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**ANALYSIS OF JUDGE'S RULING NUMBER: 45/Pdt.G/2020/PN.Pwd  
CONCERNING VIOLATION OF INDIVIDUAL GUARANTEED LAND**

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**ABSTRACT**

Decision Number: 45/Pdt.G/2020/PN.Pwd is the final result of a conflict that occurred between Paryadi and PT BRI, KPKNL, and Notary Moch Farchan Ali Imaron. This conflict occurred when Paryadi borrowed a sum of money from BRI with a land certificate as collateral, then several times it turned out that Paryadi was unable to keep up with the installments that were supposed to be made. BRI then held an auction for the land and finally sold it. It turned out that the auction did not reveal Paryadi as the original owner of the land, so this case was brought to court. On the one hand, the court paid attention to the flaws in the auction carried out by BRI and KPKNL which could result in the auction being null and void, but in terms of evidence, Paryadi was unable to provide evidence that was strong enough to defend himself. And in this agreement, it turns out that there are many things that are considered flawed and can make an agreement flawed and null and void. This research uses a normative juridical method, which uses a legal approach which is the basis for an agreement to occur.

**Keywords:** Agreement, Decision, Guarantee.

**INTRODUCTION**

The role of the state in protecting what is an asset within it which must be used to advance and prosper the life of the nation and state is the most important principle in the government of the Republic of Indonesia, this is because it is stated in the 1945 Constitution which states that earth, water and everything that is in it is used for shared prosperity.<sup>1</sup>The power of the state over the people is the highest power, this along with Machiavelli's statement aims to prosper and maintain independence.<sup>2</sup>

"The Indonesian state is a state of law" is the sound of article 1 paragraph (3) of the 1945 Constitution, which means that the state is the main or essential goal in the process of carrying out the wishes of all its citizens.<sup>3</sup>This means that whatever happens in Indonesia, whether it is a conflict or not, there must be legal norms in it.

Regarding civil law which regulates relationships between individuals and other individuals, for example, we have a lot of regulations which are still in effect. Our civil code refers to the Civil Code which has existed since the Dutch colonial era which covers people, goods, agreements, evidence and expiration.<sup>4</sup>And related to land issues, Indonesia itself has a Basic Agrarian Law or UUPA, which generally regulates land in Indonesia and is then assisted by other supporting laws or regulations.

The issue of land in Indonesia is a very general clause. There were 212 agrarian-related conflicts in 2022, an increase of 2.36% from the previous year.<sup>5</sup>Of the 212 conflicts, the most numerous were conflicts in the plantation area with almost 100 cases reaching court, because it cannot be denied that land in

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<sup>1</sup> UUD 1945 Pasal 33 ayat (3)

<sup>2</sup> Rapar, Jan Hendrik. *Filsafat Politik: Plato, Aristoteles, Augustinus, Machiavelli*. Rajagrafindo Persada, 2002.

<sup>3</sup> Supriadi. *Hukum Agraria*. Cetakan keempat. Jakarta : Sinar Grafika. 2010. Hal. 58

<sup>4</sup> Kitab Undang-Undang Hukum Perdata

<sup>5</sup> <https://dataindonesia.id/varia/detail/ada-212-kejadian-konflik-agraria-di-indonesia-pada-2022> diakses pada 5 Mei 2023

Indonesia is a very valuable object that is almost equivalent to gold in terms of price.

Notaries and Land Deed Officials in this case play a very important role in land matters, because they are the front guard when dealing with land issues in society. The role of Notaries and Land Deed Officials in maintaining community harmony and harmony in the land system is very crucial, so honesty, tenacity and patience are needed in the process.<sup>6</sup>

Several cases of land disputes stem from inheritance, collateral or multiple land certificates. And on this occasion, the author will raise a civil case with Decision Number: 45/Pdt.G/2020/PN.Pwd, which actually started in 2016.

This incident started when Paryadi (Plaintiff) took over a loan from Bank CIMB NIAGA Purwodadi with Bank Rakyat Indonesia Purwodadi amounting to Rp. 90,000,000.00- with two land documents as collateral and will be paid in installments until completed in February 2016. However, the installments then stopped and could not be paid again because the plaintiff experienced bankruptcy in his business and a default occurred. According to the plaintiff's confession, Bank Rakyat Indonesia then auctioned the land used as collateral without the knowledge of the plaintiff or the original owner of the land. and the deed of the land has also been reversed in the name of the auction winner through the office of Notary Moch Farhan Ali Imron SH who has collaborated with the defendant.

There are several facts in the conflict that are quite fierce in this regard. First, that the plaintiff was terrorized several times by the defendant by bringing in several people to evict and empty the plaintiff's house, and bringing in Notary Moch Farhan Ali Imron SH who had collaborated with the defendant. Second, that the defendant did not read the deed of agreement between the plaintiff and the defendant when it was about to be signed in front of the notary concerned. Third, the defendant clearly and firmly denies that he never informed the plaintiff that the guarantee letter would be auctioned.

## RESEARCH METHODS

The method in this research uses normative legal research or doctrinal law with a philosophical and historical approach as well as a conceptual approach.<sup>7</sup>This research uses a philosophical and historical approach to study and analyze the history of land and its accompanying regulations in the national and international scope. This type of research is descriptive research that uses and explains the phenomena that are currently occurring. This research uses secondary data originating from literature studies in the form of data originating from decisions, laws, books, journals, literacy, and opinions of legal experts as well as several other sources that can support the success of this research.

## RESULTS AND DISCUSSION

### Sitting Matters

That initially the plaintiff made a loan to Bank CIMB NIAGA then made a credit transfer to Bank Rakyat Indonesia and it was approved in May 2013 with a remaining nominal amount of Rp. 90,000,000.00- in 34 installments and will end in February 2016. Then a deed of agreement was drawn up without involving a notary and only involving the leadership of Bank Rakyat Indonesia. And at the time of signature, the credit deed was not read in front of the plaintiff, and the notary who was in the credit deed was not met with the plaintiff. That the plaintiff then experienced bankruptcy in his business so he could not continue paying installments and a default occurred. And therefore from the defendant together with The Semarang State Property and Auction Services Office (KPKNL) conducted an auction of two Ownership Certificates which were collateral for the credit without notifying the plaintiff. The defendant

<sup>6</sup> Tjukup, I. Ketut, et al. Akta Notaris (Akta Otentik) Sebagai Alat Bukti Dalam Peristiwa Hukum Perdata. *Acta Comitas*, 2016, 2: 180-188.

<sup>7</sup> Dimiyati, Khudzaifah, and Kelik Wardiono. "Metodologi Penelitian Hukum." *Fakultas Hukum UMS, Surakarta*, 2004.

also came to the plaintiff's house several times with a notary Moch Farhan Ali Imron SH and two envoys from the defendant to win and carry out terror by throwing the plaintiff out of the house which was the collateral. The defendant has also sold and transferred the name of the plaintiff's Certificate of Ownership to the new owner who won the auction.

#### **Analysis of the Defendant's Defense**

For Indonesian society, which is very diverse and adheres to the system that Indonesia is a country of law, we often hear and observe the relationship with the judiciary in the courts. The legitimacy of a person to defend themselves when they are accused of wrongdoing is a human's primary instinct to survive.<sup>8</sup> So in the case of the trial we are also given the opportunity to defend ourselves or what is known as Exception if we are accused of committing an unlawful act, because this accusation can result in material losses.<sup>9</sup> Although sometimes excessive defense is not a good thing either.<sup>10</sup>

In their exceptions, the defendant as a whole used a defense using the Mortgage Law. The defendant used the pretext of article 6 Jo. Article 20, which states that if the debtor defaults, the creditor may carry out a sale or auction of the collateral, but does not pay attention to Article 7 which indirectly states that the sale or auction must obtain approval from the owner of the collateral.<sup>11</sup>

The defendant also said that the plaintiff lied by saying that the plaintiff distorted the facts in the field, under the pretext that the defendant signed the credit deed in the presence of a Notary and Land Deed Officer in the name of Endang Sri Wukiryatun, SH, M.Kn. In this case the plaintiff also brought in 2 witnesses where the credit deed was signed, namely witnesses Mrs Rustiyani and Mrs Kartika Mulyaningrum. This is clearly the strongest clause in an agreement because there is a witness.<sup>12</sup> But if there really were witnesses, why didn't the defendant name the plaintiff as a witness in this signing even though they were the people most concerned.

The fact was also stated in the defendant's defense, that the defendant had also given warning letters to the defendant to immediately pay off his debt 3 times. It also turned out that the plaintiff had received several auction letters in the form of letters twice.

The defendant in its entirety rejects the allegations made by the plaintiff. Several times they brought witnesses and authentic letters which have very strong legal force in civil matters.<sup>13</sup> However, in practice, these letters could be falsified because the defendant is the party who created and has authority over the letters of evidence. However, there was a claim that from the start the defendant did not dare to defend, namely the position that the defendant had come and terrorized the plaintiff's family, causing the plaintiff's family members to feel uncomfortable.

#### **Analysis of Judge's Decisions**

Judges are God's representatives on earth.<sup>14</sup> Moreover, when we are in court, a person's life can depend on a judge. On a very strong basis, judges must have wisdom, authority and a neutral attitude.<sup>15</sup> He understands where his decision should go, so it is not surprising that Rasulullah once said that when there are 3 judges, one of them is an inhabitant of hell.<sup>16</sup> Therefore, judges are very important people from every aspect.

<sup>8</sup> Kudus, Sekolah Tinggi Agama Islam Negeri. *Naluri Beragama Pada Diri Manusia*.

<sup>9</sup> Niniek Suparni, *Kitab Undang-Undang Hukum Perdata*, PT. Rineka Cipta, 2000, hal. 338.

<sup>10</sup> Mul Khan, Abdul Munir. *Moral politik santri: agama dan pembelaan kaum tertindas*. Erlangga, 2003.

<sup>11</sup> UUHT Pasal 6 dan 7

<sup>12</sup> Harahap, M. Yahya. *Hukum acara perdata: tentang gugatan, persidangan, penyitaan, pembuktian, dan putusan pengadilan*. Sinar Grafika, 2017.

<sup>13</sup> Juanda, Enju. *Kekuatan Alat Bukti dalam Perkara Perdata Menurut Hukum Positif Indonesia*. *Jurnal Ilmiah Galuh Justisi*, 2016, 4.1: 27-46.

<sup>14</sup> Faisal, Akbar. *Politik Hukum Perlindungan Hakim*. *Jurnal Cita Hukum*, 2016, 4.1.

<sup>15</sup> Aisyah, Nur. *Peranan Hakim Pengadilan Agama dalam Penerapan Hukum Islam di Indonesia*. *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam*, 2018, 5.1: 73-92.

<sup>16</sup> Noor, Yunniar Firanti; MUHYIDDIN, Muhammad. „Sunan Abu Dawud“. *Studi Kitab Hadis: Dari Muwaththa' imam Malik Hingga Mustadrak Al Hakim*, 2020, 62.

Including in this decision, the role of judges is really needed in determining justice and welfare. In this decision the judge decided to reject the lawsuit filed in its entirety and ordered the plaintiff to pay a certain nominal fine. Which means that in this case the plaintiff was declared defeated in court.

In this case, the judge's wisdom and intelligence in observing conditions and reading the situation are very important. Because in conditions like this, judicial power, which has an independent nature, will really be tested regarding what the pillars of justice are in a country.<sup>17</sup>

In determining the decision this time, the judge only felt fixated on the evidence carried out by the defendant by attaching a lot of evidence in the form of witnesses and authentic letters, without paying attention to several important things which were never mentioned in the decision.

This is a clause where the defendant threatens the plaintiff by bringing in a Notary Moch Farhan Ali Imron SH and two other people ordered them to leave the house and carried out terror twice. This matter is not defended by the defendant and can be interpreted as the truth.

This behavior can be charged under Article 369 of the Criminal Code with the offense of threatening and can be punished with imprisonment for four years.<sup>18</sup> However, it is felt that the judge in this case did not pay too much attention to this incident and focused on the evidence and witnesses in court, especially since judges in civil cases are active, which means that the judge can freely ask various questions so that the resulting decision is the best decision.<sup>19</sup>

The judge can actually give a decision in accordance with the judge's own beliefs, because as stated in the decision, the debtor experienced a default due to a disaster, namely the business run by the debtor went bankrupt, so he was unable to pay off the installments that had been determined.

This was proven by the judge's considerations which focused on the defendant's evidence in the form of letters and blamed the plaintiff for not being able to prove or respond to what the defendant alleged. In fact, in this case it looks very unbalanced, where the witnesses and authentic letters are held by the defendant as a whole.

## CONCLUSION AND SUGGESTION

### Conclusion

In this case, the plaintiff filed a lawsuit against the defendant even though the plaintiff was in a weak condition, which resulted in the plaintiff committing an act of default which resulted in the confiscation of the plaintiff's assets and collateral. And it is also felt that the judiciary is an unbalanced trial because the defendant's position has full control over the evidence, while the plaintiff can only provide explanations, even to the point of experiencing content errors in the content of the lawsuit, causing the plaintiff's position to become increasingly weakened.

In this case we also learn to fully understand our condition, understand who our opponents will be, especially at the trial table. The judge was supposed to be active but then became passive and just swallowed what was conveyed by the defendant without considering the condition of the plaintiff who was getting weaker during the trial.

But the judge in this case is considered professional in carrying out his duties by carrying out the mandate of the law well.

### Suggestion

To law enforcers to be more careful when they want to make a lawsuit, both materially and formally, they must be mature, lest the lawsuit we make becomes a bomboerang on each of us.

Judges must be able to read the situation and conditions in a case, because basically a judge is allowed to use his own beliefs in making a decision.

<sup>17</sup> Barhamudin, Barhamudin. *Kemandirian Hakim Dalam Perspektif Negarawan*. *Solusi*, 2019, 17.3: 269-284.

<sup>18</sup> Kitab Undang-Undang Hukum Pidana

<sup>19</sup> Sunarto, Sunarto. *Prinsip Hakim Aktif Dalam Perkara Perdata*. *Jurnal Hukum dan Peradilan*, 2016, 5.2: 249-276.

When in an active trial, the judge should really be active in looking for sources and information, so that more data is available and the judge can give the best possible decision and minimize injustice in it.

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15. UUD 1945
16. UU Hak Tanggungan
17. Kitab Undang-Undang Hukum Pidana
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