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Unlawful Act by the Village Head: Failure to Issue a Physical Land Certificate (*Sporadik*) in the Process of Land Rights Transfer Certification (Analysis of Decision Number 39/PDT.G/2022/PN.BNA)

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Abstract

Article 1365 of the Civil Code stipulates that "every unlawful act that harms another person obliges the perpetrator to compensate for the damage." One such unlawful act occurred in Decision Number 39/Pdt.G/2022/PN.Bna regarding the refusal to sign the Sporadik for the purpose of obtaining a certificate of ownership, which harmed the other party and was analyzed in greater depth in this study. The research method used in the preparation of this study is the normative juridical research method. The purpose of this study is to understand and explain the judge's considerations regarding lawsuit Number 39/Pdt.G/2022/PN.Bna, the legal consequences for parties unwilling to sign a statement of physical control over land parcels in sporadic land registration, and the obstacles in implementing sporadic land registration for obtaining ownership certificates based on

Decision Number 39/Pdt.G/2022/PN.Bna. Based on the research results, the judge found that the actions taken were unlawful and declared the land located in Gampong Lampaseh Kota, Kuta Raja District, Banda Aceh City, with an area of 743 M² (Seven Hundred and Forty-Three Square Meters), to be the lawful ownership of the Plaintiff. The judge ordered Defendant V to sign the Statement of Physical Control over Land Parcels (Sporadic) to Defendant I. The legal consequence of refusing to sign the sporadic statement is to sign the Statement of Physical Control over Land Parcels (Sporadic) and to order the defendant to immediately and instantly hand over the land in dispute to the Plaintiff in an empty state. The first obstacle that arose was related to the defendant's lack of cooperation during the trial process. Because he was not present to provide information, and only authorized his lawyer.

Keywords: Unlawful Acts, Sporadic, Land Transfer, Land Disputes

Introduction

To ensure legal certainty regarding land rights throughout Indonesia, land registration is necessary. Land registration is important for land rights holders. Article 19 paragraph (1) of Law Number 5 concerning Basic Agrarian Affairs (hereinafter referred to as the Basic Agrarian Law) states that to ensure legal certainty, the government shall conduct land registration throughout the territory of Indonesia in accordance with the provisions regulated by Government Regulation. This provision is a necessity and obligation of the government to regulate and organize land registration. The Government Regulation referred to in Article 19 paragraph (1) of the Basic Agrarian Law is Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as the Land Registration Regulation). Article 37 of PPPT stipulates that "The transfer of land rights and ownership of apartment units thru sale and purchase, exchange, donation, contribution to a company, and other legal acts of transfer of rights, except for transfers of rights thru auction, can only be registered if proven by a deed made by a PPAT authorized under the provisions of applicable laws and regulations."

Land registration can be carried out through systematic land registration and sporadic land registration. Systematic land registration is the activity of registering land for the first time, carried out simultaneously and covering all land registration objects that have not been registered within the territory or part of the territory of a village or urban village. Sporadic land registration, on the other hand, is the activity of registering land for the first time concerning one or several land registration objects within the territory or part of the territory of a village or urban village, either individually or in groups.

In land sale and purchase transactions, the public is often faced with two types of documents that are often misunderstood as having the same function and legal force: the Sporadic Land Certificate and the Land Sale and Purchase Deed (AJB). A sporadic land certificate is a document proving land ownership prepared by the landowner and certified by village officials or the subdistrict head. Generally, this document is used for land that is not yet registered with the National Land Agency (BPN) and is often found in areas with disorganized land administration. Meanwhile, a Deed of Sale (AJB) is an official document resulting from a land sale transaction, prepared by a Land Deed Official (PPAT). This document serves as legal proof of the transfer of land ownership rights from the seller to the buyer and is a primary requirement for the certificate name change process at the National Land Agency (BPN) [1].

Based on Decision Number 39/Pdt.G/2022/PN.Bna, there was an unlawful act because the Defendant refused to sign the certificate of physical land ownership. However, a Deed of Sale had been previously executed, and the parties had also agreed to register the land. Based on its considerations, the judge in its decision ruled that the Defendants had committed an unlawful act (*onrechtmatige daad*), ordered Defendant V to sign a Physical Possession Statement for the Land Parcel (Sporadik) to Defendant I, sentenced Defendant I to immediately and instantly hand over the disputed land to the Plaintiff in an empty state, declared the Sale and Purchase Deed No. 06 dated December 30, 2021 between the Plaintiff and Defendant I, made before Defendant VI, valid and valuable, and binding.

The main focus of this research is to explain the judge's considerations regarding lawsuit Number 39/Pdt.G/2022/PN.Bna, the legal consequences for parties unwilling to sign the physical possession statement for the land parcel in sporadic land registration, and the hindering factors in the implementation of sporadic land registration for obtaining a certificate of ownership based on Decision Number 39/Pdt.G/2022/PN.Bna.

Research Method

This research uses a normative legal research method. Normative legal research is a method that involves studying library materials as secondary data, also known as literature research. This study focuses on discussing the research findings, referring to theoretical foundations obtained from various literature or library sources such as textbooks, law journals, archives, or legal publication documents [2]. The research approach used in this study is the statute approach and the case approach. The research data were analyzed using qualitative methods [3].

Results and Discussions

1. Judge's Consideration of Lawsuit Number 39/PDT.G/2022/PN.BNA

Based on Decision Number 39/Pdt.G/2022/PN.Bna, the Panel of Judges considered the following matters:

Based on documentary evidence and witness testimonies from both the Plaintiff and the Defendant's witnesses, the disputed object is owned by the First Defendant, and the disputed object is vacant land. Before being sold by Defendant I to the Plaintiff, the land was leased to merchants for them to build kiosks. As also explained by the witnesses for Defendant I, namely Rudi Gunawan, Usman Abdullah, Shalihin, and Saiful Bahri, the witnesses

essentially rented the land to Defendant I for business *puIDRoses*. Furthermore, the Plaintiff's witnesses, namely Zulkarman S, Amrizal, and Muhammad Siddiq, essentially stated that the disputed object was controlled by the Defendant. Based on the testimony of witness Zulkarman S (the Plaintiff's witness), it was explained that the disputed object was initially owned by Siti Hawa's family, and then the land was borrowed by PJKA. According to the 1987 agreement letter, the land became the property of Defendant I; because the Plaintiff suffered a stroke, the Defendant received a power of attorney from the Plaintiff to manage the certificate of the disputed object; the witness managed the land from measurement to data reporting, but the National Land Agency (BPN) doubted the land status; the witness then reported to PJKA, and the head of PJKA came to the field to measure the disputed land; at that time, the Geuchik (Defendant V) was not present, only represented by the Chairman of the Tuha Peut, the Village Secretary, and the Head of the Lorong. To the witness's knowledge, the Geuchik (Defendant V) refused to sign the Sporadik because one of the heirs was unwilling to sign.

From the evidence submitted by the Intervening Plaintiff regarding the Joint Agreement between Syafrudin (Defendant II), Irian Tri Kemalawati (Defendant III), who are the children of the late Siti Hawa, and Iswansyah, Isnawati, and Ismansyah, who are the children of the late Aminah, it is stated that the land is jointly owned and has become the property of Anwar Efendy (Defendant I), as compensation for the expenses incurred by Defendant I in managing the documents for the disputed object controlled by PNKA (PT Kereta Api Indonesia (Persero)). The land was previously controlled by PJKA. Defendant V refused to sign the measurement report prepared by the Ministry of ATR/BPN's Land Office in Banda Aceh City, so Defendant considers this action to be unlawful.

In the decision, it was stated that the Defendants had committed an Unlawful Act (*onrechtmatige daad*), declared the land located in Gampong Lampaseh Kota, Kuta Raja District, Banda Aceh City, with an area of 743 M2 (Seven Hundred and Forty-Three Square Meters) to be the legal property of the Plaintiff, ordered Defendant V to sign a Physical Possession Statement for the Land Parcel (Sporadik) to Defendant I, ordered Defendant I to immediately and instantly hand over the land in dispute to the Plaintiff in an empty condition, ordered the Defendants to cease all actions and/or decisions regarding the land in dispute in any form until a court decision with permanent legal force is issued, declared the legal basis with the court decision without the signature of Defendant V to be valid and binding, and declared the Sale and Purchase Deed No. 06 dated December 30, 2021, between the Plaintiff and Defendant I, made before Defendant VI, to be valid, valuable, and binding.

Based on the above explanation, the judge thinks that what was done constitutes an unlawful act and declared the land located in Gampong Lampaseh Kota, Kuta Raja District, Banda Aceh City, with an area of 743 M2 (seven hundred and forty-three square meters) to be the legal property of the Plaintiff, and ordered Defendant V to sign a Physical Possession Statement for Legal considerations are one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and legal certainty, in addition to being beneficial for the parties involved. Therefore, this judicial consideration

must be handled carefully, well, and meticulously [4].

In making a decision, a judge must do the following [5]:

- a. The main issues, the available evidence, and the undisputed legal arguments;
- b. Conducting a legal analysis of the decision from all aspects related to all facts/matters that have been proven by the presence of all parties of the petition;
- c. The Plaintiffs and the Defendant must be tried one by one so that the Judge can conclude whether the claim is proven or not, and whether it is granted or not in the operative part of the judgment.

When delivering court decisions, judges play an important role in realizing legal certainty, justice, and benefit. This can be seen in the court decisions that have been made. When administering justice, judges are very much needed, just as the panel of judges carries out their duties and responsibilities properly. A judge has a respected and highly noble duty for every individual and also for the country. Thus, if we desire effectiveness in the law enforcement process, adequate legal personnel are needed [6].

Once the facts of the trial have been revealed, the judge's decision will then consider the elements of the offense charged by the Public Prosecutor. The correlation between the alleged facts and the elements of the defendant's guilt will be considered. The panel of judges will then consider and examine whether the elements of the criminal offense charged against the defendant have been met and proven legally and convincingly according to the law. In addition to the legal considerations of the alleged offense, the judge must also be proficient in the theoretical aspects, doctrinal views, jurisprudence, and the position of the case they are handling, and only then can their position be definitively established [7].

In the decision of the Banda Aceh District Court Number 39/Pdt.G/2022/PN Bna, the panel of judges considered that the panel of judges provided the consideration that the disputed object was initially a single unit, namely land belonging to Siti Hawa, while Siti Hawa obtained the land from Fatimah Raden with an area of approximately 1,400 M2. Subsequently, the Plaintiff purchased the disputed land on December 30, 2022, for a price of IDR. 700,000,000 (seven hundred million rupiah) with a land area of 743 M2, as evidenced by deed of sale Number 06 dated December 30, 2021, before the Land Deed Official Irma Savitri Harahap. Because the transaction was conducted legally, the panel of judges ordered the defendant to hand over the land to the plaintiff in a vacant condition.

2. Legal Consequences for Parties Unwilling to Sign the Statement of Physical Possession of Land in Sporadic Land Registration

Legal consequences are the impact or result of a legal act produced by legal actions taken to achieve something desired by the actor performing the action, where the action is regulated by legal rules. The action taken to obtain legal consequences must be a legal act, meaning anything that can create rights and obligations [8].

The consequence of an unlawful act is the occurrence of loss. Losses resulting from unlawful acts must be compensated by the person whose fault caused the loss or by the perpetrator of the unlawful act. Thus, Article 1365 of the Civil Code regulates the obligation of the perpetrator of an unlawful act to compensate for the resulting loss on the one hand, and the right of the injured party to claim compensation on the other [9].

Defendant V, who refused to sign the Minutes of Measurement conducted by the Ministry of ATR/BPN Land Office of Banda Aceh City without valid reason, causing legal uncertainty over the community's land rights and undermining the improvement of community welfare through land registration, and violating the Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 1756/15.I/IV/2016 regarding guidelines for community land registration.

In this case, the legal consequence of not wanting to sign the *sporadik* is that it does not provide legal certainty regarding the plaintiff's right to the land, which will cause both material and non-material losses to the plaintiff. Therefore, the panel of judges ordered the Defendant to sign the Physical Possession Statement of the Land Parcel (*Sporadik*) and sentenced the Defendant to immediately and instantly hand over the disputed land to the Plaintiff in an empty condition.

3. Inhibiting Factors in the Implementation of Sporadic Land Registration for Obtaining Ownership Certificates Based on Decision Number 39/Pdt.G/2022/PN.BNA

Based on decision number 39/Pdt.G/2022/PN, the first obstacle that arose was related to the defendant's lack of cooperation during the trial process. Uncooperative behavior became an obstacle to the first-time resolution of the land ownership certificate issue in that case. Regarding this, the Defendant was unable to be present to provide testimony and was only represented by their lawyer. Therefore, this will become a real obstacle [10].

"Sporadik" refers to the first-time land registration activity conducted individually, where the certificate is issued by the village head where the land is located. The purpose of this "sporadik" is to provide legal certainty and protection for land rights to the land owner [11]. When making this sporadic request, the signatures of the heirs are required to create a certificate at the National Land Agency. In decision 39/Pdt.G/2022/PN.Bna, after the Sale and Purchase Agreement (AJB) was completed, there was ultimately an heir who refused to sign the *Sporadik*, the reason for refusing to sign being that they considered it to be their property. In fact, the land had already been distributed to the rightful heirs. Regarding this, it ultimately became an obstacle in the execution of this case, because the Defendant is an heir. This uncooperative attitude is hindering the process of resolving the issue of first-time ownership certificate creation in the *Sporadic* signing process. During this trial, the Defendant was unable to be present to provide testimony and only authorized their lawyer to do so. Therefore, this will become a real obstacle.

Conclusion

Based on the discussion above, it can be concluded that the judge's consideration that what the defendant did was an unlawful act and declaring the land located in Gampong Lampaseh Kota, Kuta Raja District, Banda Aceh City, with an area of 743 square meters (seven hundred and forty-three square meters) is legally owned by the Plaintiff, and Defendant V signed a Physical Possession Statement for Land Parcels (*Sporadik*) to Defendant I. The legal consequence of refusing to sign the *sporadik* is that the defendant is ordered to sign the Physical Possession Statement for Land Parcels (*Sporadik*) and is sentenced to immediately and instantly hand over the disputed land to the Plaintiff in an empty condition. The main factors that

emerged as obstacles were primarily related to the defendant's lack of cooperation during the trial process. Uncooperative behavior became an obstacle to the first-time resolution of the land ownership certificate issue in that case. In this case, the Defendant was unable to be present to provide testimony and only authorized their lawyer to do so.

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