JISS Journal of Indonesian Social Science

Vol. 5, No. 4, April 2024
E-ISSN: 2723-6692
P-ISSN: 2723-6595
http://jiss.publikasiindonesia.id/

Criminal Law Reform of The Existence of Article 378 of The Criminal Code in Land Cases (Case Study of Judgment No. 1154/Pid.B/2021/PN. JKT.SE)

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KEYWORDS
Criminal Law Reform; Defense; Land Cases

ABSTRACT
There is the criminalization of handling land disputes in Indonesia, such as in the case of Decision No. 1154/Pid.B/2021/PN. JKT.SE, namely Ir. Burhanuddin, who owns land with justifiable rights in the form of a Certificate of Ownership as a defendant and sentenced to imprisonment for 3 (three years), shows the need for criminal law reform against the existence of article 378 of the Criminal Code. With the normative juridical research method of the statutory approach, the author finds that the Criminal Act of Fraud 378 of the Criminal Code in the perspective of the Indonesian Criminal Law is connected with land regulations, explaining that Fraud, according to article 378 of the Criminal Code anyone who uses fraud or a series of lies to make someone give something, blame him, or cancel a debt but according to the legal principle lexes *specialist systematic derogate lex generalis*. While juridically, both the Civil Code and the Basic Agrarian Law do not specifically regulate if there is an error fraud in the sale and purchase of land rights, the sanction given by law is to cancel the sale and purchase deed with a claim for compensation because fraud in the deed of sale and purchase of land rights is not a criminal/criminal act that should be threatened with criminal sanctions but becomes *Depenalization*. The legal considerations in Decision No. 1154/Pid.B/2021/PN. JKT. SEL, reviewed in the renewal of the Indonesian Criminal Law, that the elements of fraud in the Criminal Code, namely objective and subjective elements of a person, can only be considered to have committed a criminal act of fraud as mentioned in Article 378 of the Criminal Code if all aspects are met. In this case, the perpetrator can only be sentenced according to his actions. Article 378 of the Criminal Code stipulates that someone who commits fraud must deceive the victim in a certain way, but in this case, the Civil Code and the Basic Agrarian Law does not explicitly regulate if there is an error.

1. Introduction

The development of land problems nationally is highly highlighted by practitioners or non-governmental organizations, where there are many land mafias/land grabbing and many reports in the Post about this. The Minister of Agrarian Spatial Planning or the National Land Agency (ATR / BPN), Hadi Tjahjanto, once emphasized that he would not be indiscriminate in cracking down on land mafia cases. Minister Hadi said he would take firm action against unscrupulous officials of the National Land Agency involved in land mafia practices and said at the audition, "brothers if there is a violation I will not hesitate to remove, due process and dismiss." (Antara & Muhtarom, 2022). However, this is very different from Decision Case No. 1154/Pid.B/2021/PN. JKT.SE**,** in this case, Ir. Burhanuddin, as the defendant, owns land located in the Subang area of West Java and has justifiable rights in the form of a Certificate of Ownership, as Ir. Burhanudin sold his ownership land with two sale and purchase agreements, and the First Sale and Purchase Agreement Deed was made between Ir. Burhanuddin as Seller with PT. Wijaya Karya Beton**,** as the Buyer, wherein making the Deed of Sale and Purchase using the services of a Notary / PPAT office with a land object/land area of 300,000 m^2 for IDR 133,500,000,000 (one hundred thirty-three billion five hundred million rupiah) and with the second Sale and Purchase Agreement Deed related to 200,000 m^2 land for IDR 89,000,000,000 (eighty-nine billion rupiah). Let's look at the definition of an agreement from the view of Wirjono Prodjodikoro. An agreement is defined "as a legal act regarding property between two parties, in which one party promises or is considered to promise to do something or not to do something, while the other party has the right to demand the implementation of that promise." while according to Sri Soedewi Masychoen Sofwan, "that the agreement is a legal act in which one or more binds himself against one or more others." and Subekti's view, regarding the definition of the covenant "that a covenant is an event in which one makes a promise to another or in which two people promise each other to do something."

In each agreement, there are 2 (two) kinds of subjects, namely, first, a human being or a legal entity who gets the burden of obligations for something, and second, a human or a legal entity who gets rights and gets the right to carry out these obligations (Khairandy, 2014). It is obvious that, in total, the land was sold by Ir. Burhanidin sold the land to PT. Wijaya Karya Beton becomes 500,000 m^2 (covering an area of 300,000 m^2 plus 200,000 m^2), and the total price is IDR 222,500,000,000 (two hundred twenty-two billion five hundred million rupiah). While the Buyer, in this case PT. Wijaya Karya Beton has just paid by transferring to Ir. Burhanudin's account is only Rp. 199.360.000.000,- (one hundred ninety-nine billion three hundred sixty million rupiah). In this case, there is still an obligation of PT. Wijaya Karya Beton that has not been fulfilled amounted to Rp 23,140,000,000,- (twenty-three billion one hundred forty million rupiah). Regarding the right of ownership of land as stipulated in Article 16 of Law No. 5 of 1960 concerning the Basic Agrarian Law has referred / in accordance with Article 19 of Government Regulation Number 10 of 1961, which has been replaced by Government Regulation Number 24/1997, which states "*every agreement intended to transfer land rights, must be proven by deed*"(Khairandy, 2014).

Everything that starts with an agreement and has been deed is not a criminal act, and the author would like to provide a view of how the Criminal Act of Fraud 378 of the Criminal Code, in the perspective of Indonesian Criminal Law, is related to land regulations. There is a lack of legal certainty regarding a dispute that begins with a fight over the sale and purchase agreement of the question case

there is a crime, so for the author to look at the case that the author raised, which has been decided at the South Jakarta P.N with Case Number "**No. 1154/Pid.B/2021/PN. JKT.SE**". Provide Legal Views/Considerations in Decision No. 1154/Pid.B/2021/PN. JKT. SEL was reviewed in the renewal of the Indonesian Criminal Law so that it should not be under the realm of crime, especially Article 378 of the Criminal Code. The expected objectives of this study are as follows:

Theoretically, it is to provide development and contribution of ideas in science in the field of criminal law, primarily philosophical, sociological, and juridical foundations, in accordance with the decision of the South Jakarta District Court No. 1154 / Pid.B / 2021 / PN. JKT.SE. Provide an overview of the Law that should be regulated in a sale and purchase agreement in the future or aspired (*Ius Contituendum*) in carrying out the continuity of carrying out the achievements stated in the contract (Pemerintah Pusat Indonesia, 1997).

The purpose of this study is to explore and analyze the need for criminal law reform related to handling land disputes in Indonesia, as happened in the case of Decision Number 1154/Pid.B/2021/PN. JKT.SE. From here, the author sees the above facts show a gap between *das sollen* and *das sein*, where the theory and practice are based on the background described above, the author is very interested in making this paper with the title "Criminal Law Reform of The Existence of Article 378 of The Criminal Code in Land Cases".

2. Materials and Methods

In the preparation method for this thesis research, the author uses normative juridical and statutory approaches, library materials, or secondary data (Mamudji & Soekanto, 2003) to analyze and find solutions to criminal law reform against the existence of article 378 of the criminal code in land cases in the South Jakarta criminal case mentioned above.

Types of Research

MetThe method or way of working in this study uses a normative (doctrinal) concept approach. The statutory approach has to do with the legal issues that are being raised in this thesis proposal, judges' decisions, expert opinions, and favorable legislation. So, it is expected that this thesis proposal looks at the reform of criminal law against the existence of article 378 of the Criminal Code in land cases in criminal cases in the case mentioned above in the South Jakarta District Court. Is it appropriate to use *"Law in Action"* and *"Law In Books*" or between "*Das Sollen"* and *"Das Sein"* as well as between criminalization and decriminalization? Is an analysis of normative law in the statement of Soerjono Sukanto and Sri Mahmud stated: "Normative legal research includes legal principles, the degree of synchronization of Law."(Pemerintah Pusat Indonesia, 1997)

Research Materials

The research material used by the author is data obtained directly through searching official documents or literature, including criminal law books and Fiduciary Guarantee books. The author needs to sort and then analyze the data against the laws and regulations. This data is called secondary data. In addition to secondary data, the data used is also data obtained through field research conducted by searching for data from related agencies in connection with problem formulation.

Data Processing Techniques

The source of data in normative legal writing is literature data. In legal literature, data sources are called legal materials. The collection technique and both secondary data in the form of primary, secondary, and tertiary legal materials were carried out through literature studies (Soemitro, 2001).

1) Primary Legal Materials, which are meant by Primary legal materials Primary legal materials are legal materials that have binding legal force, such as basic norms or rules, namely, obtained directly from interviews with defendants on behalf of the defendant Ir. Burhanudin;
2) Secondary Legal Material, which, Secondary Law means is legal material that provides an explanation of primary legal material and can help in analyzing primary legal material such as:
   (1) Indonesian Constitution of 1945;
   (2) Criminal Code;
   (3) Civil Code;
   (4) Code of Criminal Procedure;
   (5) Agrarian Tree Law;
   (6) South Jakarta District Court Decision number 1154/ Pid.B/ 2021/ PN. JKT.SE. dated March 17, 2022;
3) Tertiary Law Materials: What Tertiary Law means is legal material that explains primary legal materials and secondary legal materials such as the Big Indonesian Dictionary (KBBI) as well as legal dictionaries, journals, papers, papers, articles, newspapers, and the Internet to the issues to be discussed or researched in writing this thesis. The technique for collecting and reviewing the three legal materials is using documentary studies. Documentary studies are studies that examine various documents, both related to laws and regulations and other supporting documents.

Stages of Research

In submitting this paper, the author first identifies **the problem of** Criminal Law Reform Against the Existence of Article 378 of the Criminal Code in Land Cases (Case Study of Decision No. 1154/Pid.B/2021/Pn.Jkt.Se) initiated initially by a sale and purchase agreement **and made into Article 378 so that the author wishes** to discuss in the parable the problems that will be addressed in this thesis. Data is collected from secondary legal materials, namely data obtained by researchers from various literature visits and laws and regulations, literature books, expert opinions, and books that discuss punishment.

Data Analysis Methods

Understanding data analysis is the process of processing data in grouping and arranging data from a unity described so that themes can be found and working hypotheses can be formulated as suggested by the data. So, data analysis means trying to understand the meaning of data and get its meaning to answer or solve problems. In this study, the data that has been obtained will be analyzed through qualitative analysis through three lines of activities, namely data reduction, data presentation, and conclusion drawing or verification (Miles & Huberman, 1992). The first step is data reduction in the form of the selection process, focusing on simplifying, abstracting, and transforming "rough" data that emerges from written records in the field. The reduced data will provide a sharper

picture of the results of observations, also making it easier for researchers to find back the data obtained when needed. So, the reduction process was carried out since data began to be obtained at the beginning of the study and continued throughout the research until the expected results were obtained in this writing.

Step two is the presentation of data, which is an organized set of information that provides the possibility of drawing conclusions and taking action. The third step is to draw the findings/verification. Conclusions are also verified during the study because they are initially very tentative, vague, and doubtful, but as the data increases, the findings will be more focused. The three flows are interconnected activities and continue before, during, and after data collection or during research.

The method of data analysis is a follow-up to the data processing process and analyzed by showing the facts that occur in the field and then can compare with the description obtained from the literature, references in literature books and writings, laws and regulations that have something to do with writing this thesis. In an effort to answer or solve the problems raised in this study, qualitative data analysis methods are used because the data obtained is of quality, not quantity. After data collection, analysis is then carried out so that conclusions can be drawn that can be scientifically accounted for.

3. Result and Discussion

From the perspective of Indonesian criminal law, fraud under section 378 of the Criminal Code is related to land regulations.

Fraud is a criminal offense against property, as referred to in Articles 378 to 395 Chapter 25 Volume 2 of the Criminal Code. The principal form of fraud is stipulated in Article 378 of the Penal Code, which reads as follows: Anyone who uses fraud or a series of lies to get someone to give them something, blame them, or have their debt canceled faces up to four years in prison for fraud. According to M. Sudrajat Bassar, the method of fraud in Article 378 of the Criminal Code states:

1. Use of pseudonyms
2. Using the wrong position
3. Using gimmicks
4. Using intricately constructed lies.

It is inciting others by deception or a series of lies to give or give something to oneself, under a false name or false dignity (hoedaniheid), with the intention of obtaining illicit advantage for oneself or others. Whoever redeems a debt or cancels a debt is guilty of fraud, punishable by up to four years in prison. From a legal point of view, there is no definition of fraud other than that stipulated in criminal law. The words fraud in the Criminal Code do not provide a definition but merely detail the elements of the criminal act so that it can be considered fraud and the perpetrator can be punished.

Fraud, according to Article 378 of the Moeljatno Penal Code (2021, p. 133), is anyone who uses fraud or a series of lies to get someone to give something, blame him, or cancel a debt. Anyone who uses fraud or a series of lies to get someone to give something, blame him, or cancel a debt is charged with fraud and can be sentenced to up to four years in prison. This is based on the criminal element of fraud contained in the text of Article 378 of the Criminal Code above.

Therefore, R. Sugandhi (1980: 396-397) in (Hidayat & Farida, 2024) defines deception as " the act of a person who takes advantage of a fraud, a series of lies, a false name, a wrong situation, with the intention of gaining advantage for oneself without any right to it." Is it a series of true lies? It was a series of false sentences structured in such a way that it formed a story that looked like it.

The definition of fraud, according to the above opinion, makes it clear that fraud means fraud or a series of false statements so that someone feels deceived because of words that seem to be true. Usually, the person who commits the fraud will portray it as if it is true or accurate, but in reality, the goal is to keep the intended person away from the scam and convince them of their desire to be recognized. In fact, because that's all there is to do. They are giving a name to someone who obscures their identity or uses a false position to get people to believe what they say. Cheating in public is a highly reprehensible act, but perpetrators of these crimes are rarely reported to the police. Small-scale scams that go unreported by victims can force fraudsters to change their behavior, ultimately leading to the perpetrator becoming a large-scale fraudster.

Chapter XXV contains Article 378 of the Criminal Code under the title of Fraudulent Acts (Bld.: *Bedrog*), which is a chapter of Book II (Crimes) of the Criminal Code. Chapter XXV contains Articles 378 to 395, which regulate various kinds of acts that can be categorized as fraudulent acts. Article 378 is one type of fraudulent act that the framers of the Criminal Code considered (named) as fraud (Bld.: *oplichting*). Therefore, to show the elements of the criminal act of fraud, Article 378 of the Criminal Code must first be considered. According to the translation of the BPHN translation team, the elements of fraud are as follows:

1. Whosoever
2. with intent to unlawfully benefit oneself or others
3. by using a false name or dignity, deceit, or a series of lies,
4. encouraging others to give something to him, or to give debt or write off the debt.

In harmony with the legal principle of lex specialist, systematic derogate lex generalis (laws of a specific nature override laws of a general nature). Special criminal provisions are applicable if the framer of the law intends to treat the civil provisions as special criminal provisions. While juridically, both the Civil Code and the Basic Agrarian Law do not specifically regulate if there is an error fraud in the sale and purchase of land rights, the sanction given by law is to cancel the sale and purchase deed with a claim for compensation because fraud in the deed of sale and purchase of land rights is not a criminal/criminal act that should be threatened with criminal sanctions. Whatever the form of dispute in the Sale and Purchase Deed, let alone there is a letter of agreement between the parties to the buyer and seller of land, it must be resolved in civil law because the sale and purchase deed has become a law for the parties that make it(Abba et al., 2021; Pangesthi & Purnawan, 2021) so in the case mentioned above must be settled in civil law.

However, in this case, it has been brought into the Crime where Ir. Burhanudin was charged with Article 378 of the KHP, which reads:

> “Whoever with intent to benefit himself or others unlawfully by using a false name or false dignity by deceit or a series of lies moves another person to deliver something to him, or to give debt or write off receivables, shall be threatened with fraud, with a penalty of 4 (four) years”.

Application of Fraud in Decision No. 1154/Pid.B/2021/PN. JKT.SE

In this paper, we will discuss cases that South Jakarta P.N has decided on in Decision Case **No. 1154/Pid.B/2021/PN.JKT.SE** between Ir. Burhanudin (defendant) and **PT. WIJAYA KARYA BETON,** and Ir. Burhanudin was sentenced to imprisonment for 3 (three years). When looking at the sound of article 378 of the Criminal Code above, the question is what elements have been done by the defendant Ir. Burhanudin so that he can be charged with the Article, and we need to know where the Agreement between the Seller and the Buyer is stated in a Notary Deed, which if there is a dispute, that should be the agreement must be canceled through the civil court. Article 378 of the Criminal Code has elements in the act of fraud, in the opinion of M. Sudrajat Bassar:

a. Using a fake name;
b. False Dignity;
c. Deception;
d. A lie.

The main elements contained in Article 378 of the Criminal Code or the crime of fraud mentioned above are also called *Bedrog elements* formed in 378 of the Criminal Code to Article 395 of the Criminal Code in Book II Chapter.XXV is written using the sentence "Fraud or *Bedrog*" in Chapter XXV is used the sentence "Fraud" or "*Bedrog*" which, in fact in that Chapter regulates a number of acts or actions of a person directed at property, meaning that the perpetrator's seizure has been used in deceptive seizures or used as a musical deception.

From the description above, it is clear from the beginning of the Sale and purchase agreement and Deed to the Notary that this is a criminalization. Criminalization means that a person's actions are considered a criminal act, where the court will give the fight, or the judge handling the case can impose imprisonment. The definition of Decriminalization is the process of eliminating the nature of sentences in Convicted. Also, Decriminalization can be distinguished from Depenalization, which redefines who is threatened with a crime because of someone's actions, and the threat of fighting for the crime imposed against someone is eliminated. Still, depenalization can be brought to civil court because the criminal act has been eliminated, so the fight is brought to the civil realm and can be prosecuted towards administrative sanctions. Taking into account the existing provisions of the criminal law associated with Decriminalization, we can see in Article V of Law No. 1 of 1946 concerning the depenalization of offenses that are not expressly mentioned, which reads:

Criminal law regulations that are wholly or partially now unenforceable contradict the position of the Republic of Indonesia as an independent state or have no meaning. Must be considered as whole or in part temporarily and no longer valid.

Holding elections to achieve the results of criminal legislation is very good in the sense that attaining means and efficiency is the understanding of Criminal Law Politics. The politics of criminal law or criminal law policy in making changes and the preparation of new legal offenses or criminal acts are taken from the source:

a. Results of scientific meetings;
b. The results of studies and research on specific criminal acts in society and developing technological developments;
c. Observation and study of forms, as well as some new formats of criminal behavior in several international seminars;

d. From international conventions that have not been ratified and those that have been ratified;
e. Foreign Criminal Code and its results a comparative review.

The sources of these materials stated above are, of course, in studies that are selected and orientated also on socio-political, philosophical, and sociocultural values and are included in the interests of national goals that are behind the decriminalization reform policies that have been formulated in Article V of Law No. 1 of 1946 also need to be considered the size of decriminalization (selecting criminal law regulations) Article V:

The regulations in criminal law are essentially all or part now unenforceable, contradict the legal position of the Republic of Indonesia as an independent state, or have no meaning. They must be considered wholly or partially temporarily and will no longer apply.

This land conflict can be understood with various meanings, so its users need to be given limits so that the meaning of the term is known. In land law, the term "land" is used in a juridical sense as a meaning that has been given official restrictions by the Basic Agrarian Law. Based on Article 4 of the Basic Agrarian Law, it is stated that; "On the basis of the right to control from the State, it is determined that there are various rights to the surface of the earth called the land that can be given and owned by people." Land, in the juridical sense, covers the surface of the earth as stipulated in Article 4, paragraph (1) of the Basic Agrarian Law.

In Article 4, paragraph (2) of the Basic Agrarian Law (UUPA,) it is stated that land rights not only give authority to use a specific part of the earth's surface in question called "land." The limitation of the understanding of land with the surface of the earth is regulated in the explanation of the Basic Agrarian Law (UUPA) as in Article 1 part II number, which means land is the surface of the earth. Conflict in defense is often called dispute, according to the Great Dictionary Indonesian, dispute is anything that causes disagreement, disagreement, and disputation. The emergence of legal disputes regarding land begins with a complaint from a party (person or legal entity) containing objections and claims for land rights both to land, its priorities, and ownership in the hope of obtaining an administrative settlement in accordance with applicable regulatory provisions. When looking at the nature of the problem of a dispute in general, there are several kinds, namely:

1. Issues of priority can be established as the legal holder of rights to land with the status of right or to land for which there is no right;
2. Objection to something on the proper/evidence of acquisition used as the basis for granting rights;
3. Errors/errors in the granting of rights caused by improper or incorrect application of regulations;
4. Disputes or other issues containing practical social aspects.

Legal Considerations in Decision No. 1154/Pid.B/2021/PN. JKT. SEL, Reviewed in Indonesian Criminal Law Reform?

Elements of Fraud in the Kibab of Criminal Law:

1) Objective Elements

With the aim of unlawfully benefiting oneself or others. In simple terms, this element indicates that the offender wants to make a profit. The main goal of the perpetrator is to gain an unlawful advantage.; If other actions are required, the goal cannot yet be met. Therefore, the goal

is aimed at both profitable and against the law. The offender must realize that the profit he wants to achieve must be against the law. They are using one or more drivers of fraud (false name, false circumstances/dignity, deception, and various lies). In other words, the nature of fraud as a criminal offense is how the perpetrator encourages others to hand over goods (R. Soenarto Soerodibroto, 1992: 241).

One example of a means of locomotion used to move others is as follows:

a. Fake Name, where the given name is not necessarily different from the real name. On the other hand, if the fraudster uses someone else's name that is the same as his own, they can be blamed for fraud or a false convoluted structure.
b. Deception: Deception is an act done in such a way as to give rise to confidence in others about the truth of something unless this act is accompanied by speech rather than action.
c. False Dignity: The use of dignity or false state is when a person says that he is in a state that confers rights on the person who is in that state.
d. A series of lies, just a few words of lies, is considered insufficient to motivate. Hoge Raad asserted on March 8, 1926, that: "There is a series of lies if between the lies there is such a relationship and in order to make the story logically acceptable and accurate, the series of lies must be told in order because one lie complements the other so that they create a false picture that seems to be true. Therefore, words reinforce or justify each other.

Moving others to give up something, give debt, or clear debt is a sign of a relationship. The relationship between the delivery of goods and the means of propulsion. Hoge Raad asserted in his detention on August 25, 1923 (Soenarto Soerodibroto, 1992: 242) that: "There must be a causal relationship between the effort used and the intended surrender thereof." The delivery of an item that occurs as a result of the use of the means of propulsion is considered insufficiently proven without describing the influence caused because the use of tools of movers creates the right situation to mislead ordinary people so that they are deceived. The tools of mobilization must cause an impulse in one's soul to hand over something.

According to Moeljatno (2002: 70), the elements of fraud are as follows:

i) A person is required to pay something, create a debt, or write off an accounts receivable. By deceiving, the person who owns the item hands it over. The goods handed over can belong to others as well.
ii) The fraudster intends to gain profit without rights to himself or others. Thus, it is clear that the purpose is to harm the person who handed over the item.
iii) Victims of fraud should be motivated to hand over the item in the following ways:
    a. The delivery of the goods must have occurred due to fraud.
    b. Article 378 of the Criminal Code stipulates that a person who commits fraud must deceive the victim in a certain way.

Thus, if the elements mentioned in Article 378 of the Criminal Code are met, then the perpetrator of the fraud crime can be sentenced according to his actions.

2) Subjective elements
    a. For the benefit of oneself or others. The perpetrator must commit a moving act for the benefit of himself or others, and the element of guilt is deception.

b. Fighting the right against the law must be interpreted in a broader sense: as contrary to society's norms, that is, as violating the law or laws.

Based on the above opinion, a person can only be considered to have committed a criminal act of fraud, as mentioned in Article 378 of the Criminal Code, if all the elements are met. In this case, the perpetrator can be sentenced according to his actions.

3) Analysis of Decision No. 1154/Pid.B/2021/PN. JKT. SEL

Considering that the Public Prosecutor has charged the Defendant with an alternative charge, the Panel of Judges, taking into account the above legal facts, directly chose the First alternative charge, as stipulated in Article 378 of the Criminal Code jo Article 55 paragraph (1) 1 of the Criminal Code, the elements of which are as follows:

1. Whosoever;
2. With intent to unlawfully benefit oneself or others;
3. By using a false name or false dignity, false circumstances, or by deceit or series of lies;
4. Moving others to hand over something to him or to give him a debt or write off the debt;
5. As a person who commits, urges, or participates in acts (together doing deeds);

Considering that against these elements, the Panel of Judges considered as follows;

Ad.1. Whoever; Considering that by "whose goods" is meant any person or anyone who is a subject of the law who is in good physical and spiritual health, who can be accounted for their actions; Considering that in this case has been submitted to the trial of a Defendant named Ir. Burhanuddin, who is charged with having committed a criminal act, and the Defendant has confirmed his identity as contained in the indictment of the Public Prosecutor, then the person referred to in this case is correctly addressed to the Defendant mentioned above, so that it is not wrong person (error in persona); Considering, that in order to prove whether the Defendant is a criminal offender, further elements of the Article charged against the Defendant will undoubtedly be considered; Considering, that based on the considerations above, the Panel of Judges is of the opinion that the element of "whose goods" has been satisfied;

Ad.2. With intent to benefit oneself or others unlawfully; Considering that what is meant "with the intention to benefit oneself or others" is the existence of an intention or desire, or a will or the existence of intentionality or awareness of the Defendant in this case to benefit himself or for other people/parties;

Ad.3. By using a false name or false dignity, false state or by deceit or series of lies; Considering that this element is alternative, meaning that if one of the sub-elements has been fulfilled, then the other sub-elements need not be considered again;

Ad. 4. Moving others to deliver things to him or to give debts or write off receivables; Considering that what is meant by moving others, in this case, is an act done to influence unlawfully, so that by this action, the affected party obeys the will of the influencer;

Ad. 5. As a person who does, orders to do, or participates in doing deeds (together doing deeds), Considering that the purpose of this element is the existence of Criminal Acts committed by two or more people, where each perpetrator realizes the act; Considering, that what is meant by the aspect of participation according to Article 55 paragraph (1) 1 of the Criminal Code, is a

person who commits, orders to commit, or participates in committing criminal acts. If a criminal act involves more than one person or several perpetrators, either acting individually or together, where each perpetrator is aware of his actions and the consequences that will arise, and the actions of each perpetrator an inseparable unity, namely to realize the desired effect;

In defense of the defendant and the defendant's legal counsel, which stated that the defendant was not legally and convincingly proven and acquitted the defendant of all charges of the public prosecutor, or at least acquitted the defendant of all legal claims, the panel of judges was of the opinion that, since all the evidence attached to the defense memorandum of the defendant's legal counsel could not prove that the actions of the defendant and Muhammad Ali were actual, Moreover, it is said to have entered the realm of civil law, namely as an act of promise, even the Panel of Judges argued that the whole of it was a tool for the Defendant and Muhammad Ali so that PT. Wijaya Karya Beton Tbk. is interested in purchasing the object of the land, and similarly, as the considerations mentioned above, it turns out that the Defendant has been declared proven to have committed the act as alleged in the First alternative, so as such, the Panel of Judges does not agree with the Memorandum of Defense of the Defendant and the Defendant's Legal Counsel;

Considering, that furthermore, since the Panel of Judges did not find any reason that could eliminate the unlawful nature of the Defendant's actions, either as justifying reasons, or forgiving reasons, and the Defendant was able to take responsibility for his actions, the Defendant must be sentenced to criminal conduct for his actions; Considering, that in this case the Defendant has been subject to lawful arrest and detention, the period of such arrest and detention, shall be deducted entirely from the sentence imposed; Considering, that then, since the Defendant was detained, and the detention of the Defendant was based on sufficient grounds, it was necessary to establish that the Defendant remain in custody; Considering, that furthermore, with respect to the evidence presented at the trial, the Panel of Judges agrees with the Public Prosecutor, and its status will be mentioned in the judgment below; Considering, that in order to impose a crime against the Defendant, it is necessary to first consider aggravating and mitigating circumstances for the Defendant;

Incriminating situation:

- The Defendant's actions resulted in PT. Wijaya Karya Beton Tbk. Suffered a loss, namely not obtaining a document proving land ownership in the form of a land certificate covering an area of 500,000 m2;

Extenuating circumstances:

- The defendant was polite at the trial;
- The defendant is of advanced age;
- The defendant has never been convicted;

Considering that since the Defendant was convicted of a crime, it must also be burdened to pay the costs of the case, Taking into account Article 378 of the Criminal Code jo, Article 55 paragraph (1) 1 of the Criminal Code, and Law Number 8 of 1981 concerning the Code of Criminal Procedure, as well as other relevant laws and regulations.

4) Reform of the Law of Criminals in Land Matters

From the above ruling, the author analyzes that existing laws and regulations, including the Criminal Code, require material legal formulations that are able to form a more definite sanction on perpetrators related to criminal law against the existence of article 378 of the Criminal Code in land cases. The goal is to provide legal protection to people who really have rights. Given that in our Criminal Code, there are only a few material rules that are categorized as land crimes with elements of forgery of letters, land grabbing in the meaning stated in the Criminal Code becomes very narrow to be commonly applied when viewed in several examples of field cases that the author raises in this scientific paper. So, the author tries to present this scientific work seen from the renewal of our criminal law in the future by prioritizing the form of formulation in the concept to be able to include criminal law reform against the existence of Article 378 of the Criminal Code in land cases. In addition, in the formulation of the draft Draft Criminal Code, which has been discussed for a long time, it has not been passed into law, and there is no inclusion of land crimes in the category that the author revealed.

This is considered necessary, considering the existence of Article 378 of the Criminal Code needs special attention. The specificity is done so that there is no deep conflict between many interests (interests) because of the urge to control land excessively on the basis of economic and political interests alone. Disputes that occur over land are clearly driven by interest.

These interests in the occurrence of conflicts so that one party or both or more commit criminal acts in the land sector. Criminal suppression of elements has been committed, such as controlling, encroaching, and occupying. However, the problem is that neither the Criminal Code nor the Agrarian laws have been able to accommodate all of them in order to trap the perpetrators of this land crime, including land problems that occur individually. This land issue, of course, also involves a criminal act (straafbaarfiet), not merely a position on civil matters. However, as long as there is a criminal act that can be seen from his actions, Crime in general can certainly occur due to many things, especially crimes in the land sector. However, everything is also determined by law enforcement. Law enforcement is carried out by a provision that the law is regulatory and coercive, so the sanctions are firm.

According to Joseph Goldstein in Dellyana Shant, distinguishing criminal law enforcement into three parts, namely: Dellyana, Shant;1(988; 32) in (Rosadi & Afrizal, 2023)

1. Total enforcement, namely the scope of criminal law enforcement as formulated by the substantive law of crime.

   Total criminal law enforcement is not possible because law enforcers are strictly limited by the criminal procedure law, which includes rules for arrest, detention, search, seizure, and preliminary examination, among others. In addition, substantive criminal law may provide limitations. For example, a complaint is needed first as a condition for prosecution in complaint delicts (klacht delicten). This restricted scope is referred to as the area of no enforcement.
2. Full enforcement, after the scope of total criminal law enforcement is reduced by the area of no enforcement in law enforcement, law enforcers are expected to enforce the law optimally.

3. Actual enforcement, menurut Joseph Goldstein full enforcement ini dianggap not a realistic expectation, sebab adanya keterbatasan- keterbatasan dalam bentuk waktu, personil, alat-alat investigasi, dana dan sebagainya, yang kesemuanya mengakibatkan keharusan dilakukannya discretion dan sisanya inilah yang disebut dengan actual enforcement.

Because normatively, criminal law contains the following characteristics:

1. The existence of an order, prohibition, and ability.
2. The presence of strict sanctions.

These orders, prohibitions, and permissibles in their application to Agrarian Law have been manifestly in the form of written law so that they become favorable laws in the form of UUPA on Agrarian Principles, several laws and regulations, and the Criminal Code (Criminal Code). Law enforcement in the land sector is not only involved in the enforcement and implementation of the acquisition of land rights, but it also needs to regulate the enforcement of criminal law in the land sector related to crime. As stated by Soerjono Soekanto earlier in this study, law enforcement factors are influenced by 5 (five) factors. As a form of development specifically on land, as follows:

1. Its legal factors, which in this case will be limited to legislation only, concern the content of laws related to land regulation, including its implementing regulations.
2. Law enforcement factors, namely parties, form or apply the law.
3. Factors of facilities or facilities that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely the environment in which the law applies or is applied. Soejono Soekanto, (1983;8) in (Ardiyanto & Hidayat, 2021).

There is no need to deny that our Criminal Code is now a product of the Dutch East Indies government law, which is considered irrelevant to the application today. But until now, our government has not been able to pass a new Criminal Code as a result of our nation. According to Galuh Faradhilah Yuni Astuti, the criminal law reform itself is simply a change or reform of criminal law, which began as Dutch criminal law and became a criminal law derived from the study of Indonesian legal values (Astuti, 2015, p. 202).

Legal phenomena that tend to arise behind the occurrence of disputes, conflicts, and land cases in the midst of the community are a result of a situation/situation and conditions regarding rights and obligations and prohibitions that do not correctly apply to a land right held/owned by a legal subject (subject of rights). That is, there is an act that is then considered unlawful and a crime against various land rights as regulated by the UUPA, which results in disputes, conflicts, and land cases (Ramadhani, 2016, p. 91).

Although there has been a draft of our Criminal Law, which has been amended twice, from the latest draft in 2004, there was not a single article regarding material crimes or land crimes such as seizure as stipulated in article 167 of the Criminal Code. In this case, the criminal law policy is actually based on the mode and facts that occur in crimes in the land sector. The concept of seizure must be developed with the idea of occupying. Therefore, the author presents the

criminal policy scheme expressed by G.P.Hoefnagels in Barda Nawawi Arief, as follows: (Barda Nawawi Arief;1996;4) (Kholiq et al., 2015)
Criminal law policy is the result of government policy to implement criminal sanctions starting from the criminal process in the form of applications.

Criminal policy cannot be based only on norms, but the important thing is how to enforce crime as a form of law enforcement policy. Law enforcement (law enforcement policy), of course, must affect social life, as social policy has an impact on decreasing or even increasing criminal acts. Criminal policy should affect people's views on crimes and punishments made. The criminal policy also explicitly contains crime as a criminal act; the law can be applied, and the act is indeed a norm of crime that, when committed, hurts the sense of justice universally. However, criminal policy is not just the fulfillment of a qualification for a criminal act and punishment for an act; it is more than that. Criminal policy also contains what is behind it as a form of preventing the occurrence of a criminal act without punishment.

Land crimes are committed considering what people and groups can do to other people's land, as well as by governments and corporations on community land without appropriate compensation or not at all. Criminal law reform essentially contains meaning, an effort to reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underlie social policies, criminal policies, and law enforcement policies in Indonesia. (Barda Nawawi Arief; 1996; 31) By eliminating these values, it is necessary to look back at local conditions even though it is in the formulation of its formulation nationally.

Formulation of Criminal Law in Overcoming Criminal Acts in the Land Sector The reform of land criminal law indeed cannot be separated from the politics of criminal law. In determining the politics of criminal law, Teguh Prasetyo and Abdul Hakim Barkatullah argued that penal police or political (policy) of criminal law, in essence, how criminal law is well formulated and guides lawmakers (legislative policy), application policy (judicial policy), and criminal law implementation (executive policy). Teguh Presetyo dan Abdul Hakim Barkatullah; (2005; 2) in (Hairan & Datau, 2020).

Further reform of criminal law in legal policy Teguh Prasetyo and Abdul Hakim Barkatullah argue that legislative policy is a very decisive stage for the following stages because when criminal legislation is made, it has been determined what direction to go or, in other words, what actions are considered necessary to be made as an act prohibited by criminal law (Teguh et al.; 2005; 2) in (Hairan & Datau, 2020).

The determination of a criminal act needs or does not need to be contained in the criminal law, so according to Barda Nawawi Arief argues, 2 (two) central problems need to be considered in criminal law policy (penal policy), especially in the formulation stage, namely the problem of determining what actions should be made a criminal offense and the problem of determining what sanctions should be used or imposed on the violator According to Barda Nawawi Arief, (2002; 24) (Kholiq et al., 2015).

Provisions relating to land ownership rights as stipulated in Article 16 of Law No. 5 of 1960 concerning the Basic Agrarian Law, have referred / in accordance with Article 19 of Government Regulation Number 10 of 1961, which has been replaced by Government Regulation Number 24

/ 1997, which states "every agreement intended to transfer land rights, must be proven by a deed." Unlike what happens in the field, land crimes, which the author views as a form of criminalization, consider that the articles of the Criminal Code have not been able to accommodate. So, the author, when looking at the reality of being buried in concrete form, does not consider it an appropriate criminal act of "fraud." Penal policy materially concerns the unlawful nature of this law; Indonesian jurisprudence is not legalistic. Therefore, in formulating land crimes, it is fulfilled as stipulated in the decision of the Supreme Court of the Republic of Indonesia dated January 8, 1996, Number 42 / K / Kr / 1965, stating: "An act, in general, can lose its nature as unlawful, not based on a provision in the law, but also based on the principles of justice or unwritten and general legal principles such as three factors: (1) the state is not harmed; (2) the public interest is served, and (3) the defendant cannot profit" In terms of formulation of land crime crimes in its main element, according to Sudarto argues that in the face of the first central problem above, which is often called the problem of criminalization.

As Karl O. Christiansen stated in Nyoman Uni Putra Jaya, "the conception of problem crime and punishment is an essential part of the cultural of any society" (Nyoman United Putra Jaya; 2006; 115). The above understanding states that the concept of the imposition of criminal sanctions is based on fundamental things, namely culture and society itself, so the issue of land criminal law is considered very important and is very concerning for the cases that occur today.

Directed by the inclusion of the formulation of the criminal act of "occupying" strengthened by the element of intention (tournament), it can be categorized as a crime. As a formulation in determining land crimes, it is seen from several elements, namely:

1. The presence of a subjective element. We know that the subject in question is legal, consisting of a person (*persoonrecht*) and a legal entity (*natuurlijkrecht*). This is addressed to anyone who meets the provisions of the legislation, namely criminal law provisions. Both are seen from legal *status*, *legal personality*, and *legal capacity*. *The legal status* in question is about the status seen from the identity, either the identity of citizenship or the identity of the legal entity it was established. This includes the abuse of authority by state officials in relation to land crimes.
2. The existence of elements of good deeds in question is an act seen from intentionality (*dolus*) and negligence (*culpa*). In this case, it is necessary to qualify the difference in deeds seen from the presence or absence of intention or good faith and include in imposing sanctions (*punishment*) on the perpetrator, considering that it must be complete in what is meant by this act so that it does not cause double interpretation or interpretation by analogy.
3. The fulfillment of the next element is the existence of the object of action.

The next element concerns the sanctions imposed, which must be seen according to the subject or perpetrator, the presence or absence of actions, and the existence of aggravation in the form of intention (intentionality or negligence). Criminal sanctions can also be seen in form and duration based on the level of harm to many communities. Between perpetrators based on the quality of criminal acts, namely intentionality, need to be distinguished from negligence fraud in buying and selling land rights, the sanction given by law is to cancel the sale and purchase deed with a claim for compensation because fraud in the deed of sale and purchase of land rights is not a criminal/criminal act that should be threatened with criminal sanctions, including the

losses incurred by the victim including here, which is interpreted as the defendant if his land rights are not considered, and so on resulting in losses both materially and immaterially. However, it also needs to be formulated against perpetrators who intentionally or unconsciously claim the land as their land so that the imposition of this sanction distinguishes the severity and lightness of an act.

4. Conclusion

Criminal Fraud 378 The Criminal Code in the perspective of the Indonesian Criminal Law connected with land regulations, explains that Fraud, according to article 378 of the Criminal Code, Anyone who uses fraud or a series of lies to get someone to give something, blame him, or cancel a debt but according to the legal principle lex specialist systematic derogate lex generalis special criminal provisions are applicable if the framer of the law intends to treat such civil provisions as criminal provisions of a unique nature. While juridically, both the Civil Code and the Basic Agrarian Law do not specifically regulate if there is an error fraud in the sale and purchase of land rights, the sanction given by law is to cancel the sale and purchase deed with a claim for compensation because fraud in the deed of sale and purchase of land rights is not a criminal/criminal act that should be threatened with criminal sanctions.

Legal considerations in Decision No. 1154/Pid.B/2021/PN. JKT. SEL, reviewed in the renewal of the Indonesian Criminal Law, that the elements of fraud in the Criminal Code, namely objective and subjective elements, a person can only be considered to have committed a criminal act of fraud as mentioned in Article 378 of the Criminal Code if all aspects are met. In this case, the perpetrator can only be sentenced according to his actions. Article 378 of the Criminal Code stipulates that someone who commits fraud must deceive the victim in a certain way. Still, in this case, the Civil Code and the Basic Agrarian Law do not specifically regulate if there is an error.

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