

UNLAWFUL ACTS AND LAND DISPUTES: UNDERSTANDING OWNERSHIP RIGHTS IN INDONESIA

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Abstract

Indonesia, an archipelagic nation with a tropical climate, fertile soil, and abundant natural resources, primarily supports its population through agriculture. Most people make their living as farmers, heavily reliant on the land. Because of its importance, there is a constant effort to own and control land. Land represents the earth's surface and is often defined by property boundaries. Its significance necessitates state regulations for land rights control. This study uses a normative and empirical juridical approach, collecting data through library research, observations, and interviews, followed by qualitative analysis. The findings reveal that land grabbing occurs mainly due to the absence of a Certificate of Ownership (SHM), with transactions based solely on a sale and purchase certificate lacking a receipt. Factors contributing to land grabbing include landowners' lack of awareness about their assets, victims' unawareness of land ownership, family members selling or giving away land without the victims' knowledge, and rising land prices driving people to seek land for farming. In case number 1/Pdt.G/2023/PN Mgl, the judge accepted the Plaintiff's lawsuit against the Defendant for unlawful acts. The trial demonstrated that the Defendant could not prove his claim of purchasing land from Helmi Majid. The Defendant failed to provide documentary evidence, and witness statements did not support his argument. After careful examination of the actions, events, evidence, and legal facts, the Panel of Judges found the Defendant had clearly violated Article 1365 of the Civil Code regarding Unlawful Acts. Consequently, the Panel of Judges rejected all of the Defendant's objections and granted part of the Plaintiff's claim.

Keywords: Judge's considerations; Unlawful Acts; Land Grabbing; Land Rights

INTRODUCTION

Unlawful acts are one of the most common civil cases in society. Such as the land grabbing that occurred in Dusun Tengah now, Dusun III RT.02 Kampung Gunung Tapa Tengah, Gedung Meneng District, Tulang Bawang Regency, Lampung Province. (NU) as the Plaintiff, 52 years old, residing in RT/RW 001/002 Gunung Tapa Village, Gedung

Meneng District, Tulang Bawang Regency, Lampung Province suffered losses caused by the Defendant (Y) who lives in Dusun Sri Mulyo RT.002 Gunung Tapa Tengah Village, Gedung Meneng District, Tulang Bawang Regency, Lampung Province due to land encroachment carried out by the Defendant (Y) in Gunung Tapa Tengah Dusun, now Dusun III RT.02 Gunung Tapa Tengah Village by Encroaching, Controlling/Using the Land and on the land has a Semi-Permanent House building measuring 4 Meters and 8.5 Meters long and there are many plants, namely cassava, banana trees, jengkol trees, jackfruit trees and other trees that were cut down by the Defendant resulting in Material and Immaterial losses experienced by the Plaintiff.

Unlawful acts (*onrechtmatige daad*) in the civil context are regulated in Article 1365 of the Civil Code or *Burgerlijk Wetboek* (BW) in book III of the BW, which states, "Every unlawful act, which causes loss to another person, requires the person whose fault causes the loss, to replace the loss." Unlawful acts, according to the *Hoge Raad*, include every act or action that has violated the subjective rights of another person, is contrary to the legal obligations of the perpetrator, or is contrary to propriety, accuracy, and attitude, a person who, due to his fault causes loss to another person as a result of his actions is obliged to pay compensation.¹

A judge, in assessing the truth of the testimony of witnesses or parties, must seriously pay attention to the adjustment between the testimony of one witness and another, the adjustment between the testimony of a witness and other evidence, the reasons that may be used by the witness to give a certain statement, the lifestyle and morality of the witness, and everything that can generally affect whether or not the statement can be believed.² Factors that need to be considered by the judge in making a decision and normative factors as the legal basis for sentencing, which cannot be separated from the principle of criminal law, must be adjusted to the nature and condition of the perpetrator, there must be flexibility for the judge in choosing the punishment imposed and the method of implementation.³

¹ M.A Moegni Djojodirjo, *Perbuatan Melawan Hukum*, 2 ed. (Jakarta: Pradnya Paramita, 1982). h. 25-26

² P M H Pertimbangan Hakim, "Pertimbangan Hakim dalam Perkara PMH oleh Prumnas Way Halim Akibat Kelalaian Pembuatan Sertifikat Tanah," *Jurnal Kewarganegaraan* 6, no. 2 (2022): 4099–4108.

³ A. Alam, Y. S., Erlina, B., & Anggalana, "Analisis Putusan terhadap Pelaku Tindak Pidana Penggelapan Dalam Jabatan, (Studi Putusan Nomor 431/Pid. B/2020/PN Tjk)," *Jurnal Pro Justitia (JPJ)* 2, no. 2 (2021).

Utrecht, in his book entitled "Introduction to Indonesian Law," provides the same understanding between agrarian law and land law but, in a narrow sense, only covers the field of State Administrative Law. Furthermore, Utrecht said that agrarian law and land law are part of state administrative law, which examines special legal relationships that are held and will allow officials in charge of handling agrarian matters.⁴ Meanwhile, according to Sahnan, "Agrarian Law is not only a set of legal fields, where Agrarian Law is a group of various legal fields, each of which regulates the rights to control certain natural resources that are included in the definition of agrarian."⁵

Land is one of the objects regulated by agrarian law, and land regulated by agrarian law is not land in all its aspects.⁶ Therefore, land ownership is a vital thing that is protected in agrarian law.⁷ However, in reality, land grabbing is still rampant. This shows that implementing agrarian law is not optimal because there are still people whose rights and ownership of land are not protected, as is the case in Lampung.

This study attempts to examine the existing legal regulations by linking them to the Judge's considerations in case Number 1/Pdt.G/2023/PN Mgl, the Plaintiff's lawsuit against the Defendant regarding unlawful acts. This is done as an effort to show the community's need for regulations that control land rights to eradicate land grabbing and takeover of land rights, as well as comprehensive education for the community regarding land ownership.

METHOD

This research method used a normative and empirical legal approach. The sources and types of data used were primary and secondary data. The data collection was

⁴ Indah Sari, "Hak-hak atas tanah dalam sistem hukum pertanahan di Indonesia menurut Undang-Undang Pokok Agraria (UUPA)," *Jurnal Mitra Manajemen* 9, no. 1 (2020).

⁵ Durra Aliefa Susilo, "Penyelesaian Konflik Agraria Di Kabupaten Kebumen (Studi Penyelesaian Konflik Tanah Urutsewu)" (2022).

⁶ Ayu Dewi Rachmawati, "Peran Pemerintah Dalam Menangani Mafia Tanah Sebagai Perlindungan Kepada Pemilik Hak Tanah," *Jurnal Pendidikan Kewarganegaraan Undiksha* 7, no. 3 (2019): 82-93.

⁷ Filzah Irshadi et al., "Miniriset Hukum Agraria Kepastian Hukum Atas Tanah Kosong di Kota Medan," *Jurnal Relasi Publik* 2, no. 1 (2024): 49-62.

through library research and field research.⁸ The data was processed by selecting and checking the data obtained through its completeness and classifying or grouping data systematically.⁹ The data analysis used was qualitative juridical.¹⁰

RESULT AND DISCUSSION

1. Factors Causing the Occurrence of Unlawful Acts of Land Grabbing in Dusun Gunung Tapa Tengah Based on Decision Number: 1/Pdt.G/2023/PN.Mgl

Land conflicts that often occur are the use of land without permission from the rightful owner, commonly called land grabbing belonging to someone else, either intentionally or unintentionally, whether carried out by an individual or a group of people.¹¹ Land grabbing is not something new in Lampung. Land grabbing is a phenomenon that refers to the actions of a person or group of people who take over or control land that is not actually theirs without permission or legal rights.¹² A person who receives a land grant or buys it needs to be recorded by the local government to issue a Certificate of Land Ownership.¹³ The community needs proof of ownership of land rights because they are aware of the guarantee of legal certainty in the land sector so that there will be no disturbances from other parties in the future.¹⁴

Regarding the Unlawful Act of Land Encroachment Based on the Study of Decision Number 1/Pdt.G/2023/PN Mgl carried out by Defendant by controlling land measuring

⁸ Rizaldy Fatha Pringgar dan Bambang Sujatmiko, "Penelitian Kepustakaan (Library Research) Modul Pembelajaran Berbasis Augmented Reality pada Pembelajaran Siswa," *IT-Edu: Jurnal Information Technology and Education* 5, no. 01 (2020): 317-329.

⁹ Dicky Janu Prasetyo, Tami Rusli, dan Anggalana Anggalana, "Tinjauan Yuridis Error in Persona dalam Penggadaian Sertifikat Hak Milik Yang Dijaminkan Kepada Koperasi Simpan Pinjam Bina Bersama (Studi Putusan Nomor 8/Pdt. G/2019/PN. Kbu)," *Wajah Hukum* 5, no. 1 (2021): 202-211.

¹⁰ M Rafli Maulana dan Arif Firmansyah, "Penegakan Hukum Terhadap Pelaku Usaha yang Menambang di Kawasan Hutan Tanpa Izin," *Jurnal Riset Ilmu Hukum* (2023): 11-16.

¹¹ Zainudin Hasan et al., "Penegakkan Hukum terhadap Tindak Pidana Penyerobotan Tanah di Kabupaten Tanggamus Lampung," *Jurnal Review Pendidikan dan Pengajaran (JRPP)* 7, no. 2 (2024): 4277-4285.

¹² Irsan Rahman et al., "Analisis Hukum Perdata terhadap Kasus Penyerobotan Tanah," *Jurnal Tana Mana* 3, no. 1 (2022): 77-85.

¹³ Noor Atikah, "Kedudukan Surat Keterangan Tanah sebagai Bukti Kepemilikan Hak Atas Tanah dalam Sistem Hukum Pertanahan Indonesia," *Notary Law Journal* 1, no. 3 (2022): 263-289.

¹⁴ Muhammad Nadzir, "Kekuatan Pembuktian Surat Keterangan Tanah Sebagai Bukti Hak Kepemilikan Atas Tanah," *Journal de Facto* 4, no. 1 (2017): 49-70.

4 meters and 8.5 meters long and various tree plants were cut down by Defendant so that the Plaintiff suffered material and immaterial losses.

Based on the results of the interview with Mr. Fitra Agustinus as the Plaintiff's attorney, he explained the Causal Factors for the Unlawful Act of Land Grabbing in Dusun Gunung Tapa Tengah based on Decision Number: 1/Pdt.G/2023/PN.Mgl due to the factor of not having a Certificate of Ownership and only having a Certificate of Sale and Purchase signed by the seller and buyer as the Plaintiff, but not signed by the Village Head at that time, and did not have a receipt. Because in the Dusun Tengah area of Gunung Tapa Tengah Village, Gedung Meneng District, Tulang Bawang Regency, Lampung Province, at that time, was only an ordinary letter of sale or just a handwritten letter stamped and signed without a certificate. In general, the factors causing land grabbing are due to the following things:

- a. The landowner's indifference to the assets they own. In some cases, this occurs because the landowner entrusts someone else to cultivate their land, who later makes a new land deed without the landowner's knowledge with bad intentions.¹⁵ Based on this, the landowner, as the victim, indirectly has a role that influences the occurrence of land grabbing.
- b. The victim's ignorance regarding the ownership of his land has been sold or given to someone else by the victim's family. A person or victim who owns the land knows that his land is controlled by someone else after being informed by his family and paying attention to his Certificate of Ownership that the land has never been sold or transferred to someone else.¹⁶
- c. The Sale and Purchase of the parents' land used a trust system, so there was no evidence regarding the transfer of rights to the land.
- d. The soaring price of land has caused people to start looking for their land and has also made it difficult to obtain land for farming.

¹⁵ Emha Ainun Rizal, "Tanggung Jawab Ppat Atas Pembatalan Akta Yang Dibuat Di Hadapannya" (2022).

¹⁶ Jaminuddin Marbun, Raja Kenasihen Ginting, dan Anggara Zuhri Harahap, "Tindak Pidana Penyerobotan Tanah Dalam Perspektif Hukum Pidana," *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 3, no. 2 (2021): 226–238.

Based on several factors, victims often have a very important role in the occurrence of a crime, whether consciously or unconsciously, directly or indirectly. Control over land can also be interpreted as the word controlling the physical land area in two aspects, namely, legal and public.¹⁷ The description of the two aspects of control and physical control of the land area can be described as follows:

a. Juridical Aspects

Land control is based on land control rights and is protected by law. It gives the rights holder the authority to control the land being claimed physically.¹⁸ Thus, other parties physically control the land without being based on legal rights.¹⁹ For example, when the legal rights holder makes a lease agreement for his land to another party, then the land will be physically controlled by the other party during the lease period.

b. Public Aspects

The right to control land is inseparable from the interests of the nation and State as regulated in Article 33 paragraph (3) of the 1945 Constitution and Article 2 of the UUPA as referred to in Article 1 of the UUPA.²⁰ Earth, water, and space, including the natural resources contained therein, are controlled at the highest level by the State as the organization of power for all the people.²¹

2. Judge's Consideration in the Case of Unlawful Acts Regarding Land Grabbing in Dusun Gunung Tapa Tengah based on Decision Number: 1/Pdt.G/2023/PN.Mgl

a. Land Ownership in Dusun Gunung Tapa Tengah

In his lawsuit, the Plaintiff claims ownership of a plot of land in a housing area measuring 25 m x 50 m or an area of 1,250 m² located in Dusun Tengah now, Dusun III RT.02 Kampung Gunung Tapa Tengah, Gedung Meneng District, Tulang Bawang

¹⁷ Rendy Octavianus Dumais, "Pengaturan Hukum terhadap Keberadaan Tanah Terlantar di Indonesia," *Lex et Societatis* 2, no. 5 (2014).

¹⁸ Iwan Permadi, "Perlindungan hukum terhadap pembeli tanah bersertifikat ganda dengan cara itikad baik demi kepastian hukum," *Yustisia* 5, no. 2 (2016): 448–467.

¹⁹ Arivan Amir, "Peralihan Hak Penguasaan Tanah Menurut UUPA dalam Rangka Pendaftaran Tanah Pertama Kali," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 8, no. 1 (2019): 51–65.

²⁰ Ni Luh Ariningsih Sari, "Konsep hak menguasai negara terhadap tanah dalam hukum tanah (uupa) dan konstitusi," *Ganec Swara* 15, no. 1 (2021): 991–998.

²¹ Andi Bustamin Daeng Kunu, "Kedudukan Hak Menguasai Negara Atas Tanah," *Fiat Justitia: Jurnal Ilmu Hukum* 6, no. 1 (2012).

Regency, Lampung Province, which was obtained by purchasing it from the defendant on March 9, 2020, based on a sales and purchase agreement witnessed by witnesses.

The judge conducts an examination of the buyer's position, whether the buyer is categorized as meeting the criteria for a buyer in good faith or not. In accordance with the Circular of the Supreme Court Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as a guideline for carrying out duties for the judiciary, it is explained that the criteria for a buyer in good faith who needs to be protected based on Article 1338 paragraph (3) of the Civil Code are as follows:²²

- 1) Conducting the sale and purchase of the land object with the procedures and legal documents as determined by the laws and regulations, namely: - Purchase of land through public auction; or - Purchase of land before the Land Deed Official (in accordance with the provisions of Government Regulation Number 24 of 1997); or - Purchase of customary/unregistered land carried out according to customary law provisions, namely: 1) carried out in cash and openly (before/with the knowledge of the local Village Head/Lurah), 2) preceded by research on the status of the land object of the sale and purchase and based on the research it shows that the land object of the sale and purchase belongs to the seller; - Purchase is made at a reasonable price;
- 2) Exercising caution by examining matters relating to the agreed land object, including: - The seller is the person who has the right/has the rights to the land that is the object of the sale and purchase according to the proof of ownership; or - The land/object being traded is not in confiscated status; or - The land/object being traded is not in collateral/liability status; or - For certified land, information has been obtained from the National Land Agency and the history of the legal relationship between the land and the certificate holder; Considering, that based on the provisions of the SEMA, the transfer of land rights based on the Sale and Purchase Agreement (PPJB) legally occurs if the buyer has paid the full price of

²² Surat Edaran Mahkamah Agung Nomor, "Tahun 2017 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2017 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan," *Mahkamah Agung* (2017).

the land and has taken control of the object of the sale and purchase and is carried out in good faith.

Based on written evidence and witness statements from the plaintiff and defendant, it was obtained as a legal fact that the plaintiff had purchased a plot of land measuring 25 m x 50 m or an area of 1,250 m² located in Gunung Tapa Tengah Village, Gedung Meneng District from the Co-Defendant.

b. Has the Defendant Committed an Unlawful Act?

An unlawful act, as formulated in Article 1365 of the Civil Code, is "every unlawful act that causes loss to another person requires the person whose fault caused the loss to compensate for the loss". An unlawful act in Article 1365 of the Civil Code has the following elements:

1. There is an act of the defendant that is contrary to the law;
2. There is an error or negligence on the part of the defendant;
3. There is a loss caused to the defendant;
4. There is a causal relationship or cause and effect between the loss of the plaintiff and the error or act committed by the defendant;

The definition of "contrary to the law" as adopted in the jurisprudence of the Hoge Raad since 1919 (*Arrest Cohen-Lidenbaum*) on January 31, 1919, has become permanent jurisprudence and has become a doctrine of legal science in Indonesia where the definition of "contrary to the law" is interpreted broadly to include 4 (four) types of categories of actions, namely:

1. Contrary to the legal obligations of the perpetrator himself according to the law;
2. Contrary to, or violating the subjective rights of others according to the law;
3. Contrary to good morals;
4. Contrary to the principles of propriety and intelligence in society

These four criteria do not require the fulfillment of all four elements or cumulatively; however, if one of the four elements is fulfilled, the requirements for an unlawful act are also fulfilled. In case 1/Pdt.G/2023/PN.Mgl, the defendant, was found to have done something that was detrimental to the plaintiff, including cutting down trees growing on the disputed land. During the trial, the defendant insisted on owning and controlling the

land and planting it with cassava. However, this could not be proven by a sale and purchase transaction or at least evidence of transfer of ownership. Due to the defendant's inability to prove his ownership of the land, the defendant had met the criteria for committing an unlawful act.

The Judge's consideration in the verdict in this decision where the Defendant could not prove his objection stating that buying land from Helmi Majid could not be proven because the Defendant did not submit written evidence and the Defendant's witness statement was not in sync with what was argued by the Defendant. Therefore, the Panel of Judges rejected all of the Defendant's exceptions. Granted, the Plaintiff's lawsuit, in part, also stated that the Defendant's actions were unlawful based on Article 1365 of the Civil Code.

CONCLUSION

Land grabbing, in this case occurred because they do not have a Certificate of Ownership and only have a Certificate of Sale and Purchase without a receipt. There are several factors causing land grabbing due to: the landowner's indifference to the assets they own, the victim's ignorance that their land ownership had been sold or given to someone else by the victim's family, the soaring price of land, which resulted in people flocking to find land to obtain land for farming. The Judge's consideration in case number 1/Pdt.G/2023/PN Mgl, the Plaintiff's lawsuit against the Defendant regarding unlawful acts, can be accepted based on the facts in the trial, which are known that the Defendant cannot prove his rebuttal argument stating that buying land from Helmi Majid cannot be proven. The Defendant does not submit written evidence, and the Defendant's witness statement is not in sync with the Defendant's argument. The Panel of Judges has carefully examined and reviewed the actions, incidents, evidence, and legal facts in this case. Thus, it is found that the Defendant is indeed proven to have legally and clearly violated Article 1365 of the Civil Code concerning Unlawful Acts. Therefore, the Panel of Judges reject all of the Defendant's exceptions and grant part of the Plaintiff's lawsuit.

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