

**PERBUATAN MELAWAN HUKUM OLEH PENGUASA DALAM
SENGKETA HAK ATAS TANAH
(TINJAUAN YURIDIS TERHADAP PUTUSAN MAHKAMAH AGUNG
NOMOR 156 PK/PDT/2019)**

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ABSTRAK

Perbuatan Melawan Hukum yang secara sederhana terjadi di sekitar kita adalah Perbuatan Melawan Hukum yang dilakukan oleh seseorang karena merugikan orang lain, hal tersebut juga sudah jelas dalam Pasal 1365 KUH Perdata. Sejak tahun 1924 *Hoge Raad* memutuskan bahwa penguasa dapat juga dipertanggung jawabkan berdasarkan Pasal 1365 KUH Perdata, bilamana perbuatannya merupakan perbuatan yang adalah spesifik perbuatan hukum publik.

Penelitian ini mengkaji mengenai pertimbangan hukum hakim dalam mengkualifisir unsur-unsur Perbuatan Melawan Hukum pada Putusan Mahkamah Agung Nomor 156 PK/PDT/2019 dan penerapan hukum hakim pada putusan Pengadilan Negeri Nomor 568/Pdt.G/2013/PN.Jkt.Pst *juncto* putusan Mahkamah Agung Nomor 156 PK/PDT/2019 dan putusan Pengadilan Tinggi Nomor 227/PDT/2015/PT.DKI *juncto* putusan Mahkamah Agung Nomor 3650 K/PDT/2016. Penelitian ini menggunakan metode pendekatan yuridis normatif dengan pendekatan Undang-Undang dan pendekatan kasus. Spesifikasi penelitian preskriptif, sumber data primer dan sekunder, metode pengumpulan data dengan metode kepustakaan, metode penyajian dalam bentuk teks naratif, dan disusun secara sistematis menggunakan metode analisis normatif kualitatif.

Majelis Hakim Mahkamah Agung Nomor 156 PK/PDT/2019 mempertimbangkan perbuatan Tergugat telah melakukan Perbuatan Melawan Hukum, yakni Tergugat yang tidak memeriksa data fisik dan data yuridis saat melakukan konversi sehingga mengakibatkan dibatalkannya Sertifikat Hak Guna Bangunan No.1503/Gunung Sahari Selatan atas nama Penggugat, perbuatan Tergugat tersebut melanggar hak subyektif Penggugat dan bertentangan dengan kewajiban hukumnya sendiri. Penerapan hukum Hakim pada putusan Pengadilan Negeri Nomor 568/Pdt.G/2013/PN.Jkt.Pst *juncto* Mahkamah Agung Nomor 156 PK/PDT/2019 sudah tepat dalam menentukan hak atas tanah obyek perkara adalah milik Penggugat berdasarkan fakta-fakta hukum yang terjadi dan menyatakan perbuatan Tergugat telah memenuhi syarat yang terdapat dalam Pasal 1365 KUH Perdata, dan majelis hakim Mahkamah Agung Nomor 156 PK/PDT/2019 dalam mengabulkan permohonan Peninjauan Kembali Penggugat dapat dibenarkan yaitu dengan adanya kekhilafan Hakim. Selain itu, penerapan hukum Hakim pada putusan Pengadilan Tinggi Nomor 227/PDT/2015/PT.DKI keliru dalam menentukan hak atas tanah obyek sengketa karena hanya menyanggah dalil Penggugat, serta menyatakan perbuatan Tergugat bukan merupakan Perbuatan Melawan Hukum melainkan pelanggaran administrasi, padahal perbuatan Tergugat melanggar hak subyektif.

Kata kunci : unsur perbuatan melawan hukum, penerapan hukum

**ACT AGAINST LAW BY AUTHORITIES IN LAND RIGHTS
DISPUTES (JURIDICAL REVIEW OF SUPREME COURT DECISION
NUMBER 156 PK/PDT/2019)**

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ABSTRACT

Unlawful acts that often occur around us are unlawful acts committed by someone because they harm others, this is also clear in Article 1365 of the Civil Code. Since 1924 the Hoge Raad has decided that the authorities can also be held accountable under Article 1365 of the Civil Code, if the act is a specific act for a public legal act.

This study examines judges' legal considerations in qualifying elements of Act Against Law in Supreme Court Decisions Number 156 PK/PDT/2019 and the application of the judge's law in the decision of the District Court Number 568/Pdt.G/2013/PN.Jkt.Pst *juncto* the decision of the Supreme Court Number 156 PK/PDT/2019 and the decision of the High Court Number 227/PDT/ 2015/PT.DKI *juncto* Supreme Court decision Number 3650 K/PDT/2016. The research of the study use the method of normative juridical approach with the approach of Law and case analysis. Specifications of prescriptive research, primary and secondary data sources, data collection methods with library methods, methods of presentation in the form of narrative text, and compiled systematically using qualitative normative analysis methods.

The Council of Judges of the Supreme Court Number 156 PK/PDT/2019 considered that the Defendant had committed an Act Against the Law, namely the Defendant who did not check the physical data and legal data when converting so as to result in the revocation of the Certificate of Right to Use Building No.1503/Gunung Sahari Selatan in the name of the Plaintiff, the Defendant violated the Plaintiff's subjective rights and violated his own legal obligations. The application of the Judge's law in the decision of the District Court Number 568/Pdt.G/2013/PN.Jkt.Pst *juncto* Supreme Court Number 156 PK/PDT/2019 is appropriate in determining the right to the land of the object of the case belongs to the Plaintiff based on the existing legal facts and states that the Defendant has met the requirements contained in Article 1365 of the Civil Code, also the panel of judges of the Supreme Court Number 156 PK/PDT/2019 in granting the petition for judicial review of the Plaintiffs can be justified, namely by the error of the Panel of Judges. Moreover, the application of law Judge in the decision of the High Court Number 227/PDT/2015/PT.DKI erred in determining the right to the land of the object of dispute since it only refuted the Plaintiff's argument which stated that the object of dispute was obtained by the Plaintiff based on the Minutes of Auction, while also stated that the Plaintiff did not commit an Act Against the Law but an administrative violation, even though the actions of the Defendant has violated subjective rights.

Keywords: elements of acts against the law, application of the law