Criminal Responsibility of Defendant in the Crime of Selling Housing Units that Have Not Completed the Status of Land Rights (Study of Supreme Court Decision Number: 635 K/Pid.Sus/2019)

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Abstract

The crime of selling a housing unit that has not completed its land title status is regulated in Article 154 of Law Number 1 Year 2011 on Housing and Settlement Areas. The act of selling housing without clear land rights status is very detrimental to the community, especially buyers as consumers who need a house to live in, as happened in Padang City. The criminal responsibility of the defendant who violated this provision was punished with imprisonment for 1 (one) year based on the consideration of the cassation judge in the Supreme Court Decision Number: 635 K/Pid.Sus/2019.

Keywords:
Criminal Liability; Crime; Land Rights

INTRODUCTION

Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that: "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment, and to receive health services". As a citizen's right, it is the duty of the government to provide the fulfillment of housing and settlements that are healthy and protected from various aspects that disturb and make homeowners comfortable.

The state is responsible for protecting the entire Indonesian nation through the organization of housing and residential areas so that people are able to live and live in decent and affordable homes. The government needs to play a greater role in providing and providing facilities and assistance for housing and residential areas for the community through the implementation of area-based housing and residential areas and community self-help, so that it is a functional unit in the form of physical spatial planning, economic life, and socio-culture that is able to ensure environmental sustainability, this is in line with the spirit of democracy, regional autonomy, and openness in the order of life in society, nation and state.1

Regional growth and development that pays less attention to the balance for the interests of low-income people results in difficulties for the community to obtain decent and affordable housing, this is a problem faced by the government so that low-income people can also have decent homes by subsidizing those who buy houses by means of Home Ownership Loans (KPR) in banks that have been appointed by the government.

In order to support and protect all Indonesian citizens through the implementation of

1 General Elucidation of Law Number 1 Year 2011 on Housing and Settlement Areas
housing and settlement areas, the government has issued Law Number 1 Year 2011 on Housing and Settlement Areas. The Law is a replacement for Law Number 4 of 1992 concerning Housing and Settlements which is no longer in accordance with the development and needs of decent, safe, harmonious and orderly housing and settlements.

The influence of globalization inevitably has an impact on the development of criminal acts and their modus operandi. In addition to conventional criminal acts such as murder, theft, fraud, embezzlement and others, criminal acts in other forms have also developed, namely non-conventional criminal acts, such as money laundering, human trafficking, drug trafficking, narcotics and others.\(^2\)

The implementation of housing and residential area development in practice has experienced many problems, ranging from defaults by housing developers to housing purchase fraud. This certainly leads to losses suffered by the community. Various types of criminality are rampant today, including the sale of housing units and ready to build neighborhoods (lisiba) that have not fully established their land rights as stipulated in Article 137 and Article 154 of Law Number 1 Year 2011 on Housing and Settlement Areas.

Article 137 of Law Number 1 Year 2011 on Housing and Settlement Areas states that: "Every person is prohibited from selling a housing environment unit or Lisiba that has not completed its land rights status". The criminal sanctions for such violations are regulated in Article 154 which reads:

"Any person who sells a housing environment unit or Lisiba that has not completed its land rights status as referred to in Article 137, shall be punished with imprisonment of 5 (five) years or a maximum fine of Rp5,000,000,000.00 (five billion rupiah)".

Based on the sound of the two articles above, it can be seen that the government is very concerned about this development, so that special rules or policies are made in terms of housing construction to provide legal certainty to the people of Indonesia. However, even though the criminal sanctions stipulated in the law are very severe, in reality there are still people or parties who violate the rules and violate these provisions.

If a criminal offense occurs, as a juridical consequence, the perpetrator must be held accountable through the process of investigation, prosecution and examination in court by prioritizing very important principles and principles in criminal procedure law, namely the principle of presumption of innocence, as stipulated in Law Number 49 of 2009 concerning Judicial Power, which states that: "every person who is suspected, arrested, detained, prosecuted and or brought before a court session, shall be presumed innocent until a court decision declares his guilt and obtains permanent legal force".

Court decisions are an important milestone for the reflection of justice, including court decisions in the form of criminal convictions and punishments. The issuance of criminal convictions and punishments does not come out of nowhere but through a very long examination process in court from the district court, high court to the Supreme Court.\(^3\)

According to Article 2 of Law Number 14 of 1985 concerning the Supreme Court in conjunction with Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, it is stated that: "The Supreme Court is the highest State Court of all Judicial Environments, which in carrying out its duties is independent of government influence and other influences". The Supreme Court decides cassation petitions against decisions of the Court of Appeal or the Last Level of all Judicial Environments. The Supreme Court in cassation overturns decisions or rulings of courts from all Judicial Environments because:

\[ \text{a. Not authorized or overstepping authority;} \]

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b. Misapplying or violating applicable laws;
c. Failure to fulfill the conditions required by laws and regulations which threaten such failure with the annulment of the relevant decision.

The case that the author examines is the Supreme Court Decision Number: 635 K/Pid.Sus/2019 which has examined and decided the case of the crime of selling a housing environment unit that has not completed its land rights status by imposing a sentence in the form of imprisonment for 1 (one) year to the defendant because his actions have fulfilled the elements of Article 154 of Law Number 1 of 2011 concerning Housing and Settlement Areas.

The chronology of the case, namely: Elvi Mardaeni, S.H. Pgl. Evi as the Director of CV Devindo Artha Development in early 2013 built Pondok Indah Balai Baru Housing on Jalan Wisma Indah VI RT.03 RW.07 Gunung Sariak Village, Kuranji Subdistrict, Padang City with a land area of 14,330 M2; The defendant as a developer managed to build 31 (thirty-one) houses with various sizes consisting of type 36, type 45, type 60 and type 70. The defendant then sold 26 (twenty-six) of these houses with gradual payments and credit. The defendant sold the aforementioned houses where the land status was unclear and was still under dispute, so until now no land status certificate has been issued by the National Land Agency of Padang City. The defendant promised that after the houses ordered by consumers were completed, photocopies of certificates and building permits would be handed over to consumers, but until now the Home Ownership Credit (KPR) or credit contract with the Bank has not been carried out because the certificate does not yet exist while consumers have paid the down payment (DP).

According to the author, this research is interesting because of 2 (two) things, namely: first, law enforcement against criminal acts in the housing sector is rare and still very minimal and second, this case reached the Supreme Court because at the first level at the Padang District Court based on Decision Number: 46/Pid.Sus/2018/PN.Pdg in its verdict imposed a prison sentence of 1 (one) year with a probationary period of 2 (two) years, which then the Public Prosecutor of the Padang District Attorney filed an appeal, where at the appeal level the Padang High Court based on Decision Number: 116/Pid.Sus/2018/PT.Pdg in its verdict stated that the Defendant was proven to have committed the charged act but the act did not constitute a criminal offense, thereby releasing the defendant from all legal charges. Against the decision of the Padang High Court, the Public Prosecutor finally filed an appeal.

Based on the above thoughts, the problems discussed are: First, the criminal liability of the defendant in the crime of selling a housing unit that has not completed its land title status in Supreme Court Decision Number: 635 K/Pid.Sus/2019 and second, the consideration of the cassation judge in imposing a criminal verdict in the case of the crime of selling a housing unit that has not completed its land title status in Supreme Court Decision Number: 635 K/Pid.Sus/2019?

RESEARCH METHODS

The approach method used in this research is a normative juridical approach. Normative legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues at hand. Based on the definition above, the type of research conducted is normative legal research, because researchers use library materials as the main data to analyze legal cases in concrete events (in abstracto).

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DISCUSSION
Criminal Responsibility of the Defendant in the Crime of Selling a Housing Unit that has not yet completed its Land Rights Status in Supreme Court Decision Number: 635 K/Pid.Sus/2019

Criminal responsibility can be imposed on every person who commits a criminal offense. Criminal responsibility is intended to determine whether a defendant is responsible for a criminal offense that occurred or not. In other words, whether the defendant will be convicted or acquitted. If he is convicted, it must be proven that the act committed was unlawful and the defendant is capable of responsibility. This ability shows the culpability of the perpetrator in the form of intent or negligence. 5

Criminal law enforcement against criminal acts in the field of housing and residential areas is still very minimal. This is because Law Number 1 Year 2011 on Housing and Settlement Areas, in addition to regulating criminal sanctions, also regulates administrative sanctions. When violations occur in the field of housing and settlement areas, more are resolved by administrative law than criminal law, due to the punitive nature of criminal law.

Based on the decision of the Padang District Court Number 46/Pid.Sus/2018/PN.Pdg which tried a criminal case on behalf of Elvy Madreani, the defendant was found guilty of committing the crime of "selling a housing environment unit or lisiba that has not completed its land rights status" as regulated in Article 154 of Law Number 1 of 2011 concerning Housing and Settlement Areas, so the defendant Elvy Madreani was sentenced to imprisonment for 1 (one year) by the Padang District Court. However, the panel of judges determined that the sentence does not have to be served unless in the future there is a judge's decision that determines otherwise due to the convicted person committing a criminal offense before the probation period ends.

At the appeal level at the Padang High Court, the panel of judges decided that the defendant Elvi Madreani, S.H. was proven to have committed the acts charged against her but the acts did not constitute a criminal offense, or in other words, released the defendant from all charges. The decision of the Padang High Court was set out in Decision Number 116/Pid.Sus/2018/PT. Pdg.

At the cassation level in the Supreme Court, the Public Prosecutor's appeal was granted by the Supreme Court while annulling the Decision of the Padang High Court Number 116/Pid.Sus/2018/PT.Pdg dated October 4, 2018 which annulled the Decision of the Padang District Court Number 46/Pid.Sus/2018/PN.Pdg dated June 26, 2018. In addition, the Supreme Court also stated that the defendant Elvy Madreani was proven legally and convincingly guilty of committing the crime of "selling a housing environment unit or lisiba that has not completed its land rights status". The Supreme Court also sentenced the defendant Elvy Madreani to 1 (one) year imprisonment, and ordered the defendant to be detained. The Supreme Court's decision is contained in Decision Number 635 K/Pid.Sus/2019.

Based on the results of research conducted by the author related to the criminal responsibility of the defendant in the crime of selling a housing environment unit that has not completed its land rights status in the Supreme Court Decision Number: 635 K/Pid.Sus/2019, the following legal facts were obtained:
1. The fulfillment of the criminal elements of the article charged by the Public Prosecutor, namely Article 154 of Law Number 1 Year 2011 concerning Housing and Settlement Areas, the elements of which are
   a. Everyone.
   b. Selling a residential neighborhood unit that has not finalized its land title status.

2. The legal facts as well as the evidence of letters and other exhibits, the Cassation Judge is of the following opinion:
   a. That because all of the criminal elements of Article 154 of Law Number 1 Year 2011 on Housing and Settlement Areas have been fulfilled, the defendant must be declared legally and convincingly proven to have committed the crime as charged in the first alternative charge.
   b. That the consideration of the judex facti of the Court of Appeal which argues that the legal relationship that occurred between the Defendant and the witnesses (consumer home buyers) is bound by the law of the agreement so that it enters the area of civil law is very inappropriate. This is because Article 137 of Law No. 1 of 2011 expressly states that "Every person is prohibited from selling a housing environment unit or Lisiba that has not completed its land rights status".
   c. That the Panel of Cassation Judges did not find anything that could eliminate criminal responsibility, either as justification or excuse, so the defendant must be held accountable for his actions.
   d. That because the defendant is capable of taking responsibility, he must be found guilty and sentenced.
   e. Based on the aforementioned facts, the Panel of Cassation Judges is of the opinion that law enforcement must be carried out in a firm, straightforward yet humane manner so that imprisonment is more appropriate and fair when applied to the defendant.
3. The content of the judge's decision (verdict) is as follows:
   a. Adjudicate:
      1) Grant the cassation petition of the Cassation Petitioner/Public Prosecutor at the Padang District Attorney's Office.
   b. Judge for yourself:
      1) Stating that the Defendant Elvi Madreani, S.H. Pgl. Elvi was legally and convincingly proven guilty of committing the crime of "selling a housing environment unit (Lisiba) that has not yet completed its land rights status as in the first alternative charge.
      2) Sentenced the Defendant to 1 (one) year imprisonment.
      3) Determining that the period of detention served by the Defendant shall be deducted in full from the sentence imposed.
      4) Order that the defendant be detained.
      5) Determine the evidence in the form of: The complete evidence as described in the Public Prosecutor's indictment
      6) Charges the Defendant with paying court costs at the cassation level in the amount of Rp. 2,500.00 (two thousand five rupiah).

According to the author's analysis, the difference between the cassation decision and the appeal decision in the case of the defendant Elvy Madreani lies in the perspective of the panel of judges in viewing the defendant's actions. In Cassation Decision Number 635 K/Pid.Sus/2019, the cassation panel of judges considered the actions committed by the defendant to be a criminal offense, while in the appeal decision, the panel of judges considered that the actions committed by the defendant were not criminal offenses, but civil actions. The act of selling a housing environment unit or lisiba that has not finalized the status of its land rights is an act in the civil aspect, namely a sale and purchase agreement.

Looking at the validity of a sale and purchase agreement, of course, refers to Article 1320 of the Civil Code. In Article 1320 of the Civil Code, there are 4 (four) conditions for the validity
of an agreement, namely:
1. There is an agreement for those who bind themselves;
2. The capacity of the parties to enter into an agreement;
3. A certain thing; and
4. A lawful cause (*causa*).

Meanwhile, the legal relationship between the defendant Elvi Madreani and the victims (home buyers) is bound by the law of agreement, so that it has entered the area of civil law, therefore the panel of judges at the appellate level stated that the defendant Elvi Madreani had committed the act charged to her (selling a housing environment unit or lisiba that had not yet completed its land rights status), but the act did not constitute a criminal offense (*onslag van rechtvervolding*). However, by looking at the Supreme Court cassation decision number 635 K/Pid.Sus/2019 against the defendant Elvi Madreani, it can be said that prosecutors and judges still recognize the existence of criminal law contained in Article 137 and Article 154 of Law Number 1 Year 2011.

The author agrees with the legal argumentation and the content of the decision of the panel of cassation judges who held the defendant criminally liable for selling a housing unit that has not completed its land rights status with a prison sentence of 1 (one) year, because criminal provisions in the field of housing and residential areas are still needed and used as a legal basis in court decisions, so that they can be used as a warning to parties who are trying in the housing sector if they commit criminal acts in the field of housing and residential areas. Unfortunately, criminal cases in the field of housing and settlement areas decided by the court after the enactment of Law Number 1 Year 2011 on Housing and Settlement Areas are still very minimal.

**Consideration of Cassation Judges in Imposing Criminal Verdicts in the Case of Criminal Offenses of Selling Housing Units with Unresolved Land Rights Status in Supreme Court Decision Number: 635 K/Pid.Sus/2019**

Judge consideration is a stage where the panel of judges considers the facts revealed during the trial process. The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision which contains justice and contains legal certainty, besides that it also contains benefits for the parties concerned so that this judge's consideration must be addressed carefully, well, and carefully. If the judge's consideration is not thorough, good, and careful, the judge's decision derived from the judge's consideration will be canceled by the High Court / Supreme Court.

In essence, the judge's reasoning should also contain the following matters:6

a. Subject matter and matters that are admitted or arguments that are not denied.
b. There is a juridical analysis of the decision in all aspects, concerning all facts or matters proven in the trial.
c. There are all parts of the plaintiff's petition that must be considered or tried one by one so that the judge can draw conclusions about whether or not it is proven and whether or not the claim can be granted in the ruling.

The considerations of the judge will be contained in the verdict, the verdict has 3 (three) balanced aspects, namely as follows:

1. Legal Certainty. In this case legal certainty wants the law to be implemented and enforced strictly for every concrete event and there should be no deviations.
2. Justice. The law is binding on everyone, and is equalizing or does not compare the status or actions of people.

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3. Benefits. The law exists for humans, so people expect benefits from the implementation or enforcement of the law.7

The court decision that the author examines as the object of analysis and discussion is Supreme Court Decision Number: 635 K/Pid.Sus/2019 in the case of the crime of selling a housing environment unit that has not completed its land rights status, where the panel of cassation judges examining the case has issued a decision with the following considerations:

1. Juridical considerations, based on:
   a. Provisions of Article 67 in conjunction with Article 244 of the Criminal Procedure Code
      1) Article 67 of the Criminal Procedure Code states that: "the defendant or the public prosecutor has the right to appeal against a decision of the court of first instance, except for acquittals, acquittals from all charges concerning issues of inaccurate application of the law and court decisions in an expedited procedure".
      2) Article 244 of the Criminal Procedure Code states that: "against the verdict of a criminal case rendered at the last instance by a court other than the Supreme Court, the defendant or the public prosecutor may file a request for cassation examination to the Supreme Court except for acquittals".
   b. Cassation Petition of the Public Prosecutor of Padang District Attorney dated November 13, 2018, with consideration:
      1) Reading the Deed of Cassation Application Number: 38/Akta/Pid/2018/PN.Pdg made by the Registrar at the Padang District Court, it was explained that on October 30, 2018, the Public Prosecutor at the Padang District Attorney's Office filed a cassation application against the decision of the Padang High Court.
      2) Reading the Cassation Memorandum dated November 13, 2018 from the Public Prosecutor at the Padang District Attorney's Office as the Cassation Petitioner, which was received by the Registrar of the Padang District Court on November 13, 2018.
   c. Decision of the Padang High Court Number 116/Pid.Sus/2018/PT.Pdg dated October 4, 2018, with the following considerations:
      1) That the decision of the Padang High Court was notified to the Public Prosecutor at the Padang District Attorney's Office on October 19, 2018 and the Public Prosecutor filed a cassation request on October 30, 2018 and the cassation memory was received at the Registrar of the Padang District Court on November 13, 2018. Thus, the cassation request along with the reasons have been submitted within the time frame and in a manner according to the law, therefore the Public Prosecutor's cassation request is formally acceptable.
      2) That the consideration of the judex facti of the Court of Appeal which argues that the legal relationship that occurred between the Defendant and the witnesses (consumer home buyers) is bound by the law of the agreement so that it enters the area of civil law is very inappropriate. This is because Article 137 of Law No. 1 of 2011 expressly states that "Every person is prohibited from selling a housing environment unit or Lisiba that has not completed its land rights status".
      3) That thus there is sufficient reason to grant the cassation petition of the Cassation Petitioner/Public Prosecutor and annul the Decision of the Padang High Court Number 116/Pid.Sus/2018/PT.Pdg dated October 4, 2018 which annuls the Decision of the Padang District Court Number 46/Pid.Sus/2018/PN.Pdg dated June 26, 2018, and then the Supreme Court will hear this case itself.
   d. The elements of the crime in Article 154 of Law Number 1 of 2011 on Housing and Settlement Areas, as charged in the first alternative charge, have been fulfilled, therefore the defendant has been proven guilty and sentenced. The elements of Article 154 of Law

7 Oemar Seno Adji, Criminal Law, Erlangga, Jakarta, 1984, pp. 47
Number 1 Year 2011 on Housing and Settlement Areas, charged by the Public Prosecutor, namely:

1) Everyone, with consideration:
   "that based on the legal facts revealed before the trial, it has been found that the Defendant Elvy Madreani, S.H. Pgl. Evi as the Director of CV Devindo Artha Development in early 2013 built Pondok Indah Balai Baru Housing on Jalan Wisma Indah VI RT.03 RW.07 Gunung Sariak Village, Kuranji District, Padang City with a land area of 14,330 M2".

2) Selling housing units that have not finalized their land rights status, with consideration:
   a) That the Defendant as a developer managed to build 31 (thirty one) houses of various sizes consisting of type 36, type 45, type 60 and type 70. The Defendant then sold 26 (twenty six) of these houses with gradual payments and credit.
   b) That the Defendant sold the aforementioned houses where the status of the land is unclear and is still under dispute, so until now no land status certificate has been issued by the National Land Agency of Padang City.
   c) That the Defendant promised that after the houses ordered by consumers were completed, photocopies of certificates and building permits would be handed over to consumers, but until now the Home Ownership Credit (KPR) or credit contract with the Bank has not been carried out because the certificates are not yet available while consumers have paid the down payment (DP).

2. Consideration of the Proper Application of the Rule of Law, based on:
   Regarding the reasons for cassation submitted by the Cassation Petitioner/Public Prosecutor, the Supreme Court is of the opinion: "that the reason for the cassation of the Public Prosecutor can be justified because the decision of the judex facti which states that the Defendant is legally and convincingly proven guilty of committing the acts charged as in the first alternative charge and the second alternative charge, but the act is not a criminal offense, has been wrong and does not apply the rule of law as it should and has considered juridically relevant legal facts incorrectly and correctly according to the legal facts revealed before the court".

3. Non-juridical considerations
   The panel of cassation judges examining the criminal case of selling housing units that have not completed the status of land rights in Supreme Court Decision Number: 635 K/Pid.Sus/2019, before imposing a sentence on the defendant, in addition to considering juridical considerations and considerations of the application of appropriate legal regulations, also based on non-juridical considerations, namely the judge's consideration based on the psychological and sociological background conditions of the defendant and the defendant's attitude at trial. The non-juridical considerations used by the panel of cassation judges as the reason for imposing a sentence on the defendant in the case of the crime of selling a housing environment unit that has not completed its land rights status in Supreme Court Decision Number: 635 K/Pid.Sus/2019 are:
   1) Aggravating circumstances, namely:
      a. The defendant's actions have harmed other people.
      b. The defendant's actions disregarded government regulations on housing.

   2) Mitigating circumstances, namely:
      a. The defendant has never been convicted
      b. The defendant has family responsibilities.
CONCLUSION

Based on the results of the research and discussion that has been presented in the previous chapters, the author can draw the following conclusions:

The responsibility of the defendant for the crime of selling a housing environment unit that has not completed its land rights status in Supreme Court Decision Number: 635 K/Pid.Sus/2019 is that the defendant is sentenced to imprisonment for 1 (one) year because his actions have been proven legally and convincingly guilty of committing a criminal offense as regulated in Article 154 of Law Number 1 of 2011 concerning Housing and Settlement Areas.

The consideration of the cassation judge in imposing a criminal verdict in the case of a criminal offense of selling a housing environment unit that has not completed its land rights status in Supreme Court Decision Number: 635 K/Pid.Sus/2019 there are 3 (three), namely:
First, juridical considerations, including: the provisions of Article 67 in conjunction with Article 244 of the Criminal Procedure Code, the appeal of the Public Prosecutor of the Padang District Attorney dated November 13, 2018, the fulfillment of the criminal elements in Article 154 of Law Number 1 of 2011 concerning Housing and Settlement Areas and the decision of the Padang High Court Number 116/Pid.Sus/2018/PT.Pdg dated October 4, 2018, second, considerations of the application of proper legal regulations, namely: The reason for the Public Prosecutor's cassation can be justified because the judex facti's decision was wrong and did not apply the law properly and considered the legal facts juridically incorrect and correct according to the legal facts at trial, third, non-juridical considerations, namely: aggravating circumstances, including: the defendant's actions have harmed others and did not heed government regulations in the housing sector and mitigating circumstances, including the defendant has never been convicted and has family dependents.

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