

LEGAL REVIEW REGARDING CRIMINAL LIABILITY FOR THE ISSUANCE OF LAND RIGHTS LAWS FOLLOWING A COURT DECISION

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Abstract

The aim of criminal law is to protect and safeguard the interests of society. in a balanced manner, such as orderly, peaceful, and prosperous, through the enforcement of justice and crime prevention. This goal is achieved in various ways, including retaliation, general and specific crime prevention, development of criminals to become useful citizens, and rehabilitation social balance is disturbed by crime.

This research is normative in nature, it is a legal research method that focuses on analysis of legal norms and statutory regulations, both written or unwritten. This method uses library studies and secondary data such as laws, court decisions, and doctrines to examine the legal order legal norm system, not field research in order to interpret, explain, and evaluate the law in order to find solutions or provide a basis for establishing new rules.

The discussion in this research article is related to the issuance of a legality the basis of the land rights that have been cancelled by the court, so how legal impact or legal responsibility for the holder of legal rights which has been cancelled by a court decision, can it be requested? criminal liability in the criminal offense of embezzlement of land rights in criminal law in order to achieve the objectives of criminal law itself the creation of justice and legal certainty.

Keywords: *Criminal liability, issuance of land title, court decisions.*

I. Introduction

Upon proclaiming autonomous governance during mid-August forty-five, systematic endeavors commenced toward overhauling terrestrial regulatory mechanisms consonant with emancipation ideals. Regrettably, multitudinous impediments obstructed expeditious materialization of modernized terrestrial statutes. Addressing post-emancipation terrestrial predicaments whilst awaiting novel legislative constructs necessitated retention of colonial-period territorial codes, albeit administered via protocols harmonizing with Pancasila doctrines alongside aspirations embedded within the foundational charter's thirty-third segment. Administrative mandates eradicated persisting feudalistic alongside colonially-rooted institutional remnants.¹

Subsequently, through protracted deliberative processes, the ninth month's twenty-fourth day during nineteen-sixty marked ratification of Legislative Instrument Five/Nineteen-Sixty concerning Foundational Agrarian Stipulations. This promulgation concluded regulatory fragmentation regarding terrestrial affairs, instituting consolidated nationwide territorial codes anchored upon autochthonous traditional practices. The fifth segment proclaims: "Jurisprudential frameworks applicable toward

terrestrial, hydrological, alongside atmospheric realms derive from customary traditions, contingent upon non-contradiction with collective nationalistic governmental concerns, predicated upon solidarity principles, Indonesian socialistic ideology, stipulations embedded herein, complementary regulatory instruments, comprehensively acknowledging components originating from theological doctrines."

This foundational instrument, tethered unto the thirty-third segment of the forty-five constitutional manuscript, nullified preceding colonial-era terrestrial codes encompassing the eighteen-seventy Agrarian Enactment distinguished by exploitative market-driven liberalistic characteristics. Furthermore, dominion proclamations formerly enabling administrative seizure of unsubstantiated properties underwent revocation, supplanted through supervisory governmental prerogative concepts. Supervisory capacity fundamentally diverges from proprietorial possession. The second segment, initial subsection articulates: "Grounded upon stipulations within the thirty-third segment, third subsection of the forty-five constitutional manuscript alongside aforementioned considerations, terrestrial, hydrological, atmospheric domains encompassing embedded natural treasures undergo supreme governmental oversight constituting administrative representation for

¹ Bambang Eko Supriyadi, *Forestry Agrarian Law*, PT RajaGrafindo Persada, Jakarta, 2013, page. 38-39.

collective populace."

The elucidatory memorandum accompanying this foundational instrument, specifically numerical annotation two, subsequent subsection, declares: "Neither necessity nor appropriateness exists for Indonesian populace or governmental entities assuming proprietorial positioning. Superior suitability emerges through governmental bodies, representing administrative oversight for collective populace, functioning as territorial governance administrators."²

Via supervisory prerogatives, administrative bodies establish multifarious entitlements concerning territorial assets allocable toward residents individually, collaboratively alongside fellow citizens, or via incorporated entities. Territorial entitlements governing agrarian asset frameworks, catalogued within the sixteenth segment, initial subsection, incorporate: "Proprietorial entitlements, entrepreneurial exploitation permits, edifice construction permits, utilization permits, tenancy arrangements, agricultural cultivation permits, sylvan harvesting permits, supplementary entitlements excluded from aforementioned categories determinable via

subsequent legislation, alongside provisional entitlements referenced within the fifty-third segment."

Terrestrial contestations perpetually generate juridical complexities originating from colliding stakeholder concerns regarding administration, exploitation, or proprietorial assertions. Contemporary civilizations unavoidably confront such contestations considering amplifying territorial requisites accompanying demographic proliferation, metropolitan congregation, alongside mercantile progression. Territorial assets embody foundational components enabling Indonesian communities executing multidimensional societal undertakings. Territorial possessions mirror individual societal positioning; expansive possessions correlate with heightened communal standing, thereby establishing territorial assets as principal benchmarks appraising societal accomplishment.

Additionally, territorial assets emblemize cultural patrimony alongside represent communal ethical frameworks. Territorial expanses constitute foundational ingredients inseverable from sovereign existence. Regarding this archipelagic agrarian republic, territorial assets maintain strategically paramount positioning transcending mere ecological wealth toward determinative components facilitating affluence alongside anthropological perpetuation. Concerning Indonesian communal

² Muhammad, *Legal Review of Land Rights in the Territory of the Republic of Indonesia*, STIH Sultan Adam Banjarmasin Journal, Wasaka Law Journal, Vol. 7 No. 2, August 2019, page 488-490.

milieus, territorial assets comprise indispensable elements buttressing heterogeneous existential dimensions traversing mercantile, communal, alongside cultural spheres.³ Territorial assets become dispensed toward individuals, inhabitants, or incorporated bodies via entitlements instituted within agrarian regulatory frameworks, facilitating suitable purposive exploitation. Upon entitlement bestowal, juridical interconnections spontaneously crystallize between entitled parties alongside corresponding territorial possessions. Such juridical interconnections authorize entitled parties executing heterogeneous lawful transactions concerning territorial assets, encompassing voluntary entitlement conveyances toward alternative parties. Subsequent toward tangible possession establishment alongside juridical proprietary underpinnings, ensuing formalization guarantees administrative acknowledgment regarding territorial entitlements advantaging residents.

Possessing certification for territorial property holds significant value in safeguarding Indonesian citizens concerning their entitlements over specific parcels while fulfilling the objectives established within the Fundamental Agrarian Legislation, specifically creating foundations for juridical assurance benefiting entitlement possessors. Achieving such juridical

assurance requires conducting territorial documentation processes. This principle receives reinforcement through "Section 19 subsection (1) within the Fundamental Agrarian Legislation," stating that territorial documentation shall be executed by governmental authorities across all regions within Indonesian jurisdiction following stipulations outlined in Governmental Directives for ensuring juridical assurance. Additionally, "subsection (2)" elaborates that surveying, cartographic representation, record maintenance, entitlement documentation, alongside conveyance procedures and issuance of legitimate verification serving as compelling substantiation, constitute sequential components of territorial documentation activities. The objective behind territorial documentation involves delivering juridical assurance alongside juridical safeguarding for entitlement possessors. Juridical assurance encompasses objects, subjects, and regulatory frameworks connected with juridical frameworks. This concept appears within "Section 19 subsection (1) of the Fundamental Agrarian Legislation read together with Section 3 of Governmental Directive Number 24 issued in 1997."⁴

Land registration in Indonesia, where certificates serve

³ K. Wantjik Saleh, *Your Rights to Land*, Ghalia Indonesia, Jakarta, 1982, page 15.

⁴ Rezaki Ardila Rajab, *Land Title Certificates in Legal Certainty of Land Registration*, FH UNDIP, Notarius Journal, Volume 13 Number 2 (2020), page 646

as proof of ownership for rights holders, is not absolute. This means that certificates as proof of ownership can still be revoked if there are legal or formal defects in the issuance. Certificates also serve as written proof of ownership of land rights, providing a guarantee of the letter.

When land title certificates are acquired through costly and complex procedures, they are expected to truly guarantee legal certainty for the public. However, even after a parcel of land has been certified as proof of ownership, other parties who believe they are the rightful owners or who assert a competing claim may still challenge that ownership by bringing a lawsuit and requesting the revocation of the issued certificate, based on a final and binding court judgment. For this reason, land certificates must always be issued and obtained in good faith.

Land registration is essential for determining whether a person has the right to own land. Land registration is crucial because it provides clarity and information to avoid problems in the land sector, particularly regarding land status.

Under "Basic Agrarian Law Number 5 of 1960", land registration is understood as the registration of land rights holders, which includes the preparation of maps and records of land parcels that set out the legal status of the land, its size and location, the parties holding the rights, the history of ownership, and any legal acts affecting it. This system is intended to provide

comprehensive information about land parcels that have been formally recognized or designated by the government, and also to facilitate the recording of parcels whose physical or legal data are incomplete, contested, or not yet supported by a land title certificate. In this sense, land registration serves as a mechanism for citizens who possess land rights to obtain formal recognition and documentation of those rights.

When land registration is effectively carried out, and when the public actively participates in land registration programs, various practical benefits arise, encouraging more people to register their land. The key means of proving the existence of land rights is to have those rights officially recorded by submitting an application to the Land Office (or relevant land authority) so that land held or controlled by an individual or legal entity can be entered into the land register in the name of the legitimate rights holder.

What matters most in the land registration process is that each controlled parcel of land has a clear land identity record, containing information such as the type of land rights, the size and condition of the land, its boundaries and location, the person or entity that owns or controls it, as well as other distinguishing characteristics.

The provisions of "**Article 19 of the Basic Agrarian Law**" are intended to secure legal certainty by requiring the government to carry

out land registration across Indonesia in accordance with Government Regulations. However, there is a conceptual distinction between "Article 19 of the Basic Agrarian Law" and "Government Regulation Number 24 of 1997" regarding how this legal certainty is guaranteed. Under "Article 19 of the Basic Agrarian Law", land registration is conducted to provide legal certainty and to result in the issuance of a certificate as evidence of rights over a specific parcel of land. In contrast, "Article 32 of Government Regulation Number 24 of 1997" stipulates that a certificate, although intended to guarantee legal certainty, may still be contested by another party who claims ownership of the land, provided that such party is able to substantiate their claim.

Consequently, once land registration has been completed, the land certificate functions as the principal piece of evidence in the event of a dispute. Legal certainty in this setting ultimately depends on the judge's authority to examine and adjudicate the case by evaluating the evidence submitted by both sides in court. If the parties are able to demonstrate the elements of the registered land such as the type of land rights, the identity of the rights holder, the physical characteristics of the land, any encumbrances attached to it, and the relevant legal acts that have occurred then the judge can determine which party is entitled to the land on the basis of the proven evidence and the facts established during the trial.

Therefore, the court has the authority to make a decision to determine who has the right to a plot of land.

Changes and corrections can be made if the land registration is inconsistent with, or does not comply with, applicable law, or was not conducted in good faith.

Proving ownership of an object requires concrete evidence, and the most common forms of evidence are administrative, physical, and legal evidence, including land ownership. If there is no valid evidence, then, based on administrative and legal evidence, the person who owns the land and all its objects is considered non-existent. However, if there is valid evidence, the claim can still be denied or considered invalid by another party as long as the denying party can present complete evidence, or vice versa. After comparing the strength of the evidence, the holder of the most complete evidence and the method of transfer of rights and the creation of this evidence is the true legal owner.⁵

A land title certificate functions as powerful evidentiary proof in legal disputes, so long as no opposing party is able to demonstrate the contrary. The physical and juridical information recorded in the certificate is presumed to be accurate. If the party challenging the certificate fails to substantiate their allegation, the data contained in the certificate must be treated as correct, both in everyday

⁵ *Ibid*, page. 648.

legal relations and in judicial proceedings. This principle is affirmed in the elucidation of "Article 32(1) of Government Regulation Number 24 of 1997".

However, a certificate is not absolute evidence, as in practice, a certificate can still be declared invalid or legally ineffective by a court decision. Therefore, interested parties can file a lawsuit with the court to request a determination that a land title certificate is legally ineffective.

The clarification of "Article 32(2) of Government Regulation Number 24 of 1997" states that the negative land registration system has inherent weaknesses. Even when a person's name is listed as the holder of a land right in the land register and on the certificate, there remains the possibility that another party may bring a lawsuit asserting that they, in fact, have a right to the same land. In this case, the registered party remains bound by legal principles, while the other party attempts to prove their good faith regarding the method of land acquisition and their position as rights holder by using the certificate as evidence. To address the weaknesses of Indonesian land law, which is rooted in customary law, a special legal resolution mechanism is used. Under this provision, a five-year time limit can be applied if three conditions are met: first, land registration is conducted legally and produces land legal products in the form of land certificates that complies with statutory regulations,

second, the initial registration process must include an announcement of the land that has been inspected before the land register is issued if this stage is not carried out or does not comply with the provisions, the certification process is legally flawed and third, the applicant who controls the land must fulfill the elements of good faith and demonstrate physical/sporadic control of the land. If all these requirements are not met within a five-year period, then the provisions cannot be applied.

The application of the provisions of Article 32 paragraph (2) of Government Regulation Number 24 of 1997 in concrete cases to be assessed by a judge must consider the fulfillment of all applicable requirements, as is the case with the application of legal jurisdiction to customary land, as this provision remains at the Government Regulation level. Judges are tasked with assessing, examining, and adjudicating within a balance of the interests of the disputing parties, and within the framework of national land law, this provision should ideally be further regulated by statutory provisions. Aspects that must be proven regarding land title certificates include: First, the type of title stated in the land certificate must be ascertained: whether the land is a Right of Ownership, Right of Building Use, Right of Use, or Right of Management, including the validity and expiration of these titles

(except for Right of Ownership). The type of title can be specified on the cover of the certificate or land book and in the first column at the top of the land register.

Second, the Rights Holder's name can be read in the second column above the land certificate. If the rights holder changes, or if there is an inheritance or a gift, the new data must be entered and the old data crossed out.

Third, Physical Information: The certificate contains a measurement letter, so to understand the certificate, we need to know the area, length, and width of the land. Furthermore, the measurement letter also describes the physical shape of the land, whether it is hexagonal or rectangular, and so on. Location and boundaries

The land boundaries are also described in the certificate, as well as the condition of the land (for example, mountains or swamps) and the buildings on the land, or whether there are leasehold rights or building use rights. This may also be noted on the certificate if there are any court-ordered encumbrances.

Fourth, events related to specific land are also recorded by the land office on the certificate, such as a gift, sale, auction, or contribution (inbreng) into a company, or if there is a seizure or inheritance, and the aforementioned encumbrances and their cancellation.

Considering Supreme Court jurisprudence, it has been clarified which agency has the authority to

cancel a certificate, namely: Supreme Court Decision Number 350K/Sip/1968 dated May 3, 1969, Supreme Court Decision Number 350K/Sip/1968, 1969. Declaring that a certificate issued by a land office is legally void is not within the court's jurisdiction but is merely administrative in nature. Therefore, the winning party is obliged to request cancellation of the certificate from the land office based on a legally binding court decision.

Supreme Court Decision No. 716K/Sip/1973 dated September 5, 1973 (Supreme Court Decision No. 716/Sip/1973, 1973) stated that the issuance, revocation, and cancellation of land certificates are within the authority of the Land Registration and Land Registration Supervision Office, not the District Court.

Based on these two Supreme Court decisions, the court must assess the land title from all angles, not just who owns the title. In examining, verifying, and proving the origin of land ownership listed on the certificate, the judge must first determine whether the information contained in the certificate is true and whether the certificate has legal force. The judge may consider the information contained in the certificate to be true, and if the facts are true, it will have legal force, and the existence of other, stronger evidence that can provide proof.⁶

A crime is an act committed

⁶ *Ibid*, hlm. 651

by a person for whom he or she is responsible, which is prohibited, ordered, or permitted by law and carries a criminal sanction. The key to distinguishing whether an act is a crime or not is whether it carries a criminal sanction or not.⁷ In order to determine whether an act is a criminal act, according to Moeljatno, the following elements of a criminal act can be identified:

1. The act must be a human act;
2. Such acts should be prohibited and punishable by law;
3. The act is against the law (against the law);
4. Must be done by someone who can be held accountable;
5. The act must be blamed on the perpetrator.

Meanwhile, the elements of a crime are:

- a. Subject (person/legal entity);
- b. Fault (prohibited act);
- c. Unlawful (and act);
- d. Act prohibited or required by law/regulation, and violation of which is punishable by law;
- e. Time, place, and circumstances;
- f. (other objective elements).⁸

Meanwhile, according to EY Kanter and SR Sianturi, the elements of a crime are:

1. Subject;
2. Error;
3. Unlawful (and actions);
4. An action that is prohibited or

required by law/regulation and violations of which are punishable by criminal law;

5. Time, place and circumstances (other objective elements).⁹

According to Loebby Loqman, there are three possibilities in formulating a criminal act: first, a criminal act is formulated with both its name and elements. Second, a criminal act is formulated only with its elements. And third, a criminal act only mentions its name without mentioning its elements. For crimes that do not mention their elements or do not mention their names, the name and elements can be determined through doctrine.¹⁰

This is where the difficulty in solving a criminal case is often encountered, especially if the criminal case being handled by law enforcement is intertwined with a civil case in the same case. One of the most common cases law enforcement officers face in the field, particularly in Riau Province, is theft or vandalism on disputed land. In such cases, investigators often have serious doubts about whether the civil case should be resolved first, as stipulated in the principle of *ultimum remedium*, or whether the case should be continued without waiting for the civil case regarding the disputed land ownership to be resolved.

⁷ Erdianto Effendi, *Indonesian Criminal Law*, An Introduction, Refika Aditama, Bandung, 2010, page. 100

⁸ Loebby Loqman, *About Criminal Acts and Some Important Things in Criminal Law*, Jakarta, p. 13. (No year and no publisher)

⁹ EY Kanter and R Sianturi, *Principles of Criminal Law in Indonesia and Their Application*, AHM-PTM Alumni, Jakarta, 1982, page.211.

¹⁰ Loebby Loqman, *Place: Cit.*

II. Problem Formulation

1. What is the legal power of the owner or rights holder over a land object?
2. What is the criminal responsibility for the rights holder of a land object who, according to a court decision, declares the basis of the rights to be invalid and has no legal force?

III. Research Methods

A method is a procedure or way to find out something and has systematic steps.¹¹ According to Soerjono Soekanto, Methodology, as described by Soerjono Soekanto, is essentially a set of directions that guides scholars in examining, interpreting, and making sense of the reality that surrounds them.¹² In this view, a research method refers to the concrete steps used in carrying out a study, such as locating sources, documenting findings, formulating problems, examining the data, and preparing the final written report.

This study is categorized as normative research, which Soerjono Soekanto characterizes as library-based research. In this normative legal approach, library materials serve as the primary source of information, and within the framework of research methodology, these materials are

treated as secondary data.¹³

Normative research is conducted to find legal principles, principles legal principles and legal norms, making it more theoretical and conceptual in nature. According to Soerjono Soekanto, this normative research is conducted using secondary data.

IV. Research Results and Discussion

1. Legal Power of the Owner or Rights Holder of a Land Object.

Land is inseparable from human existence in daily life; in fact, people interact with land almost continuously. Every person depends on land, not only while they are alive, but even after death they still require it for burial.¹⁴ Because of this constant and fundamental need, conflicts over land frequently arise between individuals. To prevent and resolve such conflicts, it is necessary to have legal norms that govern the relationship between humans and land. Disturbances to interests or conflicts must be avoided, prevented or not allowed to continue because they will disrupt the order of society. Humans will always try to keep the natural order of society in a balanced state, because a

¹¹ Husaini Usman and Purnomo Setiady Akbar, *Social Research Methodology*, (PT Bumi Aksara, Jakarta, 2003), page. 42.

¹² Soerjono Soekanto, *Introduction to Legal Research*, (UI Press, Jakarta, 1986), p. 6.¹³ Soerjono Soekanto, *Normative Legal Research: A Brief Overview*, (RajaGrafindo Persada, 14th Edition, Jakarta, 2012), page. 24.

¹³ Soerjono Soekanto, *Introduction to Legal Research*, (UI Press, Jakarta, 1986), p. 6.¹³ Soerjono Soekanto, *Normative Legal Research: A Brief Overview*, (RajaGrafindo Persada, 14th Edition, Jakarta, 2012), page. 24.

¹⁴ Mudjiono, *Agrarian Politics and Law*, First edition, Liberty, Yogyakarta, 1997, p. 19.

balanced state can create an atmosphere of order, peace, and security which is a guarantee of survival.

Likewise, the management of human interests related to land needs. In everyday life, many land issues are encountered that require serious attention. This can include land products, the history of land acquisition, control, ownership, use and utilization of land, land acquisition, and so on. As explained above, all issues require a comprehensive solution. If the problem is in the land sector, due to its existence, land has a very close relationship with human life and livelihood. Various efforts are made to resolve disputes, both through deliberation and through the courts. Criminal acts related to disputed land will occur because they involve objects located on the disputed land. Therefore, crimes that may be related to the object of the dispute are crimes against property. This property can include plants, houses, or buildings standing on the land. Criminal acts against property, such as theft and vandalism, are closely related to the ownership of the property. Criminal acts against property on land are related to who owns the land. Therefore, the issue of criminal acts on disputed land often gives

rise to problems in practice.¹⁵

The regulation of criminal offenses against property aligns with the function and nature of criminal law as *ultimum remedium*. Criminal law essentially does not have its own legal principles but rather complements the principles of other legal fields. Its existence serves only to strengthen the enforcement of other legal fields. Andi Hamzah and Sumangelipu state that criminal law exists to ensure compliance with legal provisions such as those contained in civil, commercial, and constitutional law. Sanctions for violations of these laws are necessary. Therefore, it is often said that criminal law does not contain its own principles. For example, the rule that says you shall not steal or take another person's property is actually a civil law principle, namely the protection of property rights.¹⁶

According to "**Article 1 paragraph (20) of Government Regulation No. 24 of 1997 on Land Registration**", a land certificate is a rights-proof document as referred to in "**Article 19 paragraph (2) letter c of the Basic Agrarian Law**", which applies to land

¹⁵ In the afternoon, *Settlement of Criminal Acts Occurring on Disputed Land*, Journal of Legal Studies, Volume 3 No. 1, page. 4.

¹⁶ Andi Hamzah and A. Sumangelipu, *The Death Penalty in Indonesia: Past, Present, and Future*, Ghalia Indonesia, Jakarta, 1984, page. 1.

rights, management rights, waqf land, ownership of apartment units, and mortgage rights that have been entered into the relevant land register. Furthermore, **"Article 32 paragraph (1) of Government Regulation No. 24 of 1997"** affirms that a certificate is a rights-proof document that possesses strong evidentiary value with respect to the physical data and legal data it contains, as long as such data corresponds to the information set out in the survey/measurement document and the applicable land register.

Beyond these statutory provisions, the notion of a land certificate is also elaborated in legal scholarship. Ali Achmad Chomzah, for example, explains that a land certificate is an official document issued by the government that serves as a legal guarantee over a specific parcel of land for its rights holder. The issuance of this certificate is intended to ensure legal certainty for the person or entity holding those rights.¹⁷ This proof of title is called a land certificate and serves as a strong means of proof, meaning that the information contained therein has legal force and must be deemed true by the judge, provided there is no other evidence to the contrary or any

indication that the rights holder is someone other than the person listed on the certificate.¹⁸ Based on the definition of a certificate as explained in laws and regulations and expert opinion, the author concludes that a land certificate constitutes legal proof of ownership in accordance with the provisions of the law regarding land ownership and serves as strong evidence. This definition emphasizes two main elements:

- 1) As proof of rights, in its position as proof of rights, a land certificate can show which legal subject is considered to have the right or to be the owner of an object in the form of land;
- 2) Because the certificate serves as powerful legal evidence, whenever a lawsuit or judicial claim arises concerning a parcel of land that already has such a certificate, all of the particulars stated in that certificate are presumed accurate and possess strong probative force, unless and until they are refuted by other evidence.¹⁹

Regarding the first and second elements, in the author's opinion, they are interrelated.

¹⁸ *Ibid*, page. 57

¹⁹ Arifin Bur and Desi Apriani, *Certificates as a Strong Means of Proof in Relation to the Land Registration Publication System*, UIR Law Review, Jakarta, 2017, page. 137.

¹⁷ Ali Achmad Chomzah, *Agrarian Law (Indonesian Land) Volume 2*, Prestasi Pustakaraya, Jakarta, 2005, page. 57.

If a land certificate serves as proof of title, then the certificate serves as evidence for the rights holder to prove matters inherent in a plot of land, such as who the owner is and information regarding the condition of the land in question, including its area, location, boundaries, and so on.

The rules contained in "Article 32 paragraph (1) of Government Regulation Number 24 of 1997" are not free from shortcomings. The State does not guarantee the correctness of the physical and juridical data set out in the certificate, and the holder of the land certificate is not fully protected, because at any time they may be sued by another party who feels harmed by the issuance of that certificate.

In order to overcome these weaknesses, to strengthen the legal protection of certificate holders against third-party claims, and to elevate the certificate to the status of conclusive evidence, "Article 32 paragraph (2) of Government Regulation Number 24 of 1997" stipulates that the certificate shall constitute final and binding proof of title if a number of cumulative requirements are satisfied, namely:

a) The certificate has been lawfully issued and registered in the name of an individual or a legal entity;

b) The land was obtained on the basis of good faith;

c) The land is actually possessed and controlled in a concrete, factual manner;

d) For a period of 5 (five) years from the date the certificate was issued, no party has filed a written objection with the certificate holder and the head of the local district/city land office, nor brought a lawsuit before a court concerning the ownership of the land or the issuance of the certificate.

In essence, "Article 32 paragraph (2) of Government Regulation Number 24 of 1997" provides that when a land certificate has been lawfully issued for a particular parcel in the name of an individual or legal entity who obtained the land in good faith and actually possesses it, any other party claiming rights over the same land can no longer demand the enforcement of those rights if, within 5 (five) years from the date of issuance of the certificate, they have neither submitted a written objection to the certificate holder and the Head of the relevant Land Office nor filed a lawsuit in court concerning the possession of the land or the issuance of the certificate.

According to Irawan Soerodjo, once these conditions are met, the certificate enjoys full legal validity. The rule that a

land certificate cannot be challenged after a five-year period is seen as a mechanism that strengthens legal certainty and offers protection to certificate holders. At the same time, he points out that this policy also entails risks and may fail to safeguard members of the public who lack a proper understanding of land law. The practice of announcing the issuance of land certificates at the village or sub-district office and in the mass media does not necessarily ensure that everyone concerned becomes aware of such announcements, since many people are not used to checking notice boards or following such information in the press.

Even so, the five-year limitation on bringing claims against a certified parcel of land should, in his view, be positively received, because it creates legal stability and a sense of security for good-faith holders of land certificates. In practice, there have often been cases where certificates that are more than 20 years old (including extended periods of validity) are still contested through court proceedings. In both the District Court and the Administrative Court, defendants have frequently failed when raising objections based on the expiration of the time limit for bringing a claim, because judges consider that Indonesia's National Land Law is rooted in

customary law, which does not recognize the doctrine of *verjaring* (prescription/limitation by lapse of time).

With the introduction of the five-year period in "**Article 32 paragraph (2)**", any defendant in a land dispute whose certificate has been in force for at least five years can invoke an objection that the claim has been filed out of time. These provisions are therefore expected to reduce the number of land disputes. Furthermore, Irawan Soerodjo emphasizes that, although "Government Regulation Number 24 of 1997" stipulates that after 5 (five) years from its issuance a land certificate can no longer be challenged, this rule actually enhances legal certainty and provides relatively stronger legal protection for rights holders.²⁰

2. Criminal liability for the holder of a land object's rights who, according to a court decision, declares the basis of said rights to be invalid and of no legal force.

The criminal law currently in force in Indonesia is codified, meaning that most of its provisions are set out in a legal code (*wetboek*) called the Criminal Code, according to a specific system. Criminal provisions outside this *wetboek*

²⁰ Nur Oloan, *Legal Protection for Land Certificate Holders*, UMTS Padang Sidempuan Journal, 2016, News Edition 50, page.6.

are all subject to the system used in the Criminal Code, as outlined in Article 103 of the Criminal Code.²¹

According to Chairul Chuda, a crime is an act or series of acts that can be subject to criminal sanctions. He also explained that, in terms of the term, a crime is simply the nature or characteristics of the act. The nature or circumstances of the perpetrator who committed the act fall under another issue, namely criminal responsibility.²² According to Moeljatno, a criminal offense is an action that violates a legal norm which expressly forbids it, where the norm is accompanied by a threat of a particular punishment for anyone who breaches that prohibition. The trajectory of legal development in Indonesia, especially in the field of criminal law, shows a tendency toward increasing specialization, seeking to regulate nearly every sphere of human activity. This growth of legal frameworks carries the risk of what can be described as a “legal explosion”: the continual expansion of legislation into new areas, gradually displacing other social mechanisms of control that previously operated within the community.²³

In criminal law, accountability is understood as criminal responsibility referred to in Dutch as “toerekenbaarheid” and in English as *criminal responsibility* or *criminal liability*. This concept concerns the imposition of a sanction on an offender for conduct that breaches a legal prohibition or brings about a situation that the law forbids. Thus, criminal responsibility is essentially about attributing and transferring the punishment prescribed for a particular offense to the individual who committed that offense.

According to Simons's formulation, a *strafbaarfeit* must meet the following requirements: it is a human act, the act is *wederrechtelijk* (unlawful), it was committed by a person who can be held accountable (*toerekeningsvatbaar*), and that person can be questioned. Holding someone accountable in criminal law means imposing a punishment that objectively applies to a criminal act subjectively on the perpetrator. Criminal responsibility is determined based on the perpetrator's culpability, not solely on the fulfillment of all elements of the crime. Therefore, fault is a determining factor in criminal responsibility and is not merely viewed as a mental element in a criminal

²¹ Moeljatno, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2008. page. 17.

²² *Ibid*, page.193

²³ M. Said Saile, *Investigation of Certain Criminal Acts*, Restu Agung, Jakarta, 2009, page.

act.²⁴ If someone is found guilty, this is a matter that concerns criminal responsibility.²⁵

According to Mulyatno, the term punishment comes from the word *straf*, while the term punished comes from the word *gestraf*, which is a conventional term. He disagrees with these terms and prefers to use the term *penal* to translate the word *straf*, and the term *threatened with criminal* to replace the word *gestraf*. According to him, the word punishment is translated as punishment, so criminal law should be understood as law that is criminal in nature. He further explained that being punished means being treated according to both criminal law and civil law. Punishment is the result or consequence of the application of the law, which has a broader meaning than criminal law alone, because it also includes judges' decisions in the realm of civil law.²⁶

The conditions for criminal responsibility include:

- 1.

Intentionally (*deception*).

Criminal Code (*criminal code*) In 1809 it was stated: intentional is the will to do or not do an act that is prohibited or ordered by law. In *Explanatory Memorandum (Mvt)* Minister of Justice at the time of submission *Criminal Code* In 1881 (which answered the 1915 Indonesian Criminal Code), it was explained: intentionally is defined as consciously intending to commit a particular crime. According to the theory of knowledge or the theory of imagination, humans cannot possibly intend a consequence because humans can only desire, hope, or imagine that a consequence is intentional if a consequence resulting from an action is imagined as the intention of the action and therefore the action in question is carried out in accordance with the imagination that has been made beforehand. The theory emphasizes what the perpetrator knows or imagines, namely what will happen when he acts. In contrast to the theory of knowledge, the theory of will, intentional is the will to realize the elements of the crime in the formulation of the law. There are two other terms related to intentional,

²⁴ Chairul Huda, *From No Punishment Without Fault To No Criminal Responsibility Without Fault*, Kencana Prenada Media, Jakarta, 2006, page. 4

²⁵ Admaja Priyatno, *Legislative Policy on the Corporate Criminal Liability System in Indonesia*, CV. Utomo, Bandung, 2004, page. 15.

²⁶ Muladi, *Crime and Punishment*, In *Muladi and Barda Nawawi Arief, Criminal Theories and Policies*, Bandung, Alumni, 1984, page. 1.

namely intention(*forehouse*)and with advance planning(*measure pre-act*). In Article 53 of the Criminal Code concerning Attempts, it is stated that attempts to commit a crime are criminalized if the intention to do so is evident from the start of the implementation and the failure to complete the implementation is not solely due to one's own will.

As for the division of intentional types, which are traditionally divided into three types, namely:

- a. Intentionally as an intention(*intent as an eyemark*);
- b. Intentionally with awareness of certainty(*intent with awareness of business or necessity*);
- c. Intentionally with the awareness that it is possible that it will happen(*intent with a sense of wariness*)

2. Negligence (*Guilt*).

The law does not provide a direct definition of negligence. However, it can be understood from the Explanatory Memorandum, which states that negligence (*culpa*) falls between intentional and unintentional acts. According to Hazewinkel Suringa, criminal acts resulting from

negligence are pseudo-offenses, thus requiring a reduced penalty. Negligence lies between intentional and unintentional acts. The Government's response memorandum (MvA) states that a person who commits a crime intentionally uses their own capacity, while a person who commits a crime through error (*culpa*) uses the capacity they should have. Furthermore, criminal acts resulting from negligence are divided into two types in legal formulation: first, negligence that results in consequences; second, negligence that does not result in consequences, but the negligent act itself is the criminal offense. The difference between the two is quite easy to understand: for negligence that results in consequences, the criminal act of negligence is created, for example, under Article 359 of the Indonesian Criminal Code. Whereas for negligence that does not result in consequences, the criminal penalty applies to the negligent or careless act itself.

3. There is no reason to remove the criminal sentence.

One of the reasons for holding someone criminally responsible is whether or not the person has a reason to eliminate the criminal

penalty. In the Criminal Code, it is contained in Chapter I Book III regarding matters that eliminate or aggravate the imposition of criminal penalties. As is known, the Criminal Code currently in force can generally be divided into two general parts contained in the first part (concerning general regulations) and a special part consisting of two books as contained in the second book (concerning crimes) and the third book on violations (which applies specifically to certain criminal acts as formulated in the article).

Civil land ownership in Indonesia is primarily regulated by civil law and agrarian law. In the civil realm, ownership is governed by property rights, which grant the owner the freedom to enjoy and act upon their land as long as they do not violate the law. According to agrarian law, property rights are the strongest and most important rights. hereditary, and ownership is proven by a land certificate issued through the registration process at the Land Office.

Criminal liability for land certificates declared invalid by the court focuses on elements of the act of resistance criminal law underlying the issuance of the certificate, like document forgery or fraud, not just invalid status certificates in civil or state

administrative law. Land certificates acquired through bad faith may be annulled if they suffer from legal defects, such as falsified documents, procedural irregularities, overlapping titles, or the filing of a claim by a party who has been harmed. Although a certificate functions as strong evidence of title, it is not absolute; it can still be challenged within a certain period if legal problems arise. The annulment process is carried out by submitting a written request to the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (BPN) through the competent local Land Office.

The cancellation of land rights means revoking the decision granting those rights or invalidating the land title certificate because that decision contains administrative defects in its issuance, or in order to enforce a court ruling that has obtained permanent legal force (*in kracht van gewijsde*). Beyond administrative grounds, a land title certificate may also be cancelled if another party is able to prove that the land in question is, in law and in fact, his or her property, and this is confirmed by a court judgment that has become final and binding (*in kracht van gewijsde*).

Land certificates that have been revoked by the court are not automatically void. Interested parties must submit a cancellation request to the

National Land Agency (BPN) by attaching a copy of the legally binding court decision. Certificates that are cancelled due to administrative legal defects, overlapping certificates, or other reasons must go through this process to can be removed from land registration.

The normative basis for revoking land rights, especially Ownership Certificates, is found in several instruments: Law Number 5 of 1960 on the Basic Agrarian Principles, Government Regulation Number 24 of 1997 on Land Registration, Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Ownership of Apartment Units, and Land Registration, as well as Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 on the Handling and Resolution of Land Disputes.

The coexistence of these overlapping rules concerning the annulment of Ownership Certificates gives rise to legal uncertainty for parties who have been disadvantaged by the issuance or validation of certificates that are alleged or proven to contain administrative flaws, including inaccuracies in physical or juridical data. For that reason, there is a pressing need for codified legislation that sets out clear, detailed, and binding

provisions on the cancellation of Ownership Certificates due to administrative defects, accompanied by a well-integrated system for the registration of land rights as an embodiment of good governance principles.

Furthermore, regulatory sanctions are needed for officials who knowingly and intentionally issue certificate applications containing administrative and legal flaws but still issue them. These regulatory sanctions serve as a preventative measure to prevent officials or government officials from abusing their authority. The legal consequence of land certificate cancellation is the reversion of the land's legal status to the state it was in before the certificate was issued, i.e., ownership rights are returned to the legal owner before the certificate was issued. Cancellation also means the loss of legal certainty that the certificate should provide and can result in losses for parties bound by the certificate, for example in transactions or guarantees. If there is a suspicion of a criminal act in the issuance process that was carried out illegally or in bad faith, then under criminal law, the perpetrator can be held accountable.

V. Conclusion

1. The legal authority of the owner or rights holder over a land object is manifested in the form of proof of title. As proof of title,

a land certificate indicates which legal entity is deemed entitled to, or is the owner and/or rights holder of, the land, and also serves as strong evidence. In the event of a lawsuit or legal claim in court regarding the land for which the certificate has been issued, all information contained in the certificate has strong evidentiary force, provided there is no other evidence to the contrary. As a sign of legal guarantee granted by the government over land, the government issues a certificate, a certificate. This certificate serves as strong evidence, meaning that the information contained therein has legal force and must be accepted by a judge as true, unless there is other evidence to the contrary.

2. Criminal liability for the holder of a land title may arise if, based on a court decision, the basis for the title is declared invalid and without legal force. This can be seen from a final and binding court decision (in kracht van gewijsde), which serves as the basis for assessing the judge's legal reasoning in deciding to revoke a certificate as invalid and without legal force. This decision can also serve as a reference for other legal actions, including those involving bad faith, which may result in criminal liability. Land rights cancellation is carried out by annulling the decision granting land rights or land title

certificate due to administrative legal flaws in its issuance or to enforce a legally binding court decision (in kracht van gewijsde). In addition to administrative reasons, certificate cancellation can also occur if another party can legally prove that the land for which the certificate was issued is indeed theirs, and this is supported by a legally binding court decision. A land certificate that has been canceled by the court is not automatically void. The interested party must submit a cancellation request to the National Land Agency (BPN) enclosing a copy of the legally binding court decision. Certificates canceled due to administrative flaws, overlapping certificates, or other reasons must go through this procedure to be removed from the land registry. The legal basis for the cancellation of land rights, particularly Ownership Certificates, includes Law Number 5 of 1960 concerning Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, and Regulation of the Minister of ATR/BPN Number 21 of 2020 concerning the Handling and Settlement of Land Disputes. The overlapping of normative

regulations regarding the cancellation of Ownership Certificates creates legal uncertainty for parties who are harmed by the issuance or ratification of certificates suspected or proven to contain administrative defects, such as defects in physical data or legal data. Therefore, a codification of regulations that provide clear and firm rules regarding the cancellation of Ownership Certificates due to administrative defects is needed, as well as good system integration in land rights registration as an application of good governance principles. Furthermore, it is necessary to establish normative sanctions for officials who knowingly know of administrative and legal flaws in certificate issuance applications but still issue them. This sanction serves as a preventative measure to prevent officials or government officials from abusing their authority. The legal consequence of certificate cancellation is the reversion of the land's legal status to the state it was before the certificate was issued, with ownership rights returning to the previous legal owner. Cancellation also means the loss of legal certainty that the certificate should provide and can result in losses for parties already bound by the certificate, for example in transactions or guarantees. If there is suspicion of fraud or criminal activity in

the previous issuance process, whether carried out unlawfully or without good faith, the perpetrator can be held criminally liable.

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