



Unlawful Acts in Leasing Land that Has Been Certified in the Padang District Court

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Abstract

Soil is important for human life Land is also a very basic human need. Humans live and carry out activities on the ground so that at any time humans are always in contact with the ground. Acts against the law can be interpreted as any action that is contrary to the rights of others that arise because of the law or actions that are contrary to one's own legal obligations that arise because of the law. One of the problems that occur in practice is the existence of illegal acts of renting without rights. As doing this research, the author formulates several problems regarding what causes disputes over land that have been certified at the Padang District Court, how are the judges' considerations in disputes over illegal acts on land that have been certified at the Padang District Court, so that there is clarity in ownership. land based on the principles of legal certainty, legal order, legal protection which contains truth and justice. The purpose of this research is to find out what causes a dispute over illegal acts on land that has been certified at the Padang District Court, to find out the basis for judges' considerations in disputes over illegal acts on land that have been certified at the Padang District Court. This study uses a normative juridical approach, with the data used are primary data obtained from applicable laws and regulations, secondary data, namely legal theories and the work of the legal profession and tertiary data, namely applicable legal terms. Data analysis using data processing related to the problem under study by analyzing qualitatively, namely connecting the problems raised with relevant theories so that data that is arranged systematically can be obtained. The theoretical basis used to obtain systematic data uses a theoretical framework (the theory of unlawful acts, the theory of legal certainty and the theory of legal protection) and a conceptual framework. The results of this study indicate that the existence of a legal event renting out without rights to land tenure is an unlawful act that requires compensation to the injured party, and in a court decision stating that there was an unlawful act committed by the tenant, the tenant obliges the tenant to dismantle all the buildings and hand it over to the owner. the owner of the land because renting out the shop and land is illegal and therefore null and void.

Keywords: *Dispute Resolution; Unlawful Action; Certified Land*

Introduction

Soil is important for human life Land is also a very basic human need. Humans live and carry out activities on the ground so that at any time humans are always in contact with the ground. For the Indonesian people, land is a gift from God Almighty and is a national wealth, and the relationship

between the Indonesian people and the land is eternal, so in this case it must be managed carefully both now and in the future.

Land has an important role because land is a source of prosperity, prosperity, and life. This provides an understanding that it is a national responsibility to realize the welfare and prosperity of the people. So, in the 1945 Constitution article 33 paragraph 3 it is stated that:

"Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people".

Based on the provisions of the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Regulations was drawn up. One of the objectives of the Basic Agrarian Law (UUPA) is to provide legal certainty regarding land rights held by the community.

According to Article 16 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or commonly referred to as the Basic Agrarian Law (UUPA), it is regulated on land rights that can be given to citizens in the form of property rights. , Right to Cultivate, Right to Build, Right to Use, Right to Rent, Right to Open Land, Right to Collect Forest Products and other rights that are not included in the rights mentioned above which will be stipulated by law and other rights which is temporary.

Property rights are regulated in Articles 20-27 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). The definition of property rights according to the provisions of article 20 paragraph (1) of the UUPA is a hereditary, strongest, and fullest right that can be owned by people on land by keeping in mind the provisions of article 6 of the UUPA. The strongest and most complete rights referred to in this definition do not mean that property rights are absolute, unlimited and inviolable rights. Hak Milik as the strongest right means that the right is not easily erased and is easily defended against interference from other parties.

Provisions regarding unlawful acts are often referred to as flexible articles because a person can be sued for unlawful acts not only for his actions that violate existing laws, but also if the act is contrary to the legal obligations of the perpetrator, contrary to the subjective rights of others, and contrary to decency, propriety, thoroughness and prudence.

An act can be said to be an unlawful act if there is an element of mistake. This element of mistake is an act and consequence that can be accounted for by the perpetrator. The element of loss is not only material but also immaterial losses such as fear, burden of mind, and so on, and the last is the causal relationship between the actions taken and the losses incurred.

The definition of an unlawful act in article 1365 and article 1370 in a lawsuit against the law must fulfill the following elements:

- a. The existence of an act, an act against the law begins with the act of the perpetrator. It is generally accepted that an act here means either doing something (actively) or not doing something (in a passive sense), for example not doing something even though he is obliged to help him, obligations arise from applicable law (because there are obligations arising from contracts). . Acts against the law do not contain an element of agreement or agreement and there is also no element of "allowed cause" as contained in the contract.
- b. An act that is against the law is an act that violates the subjective rights of others or is contrary to the legal obligations of the maker himself as regulated by law.
- c. There must be a mistake, this mistake condition can be measured by:

- 1) Objectively, it is proven that under normal human conditions, we suspect that this possibility will arise as a result of this possibility preventing good humans from doing or not doing.
 - 2) Subjective, evidenced by the maker based on the expertise possessed guessing the consequences of his actions.
- d. There must be a loss. Losses caused by Act against the law:
- 1) Material losses, losses that were actually suffered and the benefits that should have been obtained
 - 2) Ideal loss, an act against the law that causes an ideal loss of fear, pain and loss of pleasure in life.
- e. There is a causal relationship between actions and losses.
- 1) Condition sine qua no, where according to this theory people who commit acts against the law are always responsible if their actions condition sine qua no cause harm.
 - 2) Adequate veroorzaking, where according to this theory the maker is only responsible for losses that should be expected as a result of unlawful acts.

The land registration system in a country is determined on which legal principle the state adopts in transferring land rights, the legal principle is the *nemo plus juris* principle and the principle of good faith. Land has the most basic problem so that it can be determined from the number of various criminal and civil cases that are brought to court in the form of disputes regarding land.

The lease agreement is an agreement regulated in the *Burgelijk Wetboek* (BW). This lease agreement is subject to the general provisions of the agreement regulated in Book III of the Civil Code as specified in Article 1448 of the Civil Code which states that a lease is an agreement whereby one party binds itself to provide enjoyment of an item to the other party. another for a certain period of time, with the payment of a price agreed by that party.

The development is based on "freedom of contract" as the principle of the agreement regulated in Article 1338 in conjunction with Article 1320 of the Civil Code. In the form of a leasing arrangement, it is a legal agreement of contract (written) usually the tenant is presented with an agreement with the terms set by the lessor, while the lessee can only propose changes to certain things, for example regarding the price, place of delivery of goods and method of payment, where this is if possible by the lessor.

As the case that will be a research study in writing this thesis, namely Decision Number: 198/Pdt.G/2016/PN.Pdg and Decision Number 63/Pdt.G/2016/PN.Pdg In the Decision of the Padang District Court, Case Number 198/ Pdt.G/2016/PN.Pd, where the plaintiff is SS the land owner and Am, JS, AM, PYL, PS the tenant (Defendant I) and IT the tenant (Defendant II). Government regulation number 18 of 2021 concerning management rights, land rights, apartment units, and registration of sale and purchase land is carried out by the parties before the PPAT who is in charge of making the deed.

Whereas the plaintiff owns a plot of land with an area of 3040 M2 and leases the land to the tenant (Defendant I) the tenant wants to control and occupy the land without rights and then builds houses and buildings of several shops, workshops and car washes under the name CMS, and leases back part of it the shop to IT (Defendant II) without the knowledge and approval of SS the owner of the land, SS as the land owner feels aggrieved and has tried to find a solution to the problem amicably but to no avail. The Defendants continued to control the land, this was an unlawful act which greatly harmed SS as the land owner.

In this case, the tenant's actions are against the law where he wants to control, occupy, and build a house, this is very detrimental to the owner of the land. Based on the description above, the problems in the title and the background above, in writing this law the author provides a knowledge of a matter that was appointed as a thesis with the title " UNLAWFUL ACTS IN LEASING LAND THAT HAS BEEN CERTIFIED IN THE PADANG DISTRICT COURT".

Research Methods

The approach method used is normative juridical, which emphasizes legal material, including legal principles, legal systematics, legal synchronization level, legal history and legal comparison. The types of normative legal research include legal principles, legal systematics, legal synchronization level, history law and comparative law. Normative juridical research is research that refers to legal norms contained in laws and regulations and court decisions and stipulations. This research is based on certain laws by identifying the rules that have been formulated in certain laws.

Research Result

Unlawful act in the broad sense that the act not only violates the rights of others and is contrary to the legal obligations of the perpetrator or those who do it, but the act is also contrary to decency and propriety towards other people's self or objects, which should exist in society, in meaning contrary to unwritten provisions such as customs and others.

The occurrence of unlawful acts on land is caused by economic factors where certain parties want a number of advantages by controlling, occupying and building houses. Acts against the law that occurred in case Number: 198/Pdt.G/2016/PN.Pdg. On November 21, 2016 there was a legal event where the Plaintiff was SS and the Defendants were Am, JS, AM, PYL, PS, (Defendant A) and IT (Defendant B). The object of the case began when the plaintiff owned a plot of land located at By Pass Kampung Lalang RT 003 RW 006 Pasar Ambacang Village, Kuranji District, Padang City, known as Ownership Certificate No. 804/Kelurahan Pasar Ambacang, covering an area of 3040 M2, was leased to Defendant I by constructing a house and several shops, a workshop and a car wash under the name "Ceko Motor Service". The tenant who controls, occupied the land and the building leased it back to the new tenants of part of the shop without the knowledge of the owner of the land. the tenant receives payment from the rental of part of his shop without the knowledge of the owner of the land, the new tenant who does not know the actual land owner only pays the rented price to the tenant which in fact the land owner does not receive from the rental price that has been paid by the new tenant to the tenant owner from land so that the land owner feels disadvantaged because he feels that the tenant is renting out something without rights. The land owner has made good faith by seeking a family settlement, but in reality the tenant has no good faith towards the land owner and continues to control the land, in this case the actions carried out by the tenant are unlawful acts that cause losses to the SS owner of the land.

Furthermore, violation of this law is an act against the law, the impact of violating the law must bring harm to other parties. It is said that actual losses are losses that are easily seen in real or physical, both material and immaterial.

Based on the decision of the Padang District Court Number: 60/Pdt.G/2021/PN.Pdg, Plaintiff I was AM, Plaintiff II TW, Plaintiff III DN, Plaintiff IV NL, and Defendant I was Am and Defendant II VP, the object of the case began on when the plaintiff owns a plot of land SHM, No. 1243, covering an area of 425 M2 dated June 28, 2004.

In 2006, without the permission of the Plaintiff as the owner of the land with no tenant rights (Defendant I) controlled the land by stockpiling the land by pouring some of the land with cement.

Then in 2021, without the permission of the land owner (plaintiff) the tenant allowed the new tenant to establish a chicken coop on a small part of the land without the consent of the land owner. The land owner did not know that the land was leased back with payment of the price made by the new tenant. The tenant does not act in good faith when the land owner inquires about the land being leased back, the land owner feels that his rights have been disturbed, the land owner has made various efforts, namely consulting with the parties, namely the tenant, the tenant still does not act in good faith by continuing to

control and occupy the land where Article 1548 of the Civil Code states that the party who binds himself to give to the other party the enjoyment of an item, which in this case is in the form of an office house building, for a certain time and with the payment of a price, which by the latter party (the lessee) is agreed to pay, From the provisions of this Article it appears that the lease agreement only gives a usage right to the lessee to obtain a certain enjoyment of a leased object. With ownership rights remain with the owner. The action taken by the tenant to control the land without the permission of the land owner, namely to rent it back to the new tenant by establishing a chicken coop without the permission of the land owner, is an unlawful act that is very detrimental to the owner of the land.

The act of a tenant who rents out something without rights is included in Article 1365 of the Civil Code for an unlawful act because it has fulfilled the following elements:

1. The existence of an act,
2. The act is against the law,
3. There is an error on the part of the perpetrator,
4. There is a Loss for the Victim,
5. There is a causal relationship between actions and losses
6. The existence of actions that are contrary to prudence or necessity in good community association

With the fulfillment of these six elements cumulatively, the tenant (Defendant I and Defendant II) can be said to have committed an act against the law. The actions taken by the land owner in this case do not fulfill the elements of an unlawful act, where the owner of the land has had good intentions by seeking a familial settlement of the problem, but to no avail.

Whereas without rights and against the law the tenant has controlled and occupied the disputed land and without rights the tenant has also built houses and buildings of several shops, workshops and car washes under the name Czech Motor Servis on the disputed land, and subsequently by the tenants of some of the shops The property is leased back to the new tenant, the act of the tenant controlling, occupying and constructing a house, shop, workshop, and car wash under the name "Ceko Motor Servis" is clearly an unlawful act that greatly harms the land owner). The land owner has tried to find a family settlement, but to no avail, the tenant still controls the land.

In the normative research that the author did, the basic considerations carried out by the panel of judges were based on several considerations, including the panel of judges judging that the parties who committed acts against the law who controlled and occupied the land and rented it out with and without rights were carried out by the tenant and leased it back. to a new tenant is invalid, therefore null and void wherein Article 1548 of the Civil Code states that a lease is an agreement whereby one party binds itself to provide the enjoyment of an item to the other party for a certain period of time. Prohibitions for tenants are:

1. The lessee is not allowed to misuse the leased property or release the lease to another person, under the threat of cancellation of the lease agreement and reimbursement of costs.
2. If what is being rented is a house occupied by the lessee, the lessee is responsible for renting out part of it to another person.

Settlement of disputes over illegal acts in leasing land that has been certified at the Padang District Court which the author examines, which is related to renting without rights in control of land that wants to control, occupy, and build houses are categorized as having committed unlawful acts renting without rights therefore it is illegal and null and void and requires the tenant to dismantle all of the building and after it is vacant it is handed over to the land owner free from all his rights and the rights of others, then the legal consequences of the tenant who leases the object's land to another tenant is invalid and therefore null and void by law.

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