

UNLAWFUL ACTS (ONRECHTMATIGEDAAD) REGARDING LAND OWNERSHIP DISPUTES**(Study of Marisa District Court Decision Number: 11/Pdt.G/2019/PN.Mar)**Awalulkhairi Santosa Putra¹, Rizka²¹ Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100217412@student.ums.ac.id)² Fakultas Hukum, Universitas Muhammadiyah Surakarta (rizka@ums.ac.id)**ABSTRACT**

In cases regarding land, they are often related to civil cases which fall into the field of unlawful acts (Onrechtmatigedaad), Article 1365 of the Civil Code (KUHPer). Looking at the decision regarding unlawful acts in the case of land disputes based on the Marisa Court Decision Number: 11/Pdt.G/2019/PN Mar, the Marisa District Court judge decided that the Defendant had committed an Unlawful Act against the land rights owned by the Plaintiff. This research uses a juridical normative approach whose main data source is secondary data, namely legal norms contained in statutory regulations and court decisions as well as legal norms that exist in society. From this research, the results obtained are that the author describes the elements of each unlawful act in Article 1365 of the Civil Code from case number: 11/Pdt.G/2019/PN.Mar. So it is true that the Defendant has fulfilled all the elements in committing an unlawful act. That according to the Panel of Judges in its legal considerations a private sale and purchase agreement regarding land rights is valid and has binding legal force as long as the agreement is carried out clearly and in cash and is witnessed and acknowledged by the Village. So that the ownership of the plaintiff's land rights legally belongs to him.

Keywords: Unlawful Acts, Property Rights, Land Disputes**INTRODUCTION**

The Indonesian state is a country based on which Indonesia is a legal state, as is regulated in Article 1 paragraph (3) jo. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) states that all citizens have equal status under the law and government and are obliged to uphold the law and government without exception. Article 28D paragraph (1) of the 1945 Constitution states that every person has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law.

Humans are always trying to own and control land, because land is important for life. Efforts to obtain land can be done in various ways, one of which is buying and selling. By buying and selling, the land owner shift from one party to another. As is The need for land, so that the Republic of Indonesia Indonesia, which is based on the 1945 Constitution, provides guarantees and provides protection for the rights of the country's citizens to obtain, own and enjoy property rights to the land. So when talking about land rights, it often causes problems between the parties

In cases regarding land, which are often related to civil cases which fall into the field of unlawful acts (Onrechtmatigedaad), Article 1365 of the Civil Code (KUHPer) determines as follows: Every act who causes loss to another person, requires the person who is guilty of causing that loss, to compensate for that loss. Civil Law (Bur\erlijkrecht) is a series of legal regulations that regulate legal relationship between people one with other people, with an emphasis on individual interests.¹

Looking at the decision regarding unlawful acts in the case of land disputes based on the Marisa

¹ Rizky Reza Pahlevi, Zulfi Diane Zaini, Recca Ayu Hapsari, "Analisis Perbuatan Melawan Hukum (Onrechtmatigedaad) Terhadap Sengketa Kepemilikan Hak Atas Tanah", *Pagaruyung Law Journal*, Vol. 5, No.1, (Juli 2021), hal. 18

Court Decision Number: 11/Pdt.G/2019/PN Mar, the Marisa District Court judge decided that the Defendant had committed an unlawful act against the land rights owned by the Plaintiff. In handing down this civil decision, the Panel of Judges has of course examined the facts at trial through letters and statements from witnesses presented at trial. After the Panel of Judges considered the facts presented at the trial accompanied by evidence, the panel of judges decided that the Defendant had committed an unlawful act in the land dispute.

The problems in this research are: First, how are the elements of unlawful acts (Onrechtmatigedaad) shown in Decision Number: 11/Pdt.G/2019/PN Mar. Second, what is the legal consideration of the court in Decision Number: 11/Pdt.G/2019/PN Mar and whether the sale and purchase of ownership of land rights under the hands is valid and has binding legal force.

The purpose of this research: To find out the elements of unlawful acts (Onrechtmatigedaad) which are the basis for the decision, and to find out the court's legal considerations in the decision and to find out whether the sale and purchase of ownership of land rights is valid and has binding legal force.

The benefit of writing this thesis is that it is hoped that it can provide knowledge to the public regarding the juridical analysis of knowing the elements of unlawful acts (Onrechtmatigedaad) which are the basis for the decision, and to know the legal considerations of the court in Decision Number: 11/Pdt.G/2019/PN Mar, as well as knowing whether the sale and purchase of ownership of land rights under the hand is valid and has binding legal force.

RESEARCH METHODS

The research method used in this research is a juridical normative research method, namely a type of research that refers to legal norms contained in statutory regulations and court decisions as well as legal norms that exist in society.²In this case the research was carried out using secondary data, namely data obtained by the author through library materials³, because this research examines court decisions, namely the Marisa District Court Number: 11/Pdt.G/2019/PN Mar

RESULTS AND DISCUSSION

Elements of Unlawful Acts (Onrechtmatigedaad) in Decision Number 11/Pdt.G/2019/PN.Mar

In civil law, filing a lawsuit is divided into 2 types, namely a lawsuit for breach of contract based on an agreement and a lawsuit for unlawful acts based on law. In practice, a lawsuit against the law occurs if the conflicting parties do not have an contractual relationship. Therefore, the law guarantees legal protection to the injured party.⁴

The author will describe the elements of unlawful acts in Article 1365 of the Civil Code related to the actions of the Defendant. The elements are as follows:

1. There is an action

An unlawful act begins with an action from the perpetrator. It is generally accepted that by action here we mean either doing something (in the active sense) or not doing something (in the passive sense), for example not doing something even though he has a legal obligation to do it, which obligation arises from the applicable law.⁵

It can be seen in the disputed land case above that the Defendant has postponed the compensation costs that will be given to the Plaintiff. Where the reason the Defendant postponed the

² Zainuddin Ali, 2016, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, hal 105.

³ Ibid, hal. 23.

⁴ Frisca, LBH "Pengayoman" Universitas Katolik Parahyangan, 2021, *Apakah itu Perbuatan Melawan Hukum?*, Diakses melalui <https://lbhpengayoman.unpar.ac.id/apakah-itu-perbuatan-melawan-hukum/>, pada tanggal 21 Agustus 2022 Pukul 13.39 WIB

⁵ Munir Fuady, 2005, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, Bandung: PT. Citra Aditya Bakti, hal. 10

compensation costs was because the Defendant considered that the ownership of the Plaintiff's land rights was invalid. So the Defendant chose not to pay compensation for the disputed land.

2. This act is against the law

Since 1919, this element of unlawfulness has been interpreted in the broadest sense, namely including the following matters:⁶

a) Actions that conflict with other people's rights

The meaning of other people's rights here are rights recognized by personal rights law; property rights; the right to freedom; the right to honor a good name.

In the land dispute case above, it is explained that here the personal rights and property rights of the Plaintiff were not obtained from the Defendant even though the Plaintiff's land had been affected by the overflow of water from a project from the Government in the form of building a weir and a flood irrigation network.

b) Actions that conflict with one's own legal obligations

That the act is contrary to the legal obligations (*rechtsplicht*) of the perpetrator. By the term "legal obligation" (*rechtsplicht*), what is meant is an obligation given by law to a person, whether written or unwritten law. So, it is not only contrary to written law (*wettelijk plicht*), but also contrary to other people's rights according to law (*wettelijk recht*).

This is shown in the land dispute case above that the Defendant did not carry out his obligations in terms of delaying paying compensation so that the Plaintiff felt disadvantaged.

3. There is an error on the part of the behavior

An action is considered by law to contain an element of error so that it can be held legally responsible if it meets the following elements:

a) There is an element of intent, here the Defendant has deliberately not paid the losses suffered by the Plaintiff because the Defendant considers ownership of the Plaintiff's land to be invalid. Even though the Plaintiff has also provided proof of ownership rights to his land, even though the ownership rights to the land do not yet have a certificate.

b) There is no justification or excuse, such as overpowering, self-defense, insanity, etc. In the above land dispute case, the Defendant clearly has no justification or excuse. So it can be said that the Defendant's actions are in the category of culpable behavior.

4. There is loss for the victim

In addition to material losses, jurisprudence also recognizes the concept of immaterial losses which will also be assessed in money.

That the losses arising from this case are that the Plaintiff's land, which the Plaintiff has been using for agricultural land, was announced by the Defendant to be affected by the overflow of water from the government's project on the dam and the Randangan irrigation network and compensation will be provided from the Government. However, these losses have not been paid to the Plaintiff because the Defendant considers that the Plaintiff's land is disputed land. The plaintiff has explained that the land he owns is legal ownership and the sale and purchase of the land is also legal. So the plaintiff's loss was that these costs were deferred by the defendant.

5. Clause Relationship between Actions and Losses

A causal relationship between the act committed and the loss incurred is also a requirement for an unlawful act. A factual cause-and-effect relationship (causation in fact) is only a matter of "fact" or what factually happened. Every cause that causes loss can be a factual cause, as long as the loss (the result) would never occur without the cause.

From the clause relationship between actions and losses in land dispute cases above, it is clear that the Defendant's actions in not paying compensation for the Plaintiff's land affected by the Government's project have not been paid/suspended by the Defendant.

⁶ Indah Sari, "Perbuatan Melawan Hukum (PMH) dalam Hukum Pidana dan Hukum Perdata", *Jurnal Ilmiah Hukum Dirgantara*, Vol. 11, No. 1 (September 2020) hal. 65

So after the author describes the elements of each unlawful act in Article 1365 of the Civil Code from case number: 11/Pdt.G/2019/PN.Mar. So it is true that the Defendant has fulfilled all the elements in committing an unlawful act.

Legal Considerations of the Court in Decision Number: 11/Pdt.G/2019/ PN Mar and Buying and Selling in Ownership of Land Rights is Legal and Has Binding Legal Force

According to customary law, buying and selling land is a clear and cash transfer of land rights, which clearly means that the act of transferring rights must be carried out before the traditional head, whose role is as an official who oversees the orderliness and legality of the act of transferring rights, so that the transfer of rights and payment of the price are carried out simultaneously.⁷

Regarding the participation of traditional heads/village heads in buying and selling land rights, the Supreme Court in its Jurisprudence dated 13 December 1958 No. 4/K/RUP/1958 states that it turns out that the participation of the Village head/traditional head is required as an absolute requirement by customary law, only the involvement of the Village head or the testimony of the Village head is a factor that further expresses confidence that a sale and purchase of land rights is valid. In the Supreme Court's decision dated 12 June 1975 No. 952/K/SIP/1975 in its legal considerations, it is stated that buying and selling according to customary law is valid if it is done in real terms and in cash and is witnessed and known by the village head. The decision from the Supreme Court is in accordance with the principles of customary law. If the sale and purchase is not carried out in the presence of the Land Deed Official (PPAT), the sale and purchase remains valid because the UUPA is based on customary law and the definition of sale and purchase according to the UUPA uses the principles of customary law, namely concrete and real.⁸

That if we look at the considerations of the Panel of Judges in the decision of case number 11/Pdr.G/2019/PN Mar regarding private sale and purchase agreements regarding land rights. The Panel of Judges in their legal considerations stated that in civil law there is known as the principle of sale and purchase, namely clear and cash, which has the meaning "clear" when carried out by both parties, namely between the plaintiff as the buyer and the co-defendant as the seller who has had an agreement in the sale and purchase agreement. , then the meaning of "cash" is if payment has been made, which payment can be made in full or only partially paid as agreed. In this case, the transfer of money from the plaintiff to the co-defendant as a form of "cash" was then followed up with a certificate of land purchase based on the evidence presented at the trial as a form of "clear"

Whereas according to the Panel of Judges in its legal considerations it explains the terms of sale and purchase in customary law, namely clear and cash and according to the Supreme Court Jurisprudence in its decision number 655/K/Sip/ 1979 dated 22 July 1980 which states "with a sale and purchase between the seller and the buyer who is known to the head of the village concerned and is attended by two witnesses, and the purchase price is accepted by the seller, then the sale and purchase is valid according to law, even if it has not been carried out before the PPAT."

That there is a correlation between Case decision number 11/Pdr.G/2019/ PN Mar and other Supreme Court jurisprudential laws and regulations, which in essence, private sale and purchase agreements regarding land rights are valid and have binding legal force as long as the agreement is carried out with clear and cash methods that are witnessed and known by the Village. So that the ownership of the plaintiff's land rights legally belongs to him.

⁷ Ibid, hal. 72

⁸ Prancisca Romana Dwi Hastuti, "Keabsahan Jual Beli Hak Atas Tanah di Bawah Tangan di Desa Patihan Kecamatan Sidoharjo Kabupaten Sragen (Tinjauan Beberapa Kasus Terkait di Pengadilan Negeri di Surakarta)", Jurnal Repertorium, Vol. II, No. 2 (Juli-Desember 2015) hal. 121

CONCLUSION AND SUGGESTION

Conclusion

1. Elements of Unlawful Acts (Onrechtmatigedaad) in Decision Number 11/Pdt.G/2019/PN.Mar

If we look more closely at the elements of unlawful acts in Article 1365 of the Civil Code, they are divided into 4 elements, namely, 1) the act must be against the law; 2) the act must cause loss; 3) the act must be done with a mistake; 4) there must be a cause and effect relationship between the act and the loss that arises. If one of the above elements is not fulfilled, the act cannot be said to be an unlawful act.

So after the author describes the elements of each unlawful act in Article 1365 of the Civil Code from case number: 11/Pdt.G/2019/PN.Mar. So it is true that the Defendant has fulfilled all the elements in committing an unlawful act

2. The Court's Legal Considerations in Decision Number: 11/Pdt.G/2019/PN Mar and the Sale and Purchase in Ownership of Land Rights are Legal and Have Binding Legal Force

Whereas according to the Panel of Judges in its legal considerations it explains the requirements for buying and selling in customary law, namely clear and cash and according to the Supreme Court Jurisprudence in its decision number 655/K/Sip/ 1979 dated 22 July 1980 which states "if a sale and purchase has occurred between the seller and the buyer who are known to the village head concerned and attended by two witnesses, and the purchase price is accepted by the seller, then the sale and purchase is valid according to law, even if it has not been carried out before the PPAT"

In essence, the private sale and purchase agreement regarding land rights is valid and has binding legal force as long as the agreement is carried out clearly and in cash and is witnessed and acknowledged by the Village. So that the ownership of the plaintiff's land rights legally belongs to him

Suggestion

The author in this research provides suggestions which are expected to be useful to the National Land Agency, especially the Gorontalo province, which needs to provide education to the public that in the future, if you want to sell or buy a plot of land, it would be better if the land sale and purchase transaction is carried out by following the applicable laws and regulations, namely carrying out a proper land sale and purchase process. must be carried out before an authorized official, in this case the Land Deed Drafting Officer (PPAT). So that land sale and purchase transactions carried out have legal certainty and strong legal protection, as well as reducing the emergence of risks in the future

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