

LEGAL ANALYSIS OF WORKS MASTERING LAND OWNERSHIP NOT HIS OWN (DECISION NO.115/PDT.G/2017/PN. MDN)

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ABSTRACT

Land is a very central thing, other than as a means of production serves as a place of residence. Very important land, in Indonesia there are still many of our people who have not got the land, there are still many lawsuits about land registered in court. Land disputes occur because the land has an important position, which can prove the independence and sovereignty of the owner. Land has a function in the framework of the integrity of the state and function as the basic capital in order to realize the greatest prosperity of the people. Factors causing land ownership rights have others in Decision No. 115 / Pdt.G / 2017 / PN.Mdn because the landowner, never occupy and control the land, due to continuously in the empty state then the defendant adjacent to the plaintiff's land feel the land belongs to his parents who have been inherited to him and assume that there is no owner, therefore the defendant controls the land. The process of settlement of land tenure which is not his own in Decision No. 115 / Pdt.G / 2017 / PN.Mdn was resolved through legal proceedings at the Medan District Court, and prior to that the plaintiff had also reported to the police about the defendant's acts but the defendant retained control of the land which he did not own, and had to be resolved by the court to execution and expulsion to vacate the plaintiff's land. It is advisable to raise public awareness to provide borders and stakes to their property as proof of ownership of legitimate land rights and also need to register with the National Land Agency to have strong evidence if there is a dispute, and it is better that the land object should be occupied by itself in order not to be used or occupied by others.

Keywords: Legal Actions, Mastering the Land of Others

A. BACKGROUND

Since ancient times, the lands tightly related to everyday human life and are a basic human need. Humans live and reproduce all the time, and carry out activities on the ground so that humans are always in contact with the land.

In Indonesia, land has an essential and strategic meaning in the lives of its people. Land that gives life because this is where everyone grows, to meet their daily needs. A place to build a house to carry out a life of descent, birth, and having grandchildren, which in the end is also the land where people are buried after someone dies as a resting place. (Soerjo Wignjodipuro, 1982: 197).

According to reality, villagers are classified on the basis of their relationship with the land, and on this basis, villagers take part in the village government, for example; only land owners who in the past were allowed to elect members of the Village Government and have a greater responsibility towards the village than those who are not land owners. The lowest legal community system. It shows the agrarian nature of our society. (Imam Sutiknyo, 2007: 57).

Law regarding land in Indonesia is influenced by a colonial legal system as a result of being colonized by the Dutch for hundreds of years so that there are two types of land; namely lands with western rights and lands with customary rights which of course will also differ regarding the transition, in buying and selling is also a way of legal protection and legal certainty for the owner of the land concerned.

In particular, Herman Soesangobeng said the philosophy of land ownership in customary law, the base essence of which is the linkage of humans with land and nature and not on rights, but on the solid relationship of linkages that give birth to authority (rights). Therefore, rights are born through the process of the intensity of the relationship between humans and land, not from official decisions. (Herman Soesangobeng, 1998: 4). In customary philosophy, rights are understood as relative and easy to change in accordance with changes that occur in society, so rights are not absolute.

The concept of land rights contained in national agrarian law divides land rights into two forms (Supriadi, 2010: 64):

1. Primary land rights, namely land rights that can be owned or controlled directly by a person or legal entity that has a long period of time and can remove to other people or their heirs such as Hak Milik (HM), Hak Guna Business (HGU), Building Use Rights (HGB), and Use Rights (HP).

2. Secondary land rights, namely temporary land rights such as liens, profit-sharing business rights, boarding rights, and rental rights on agricultural land.

An unlawful act is an act in which a person commits an act that harms another person but the act is not based on or required by the agreement. Initially, the definition of unlawful acts was only interpreted narrowly, namely acts that violate the law. However, later Hoge Raad in the famous case of Lindenbaum against Cohen expanded the notion of violating the law not only as an act that violates the law, but also as any act that violates propriety, prudence, and decency in relations between fellow citizens and against objects others. (Suharnoko, 2007: 119).

A broad interpretation of the meaning of unlawful acts is also in line with the development of theory in contract law that agreements must be made in good faith which means that they must pay attention to the principle of propriety.

In order to maintain the security and legal certainty of land rights, everyone who acquires and has rights should work on them so can have a certificate of land rights. Thus the owner of the certificate of land rights will feel more secure and calm to use his rights (M.A. Moegni Djojodirjo, 1982: 18).

RESEARCH PROBLEMS

The problems in the implementation of this thesis research based on the above background are:

1. What are the factors causing the act of controlling land rights that are not owned by him?
2. What is the settlement process for the act of controlling land rights that do not belong to him in Decision No. 115/Pdt.G/2017/PN.Mdn?

RESEARCH GOALS

The research objectives based on the problems above are:

1. To find out the factors causing the act of controlling land rights that do not belong to him.
2. To find out the settlement process for the act of controlling land rights that do not belong to him in Decision No. 115/Pdt.G/2017/PN.Mdn.

B. RESEARCH METHOD

This type of research is normative legal research. Normative legal research is research that examines applicable norms including laws that have relevance to the problem as legal source material. (Soerjono Soekanto and Sri Mamudji, 2001: 14)

The nature of descriptive-analytical research is that the data analysis is carried out not outside the scope of the problem and based on general theories or concepts applied to explain a set of data, or to show a comparison or relationship between a data set and another data set. (Bambang Sunggono, 2011: 28).

The data collection technique is Library Research, namely by researching various reading sources, namely books, legal magazines, opinions of scholars, statutory regulations, and also lecture materials doing spaciousness in this case the author directly conducted a study at the Medan District Court by taking a related decision, namely Decision No. 115/Pdt.G /2017/PN.Mdn for analysis.

Data analysis in this study used qualitative methods. Research using qualitative methods departs from assumptions about reality or social phenomena that are unique and complex. In it, there is a certain regularity or pattern, but it is full of variety (diversity). (Burhan Bungin, 2003: 53).

C. THE RESULT AND DISCUSSION

1. Factors that cause actions to control land rights that do not belong to him

Land disputes arise due to several factors, these factors are very dominant in every land dispute anywhere, among others (Maria S.W Sumardjono, 2008:38):

- a. Incomplete regulations;
- b. Non-compliance with regulations;
- c. Land officials who are less responsive to the need and the amount of land available;
- d. Inaccurate and incomplete data;
- e. Incorrect land data;
- f. Limited human resources tasked with resolving land disputes;
- g. erroneous land transactions;
- h. by the applicant's rights or;
- i. The existence of settlements from other agencies, so that there is overlapping authority.

In general, land disputes that arise in Indonesia can be grouped into four classifications of problems, namely problems related to (Abdurrahman. 1995: 85):

- a. Recognition of ownership of land;
- b. Transfer of land rights;
- c. Encumbrance of rights, and
- d. Occupation of formerly private land.

Judging from the subject matter of the dispute, land disputes can be grouped into three types, namely (Ali Achmad Chomzah. 2002: 64):

- a. Land disputes between residents;
- b. Land disputes between the Regional Government and residents, and
- c. Disputes relating to natural resource management

The typology of cases in the land sector can be broadly divided into five groups, namely (Urip, Santoso 2007: 15):

- a. Cases relating to people's cultivation of plantation, forestry, and other lands,
- b. Cases relating to violations of land reform regulations,
- c. Cases relating to excesses of providing land for development,
- d. Civil disputes relating to land issues;
- e. Disputes regarding layout land.

Meanwhile, according to Rusmadi Murad, the natural problems of land disputes, in general, there are several kinds, namely (Rusmadi Murad, 2001: 40):

- a. Issues concerning priorities to determine as legal rights holders to land with title status; or on unclaimed land.
- b. A rebuttal to a base of rights/evidence of acquisition used as the basis for granting rights,
- c. Mistakes/errors in granting rights due to improper application of regulations,
- d. Another dispute contains practical social aspects.

According to the Head of the Central National Land Agency (BPN), there are at least three main things that cause land disputes (Rusmadi Murad, 2001: 56):

1. The issue of land certification administration is not clear. The result is land owned by two people with their respective certificates.
2. Unequal distribution of land ownership, the imbalance in the distribution of land ownership for secondary agricultural and non-agricultural lands has led to economic, political, and sociological inequality. In this case, the lower community, especially farmers/cultivators of the ground bear the heaviest burden. This inequality in land distribution is inseparable from economic policies that tend to be capitalistic and liberalistic. In the name of the development of lands arable by farmers or lands belonging to indigenous peoples are taken over by investors at low prices.
3. Legality of land ownership based solely on formal evidence (certificates), without regard to land productivity. As a result, legally (*de jure*), it is possible that a lot of certified land is owned by companies or big investors, because they have bought it from the farmers/land owners, but the land has been neglected for a long time. Maybe some people underestimate looking down on this land dispute issue, even though this problem is a problem that must be immediately found solution. Why is it, that land disputes have the potential for conflicts between races, ethnicities, and religions? As a result, self-esteem must be at stake.

In Decision No. 115/Pdt.G/2017/PN.Mdn, there has been a land dispute, namely due to an unlawful act by controlling land rights that are didn't owned by the accused against the plaintiff's land.

Whereas all this time Plaintiff as the holder of the certificate of the object of a piece of land with the certificate of Property Rights Number 821/ Kelurahan Helvetia Tengah, Kec. Medan Helvetia, Medan City wide an area of 454 m2. Whereas the object of the lawsuit is land as stated in the Certificate of Ownership Number 821/ Kelurahan Helvetia Tengah, Kec. Medan Helvetia, Medan City wide an area of + 454 m2, directly adjacent to the land owned by Defendant's parents.

That during his lifetime the Defendant's parents never controlled the object of the lawsuit, namely land as stated in the Certificate of Ownership Number 821/Keluraha Helvetia Tengah, Kec. Medan Helvetia, Medan City with an area of + 454 m2, but after the Accused's parents died the accused and his family controlled the land owned by the Accused's parents, and also controlled the land belonging to the plaintiff.

The factor causing control of the plaintiff's land, is because the defendant's land and the plaintiff's land are sides by side, and the plaintiff's land has never been occupied or seen by the plaintiff, it causes the defendant who occupies the land next to the plaintiff to control the land that is the object of the dispute because he feels the land is empty and not someone occupies.

The rights to control over land contain a series of powers, obligations, and prohibitions, for the holder of the right to act, with the land that is entitled, "something" that may be obligatory and/or prohibited to be finished is what constitutes a differentiating benchmark for various control rights over land. If we know that the land tenure rights can be interpreted as a legal institution if it has not linked to a certain Subyrik land (Budi Harsono, 2008: 262).

Juridical control is based on rights, which are protected by law and generally give authority to the right holder to physically control the land that is the judge. However, there is also juridical control which, even though it gives the authority to control land that has been acquired physically, in reality, the physical control is carried out by another party.

2. The Process of Settlement Against Acts of Controlling Land Rights Not Owned in Decision No. 115/Pdt.G/2017/PN.Mdn

Various land conflict resolutions are offered, both litigation and non-litigation, but in many cases, the results are not satisfactory. Even the settlement through the courts is sometimes felt by the community to be unsatisfactory. Not a few of those who have occupied land for years have had their lawsuits rejected to defend their rights or obtain rights because there are other parties who control the land in question. Or conversely, a person's claim against a certain land tenure is granted by the court even though the party who controls the land is not strong enough or the claim is not well-founded.

In order to build public trust (trust building), one of the things done by BPN is to accelerate the handling and settlement of land cases as mandated in MPR Decree IX/MPR/2001 which is also part of the 11 Priority Agenda of BPN RI based on 4 (four) principles of land policy. Settlement of land conflicts based on the Regulation of the Head of BPN No. 3 of 2011 concerning the Management of the Assessment and Handling of Land Cases consists of (Abdurrahman. 1995: 90):

1. Settlement of land disputes and conflicts to implement court decisions; BPN RI is obliged to implement court decisions that have permanent legal force, unless there are valid reasons not to implement them, namely:

- a. Against the object of the decision there are other contradictory decisions;
- b. Against the object of the decision is being placed collateral confiscation;
- c. Against the object of the decision being the object of a lawsuit in another case;
- d. Other reasons regulated in the legislation.

2. Settlement of land disputes and conflicts outside the court; can be in the form of land administration legal actions including:

- a. Cancellation of land rights due to administrative law defects;
- b. Recording in the Certificate and/or Land Book and other General Registers; and
- c. Issuance of letters or other land administration decisions because there are administrative legal defects in their issuance.

So that the handling and resolution of land conflicts can be realized and the policy agenda of BPN RI can be implemented to achieve the desired strategic goals, the following strategies are formulated (Ediwarman, 2003: 10):

- a. Strengthen the implementation of the main tasks and functions of the Deputy for the Assessment and Handling of Land Disputes and Conflicts by establishing standard mechanisms and operational procedures for the assessment and handling of land disputes;
- b. Intensifying the resolution of disputes, conflicts, and land cases through mediation based on root cause studies;
- c. Building a database system and a valid land case information system to support the acceleration of systematic handling and resolution of disputes, conflicts, and land cases;
- d. Initiating the realization of the strategic concept of resolving disputes, conflicts, and land cases by involving experts, academics, and agrarian observers;
- e. Improving the quality and professionalism of human resources within the Deputy for the Assessment and Handling of Land Disputes and Conflicts.

In decision No. 115/Pdt.G/2017/PN.Mdn regarding the case of land disputes because the defendant controls land objects that do not belong to him, the settlement process is carried out through the Medan District Court because it has been carried out amicably and through deliberation but the defendant still controls the object of the land dispute which is the property of the plaintiff. The plaintiff has also reported the defendant to the authorities, namely the crime of controlling land belonging to another person, but the defendant still does not want to leave the object of the land dispute because he feels that the object of the land dispute belongs to the parents of the previous defendant. After being examined at the Medan District Court, by looking at the letter evidence and listening to witnesses during the trial process, the Panel of Judges decided to grant the plaintiff's claim in part and stated that the land that was the object of the dispute was land belonging to the plaintiff and ordered the defendant to vacate and leave plaintiff's land.

In order for the function of law as a tool of social engineering, a tool for community renewal and development to be realized, a number of requirements must be met, including (Mochtar Kusumaatmadja, 1970:19):

- a. There is a good rule of law, which is synchronous vertically and horizontally. Vertically synchronous means that the rules at the lower level must not conflict with the rules at the higher (higher) level. While horizontally synchronous means that the existing rules must not conflict and/or overlap with the rules of the same level, especially if they regulate the same legal material;
- b. The existence of good human resources, namely law enforcement officers who are capable, competent, and have high integrity with honest and tough personalities;
- c. Availability of adequate facilities and infrastructure, and;
- d. The existence of a good society, which has an adequate level of education, is cultured and upholds the values of justice.

D. THE CONCLUSION AND SUGGESTION

Conclusion

Factors causing control of property rights to land owned by others in Decision No. 115/Pdt.G/2017/PN.Mdn because the land owner has never occupied and controlled the land because it is continuously empty, the defendant who is adjacent to the plaintiff's land feels that the land belongs to his parents who have inherited it and thinks that there is no owner, therefore the defendant controls the land. 115/Pdt.G/2017/PN.Mdn was resolved through legal channels at the Medan District Court, the judge's decision was by the juridical aspect based on rights, which were protected by law, and before that, the plaintiff had also reported to the police about the defendant's actions, but the defendant continues to control land that does not belong to him and must be resolved by the court to carry out executions and evictions to vacate the land belonging to the plaintiff.

Suggestion

It is better to increase public awareness to provide boundaries and stakes on their land as proof of legal ownership of land rights and also need to register with the National Land Agency so that they have strong evidence if there is a dispute, and it is better if the land object must be occupied alone so that it is not used or occupied by other people. It is better if the problems that occur can be resolved through deliberation and family without having to be resolved through the Court because it will cost a lot and waste a lot of time and make more losses for both parties in dispute.

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