

**TINJAUAN YURIDIS TERHADAP PUTUSAN HAKIM DALAM  
PERKARA TANAH ANTARA PERBUATAN MELAWAN HUKUM  
DAN WANPRESTASI**

**(Studi Putusan Nomor : 53/Pdt.G/2019/PN SMN jo Putusan Nomor :  
12/PDT/2020/PT YYK)**

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**ABSTRAK**

Tanah mempunyai arti dan peranan yang sangat penting bagi kehidupan manusia. Sehingga membuat manusia ingin mendapatkan dan menguasai tanah. Namun, tidak jarang keinginan untuk menguasai tanah ini pada akhirnya menimbulkan sengketa tanah yang bermuara ke pengadilan.

Penelitian ini bertujuan menganalisis pertimbangan hukum hakim dalam memutus perkara tanah dan menganalisis pertimbangan hukum hakim dalam memutuskan besarnya ganti rugi dalam perkara tanah. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan undang-undang dan pendekatan kasus. Spesifikasi penelitian preskriptif, sumber data sekunder dengan metode penyajian dalam bentuk teks naratif dan disusun secara sistematis menggunakan metode analisis normatif kualitatif.

Berdasarkan hasil penelitian dan pembahasan, Putusan No. 53/Pdt.G/2019/PN SMN menyatakan bahwa tindakan tergugat menjual tanah yang masih dalam proses upaya hukum peninjauan kembali kepada penggugat merupakan perbuatan melawan hukum. Sedangkan Putusan No. 12/PDT/2020/PT YYK menyatakan tergugat telah melakukan ingkar janji. Menurut Penulis, Putusan Pengadilan Tinggi tersebut tidak tepat jika dikualifikasikan sebagai wanprestasi karena para pihak telah memenuhi prestasi. Lebih tepat jika dikualifikasikan sebagai perbuatan melawan hukum karena memenuhi unsur melanggar hak subyektif dan bertentangan dengan keharusan yang harus diindahkan dalam pergaulan masyarakat mengenai orang dan benda. Perihal penentuan besarnya ganti rugi, Majelis Hakim menetapkan ganti rugi sejumlah uang harga pembelian yang telah diterima Tergugat berupa biaya (*costen*) sebesar Rp.5.938.475.000,- untuk diserahkan kepada Penggugat.

**Kata kunci :** Tanah, Perbuatan Melawan Hukum, Wanprestasi, Ganti Rugi.

***JURIDICAL ANALYSIS OF JUDGE'S DECISIONS IN LAND CASES  
BETWEEN AGAINST THE LAW AND DEFAULT***

***(Study Decision Number: 53/Pdt.G/2019/PN SMN and Decision Number:  
12/PDT/2020/PT YYK)***

**By Auliya Zaki Abidin**

***ABSTRACT***

*Soil has a very important meaning and role for human life. So that makes people want to get and control the land. However, it is not uncommon for the desire to control this land to eventually lead to land disputes that lead to courts.*

*This study aims to analyze the legal considerations of judges in deciding land cases and analyze the legal considerations of judges in deciding the amount of compensation in land cases. This study uses a normative juridical method with a law approach and a case approach. Specifications of prescriptive research, secondary data sources with the method of presentation in the form of narrative text and arranged systematically using qualitative normative analysis methods.*

*Based on the results of research and discussion, Decision No. 53/Pdt.G/2019/PN SMN stated that the defendant's act of selling the land which was still in the process of judicial review to the plaintiff was against the law. While Decision No. 12/PDT/2020/PT YYK stated that the defendant had broken his promise. According to the author, the High Court's decision is not appropriate if it is qualified as a default because the parties have fulfilled their achievements. It is more appropriate if it is qualified as an unlawful act because it fulfills the element of violating subjective rights and is contrary to the must that must be heeded in public relations regarding people and things. Regarding the determination of the amount of compensation, the Panel of Judges determined the compensation in the amount of the purchase price money that had been received by the Defendant in the form of a fee of Rp. 5,938,475,000, - to be submitted to the Plaintiff.*

***Keywords : Land, Unlawful Acts, Default, Compensation***