

Land Ownership Disputes Related to Unlawful Acts

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Abstract. This study aims to analyze land ownership disputes related to unlawful acts. Land disputes can still occur and land ownership must be proven based on evidence of rights. This research is a descriptive normative juridical research using a statute approach and a case approach. Data were analyzed qualitatively and conclusions were drawn using deductive logic. The results showed that Salma, Susanti, Sumiati and Iin Marlina were the legal owners of a plot of land with an area of $\pm 28,781 \text{ M}^2$ located in Tanjung Katung Village, Maro Sebo District, Muaro Jambi Regency. Ma'an and Iwan Setiawan as defendants were proven to have committed unlawful acts which had the plaintiff's loss and were not entitled to own part of the land owned by Salma Susanti, Sumiati and Iin Marlina.

Keywords: Land dispute; Unlawful act

1 Introduction

The rule of law is very important to avoid land disputes and to protect human rights [1]. In fact, even if you already have proof of land ownership, there are still land disputes that contain elements of unlawful acts [2]. A person's behavior may be an act that is legal (permitted by law) or may also be an act that is unlawful acts [3]. According to Article 1365 of the Civil Code, every person who commits an unlawful acts is required to compensate for the loss arising from his mistake [4].

The causes of land disputes are very diverse, consisting of (a) lack of orderly land administration; (b) inequality in the structure of land tenure and ownership; (c) negative land registration publication system; (d) increasing demand for land; (f) the substance of the laws and regulations overlaps with each other; (e) notaries and land deed officials are not careful in making the deed; (g) wrong perception or interpretation of judges on laws and regulations in the land sector [5]. Land disputes settlement is available legal remedies can be taken through non-litigation or litigation. The disputing parties can submit a complaint to the Head of the Land Office in writing and mediation will be carried out (non-litigation), or through file a lawsuit to the court (litigation).

The legal issues in this research are whether Salma, Susanti, Sumiati and Iin Marlina (the plaintiffs) are the legal owners of the dispute land and whether Ma'an and Iwan Setiawan (the defendants) have committed any unlawful acts. This paper aims to analyze the land ownership dispute settlement as a result of unlawful acts. This research contributes to resolving land disputes and the implications are discussed.

2 Unlawful Act

According to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases, land disputes are land disputes between individuals, legal entities, or institutions that do not have a significant impact. Settlement of land cases aims to provide legal certainty and justice regarding the land tenure, ownership, use and utilization of land. Settlement of land disputes is not only through the judicial process (litigation) but can also be reached outside the court (non-litigation) through Mediation, in which acting as a mediator is the National Land Agency.

According to civil law, the filing of a lawsuit is divided into two types: (i) a lawsuit against a breach of contract based on an agreement and (ii) a lawsuit against the law (unlawful acts) on a legal basis. In practice, a lawsuit regarding unlawful acts occurs if the disputing parties do not have a contractual relationship. The law guarantees protection to the injured party [6]. The lawsuit filed by the plaintiff contains arguments that are supported by evidence. This is based on Article 1865 of the Civil Code that, in the process of proof, there is a principle that everyone who postulates must prove it. Therefore, the proof of the elements in a civil suit is borne by the plaintiff [7]. According to Article 1365 of the Civil Code [8] every person who commits an unlawful act is required to compensate for the loss arising from his mistake[9]. Referring to this explanation, there are 5 (five) elements that must be proven if you want to sue based on an unlawful acts, namely [10]:

- a. There is an action: that people do something (active) or not do something (passive).
- b. The act is against the law or an unlawful act: This element emphasizes the actions of someone who is considered to have violated the rules of law that apply in society. Since 1919, the meaning of the word "law" has been expanded not only to act that violate the law, but also to any act that violates propriety, prudence, and decency in relations between fellow citizens and the objects of others [11]. The definition of an unlawful act since 1919 is no longer defined as merely contradicting the obligations regulated in the law but has been broadly interpreted to include [12]: (a) Actions that violate the rights of others, [13] (b) actions that are contrary to their own legal obligations, (c) actions against morality, and (d) actions that are contrary to prudence or necessity in good social relations [14].
- c. There is an error from the perpetrator: According to Rutten, every consequence of an unlawful act cannot be held accountable if there is no element of error [15]. The element of error can be classified into 2 (two) namely errors committed intentionally and errors due to carelessness or negligence, having the same legal consequences, namely the perpetrator is still responsible for replacing all losses resulting from his unlawful act [16].
- d. There are losses for victims: Losses are divided into 2 (two) classifications, namely material losses and/or immaterial losses. Material losses are losses that are actually suffered. Immaterial losses are losses on benefits or gains that may be received in the future. In practice, the fulfillment of claims for immaterial losses is left to the subjectivity of the judge who decides.
- e. There is a causal relationship between unlawful act and losses: The teaching of causality in civil law is to examine the causal relationship between unlawful act and the losses caused, so that the perpetrator can be held accountable [17]. There are 2 (two) kinds of causal relationships, namely the theory of factual relationships and the theory of approximate causation [18]. (a) The theory of factual relationships: factual causation is only a matter of fact or what factually has occurred, provided that harm would never exist without a cause. In the law regarding unlawful act, this type of cause and effect is often referred to as the

"sine qua non" law. (b) The theory of approximate causes: This theory aims to be more practical and in order to achieve a fairer element of legal and legal certainty, the concept of a proximate cause or cause is created in determining the extent to which the behavior of unlawful act must be responsible for their actions. Because it is proper and fair if a person is given responsibility only for the consequences that can be predicted to occur, the concept of proximate cause places the element of "should be predictable" (forceability) as the main factor.

3 Methods

This study uses a normative legal research type, a research that aims to examine or analyze secondary data, [19] through the statute approach and case approach. The data sources used were secondary data which were analyzed qualitatively, namely data that was not in the form of numbers obtained from written materials (laws, documents, books). [20] Conclusions are drawn through deductive logic.

4 Results and Discussion

The disputed land belonging to Salma, Susanti, Sumiati and Iin Marlina (hereinafter referred to as Salma et al.) was inherited from Said bin Taib based on the Certificate of Heirs No.140/164/MD/2017 dated August 15, 2017. In 1979 the land was purchased by Said bin Taib from Husin bin Karim planted rubber plantations. For 30 years, the late Said bin Taib and his heirs enjoyed the harvest of the rubber plantation. The land was originally located in the Tanjung Katung Marga Sunday Market, Jambi Kecil, Sekernan District, Muaro Jambi Regency with an area of $\pm 28,781$ M2. Due to regional expansion, the position of the land is located in RT.04 Tanjung Katung Village, Maro Sebo District, Muaro Jambi Regency.

In 2014 Said bin Taib passed away. In 2016, when Salma et al. visited the plantation, wanting to rejuvenate the rubber trees in order to maximize the production of rubber latex, it turned out that there were palm trees in the west corner owned by Ma'an (area $\pm 4,654$ M2) and the northern corner owned by Iwan Setiawan (area ± 191 M2). This was considered an illegal act, because Ma'an and Iwan Setiawan physically controlled the land of the Salma et al.'s property and had benefited from the oil palm plantation. Salma et al. wanted the land to be handed back to them, however, Ma'an and Iwan Setiawan refused to hand over the land because they had an underhand deed as evidence of ownership of the dispute land.

Based on the actions taken by Ma'an and Iwan Setiawan, Salma et al. filed a lawsuit against the disputed land object to the Sengeti District Court (Judgement No. 14/Pdt.G/2017), then Salma et al. filed an appeal to the Jambi Court of Appeal (Judgement No.5/Pdt/2018) and finally Ma'an and Iwan Setiawan appealed to the Supreme Court (Judgement No.3021 K/Pdt/2018).

4.1 Sengeti District Court Judgement No.14/Pdt.G/2017

Salma et al. filed a lawsuit the Sengeti District Court for losses suffered from unlawful acts committed by Ma'an and Iwan Setiawan who did not have the right to physically control part of the land. The judge of the Sengeti District Court concluded that Salma et al. was obliged to prove that the land object of the dispute was theirs legally. This has been proven by Salma et

al. with evidence of letters and witnesses: (a) Photocopy of Sale and Purchase Letter (privately made deed) between H. Timah and Abd. Samad bin Rahmad, May 16, 1967; (b) Photocopy of Sale and Purchase Letter between Husin bin Karim and Said bin Taib, July 19, 1979; (c) Photocopy of Family Card in the name of A.R. Sayutti, dated May 25, 2012; (d) Photocopy of Family Card in the name of Salma, dated September 7, 2015; (e) Photocopy of Family Card in the name of Paijo, July 21, 2017; (f) Photocopy of Family Card in the name of Sofyan Efendi, August 15, 2017; (g) Photocopy of Certificate of Heirs No.140/164/MD/2017, August 15, 2017; (h) Photocopy of Death Certificate in the name of Said bin Taib, August 21, 2017; Salma et al. also presented witnesses Aini, M. Dali, Soliya, Zainal Abidin.

Ma'an and Iwan Setiawan also denied the claims made against them by Salma et al. by submitting several letters and witnesses to the Court: (a) Photocopy of the Sale and Purchase Letter between Tohir and Samsudin bin H. Taha, October 31, 1986, (b) Letter of Physical Land Ownership Statement in the name of Ma'an, August 26, 2016, (c) Photocopy of Receipt on behalf of Ma'an, June 6, 2016, (d) Photocopy of Land and Building Tax in the name of Cek Sudin, April 20, 2017. The witnesses were Efensi, Samsudin, Siti Fatimah, Wagiran, A. Gani.

Based on the jurisprudence of the Supreme Court Judgement No. 112 K/Pdt/1996 dated September 17, 1998, it states that: "A photocopy of a letter is submitted by one of the parties to the civil court trial to be used as "evidence", if it turns out that the photocopy is not accompanied by the "original letter" to be adjusted, then the photocopy cannot be used as "valid evidence" in the trial." The parties to the dispute must prove that the attached letter in the form of a photocopy has the original letter, so that it can be adjusted to serve as legal evidence.

According to Article 180 paragraphs (1) and (2) RBg and Circular Letter of the Supreme Court No. 7 of 2001, Circular Letter of the Supreme Court No. 5 of 1994 in a dispute to obtain a clear picture of the location, area and boundaries of the land must be examined to avoid confusion. This was done on September 19, 2017, and that it was true that the boundaries, location and area of the disputed land, namely in the north and west corners were planted with oil palm trees belonging to Ma'an and Iwan Setiawan on land owned by Salma et al..

According to the Sengeti District Court judgement, there are elements that have not been fulfilled in the lawsuit filed by Salma et al., wherein Salma et al. did not bring Samsudin as the party who had sold the land to Ma'an and Iwan Setiawan. In accordance with the jurisprudence, the Supreme Court Judgement No. 938 K/Sip/1971 dated October 4, 1972 stated that: "The sale and purchase between the defendant and a third person cannot be annulled without the inclusion of the third person as a defendant in the case."

Jurisprudence of the Supreme Court of the Republic of Indonesia No.2138 K/Sip/1980 states: "The lawsuit must be declared unacceptable, because not all heirs are parties (defendants) in the case." So that by not withdrawing the party who sold the land to Ma'an, namely Samsudin and the party who sold the land to Iwan Setiawan, namely Wagiran and the party who had sold the land to Wagiran, namely M. Dali, resulted in the lawsuit of Salma et al. becoming incomplete. Based on these considerations, the Panel of Judges at the Sengeti District Court stated that Salma and others' lawsuit was unacceptable, and the evidence that had been submitted by the disputing parties did not need to be considered again.

4.2 Jambi Court of Appeal Judgement No.5/Pdt/2018

Salma et al. objected and did not accept the Sengeti District Court Judgement No.14/Pdt.G/2017 which stated that the lawsuit they filed was unacceptable because it did not attract a third party (Samsudin as the party who sold the land to Ma'an and Iwan Setiawan). So

Salma et al. filed an appeal to the Jambi Court of Appeal. The Jambi Court of Appeal Panel of Judges concluded that the legal issue in the main case was whether Salma et al was the legal owner of the object of the dispute and whether Ma'an and Iwan Setiawan had committed unlawful acts.

According to the Jambi Court of Appeal Panel of Judges, that the Sengeti District Court Judges were deemed to be wrong in applying the law, that a third party (the party who sold the disputed land object/Samsudin to Ma'an and Iwan Setiawan) did not need to be sued. Because not all cases have to attract a third party. Because Samsudin does not physically control the object of the land dispute and has been asked for testimony as a witness, there is no need to sue third parties.

The reason Salma et al did not sue Samsudin was because Samsudin was not the person who physically controlled the object of the case. This is reinforced by the provisions of the Supreme Court of the Republic of Indonesia Jurisprudence No. 1883 K/Pdt/1984 dated October 17, 1985 that: "The third party from whom the land in the case was obtained, does not need to be sued if that person has been examined as a witness." According to the Jambi Court of Appeal Judgement, the considerations and reasons given by the Sangeti District Court were unacceptable. Therefore, the Sengeti District Court's Judgement dated November 14, 2017 must be annulled, and the Jambi Court of Appeal Judges at the appeals level will give their own consideration to the case.

Against the evidence submitted by the parties, the panel of judges of the Jambi Court of Appeal saw that there was no deed that had authentic value, but only in the form of evidence of a privately made deed (an underhand deed). The strength of proof of a privately made deed is only as preliminary evidence which still needs to be added with other evidence, in order to provide strong evidence. Because the evidence submitted by the parties is not authentic evidence, the panel of judges will look at and consider which evidence between the parties is the strongest. In terms of the time of purchase and control of the disputed land, Salma et al bought and controlled the object of the land dispute according to the evidence of the Sale and Purchase Letter (privately made deed) between Husin bin Karim and Saib bin Taib (parents of Salma et al.) on July 19, 1979.

Meanwhile, Ma'an claimed to have physical control of the disputed land on August 16, 2016 by reason of buying it from his father-in-law Samsudin, where Samsudin bought the land from Tahir on October 31, 1986. Meanwhile, Iwan Setiawan bought the land from Wagiran on February 13, 2012, where Wagiran bought the land from M. Dali on June 1, 2007. Based on the perspective of the time of land tenure, the panel of judges of the Jambi Court of Appeal was the opinion that the evidence presented by Salma et al. was stronger than the evidence of Ma'an and Iwan Setiawan. With the reason that Salma et al.'s father first bought and controlled the disputed land, and the evidence of Salma et al. was also corroborated by testimony of a witness, namely Samsudin.

Ma'an and Iwan Setiawan were considered by the Jambi Court of Appeal Judge that they could not refute the arguments and evidence of Salma et al, hence the Panel of Judges stated that Salma et al. succeeded in proving the basis of their ownership of the disputed plot of land with an area of ± 28,781 M2 which had been purchased by Saib bin Taib (parents of the plaintiffs) from Husin bin Karim on July 19, 1979. Therefore, the actions of Ma'an and Iwan Setiawan who controlled the land belonging to Salma et al. were declared to be against the law. According to Article 1365 of the Civil Code, unlawful acts is defined not only as an act that is contrary to the law, but also contrary to the rights of others or contrary to the obligations of the person doing it.

Based on the above considerations, it means that Salma et al. has succeeded in proving that the object of the dispute land is their legal property. Ma'an and Iwan Setiawan were no right to physically controlling the land owned by Salma et al.. Therefore, Ma'an and Iwan Setiawan had to hand over the disputed object of land along with the plants growing on it to Salma et al.

4.3 Supreme Court Judgement No.3021 K/Pdt/2018

Ma'an and Iwan Setiawan objected to the Jambi Court's of Appeal Judgement No.5/Pdt/2018 which stated that they accepted all the lawsuits in the appeal stage filed by Salma et al., and annulled the Sengeti District Court's Judgement No.14/Pdt.G/2017. Ma'an and Iwan Setiawan appealed to the Supreme Court.

After examining the memorandum of cassation dated March 13, 2018 and the counter memorandum of cassation dated March 28 2018, related to the consideration of the Jambi Court's of Appeal Judgement, then the Supreme Court is of the opinion that in this case the Sengeti District Court has wrongly applied the law, with the following considerations: The Jambi Court of Appeal was not wrong in canceling the Judgement of the Sengeti District Court, because Salma et al. can prove that the object of the land dispute is theirs.

The land was obtained by Salma et al. from the inheritance of the late Said bin Taib. Said bin Taib acquired the land from a sale and purchase with Husin bin Karim on July 19, 1979. Meanwhile, Ma'an owned the disputed land in 1986, as well as Iwan Setiawan who only took control of the disputed land in 2012. So it is clear that the actions carried out by Ma'an and Iwan Setiawan are unlawful acts. The Judges of the Supreme Court also considered that the Jambi Court of Appeal Judgement in this case did not contrary with applicable laws and regulations. Therefore, the appeal filed by Ma'an and Iwan Setiawan was declared rejected.

The author's opinion that based on Article 1365 of the Civil Code, Ma'an and Iwan Setiawan's actions are categorized as unlawful acts because they meet all the elements, namely:

- a. There is an act: An unlawful act is initiated by an act of the perpetrator. This action is intended, either to do something (active) or not to do something (passive). In the dispute, the element of an act has been fulfilled, because land ownership must be carried out by an active act, where Ma'an and Iwan Setiawan get the land based on buying and selling activities.
- b. The act is an unlawful act: An unlawful act is defined as an act that is contrary to the rights of others. What is meant by the rights of others are the subjective rights of others regulated by law. Ma'an and Iwan Setiawan cannot prove that they are the rightful owners of the disputed land, meaning that they are not entitled to use and obtain profits from the land. In addition, Ma'an and Iwan Setiawan have violated the subjective rights of Salma, Susanti, Sumiati and Iin Marlina, that their rights as legal land owners are disturbed. The actions carried out by Ma'an and Iwan Setiawan are referred to as act of land grabbing which are regulated in Law Number 51 of 1960 Article 2 "It is forbidden to use land without the rightful permit or legal proxy."
- c. There is an error from the perpetrator: An action is considered by law to contain an element of error so that it can be held legally responsible if it fulfills the following elements: (a) intentional; (b) negligence; (c) There is no justification or excuse for forgiveness, such as overmacht, self-defense, insanity. The actions of Ma'an and Iwan Setiawan physically controlling the land belonging to Salma et al. were wrong, because they deliberately used the land without permission from Salma et al.. The actions of Ma'an and Iwan Setiawan also contain elements of negligence, because they are not careful in

buying a plot of land by first examining the land that they want to buy along with information about the subject of the seller, whether the seller is a person who has the right or not. The actions taken by Ma'an and Iwan Setiawan were not in a state of overmacht, self-defense, insane.

- d. There is a loss for the victim: The actions taken by Ma'an and Iwan Setiawan have caused material losses, therefore Salma et al. can ask Ma'an and Iwan Setiawan to compensate for the actual losses they have suffered. The land controlled by Ma'an and Iwan Setiawan has been planted with palm trees, and they have benefited from the results of the palm oil plantation, making Salma, Susanti, Sumiati and Iin Marlina disadvantaged.
- e. There is a causal relationship between losses and actions: The losses experienced by Salma et al. have a causal relationship resulting from the actions of Ma'an and Iwan Setiawan. A factual cause-and-effect relationship is a matter of fact or something that factually has happened. This relationship connects the losses suffered by Salma et al. as a result of unlawful acts committed by Ma'an and Iwan Setiawan, because Ma'an and Iwan Setiawan's actions of planting palm trees on land owned by Salma et al. is a fact that has happened and because of that action, it caused losses for Salma, Susanti, Sumiati and Iin Marlina.

5 Conclusions

Based on the above considerations, it can be concluded that Salma, Susanti, Sumiati and Iin Marlina are the legal owners of a plot of land with an area of $\pm 28,781$ M2 which was formerly located in Tanjung Katung Sunday Market, Jambi Kecil, Sekeman District, is now located in RT 04 Tanjung Katung Village, Maro Sebo District, Muaro Jambi Regency.

Ma'an and Iwan Setiawan were proven to have committed unlawful acts against the land ownership of Salma, Susanti, Sumiati and Iin Marlina and it had caused losses Salma et al. This means that Ma'an and Iwan Setiawan are not entitled to control or own part of the land belonging to Salma et al. which have been legally declared as the property of Salma et al. Furthermore, Ma'an and Iwan Setiawan had to hand over the disputed object of land and the plants growing on it to Salma et al. with all the legal consequences.

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