it is obliged to immediately report to the chairman of the local District Court for his approval. (Hamzah, Hukum Acara Pidana, 2012) Confiscation of evidence is regulated in Article 38 through Article 46 of the Criminal Procedure Code where confiscation of evidence carried out by investigators can only be done with a permit from the local District Court Chair.

4. Inspection

Examination activities are one of the activities of investigators / auxiliary investigators to obtain information and clarity about criminal acts that occur and set forth in the minutes of the examination to complete the case file. The examination is carried out both on the witnesses and on the suspects. In conducting an examination of a suspect accompanied by a lawyer who is a material requirement that has been regulated in the Criminal Procedure Code.

5. Detention

"Detention is the placement of a suspect or defendant in a certain place by the investigator, or the public prosecutor or judge by his determination, in terms of and according to the manner stipulated in this law."

Detention is a form of deprivation of one's freedom of movement. So here there is a conflict between the two principles, namely the right to move a person which is a human right that must be respected on the one hand and the interests of public order on the other hand that must be maintained for many people or the community from the evil deeds of the suspect. The considerations and provisions regarding detention carried out against suspects are regulated in Article 20 through Article 31 of the Criminal Procedure Code.

6. Submitting Case Files to the Prosecutor's Office

According to Article 8 of the Criminal Procedure Code, if the investigator has finished conducting an investigation, the investigator must immediately submit the case file to the public prosecutor. Completion and submission of case files consist of two stages where in the first stage the investigator submits the case file, if it has been deemed complete then the investigator hands over responsibility for the suspect and the evidence. This activity is the end of the criminal investigation process carried out by the investigator.

### 3. Methodology

A juridical normative approach (library research) is an approach that is based on the main legal material, examines several theoretical matters concerning legal principles, legal conceptions, views, and legal doctrines, legal regulations and legal systems regarding with the thesis being discussed or using secondary data including the principles, rules, norms, and legal rules contained in the legislation and other regulations. This approach is known as the library approach, namely by studying books, legislation, and other documents related to this research. (Sugiyono, 2012)The statute approach is carried out by examining all relevant legal regulations relating to the legal issues to be written, namely research on norms contained in the Criminal Procedure Code, the Criminal Law Code.

## **4. Result and Discussion**

### **4.1. The efforts of investigators in the South Sumatra Regional Police to uncover land crime**

Efforts by investigators to eradicate land crime are:

1. The Ministry and the National Police coordinate in following up information and / or make a report on the consideration of follow-up in the agrarian / land sector and violate the spatial planning sector which is sourced from:
  - a. The results of the report from the Integrated Team both eradication of the land mafia and the liar fees;
  - b. Reports / complaints from individuals, groups and legal entities;
  - c. Reports received by the PPNS on spatial planning from the community or spatial audit results.
2. Information as referred to in number 1 is followed up by the National Police as follows:
  - a. Reports from the integrated team to eradicate land mafia and illegal fees;
    - 1) The integrated team report is contained in the police report; and
    - 2) Conduct an investigation.
  - b. Reports / complaints from individuals, groups and legal entities;
    - 1) Make a police report;
    - 2) Carry out TPTKP (First Actions at the scene of the Case);
    - 3) Perform crime scene; and
    - 4) Carry out an investigation.
  - c. Reports received by the Spatial Planning PPNS from the public or spatial audit results;
    - 5) As stated in the incident report; and
    - 6) The incident report as referred to in number 1), is reported to the National Police to be followed up.
    - 7) The Ministry and the National Police also support each other in the handling of other criminal acts that occur within the Ministry.

### **4.2. The modus operandi of the perpetrators in committing crimes in the land sector**

The existence of the land mafia is still a serious problem faced by the government and the community. The land mafia has become one of the actors that have caused land conflicts. One of the many modes, it usually involves a systematic network between investors, land speculators, land certificate brokers, thugs, regional government officials, and the police and of course the BPN. "The main mode is to buy cheap people's land that is being cultivated because the land cannot be serviced by BPN for various reasons, such as being called state land because of the land of former Western rights that have not been converted.

In this condition, usually the land mafia controls or buys cheap community land because there will be large projects on it (speculators) or in some cases precisely for the projects themselves.

Another issue is the issuance of two or three certificates on the same parcel of community land. The parties holding the certificate appear to have litigated in court.

In fact, people do not know at all that the mafia is litigating on their land. When the court ruled one of these mafias, the decision was used to execute community land.

Another common mode is sending thugs to occupy the land armed with fake girik or bulging certificates. Then, the step becomes a way to seize land by force or buy cheap.

If this condition happens, then not only the police can handle it. BPN should have the right to handle it. However, there must be an Independent Commission (including members of the Police and Community) in the BPN who inspects the land mark and then conducts a case title in it to decide which the rightful owner.

To anticipate this condition, KPA recommends that there be an immediate national land information system. Including pre-registration systems such as document services at the notary level PPAT sub district village which must be integrated in the BPN land registration computer system.

At the time of registration all processes can be monitored by the public through pre-registration documents. So that certification can be accessed and monitored, according to public information standards. BPN must not be kept closed with many pretenses made up. The national land information system must be well established, which in turn can guarantee transparency and public accountability. Thus, the mobility of the land mafia will be increasingly limited.

## **5. Conclusion**

1. Efforts by investigators to eradicate land crime are The Ministry and the National Police coordinate in following up information and / or make a report on the consideration of follow-up in the agrarian / land sector and violate the spatial planning sector which is sourced from: The results of the report from the Integrated Team both eradication of the land mafia and the liar fees; Reports / complaints from individuals, groups and legal entities;

Reports received by the PPNS on spatial planning from the community or spatial audit results. Information as referred to in number 1 is followed up by the National Police as follows: Reports from the integrated team to eradicate land mafia and illegal fees; the integrated team report is contained in the police report; and Conduct an investigation. Reports / complaints from individuals, groups and legal entities; make a police report; Carry out TPTKP (First Actions at the scene of the Case); Perform crime scene; and Carry out an investigation.

2. The modus operandi in the occurrence of land disputes usually involves a systematic network between financiers, land speculators, land certificate brokers, thugs, regional government officials, and the police and of course BPN elements. Commonly used modus operandi: Use of falsified land rights; Counterfeiting Warkah; Provision of false information; Letter forgery; Fictitious buying and selling; Fraud or embezzlement; Lease; Suing land ownership; Mastering thug-style land.

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## Biography / Biographies

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