
TENURE OF OTHER PEOPLE'S LAND WITHOUT RIGHTS**(Case Study of Court Decisions No. 16/Pdt.G/2018/PN.Skh and No. 82/Pdt.G/2022/PN.Yyk)**Anjar Sari¹, Marisa Kurnianingsih²¹ Fakultas Hukum, Universitas Muhammadiyah Surakarta (c100192013@student.ums.ac.id)² Fakultas Hukum, Universitas Muhammadiyah Surakarta (mk122@ums.ac.id)

ABSTRACT

Arbitrary land ownership is a crime where a person controls a plot of land without proof of ownership, but turns out to be the legal owner of the land in question. The research method used in this research is a normative juridical approach. This research approach is based on legal sources in the form of statutory regulations and court decisions related to control of land belonging to other people without rights. The research in this article is different from previous research which lies in the formulation of the problem raised and the location of the case. Regarding the regulation of control over land belonging to other people without rights, from the perspective of Islamic law, land that already has ownership rights is prohibited from being contested by anyone without the owner's consent.

Keywords: Land Rights, Land Control, No Rights**INTRODUCTION**

Indonesia is a country of law, where everything is based on law¹. Land is an individual right and is contained in the 1945 Republic of Indonesia Constitution, in Article 33 paragraph (3)². Land and earth need to be utilized properly, including those controlled by the community, therefore land control and ownership need to obtain legal certainty regarding legal protection by the state.³ Since ancient times, land has been a source of conflict for humans⁴. Basically, every land conflict can be resolved through legal norms and rules⁵.

History of land, Indonesia has specific provisions for managing land related matters in Law no. 5/1960 concerning UUPA. UUPA is the implementation of Article 33 (3) of the 1945 Constitution which provides the basis that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. This is reinforced by Article 2 of the UUPA which states "the exercise of the state's right to control can be delegated to autonomous regions and customary law communities, as necessary and not in conflict with national interests, according to government regulations."⁶ The special right of ownership is a hereditary, strongest and fullest right that

¹ Indrasari, Febrina. Tinjauan tentang kekuatan pembuktian pemeriksaan setempat dalam pemeriksaan sengketa perdata (sengketa tanah dipengadilan negeri Surakarta). *Jurnal Jurisprudence* (2015) 5(1). Hal. 9.

² Indonesia, Undang - Undang Dasar Negara Republik Indonesia Tahun 1945.

³ P, M Riska Anandya Putri. Tinjauan Yuridis Penguasaan Tanah Di Kelurahan Kemijen Kota Semarang (Studi Kasus Pertanahan PT KAI Dengan Warga Kelurahan Kemijen Kota Semarang). Fakultas Hukum. Universitas Negeri Semarang, (2020). Hal. 1.

⁴ Putri, Lisa Nurita, Kelik Wardiono dan Darsono. *Mediasi dan Sengketa Pertanahan : Studi Tentang Okupasi Tanah Diketingan Baru Kelurahan Jebres Kota Surakarta*. Eprints UMS, (2014). Hal. 1.

⁵ Trisnawati, Santika Ayu Dan Nuswardhani. *Proses Penyelesaian Sengketa Hak Atas Tanah Bangunan Yang Telah Dijual Tetapi Masih Dipakai Oleh Pihak Lain (Studi Kasus Di Pengadilan Negeri Surakarta)*. Eprints UMS, (2018). Hal. 4.

⁶ Indonesia, Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok - Pokok Agraria.

a person has to land⁷.

Land control contains a series of authorities, obligations and prohibitions for the rights holder in doing things to the land. The "things" that are permitted, required and prohibited are the benchmarks between various land tenure rights that can be interpreted as legal institutions. The National Land Law has a variety of land tenure rights, which are arranged in a hierarchy⁸:

- 1) Rights of the Indonesian Nation (Article 1 UUPA)
- 2) Right to Control from the State (Article 2 UUPA)
- 3) Ulayat Rights of Customary Law Communities, As Long As In Fact They Still Exist (Article 3 UUPA)
- 4) Individual Rights

In the legal sense, control is control that is based on legally protected rights and usually gives the right holder the ability to physically manage the land claimed, such as when the land owner uses or utilizes the land claimed and does not transfer ownership to another person, control is defined as two, namely juridically and physically⁹. In general, land control is divided into two, namely private land and state land. Land is so important in life that humans always try to own and control land¹⁰. Arbitrary land ownership is a crime where a person controls a plot of land without proof of ownership, but turns out to be the legal owner of the land. If the owner has been warned but does not want to leave the land in question, then the action falls under Article 1365 of the Criminal Code "Every act that violates the law and causes loss to another person, requires the person who caused the loss through his fault to compensate for the loss"¹¹.

The obligation to defend is not only on the right owner, but also on every citizen, legal entity or organization related to the land. As a start, the government acted to stop illegal land use and issued regulations as a legal basis in the form of PERPU No. 51/1960 concerning Prohibition of Land Use Without Government Permit¹². Based on the description above, the researcher would like to discuss several issues, namely how legal considerations are given by judges regarding control of land belonging to other people without rights (case study of Court Decisions No. 16/Pdt.G/2018/PN.Skh and No. 82/Pdt.G/2022/PN.Yyk)? and How is control over land belonging to other people without rights regulated in the perspective of Islamic law?

RESEARCH METHODS

The research uses a normative juridical approach. Data collection techniques in normative legal research are carried out using library studies in the form of secondary data as basic material for research by reviewing regulations and other literature related to the research object. The type of research is descriptive qualitative. Normative legal research uses an analytical basis in the form of positive legal norms, judge's decisions and doctrine¹³.

RESULTS AND DISCUSSION

⁷ Wuisan, Edwin Nehemia. Sengketa Hak Milik Atas Tanah Warisan Yang Di Kuasai Oleh Ahli Waris Yang Bersengketa. *Lex Crimen*, (2016), 5 (6). Hal. 63.

⁸ Yusra, Doni. Penguasaan Hak Atas Tanah Secara Melawan Hukum, Dan Implikasinya Bagi Yang Menyerobot Tanah." *Artikel Ilmiah Universitas Esa Unggul*, Hal. 1

⁹ Elvlyn, Chatarina Dwi Agista dan Margaretha Andini Oktaviana. Penegakan Hukum Penguasaan Tanah Tanpa Hak Di Wilayah Jakarta Utara. *Syntax Idea*, (2020) 2(4). Hal. 27.

¹⁰ Andini, Sabrina Ayu, Darsono dan Septarina Budiwati. Pelaksanaan Balik Nama Sertifikat Hak Milik Dalam Jual Beli Tanah. *Eprints UMS*, (2015). Hal. 1.

¹¹ Kitab Undang-Undang Hukum Perdata

¹² Peraturan Pemerintah Pengganti Undang-Undang Nomor 51 Tahun 1960 Tentang Larangan Pemakaian Tanah Tanpa Izin Yang Berhak Atau Kuasanya.

¹³ Benuf, Kornelis dan Muhamad Azhar. Metode Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*, (2020) 7(1) 20-33.

A. Legal consideration by the judge regarding control of land belonging to another person without rights (case study of Court Decision No. 16/Pdt.G/2018/PN.Skh which is as follows:

In exception:

Defendant I and Defendant III in their answers filed an exception to the lawsuit filed by the Plaintiff. After the Panel of Judges studied the material regarding the changes to the Plaintiff's claim and the exceptions from Defendant I, there were no changes or revisions to the claim made by the Plaintiff from numbers 1 to 15 that changed or added to the subject matter of the claim, but only regarding changes to the claim that were not in principle. Changing the letter number and the change does not cause harm to the Defendant in self-defense, then the change is permitted.

After the Judge studied the power of attorney dated 20 February 2018, in the power of attorney there was a clause of two proxies, namely Endra, SH, MH and Bambang Tutuka, SH, MH in representing their client (Plaintiff) acting either individually or jointly, so with this clause, the signing of the amendment to the lawsuit by one of the Plaintiff's two proxies is valid. Based on the legal considerations above, Defendant I's exception regarding signing the revision letter was only carried out by one of the two attorneys, changing the lawsuit adding to the posita and changing the petitem of the lawsuit, is unreasonable and must be rejected.

Regarding Defendant I's exception which states that Co-Defendant I is in the category of inactive cooperatives and has ended its legal entity status, then Co-Defendant I in *casu* Raya Sejahtera Cooperative is no longer a legal subject, so it cannot be withdrawn as a party in the Plaintiff's lawsuit, after the Tribunal The judge understood that this exception goes to the heart of the case and requires proof, so this exception must be rejected.

Regarding the difference in Defendant I's address, according to the Panel of Judges, this exception did not cause the lawsuit to be blurred, Defendant I had been summoned legally, properly and based on this summons, Defendant I was present at the trial and submitted an answer to the Plaintiff's lawsuit.

Regarding the Plaintiff not mentioning the boundaries of the disputed object of land as stated in the Certificate of Ownership Number 169/Makamhaji, Kartasura District, Sukoharjo Regency covering an area of $\pm 1,000$ M² which is argued to be payment of the Plaintiff's entire debt to Co-Defendant I and does not mention the boundaries of the remaining land of the object the dispute over an area of ± 712 M² which was argued to belong to the Plaintiff resulted in the lawsuit being vague and unacceptable (*vide* supreme court decision number 1559 K/Pdt/1983, supreme court decision number 1149 K/Sip/1975). One of the reasons for a vague lawsuit is that the object of the dispute is unclear. There are several aspects that cause the object of the lawsuit regarding land to be unclear, namely the boundaries are unclear, the location is uncertain and the size stated in the lawsuit is different from the results of the inspection. Based on the considerations above, Defendant I's exception regarding the Plaintiff's claim being vague is quite reasonable according to law, so it can be accepted.

One of the exceptions from Defendant I is accepted, the reasons for the exceptions from Defendant I other than that and the remainder as well as the exception from Defendant III do not need to be considered and must be rejected. Based on the considerations above, it turns out that the Plaintiff's lawsuit is vague, meaning it contains formal defects and the consequences are unacceptable.

In Main Case:

Considering, because Defendant I's exception was accepted and granted by the Panel of Judges, then as stated in the consideration of the exception, the Plaintiff's claim must be declared not accepted and regarding the main arguments of the Plaintiff's claim or the main arguments of the answers of Defendant I, Defendant III, Co-Defendant I and Defendant II has not yet been considered by the Panel of Judges. Considering, because the Plaintiff's lawsuit was declared unacceptable, the Plaintiff is the losing party and needs to be sentenced to pay the court costs. Remember and pay

attention to the provisions in the Civil Code, HIR (Herzien Inlandsch Reglement), as well as the legal provisions that apply and are related to this case¹⁴.

B. Legal consideration by the judge regarding control of land belonging to another person without rights (case study of Court Decision No. 82/Pdt.G/2022/PN.Yyk is as follows:

In concession

In exception

The Panel of Judges considered the exceptions raised by the compensation Defendant/counterclaim Plaintiff, as follows:

Obscure Claim Exception (Obscur Libel): The Panel of Judges is of the opinion that the arguments put forward by the compensation Plaintiff/counterclaim Defendant are correlated with the petitum submitted, the letter of claim of the compensation Plaintiff/counterclaim Defendant is made clearly and clearly, so that the Defendant's exception regarding the vague lawsuit has no legal basis and must be rejected.

Exception to the Claim for Less Parties (Plurium Litis Consortium): In civil procedural law, it is known that the plaintiff is the one who has the authority to determine who he will sue, as long as the Plaintiff considers that there is a legal correlation between the arguments of the lawsuit and the Defendant, the Panel of Judges is of the opinion that the Defendant's exception is a concession/Plaintiff's counterclaim regarding the lawsuit. less party has no legal grounds and must be rejected.

Connection Claim Exception: Based on the lawsuit of the Kompension Plaintiff/Rekompension Defendant, the main point of the lawsuit is that the Kompension Defendant/Rekompension Plaintiff controls the object of dispute belonging to the Kompension Plaintiff/Rekompension Defendant, so that the Kompensi Defendant/Rekompension Plaintiff commits an unlawful act and the panel of judges is of the opinion that the exception to the connection claim is unreasonable and must be rejected.

Disqualification Claim Exception: The Panel of Judges is of the view that the exception material is included in the main matter of the case which will be assessed and proven together with the main case, so that the exception to the disqualification claim is unreasonable and must be rejected.

Based on the considerations above, the exception submitted by the compensation defendant/counterclaim plaintiff is rejected in its entirety.

In the main case;

Regarding evidence T-4, namely page 7, the Panel of Judges did not get clarity on the meaning of this evidence, so evidence T-4 had to be set aside.

Based on the considerations above, the Panel of Judges is of the view that the Kompension Defendant/Rekompension Plaintiff cannot prove that the Kompension Defendant/Rekompension Plaintiff was given the land subject to dispute by Rm Soekiyono, in other words, evidence of authentic deeds P-2 and P-3. The Kompension Defendant/Rekompension Plaintiff cannot prove otherwise. so that the object of the dispute belongs to the Kompensi Plaintiff/Rekompensi Defendant which was obtained as a gift from the Plaintiff's father, namely RM Soekiyono, then the control of the disputed object by the Kompensi Defendant/Rekompension Plaintiff does not have the right basis, is in conflict with the rights of other people and is contrary to propriety, so that it can be said that the Defendant, in controlling the object of the dispute, had committed an unlawful act.

The panel of judges considered the petitum of the plaintiff's lawsuit/defendant's counterclaim based on the legal considerations above: petitum number 1 so that the lawsuit is granted in its entirety, it still depends on other petitums, petitum number 2 so that the plaintiff is declared the legal owner of the object of dispute is reasonable to be granted, against petitum number 3 so that the Defendant is declared to have committed an unlawful act is reasonable enough to be granted, petitum number 4 is for the Defendant to vacate the object of the dispute, because the Plaintiff is the legal

¹⁴ Salinan Putusan Nomor 16/Pdt.G/2018/PN.Skh.

owner of the object of dispute so it is reasonable enough to be granted, against petitum number 5 because in the trial the Plaintiff cannot to prove material or immaterial losses in the aquo case, then it must be rejected, against petitum number 6 so that the court decision is executed first (Uit Voorbaar Bijvooraad), because it is not proven that there is a requirement for the decision to be handed down immediately (Uit Voorbaar Bijvooraad), then there is reason to be rejected, against the petitum number 7 because in the process of examining the Aquo case there was never a request to confiscate the collateral, then the petitum number 7 must be rejected, against the petitum number 8 because there was never a letter issued for and on behalf of the Defendant who was in his power as far as the object of the dispute, then there is reason to reject it.

Based on the considerations above, the Plaintiff's petitum was granted in part and rejected in part and in part, so that the Defendant was the losing party. As stipulated in Article 181 HIR, the losing party, the Defendant, is sentenced to pay the court costs incurred in this case, the amount of which is stated in the decision, so petitum number 9 has reason to be granted.

In response

Because the main claim in the concession is granted and it is stated that the counterclaim Defendant/Compensation Plaintiff is the legal owner of the object of dispute, then the counterclaim lawsuit from the counterclaim Plaintiff/Compensation Defendant has no legal grounds and must be declared rejected.¹⁵

C. Arrangements for Land Control of Other People Without Rights in the Perspective of Islamic Law

According to the Islamic perspective, everything on earth and sky, including land, belongs to Allah SWT. In accordance with the Word of Allah SWT: "And to Allah belongs the kingdom of the heavens and the earth, and to Allah alone will (all creatures) return" (QS. An-Nur: 42). According to the Prophet's hadith, it is explained that: "Indeed, the Messenger of Allah has decided that this earth (land) is Allah's earth and these servants (humans) are Allah's servants. Islamic law guarantees the caliph (government) to regulate land, because the government is the embodiment of a large human group and is organized in the way of life of a region. Apart from land controlled by the state, and the state dividing it (Al Iqtho), there is also a system of control and ownership of land by opening a plot of land that has not been cultivated (empty land) by someone based on their initiative and efforts.

According to Wahbah Az-Zuhaili, control of state land without the land owner's consent is a form of usurping (seizing) an item/right that another person has.¹⁶ In a hadith narrated by Imam Ahmad, Turmudzi, Nas'l, Abu Dawud and Ibn Majah. The Prophet Muhammad SAW said that: "Whoever takes an inch of land wrongfully, that land will be charged (wound) to that person on the Day of Resurrection, with the seven layers of earth that he took." Based on the explanation above, the government's control over land and ownership of land in its territory is based on God's delegation to bodies/authorities to regulate, supervise, distribute and direct the use of land in proportion to God's purpose in creating the earth and humans.¹⁷

CONCLUSION AND SUGGESTION

Regarding legal considerations by the judge in Court Decision no. 16/Pdt.G/2018/PN.Skh, one of the exceptions from Defendant I is accepted, the reasons for the exceptions from Defendant I other than that

¹⁵ Salinan Putusan Nomor 82/Pdt.G/2022/PN.Yyk.

¹⁶ Nasution, Aisyah dan Tetty Marlina Tarigan. Analisis Hukum Penguasaan Tanah Negara Tanpa Persetujuan Pemilik Tanah Di Kecamatan STM Hilir, Kabupaten Deli Serdang Perspektif Wahbah Az-Zuhaili. Al Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam, (2020). Hal. 345.

¹⁷ Muhibbin, Mohammad. Perspektif Hukum Islam Tentang Konsep Penguasaan Tanah The Concept Of Land Ownership In The Perspective Of Islamic Law. Al- Risalah Forum Kajian Hukum dan Sosial Kemasyarakatan, (2017) 17(1) 61-74.

and the remainder and the exception from Defendant III do not need to be considered and must be rejected. Based on the considerations above, it turns out that the Plaintiff's lawsuit is vague, meaning it contains formal defects and the consequences are unacceptable. As well as legal considerations by the judge in Court Decision No. 82/Pdt.G/2022/PN.Yyk, Based on the considerations above, the Plaintiff's petition is granted in part and rejected in part and in the remainder, so that the Defendant is the losing party.

Regarding the regulation of control over land belonging to other people without rights from the perspective of Islamic law, in relation to land that has an owner, it cannot be controlled by other people without the owner's consent. In a hadith narrated by Imam Ahmad, Turmudzi, Nas'i, Abu Dawud and Ibn Majah. The Prophet Muhammad SAW said that: "Whoever takes an inch of land wrongfully, that land will be charged (wound) to that person on the Day of Resurrection, with the seven layers of earth that he took."

REFERENCES

1. P, M Riska Anandya Putri. Tinjauan Yuridis Penguasaan Tanah Di Kelurahan Kemijen Kota Semarang (Studi Kasus Pertanahan PT KAI Dengan Warga Kelurahan Kemijen Kota Semarang). Fakultas Hukum. Universitas Negeri Semarang, (2020). Hal. 1.
2. Benuf, Kornelis dan Muhamad Azhar. Metode Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. Gema Keadilan, (2020) 7(1) 20-33.
3. Elvlyn, Chatarina Dwi Agista dan Margaretha Andini Oktaviana. Penegakan Hukum Penguasaan Tanah Tanpa Hak Di Wilayah Jakarta Utara. Syntax Idea, (2020) 2(4). Hal. 27.
4. Muhibbin, Mohammad. Perspektif Hukum Islam Tentang Konsep Penguasaan Tanah The Concept Of Land Ownership In The Perspective Of Islamic Law. Al- Risalah Forum Kajian Hukum dan Sosial Kemasyarakatan, (2017), 17(1) 61-74.
5. Yusra, Doni. Penguasaan Hak Atas Tanah Secara Melawan Hukum, Dan Implikasinya Bagi Yang Menyerobot Tanah." Artikel Ilmiah Universitas Esa Unggul, Hal. 1
6. Wuisan, Edwin Nehemia. Sengketa Hak Milik Atas Tanah Warisan Yang Di Kuasai Oleh Ahli Waris Yang Bersengketa. Lex Crimen, (2016), 5 (6). Hal. 63.
7. Indrasari, Febrina. Tinjauan tentang kekuatan pembuktian pemeriksaan setempat dalam pemeriksaan sengketa perdata (sengketa tanah dipengadilan negeri Surakarta. Jurnal Jurisprudence (2015) 5(1). Hal. 9.
8. Trisnawati, Santika Ayu Dan Nuswardhani. Proses Penyelesaian Sengketa Hak Atas Tanah Bangunan Yang Telah Dijual Tetapi Masih Dipakai Oleh Pihak Lain (Studi Kasus Di Pengadilan Negeri Surakarta). Eprints UMS, (2018). Hal. 4.
9. Andini, Sabrina Ayu, Darsono dan Septarina Budiwati. Pelaksanaan Balik Nama Sertifikat Hak Milik Dalam Jual Beli Tanah. Eprints UMS, (2015). Hal. 1.
10. Putri, Lisa Nurita, Kelik Wardiono dan Darsono. Mediasi dan Sengketa Pertanahan : Studi Tentang Okupasi Tanah Diketingan Baru Kelurahan Jebres Kota Surakarta. Eprints UMS, (2014). Hal. 1.
11. Nasution, Aisyah dan Tetty Marlina Tarigan. Analisis Hukum Penguasaan Tanah Negara Tanpa Persetujuan Pemilik Tanah Di Kecamatan STM Hilir, Kabupaten Deli Serdang Perspektif Wahbah Az-Zuhaili. Al Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam, (2020). Hal. 345.
12. Indonesia, Undang - Undang Dasar Negara Republik Indonesia Tahun 1945.
13. Peraturan Pemerintah Pengganti Undang-Undang Nomor 51 Tahun 1960 Tentang Larangan Pemakaian Tanah Tanpa Izin Yang Berhak Atau Kuasanya.
14. Indonesia, Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok - Pokok Agraria.
15. Salinan Putusan Nomor 16/Pdt.G/2018/PN.Skh.
16. Salinan Putusan Nomor 82/Pdt.G/2022/PN.Yyk.

17. Kitab Undang-Undang Hukum Perdata.