

**LEGAL REVIEW OF UNLAWFUL ACTS IN LAND DISPUTES****Anwar Sadat<sup>1\*</sup>, Heru Prasetyotomo<sup>2</sup>, Pakerti Luhur L.<sup>3</sup>, Zelima Nazara<sup>4</sup>, Nurul Widya Kusuma<sup>5</sup>, Teguh Irawan<sup>6</sup>**<sup>1-6</sup>IBLAM College of Law, Jakarta, Indonesiaanwarsadar@iblam.ac.id<sup>1\*</sup>, heruprasetyotomo1974@gmail.com<sup>2</sup>, pktlhr@gmail.com<sup>3</sup>, zelimanazara@ymail.com<sup>4</sup>, nwk.kuliah@gmail.com<sup>5</sup>, teguh.irawan1970@gmail.com<sup>6</sup>**Abstract**

Law and jurisprudence stipulate that the perpetrator must have schuldelement, or an element of fault, in committing his/her act in order to be covered by Article 1365 concerning Unlawful Acts. Liability under Article 1365 of the Civil Code does not include liability without fault (strict liability). Jurisprudence recognizes the concept of immaterial losses, which will be assessed in monetary form, in contrast to losses arising from breach of contract, which only discusses material losses, and losses arising from unlawful acts. Decision of the Sukoharjo District Court Number 32/Pdt.G/2007/Pn.Skh. The case began when the plaintiff sold a building and a plot of land to the defendant. After both parties agreed on the price of the land, the defendant paid the plaintiff in cash and the remainder by check, but the check turned out to be empty when the plaintiff cashed it at Bank BCA. The formulation is 1) What is the perspective of Unlawful Acts in Civil Law? 2) How to resolve land and building sale and purchase disputes through lawsuits for unlawful acts at the Sukoharjo District Court? and 3) What are the legal consequences of the judge's decision regarding land and building sale and purchase disputes at the Sukoharjo District Court? The method used is the normative legal research method, which is to examine relevant laws and regulations or apply them to a particular legal problem. Law enforcers are advised to apply these elements carefully in order to achieve justice in each case. Victims also need to be given support in proving the existence of losses and causal relationships with the actions of the perpetrators. In addition, it is important to conduct socialization to the community regarding the definition of unlawful acts, the rights of victims, and the legal obligations of perpetrators to increase legal awareness in community life.

Keywords : Unlawful Acts, Land Disputes, Civil

## **INTRODUCTION**

One way to obtain rights and ownership of land is through buying and selling; however, to do so requires its own set of guidelines, specifications, and processes. When land is bought and sold in violation of Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration, it often causes problems later on. Cases involving the purchase and sale of land that result in disputes often appear in print and electronic media, and may also not be reported. Errors and mistakes or negligence in the implementation of the transfer of land rights are one of the many reasons why land-related disputes and litigation arise in society. According to Article 1 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2011 concerning Management of Assessment and Handling of Land Cases, land disputes are disputes that arise between people, organizations, or legal entities and often have broad socio-political impacts.

Land disputes that occur between people, groups, organizations, legal entities, or institutions that tend to have broad socio-political impacts are called land conflicts. According to Koentjaraningrat, conflict or dispute can also occur due to differences in perception, namely a world view that is realized based on individual knowledge; the environment in question is the social environment and the physical environment. Because one party has greater rights to the disputed land than the other party, the resolution of legal disputes over land disputes depends on the nature of the problem being raised, and the process requires several specific stages before a decision is reached. This is the real reason that is the ultimate goal of the dispute. (Achmad, 2003)

This also happened in the case of land and building sale and purchase disputes, especially the Decision of the Sukoharjo District Court Number 32/Pdt.G/2007/Pn.Skh. The case began when the plaintiff sold a building and a plot of land to the defendant. After both parties agreed on the price of the land, the defendant paid the plaintiff in cash and the rest by check, but the check turned out to be empty when the plaintiff cashed it at Bank BCA. After that, the plaintiff contacted the defendant both directly and by telephone, but every time the plaintiff asked about the non-payment of SHM No. 5210 (the subject of the dispute) for the purchase of land and buildings, the defendant always avoided it and essentially refused to pay. As a result, the plaintiff filed a lawsuit against the defendant at the Sukoharjo District Court on the grounds that the defendant had broken his promise, acted in bad faith, and had committed an unlawful act in the form of a breach of contract. (Fuady, 2022)

## **RESEARCH METHODS**

The author in this work uses a normative legal research methodology that combines the legislative and case approaches. The normative legal research method is to examine relevant laws and regulations or apply them to a particular legal problem. Because library materials and official documents are research materials, normative research is often referred to as library research. (Asikin, 2004)

## **RESULT AND DISCUSSION**

### **Unlawful Acts in Civil Law**

In accordance with the provisions of Article 1365 of the Civil Code (Subekti, 2017), an unlawful act in civil law must contain the following elements:

1. The existence of an act

An illegal act begins with the action of the perpetrator. It is generally understood that the term "act" in this context refers to doing something (in the active sense) or not doing something (in the passive sense). For example, he may be legally obligated to do something, but he may choose not to do so because of applicable law (because there are also obligations arising from a contract). Consequently, neither "agreement or agreement" nor "permissible reasons" found in a contract are present in unlawful behavior.

2. The act is unlawful.

The act committed must be unlawful. Since 1919, this unlawful element has been interpreted in the broadest sense, namely including the following basic things:

- a. Acts that violate applicable laws.
- b. Violating the rights of others guaranteed by law, or
- c. Acts that are contrary to the legal obligations of the perpetrator, or

- d. Acts that are contrary to morality (*goede zeden*), or
  - e. Acts that are contrary to good attitudes in society to pay attention to the interests of others
3. There is an error on the part of the perpetrator.

The law and jurisprudence stipulate that the perpetrator must have *schuldelement*, or an element of error, in carrying out his actions in order to be covered by Article 1365 concerning Unlawful Acts. Thus, liability under Article 1365 of the Civil Code does not include liability without fault (strict liability). Although strict liability, or liability without fault, can be used in some circumstances, this is not based on Article 1365 of the Civil Code but on other laws and regulations. The extent of the element of error must be understood because Article 1365 of the Civil Code stipulates that an unlawful act must have an element of "fault" (*schuld*). If an act meets the following requirements, then the act is considered to have an element of error and can be held legally accountable:

- a. There is an element of intent,
  - b. There is an element of negligence (*negligence, culpa*),
  - c. There is no justification or excuse (*rechtvaardigingsrond*), such as *force majeure*, self-defense, insanity, etc.
4. There is a loss for the victim.

In order for a lawsuit based on Article 1365 of the Civil Code to be used, the victim must also have suffered a loss (*schade*). Jurisprudence recognizes the concept of immaterial losses, which will also be assessed in monetary terms, in contrast to losses arising from breach of contract, which only discusses material losses, and losses arising from unlawful acts.

5. There is a causal relationship between the act and the loss.

An unlawful act must also have a causal relationship between the act and the loss it causes. There are two types of theories about causal relationships: the direct cause theory and the factual relationship theory. The "facts" or what actually happens are all that is involved in the factual causal relationship, or "causality in fact." If the loss (result) would not have occurred without its cause, then any cause that results in the loss can be considered a factual cause. This type of cause and effect is often referred to as the "but for" or "sine qua non" law in the context of illegal activities. One of the legal scholars from Continental Europe who strongly believes in the factual effect theory is von Buri. In addition, the idea of "proximate cause" was developed to make the law more practical, achieve aspects of legal certainty, and make the law more just. The most ambiguous and controversial aspect of law relating to illegal activities is proximate cause. This kind of reason is sometimes also known as legal cause or by other names.

### **Resolution of Disputes in The Sale of Land And Buildings Through a Lawsuit in The Sukoharjo District Court**

There are two ways to settle land and building sales cases, namely litigation and non-litigation. Settlement through litigation is carried out by filing a lawsuit with the District Court, while settlement through non-litigation is carried out through mediation. To determine general legal provisions up to concrete legal events, the Panel of Judges in the Civil case of the Sukoharjo District Court Decision Number 32/Pdt.G/2007/Pn.Skh concerning a lawsuit for breach of contract in the sale of land and buildings also made legal efforts to discover the law. The purpose of this legal discovery process is to determine general legal provisions (*das sollen*) by considering concrete events (*das sein*). In the Civil case of the Sukoharjo District Court Decision Number 32/Pdt.G/2007/Pn.Skh, the judge rejected the plaintiff's lawsuit for the following reasons.

Since Defendant I and Defendant II rejected the Plaintiff's lawsuit, the Plaintiff must prove the truth of his lawsuit. The Plaintiff has submitted evidence P.1 to P.7 and two (two) witnesses whose names and statements have been mentioned previously to support his lawsuit. Defendant I and Defendant II have submitted evidence (T.I. II-1 and T.I. II-2) to strengthen their objections. Therefore, the Panel of Judges will first assess the procedural requirements that must be met before determining the main case. Formalities must be met so that a civil case can be declared complete. One of these formalities is the existence of a real object, namely something that can be counted, measured, seen, and felt by justice seekers in a legal environment. If the object is not like that, then the decision will be meaningless for justice seekers because it will be difficult to implement. (Bisri, 998)

According to the plaintiff in posita number 1, the main dispute in this case is a plot of land measuring 280 m<sup>2</sup> in Kartasura Village/Sub-district, Kartasura District, Sukoharjo Regency, on which there is a building and Certificate of Ownership Number 5210. The boundaries of the land are: the north is bordered by Jalan Desa, the south is bordered by Hadi Mulyono, the east is bordered by Jalan Desa, and the west is bordered by H Muhtar Rifai. Regarding the intent and purpose of the dispute, the plaintiff in posita number 11 and petitum number 7 of this case has requested that if Defendant I cannot pay off the remaining payment for the land and building in question, then the case can be auctioned in a public place through the State Auction Officer. According to jurisprudence (Supreme Court Decision of the Republic of Indonesia No. 1149 K/Sip/1975 dated April 17, 1979) the lawsuit must contain the following provisions, although the main case is a breach of contract due to the sale and purchase of the disputed object between the Plaintiff and Defendant I, which has been denied by Defendant I and Defendant II: (a) The lawsuit must contain the boundaries and area of the land plot. (b) and must state in detail the land plot that is the subject of the lawsuit.

Based on evidence P.5 = TI. II-1 and TI. II-2 relating to the testimony of Plaintiff I's witness, MASDUKI who is the previous owner of the disputed object, the boundaries of the disputed object are as follows: North: land owned by witness Masduki's older brother (NIB 00639). East: Village Road. South: land owned by witness Masduki's older brother (NIB 00637). West: H. Muchtar Rifai. As a result, the object of the dispute is no longer certain, and its extent may even be uncertain because it has violated someone else's land, because the boundaries of the object mentioned in the Plaintiff's lawsuit are linked to the facts revealed in court. It turns out that the boundaries of the North and South are different. It turns out that the benchmarks determined in the Jurisprudence/Decision of the Supreme Court of the Republic of Indonesia No. Reg. 1149 K/Sip/1975 dated April 17, 1979 were not met, based on the matters mentioned above. Thus, the Panel of Judges decided that the Plaintiff's lawsuit should be considered unreasonable because it is inappropriate and unclear (imperfect) based on the considerations above.

The researcher is of the opinion that the judge's decision to reject the plaintiff's lawsuit based on the considerations above is correct, because the judge in deciding the method of dispute resolution has considered the available evidence, which strengthens his belief that the evidence is strong and pure as referred to in Article 1866 of the Civil Code, namely written evidence, witnesses, letters, confessions, and oaths. (HS., 2066)

In deciding who is right and who is wrong in a case and resolving disputes, judges are also expected to be impartial. When a judge tries a case, the most important thing is the facts or events, not the law. The events are what make the difference; the law is only an instrument. Even if there are legal norms, there is a possibility that an event will occur with a different resolution. If we look at the Authority of Judges to Provide Legal Considerations in Their Decisions, we find that it is regulated very clearly in Article 189 RBG (*reglement bewesken*), which states: (1) Judges because of their position are required to provide sufficient legal basis submitted by the parties in deliberation. (2) Judges are required to examine every aspect of the lawsuit. (3) Judges are not allowed to decide on matters that are not requested or grant more than requested. (Harahap, 2011)

The facts of the case and the legal factors that are considered in reaching a decision are examined by the panel of judges who examine, consider, and decide the case. In order to make a decision, the judge must first have an objective understanding of the facts of the case rather than making conclusions based on assumptions. The judge will be able to determine the actual events based on the evidence. The judge must decide which legal rules apply to the dispute between the two parties after considering the disputed event proven, which shows that the judge has been able to prove the disputed event. He needs to determine the punishment and qualifications of the event that is considered proven. Article 195 RBG paragraph (1), 184 HIR, identifies the provisions that must be considered by the court. It states that the judge's decision must concisely and clearly state the demands and responses, as well as the reasons behind the decision and, finally, the district court's decision regarding the main lawsuit, its costs, and the parties present at the time of the decision. (Muhammad, 2002)

The consideration of the verdict is divided into two, namely consideration of the facts of the case or event and consideration of the law. The party who submits the event or fact of the case is responsible for proving it in court by submitting or providing evidence, while the judge is responsible for determining the law. If it is stated explicitly in the verdict, then the decision of the Panel of Judges

must be the result of mature consideration and must be kept confidential until it is known to the public. Article 195 RBg paragraph (1) 184 HIR states the provisions that must be considered by the court. The article states that the judge's decision must contain demands and answers, as well as the reasons behind the decision in a concise and clear manner, and finally the decision of the district court regarding the main points of the case, court costs, and the parties present at the time of the verdict. (Mertokusumo, 2002)

The judge must provide an appropriate legal basis because of his position, in accordance with Article 189 paragraph (1) of the Judicial Law. In this process, both the incident and the law are considered. These factors must not conflict with the basis of the lawsuit. The court must then consider it carefully. The decision needs to be canceled because there is no court consideration. "In addition to containing the reasons and basis for the decision, a court decision must also contain certain articles of related laws and regulations or unwritten legal sources that are used as the basis for judging," in accordance with Article 50 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power.

In his book, *Law of Evidence*, Subekti states that a judge's decision is based on legal considerations made by determining whether the underlying arguments of the lawsuit are accepted or rejected, then moving on to the arguments that are rejected and which are the main points of the case. In the Civil Case of the Decision of the Sukoharjo District Court Number 32/Pdt.G/2007/Pn.Skh, a lawsuit for unlawful acts regarding the sale and purchase of land and buildings, the Judge considered the arguments put forward by the plaintiff, witness statements at trial, and evidence submitted. The object of the lawsuit, as supported by evidence P.5 = T.I. II-1 and T.I. II-2, connected with the statement of witness I, the plaintiff, MASDUKI, who is the previous owner of the disputed object. It turns out that the boundaries of the disputed object are as follows: (1) North: land owned by the witness's older brother Masduki (NIB 00639). (2) Village Road to the East. (3) South: Masduki's Field (NIB 00637), the witness's older brother. (4) H. Muchtar Rifai, West.

Because the boundaries of the disputed object are linked to the facts revealed in court, and it has been determined that the northern and southern boundaries are different, the disputed object is no longer certain and perhaps even its area is no longer certain because it has violated the property rights of others. It turns out that the requirements stipulated in the Jurisprudence/Decision of the Supreme Court of the Republic of Indonesia No. Reg. 1149 K/Sip/1975 dated April 17, 1979, were not met considering the above matters. Therefore, the Panel of Judges decided that the Plaintiff's argument was vague and confusing (imperfect / obscur libel) based on the reasons above, and must be considered unreasonable.

### **Legal Consequences of The Judge's Decision Regarding The Dispute of Sale of Land and Buildings at The Sukoharjo District Court**

After the decision of the Sukoharjo District Court Number 32/Pdt.G/2007/Pn.Skh was read out, the decision had permanent legal force and had an impact on the disputing parties. The losing party is obliged to voluntarily implement the provisions of the decision as a result of the decision. The plaintiff is the losing party in this case, and they have three legal options if they are not satisfied with the decision of the Sukoharjo District Court: appeal, cassation, and judicial review. The implementation of the decision has a legal impact on the disputing parties. If there is no alternative legal remedy, everyone is obliged to implement the decision that has permanent legal force. The winning party, the defendant, can ask the Sukoharjo District Court to enforce the decision by force (execution) if the losing party, the plaintiff, refuses to do so. Because the crown of the Court is the implementation of the contents of the decision, the contents of the decision must be followed. (Murad, 1991)

The judge handed down a decision in case Number 32/Pdt.G/2007/Pn.Skh. with the following considerations: (1) Declare that the Plaintiff's lawsuit cannot be accepted / Niet – Ontvankelijke verklaard. (2) Order the Plaintiff to pay the court costs which are currently estimated at Rp. 224,000,- (two hundred and twenty four thousand rupiah). The Plaintiff is obliged to implement the decision stating that the object of the dispute, namely the land and building, is the legal property of Defendants I and II, Mulat Sri Lestari and Syamidi.

**CONCLUSION**

Article 1365 of the Civil Code stipulates that an unlawful act must meet five main elements, namely the act being committed either actively or passively, the act being unlawful by violating laws, rights, obligations, morality, or social norms, the perpetrator's fault either intentionally or negligently, the loss suffered by the victim, and the causal relationship between the act and the loss that occurred. These elements provide a clear legal basis for demanding the perpetrator's responsibility and ensuring that the actions taken can be fairly accounted for.

Through a lawsuit for unlawful acts at the Sukoharjo District Court No. 32/Pdt.G/2007/Pn.Skh, the land and building sale and purchase dispute was resolved based on the plaintiff's lawsuit, supporting documents, and witness statements. The boundaries of the disputed object mentioned in the plaintiff's lawsuit were linked to the facts revealed in court, and it was determined that the northern and southern boundaries were different. Therefore, the Panel of Judges decided that the Plaintiff's case was unclear and confusing (imperfect / obscur libel) based on the reasons above, and must be considered unreasonable.

The legal consequences of the decision in case No. 32/Pdt.G/2007/Pn.Skh for the disputing parties are in the method of implementing the decision, namely that the Plaintiff who does not agree with the decision of the first instance Court can file an appeal, judicial review, and cassation.

This dispute occurred because of the alleged Exceptio non adimpleti contractus and this principle is regulated in Article 1478 of the Civil Code, namely that Defendant 1 and Defendant II did not carry out the obligation to pay off the payment because the Plaintiff did not carry out the agreement first, because the facts revealed in the trial turned out to be differences in the northern and southern boundaries, so that the object of the dispute is no longer certain, even its area may be uncertain because it has violated land owned by others.

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