
Juridical Review of Land Disputes Against Unlawful Actions**(Case Study Decision No. 27/ Pdt.G/ 2021/ Pn.Spt)**

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ABSTRACT

Humans and land cannot be separated because human life depends on land. Land has a very important value for humans because almost all human needs are related to land, from birth to death. Humans have an emotional and spiritual connection to land, which is not seen as a commodity with economic value, but also has cultural, customary, economic and spiritual elements that are valuable for the owner. Because of this, land disputes often occur, as in Decision no. 27/ Pdt.G/ 2021/ Pn.Spt. This research uses a normative juridical method by examining library materials related to the decision. The results show that the factors causing land disputes are the lack of regulations regarding land rights and unclear land ownership documents in the past. Therefore, the plaintiff's claim must be declared inadmissible, and the arguments of the claim must be explained specifically to determine what actions violate the law.

Keywords: Land disputes, unlawful acts,

INTRODUCTION

Humans and land are two inseparable things, because human life is very dependent on land. Land has important value for humans, because almost all of a person's needs are related to land, such as birth to death. Humans have emotional and spiritual ties to land, and the value of land to its owners includes cultural, customary, economic and spiritual values. Therefore, land disputes often occur, as happened in Decision no. 27/Pdt.G/2021/Pn.Spt. This research uses a normative juridical approach by conducting legal literature research and analyzing the decision. The research results show that one of the factors causing land disputes is the lack of regulation of land rights and unclear land ownership documents in the past. Apart from that, the government also needs land to meet community needs and state interests.¹

People always try to own and control land, because land has an important value in life. One way to acquire land is through buying and selling. In the buying and selling process, land ownership can be transferred from one party to another. Therefore, the Indonesian state, which is based on the 1945 Constitution, guarantees and protects the rights of citizens in obtaining, owning and enjoying land ownership rights.²

In civil cases, generally there are two types of cases, namely breach of contract and unlawful acts. To understand the meaning of "acts against the law" (onrechtmatige daad), Article 1365 of the Civil Code explains that: "every action that causes harm to another person requires the guilty actor to compensate for the losses incurred."

Because humans are social creatures, legislation must develop. Here the law functions to regulate social rights and obligations and provide direction for their implementation and maintenance. "Material civil law" is a term for the body of civil law that regulates the rights and obligations of people in society. On the other hand, "formal civil law" refers to the civil law that controls the process of establishing and

¹ Erna Sri Wibawanti dan R. Murjiyanto, *Hak Atas Tanah dan Peralihannya*, Liberty, Yogyakarta, 2013, Hal 1

² Urip Santoso, 2010, "*Hukum Agraria dan Hak-Hak Atas Tanah*", Kencana Prenada Media Group, Jakarta, Hal. 87

enforcing these rights and obligations. Civil procedural law is another name for formal civil law.³

One example of an act that violates the law is if someone without the owner's permission occupies land or a building which causes a dispute. Land is a basic need in people's lives because it has an important role and function both as a place to live and as a place of business. Because the need for land is increasing for both society and the government, the judge's consideration in handing down decisions is very important. Justice, legal certainty and benefits for the parties involved must all be in the judge's decision. The judge must analyze the information gathered during the trial, such as documents, witnesses, rumors, confessions, and promulgated oaths. A judge must be impartial and impartial in assessing disputes. To find out the real truth during a trial, the judge must pay attention to testimony and evidence from all sides. Therefore, the results of the decision must be able to pay attention to and respect the sense of justice that is generally recognized by the plaintiff and the defendant. Techniques and skills in using law and justice are essential to any court dispute resolution.⁴

In the description above, this is an interesting matter to study for the writer. So, the writer formulates the problem as follows:

1. What are the factors that cause land disputes to occur against the law (case study of decision No. 27/ Pdt.G/ 2021/ Pn.Spt)?
2. What is the legal analysis of decision no. 27/ Pdt.G/ 2021/ Pn.Spt?

RESEARCH METHODS

This research uses a normative juridical approach and library research techniques, especially through searching library material collections. This was done to collect data needed for research on applicable laws relating to land disputes. This research has descriptive-analytic specifications, which means that apart from providing a comprehensive and methodical description of the problem being studied, it also thoroughly examines the data and information that has been collected.

RESULTS AND DISCUSSION

A. Factors Causing Land Disputes Due to Unlawful Actions (Case Study Decision No. 27/ Pdt.G/ 2021/ Pn.Spt)

1. Case Position

In the land dispute, study of the Sampit District Court Decision, Case Number: 27/Pdt.G/ 2021/PN. Like between Rensiah (plaintiff) and Nurjais, Juliansyah, Muhammad Yusuf (defendants I, II, III) whose respective addresses are at Jl HM Arsyad Metro TV, Ketapang Village, Mentawa Baru Ketapang District, as for the East Kotawaringin Regency Government/District Ketapang, Kotim Regency Government/Mentawa Baru Ketapang District, and the Government of the Republic of Indonesia/Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia/BPN Regional Office of Central Kalimantan Province/East Kotawaringin Regency Land Office (Defendants IV, V, VI) domiciled in the District area Mentawa Baru Ketapang, East Kotawaringin Regency, Central Kalimantan Province. So the background to the dispute or dispute resulting from an unlawful act occurred because of the plaintiff's confession (Rensiah) who felt that his rights had been harmed, it was alleged that there was a lack of clarity regarding land rights and land ownership status which was marked by the filing of a lawsuit against the defendant (Nurjais, Juliansyah, and Muhammad Yusuf). The defendant won the case on the basis of convincing evidence regarding land ownership and having fulfilled all the necessary elements. In the past,

³ Abdul kadir Muhammad, 2000, *Hukum Perdata Indonesia*, (Bandung: PT Citra Aditya Bakti), h. 3-4.

⁴ Mahkamah Agung RI Dirjen Peradilan Agama, *Konstatiring sebagai pintu pertama bagi hakim dalam menegakkan keadilan* dalam <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/konstatiring-sebagai-pintu-pertama-bagi-hakim-dalam-menegakkan-keadilan> diunduh Selasa 08 November 2022, 22:14 WIB.

mediation has been used to try to resolve these disputes, but has failed. The trial for the case then began. When a trial was held on the subject of the dispute, it was discovered that the disputed land belonged to plaintiffs I, II and III, not to the defendants. As a result, the Sampit District Court judge could not accept the plaintiff's lawsuit. In addition, the plaintiff was unable to establish a causal relationship between the defendant's actions against him and the material losses he caused.

2. Causal Factors

Unclearness regarding land rights and a lack of documents explaining land ownership in the past can be the main factors in the occurrence of unlawful land disputes as explained above. Apart from that, negligence on the part of the plaintiff who does not try to increase the legal status of land ownership by having a land certificate can also cause disputes. However, in the case mentioned, the plaintiff's lawsuit cannot be considered PMH because Article 1365 of the Civil Code does not specifically detail the legal actions carried out by the defendant in the plaintiff's lawsuit.

In society, the main factor in land disputes is the lack of clarity in the regulation of land rights. In accordance with Article 1365 of the Civil Code, an act must fulfill the following elements:

a. There is action or action (daad)

An unlawful act begins with an action that is carried out without any agreement or agreement and without the existence of a valid *causa* element such as in a contract. Violations that occur in these two articles result in legal consequences, namely compensation for losses.⁵

b. Acts committed against the law (onrechtmatig)

Unlawful acts can be defined generally, including behavior that violates applicable legal regulations, harms the rights guaranteed by law, and is contrary to the legal obligations of the perpetrator. Apart from that, actions that are contrary to moral norms can also be considered unlawful acts. (*good zeden*), or an action is something that is the opposite of a good action (*indruist maatschappelijk verkeer betament ten anzein van anders person of gone*).

c. There is an error on the part of the perpetrator

If an action meets the following elements, the law will consider it a wrong action so that it can be held legally responsible under Article 1365:

- 1) In this case there is an intentional element involved (element intentional), or
- 2) In certain contexts, there is an element of negligence that can be a factor that influences an event or event. (there is an element of negligence/ negligence, culpa)
- 3) No justification or forgiveness can be given. (*rechvaardigingsgrond*), such as *overmacht*, self-defense, insanity, etc.

d. The losses experienced by the victim are contained in this case

To use Article 1365 of the Civil Code in a lawsuit, one of the conditions is that there is loss for the victim (*schade*). This means that an unlawful act must cause harm to the injured party. These losses can vary, such as:

1) Material loss

There are two types of material losses that may arise from unlawful acts: actual losses and profits that should have been obtained. Therefore, it is generally accepted that a person who commits an unlawful act must pay compensation for both possible profits and actual losses incurred.

2) Immaterial/ideal losses.

Apart from tangible losses, unlawful acts can also cause intangible losses such as anxiety, suffering and loss of life satisfaction. Payment for such illegal actions is not regulated by any law. Therefore, the procedures used to compensate for these losses follow the Default guidelines regulated in Articles 1234 to 1252 of the Civil Code. Additionally, the property can be returned to its original condition.

B. Legal Analysis of Decision No. 27/ Pdt.G/ 2021/ Pn.Spt

⁵ Abdulkadir Muhamad, Ibid

a) Problem analysis

Based on this situation through his attorney, Plaintiff has filed a lawsuit dated May 27 2021 against the Defendants. Therefore, the actions of Defendants I, II & III, who controlled and built a house on the disputed land belonging to the Plaintiff, as well as the actions of Defendant IV who registered land documents in the names of Defendants I, II & III, as proof of land rights that are still problematic are acts against the law and the Plaintiff's rights to the land are impaired.

To assess whether an act is an unlawful act, it is not enough just to assess whether a violation of legal rules has occurred. Apart from that, it also needs to be assessed from a propriety perspective. In determining whether an action that causes harm is in accordance with the propriety that a person should have in interacting with fellow members of society, violations of legal rules can be one of the factors taken into account.

The term *onrechtmatigedaad* (act against the law) in Dutch in general, it has a limited meaning, namely the meaning contained in Article 1365 *Burgerlijk Wetboek* (BW). In this context, the term Civil Code (KUHPerdt.) will be used to replace BW. This article can be interpreted differently by legal experts. Some legal experts understand this term as an Unlawful Act, while others consider it an Unlawful Act..

R. Wirjono Prodjodikoro interprets the words *onrechtmatige daad* as an act that violates the law.⁶ He believes that the term "act" in the phrase "act against the law" can be interpreted both positively and negatively, namely covering situations where a person can be considered to be breaking the law by remaining silent when in fact the law requires that person to act. A person who is silent cannot be considered to have committed a legal act, unless he knows that his silence violates the law, according to the concept of "active" negative acts. Therefore, it is a person's emotions and feelings, not his physical body, that move. As a result, the concept of "action" now includes a movement component. According to Wirjono Prodjodikoro, because what is meant by "act against the law" is generally applicable law in Indonesia, the majority of which is customary law, the most appropriate word to translate *onrechtmatigedaad* is act against the law. This is because the word "violation" in the series of words "act against the law" is meant to be active.⁷

b) Juridical review of the judge's decision on land disputes regarding acts of contravention law (Case Study Decision No. 27/ Pdt.G/ 2021/ Pn.Spt)

Thus in Decision No. 27/ Pdt.G/ 2021/ Pn.Spt the judge has an opinion on the land dispute case with the following considerations:

The Plaintiff demands that Defendants I, II, III & IV have committed unlawful acts, according to the Tribunal because of the actions of Defendants I, II, & III who have controlled and built a house on land belonging to the Plaintiff, including the actions of Defendant IV who having registered land documents in the names of Defendants I, II, & III is an unlawful act.

According to the Panel, because in essence it argued that Defendants IV & V were withdrawn as parties and were deemed to have committed an unlawful act in this case because Defendants IV & V had ignored the Plaintiff's letter dated 23 April 2021 regarding requesting an explanation regarding the disputed land, but in the arguments of the lawsuit There is absolutely no specific description of what kind of unlawful acts were committed by Defendants IV & V which resulted in the Plaintiff feeling aggrieved by these attitudes and actions, apart from that the form of the lawsuit for unlawful acts filed by the Plaintiff does not at all prove that there is a causal relationship between the acts committed. Defendants IV & V against the Plaintiff, causing losses to the Plaintiff.

The results of the local inspection have shown that there are parties other than Defendants I, II, & III who actually take part in controlling the object of the dispute, so by not withdrawing the

⁶ Wirjono Prodjodikoro, *Perbuatan Melanggar Hukum*, (Bandung: Mandar Maju, 2000), hlm. 1.

⁷ Tajuddin Noor, Remy B.R Hasibuan dan Zunius S Halawa, *Tinjauan Yuridis Terhadap Perbuatan Melawan Hukum Atas Menempati/Menguasai Tanah Dan Bangunan Hak Orang Lain (Studi Kasus Putusan Nomor 340/Pdt.G/2015/Pn.Mdn)*, Jurnal Hukum Responsif FH UNPAB, Vol. 7 No. 7 Maret 2019, hal. 134

parties who actually take part in controlling the object of the dispute as parties in the Plaintiff's lawsuit, in the opinion of the Panel has resulted in the Plaintiff's lawsuit becoming less of a party.

This is in line with the Supreme Court Circular Letter Number 10 of 2020 concerning the Implementation of the Formulation of the Results of the 2020 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court mentioned in the civil chamber formulation mentioned in a land ownership lawsuit, if the plaintiff does not sue the party who is actually control of the object of dispute based on the results of local inspections, whereasThe plaintiff knows or should know that the defendant has control of the object of dispute permanently or on a legal basis, then the lawsuit is considered lacking in parties.

The Plaintiff demands that Defendants I, II, & III be ordered to vacate the disputed land including the building and the objects on it to be handed over to the Plaintiff in good condition without any burden and to pay forced money (dwangsom) of Rp. 500,000 (five hundred thousand rupiah) to the Plaintiff every day if Defendants I, II, & III are negligent or unwilling to carry out the contents of the case decision until the contents of the decision are executed.

In this lawsuit, the plaintiff was declared less of a party, meaning that the plaintiff did not have the legal standing to file the lawsuit. Therefore, the plaintiff's claim must be declared unacceptable by the panel of judges.(Niet ontvankelijk verklaard) andDue to the shortcomings of the parties in the Plaintiff's claim, according to the decision taken, the Plaintiff's claim must be rejected or declared inadmissible,then the Plaintiff is the losing party in the case, so it is appropriate ifdIn this case, the plaintiff is obliged to bear the costs incurred in the case.

Based on the results of the judge's considerations and decisions, the land dispute lawsuit related to unlawful acts has been rejected and written downin decision no. 27/ Pdt.G/ 2021/ Pn.Spt submitted by the plaintiff in this case, the author has the opinion that the plaintiff's (Rensiah) lawsuit cannot be accepted because the plaintiff's lawsuit is declared lacking in parties and the plaintiff in his lawsuit cannot provedIn this case, the unlawful act committed by the defendant caused the lawsuit filed by the plaintiff to not be accepted by the panel of judges.Based on this, it becomesThe judge's considerations in deciding land dispute cases involving unlawful acts have been explained in the decision mentioned above. The author believes that the judge's decision is in accordance with applicable regulations and laws and has strong reasons, which will be explained as follows:

Whereas based on the results of the local inspection, it was found that there were parties other than Defendant I, Defendant II and Defendant III who actually took control of the disputed object. In the opinion of the Tribunal, it did not include parties who were factually involved in the use of the disputed object as parties to the lawsuit. The plaintiff caused the lawsuit to not meet the requirements as a lawsuit that is sufficiently partial so that the lawsuit can be categorized as a lawsuit that lacks parties.

That although basically the Plaintiff has the right to determine who he will sue when referring to the Supreme Court Decision Number 305K/Sip/1971, according to the Tribunal this right cannot be interpreted broadly and freely, meaning that even though the Plaintiff has the right to determine which parties which he will sue, but the Plaintiff is not permitted to only withdraw some parties even though there are other parties who actually control the object of the dispute and are not withdrawn as parties, this is in line with the Supreme Court Circular Letter Number 10 of 2020 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2020. 2020 as Guidelines for the Implementation of Duties for the Court mentioned in the context of civil law, it is explained that if in a land ownership lawsuit, the plaintiff does not invite the party or parties who clearly control the object of the dispute based on the results of a local inspection, and the plaintiff knows or should know that the party or parties - the party is permanently or with rights to the object of the dispute, then the lawsuit is considered to be less than a party.

Whereas further Defendant IV and Defendant V basically argued that Defendant IV and Defendant V were withdrawn as parties and were deemed to have committed an unlawful act in this case because Defendant IV and Defendant V had ignored the Plaintiff's letter dated 23 April 2021 regarding requesting an explanation regarding the disputed land. However, the lawsuit's arguments do not specifically explain what kind of unlawful acts were committed by Defendant IV and Defendant V, which resulted in the Plaintiff feeling disadvantaged by the attitudes and actions of Defendant IV and Defendant V, apart from the form of the lawsuit for unlawful acts filed by the Plaintiff. does not at all prove that there is a causal relationship between the actions committed by Defendant IV and Defendant V against the Plaintiff which caused losses to the Plaintiff;

That according to article 283 Rbg whoever claims to have a right, or submits an event (feit) to confirm his right or to deny the existence of that right or event, he is obliged to prove it, thus the Plaintiffs are obliged to prove the argument of their claim, so Defendants are also required to prove their counterarguments

CONCLUSION AND SUGGESTION

Based on what has been described in the discussion above related to the Juridical Review of Land Disputes Due to Unlawful Acts (Case Study Decision No. 27/ Pdt.G/ 2021/ Pn.Spt), the author draws the following conclusions:

1. The factors that cause land disputes here are: The lack of clear regulations regarding land rights and ignorance regarding who was responsible for the management of cultivated land in the past, as well as negligence on the part of the plaintiff who did not try to improve the status of land ownership to become legally clear by having a land certificate, are the reasons for the lack of clarity regarding land ownership documents in cases of land disputes. However, in this case the Plaintiff's lawsuit cannot be said to be an unlawful act because the elements contained in Article 1365 of the Civil Code are not specifically described as to what kind of legal action the Defendant carried out in the Plaintiff's lawsuit so it does not fulfill one of these elements.
2. That the Plaintiff's claim must be declared inadmissible and the arguments for his claim are not at all explained specifically what kind of Unlawful Act is. Apart from that, the form of the tort action filed by the Plaintiff does not at all prove that there is a causal relationship between the actions committed by Defendant IV and Defendant V against The Plaintiff causes losses to the Plaintiff, on the other hand, basically the Plaintiff has the right to determine who he will sue, but based on the applicable provisions, the Plaintiff cannot only withdraw some parties while there is another party who actually controls the object of the dispute which he does not withdraw as a party, this is In line with the Supreme Court Circular Letter Number 10 of 2020 concerning the Implementation of the Formulation of the Results of the 2020 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court, it is stated in the civil chamber's formulation that if in a land ownership lawsuit, the plaintiff does not include the party or parties who are legally clearly controls the object of the dispute after a local inspection, and the plaintiff knows or should know that the party or parties permanently or by right control the object of the dispute, then the lawsuit is considered lacking in parties.

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