

**TINJAUAN YURIDIS TERHADAP PERBUATAN MELAWAN HUKUM
ATAS PENGUASAAN TANAH TANPA PERSETUJUAN PEMILIK**

TANAH

(Studi Putusan Nomor 334/Pdt/2023/PT MDN)

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ABSTRAK

Penelitian ini dilatarbelakangi dengan adanya tindakan penguasaan tanah tanpa hak yang dilakukan oleh Sondang Pasaribu dan Mariana Sitompul selaku Para Terbanding semula Tergugat yang melakukan Perbuatan Melawan Hukum berupa menguasai tanah milik Pembanding semula Penggugat. Penelitian ini bertujuan untuk menganalisis pertimbangan hukum hakim dalam mengkuafisir kriterium perbuatan melawan hukum yang dilakukan oleh Para Terbanding semula Tergugat dan menganalisis pertimbangan hukum hakim dalam mengkuafisir bentuk ganti kerugian yang harus dibayarkan kepada Pembanding semula Penggugat. Penelitian ini menggunakan metode pendekatan yuridis normatif dengan spesifikasi penelitian preskriptif analitis. Data bersumber dari data sekunder. Metode pengumpulan data dilakukan dengan studi kepustakaan, dengan menggunakan metode analisis normatif kualitatif.

Berdasarkan hasil penelitian dan pembahasan, Majelis Hakim belum secara jelas mempertimbangkan kriterium perbuatan melawan hukum yang dilakukan oleh Para Terbanding semula Tergugat. Penulis berpendapat bahwa Terbanding semula Tergugat terbukti melakukan Perbuatan Melawan Hukum dan memenuhi kriterium Perbuatan Melawan Hukum yaitu melanggar hak subyektif orang lain berupa hak milik atas tanah dan bertentangan dengan kewajiban hukumnya sendiri berlandaskan Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria Pasal 20 dan Peraturan Pemerintah Pengganti Undang-Undang Nomor 51 Tahun 1960 tentang Larangan Pemakaian Tanah Tanpa Izin Yang Berhak Atau Kuasanya Pasal 2. Dalam hasil penelitian ditemukan Majelis Hakim belum secara jelas mempertimbangkan apakah syarat-syarat mengajukan ganti kerugian bahwa syarat kumulatif dalam Pasal 1365 telah terpenuhi agar dapat mengajukan ganti kerugian ke hadapan pengadilan, dan Penulis berpendapat bahwa gugatan Pembanding semula Penggugat telah memenuhi syarat-syarat sebagaimana diatur dalam Pasal 1365 KUH Perdata yaitu adanya perbuatan melawan hukum, kerugian yang diderita secara kumulatif Rp. 10.600.000.000,00 (sepuluh milyar enam ratus juta rupiah), adanya kesalahan dari pihak Para Terbanding semula Tergugat, dan adanya hubungan kausal antara kerugian yang diderita dan tindakan Para Terbanding semula Tergugat.

Kata Kunci: *Perbuatan Melawan Hukum, Penguasaan Tanah Tanpa Hak, Ganti Rugi*

**JURIDICAL REVIEW OF UNLAWFUL ACTS ON LAND TENURE
WITHOUT THE CONSENT OF THE LANDOWNER
(Study of Decision Number 334/Pdt/2023/PT MDN)**

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ABSTRACT

This research is motivated by the act of unlawful possession of land committed by Sondang Pasaribu and Mariana Sitompul as the original Defendants who uprooted, burned various perennials that had been planted by the original Plaintiff Appellant resulting in the losses suffered. This study aims to analyze the legal considerations of the judges in qualifying the criteria for tortious acts committed by the Defendants and to analyze the legal considerations of the judges in qualifying the form of compensation to be paid to the Plaintiff. This research uses a normative juridical approach with prescriptive analytical research specifications. Data is sourced from secondary data. The data collection method was carried out by literature study, using a qualitative normative analysis method.

Based on the results of research and discussion, the Panel of Judges has not clearly considered the criteria for unlawful acts committed by the Respondents. The author is of the opinion that the Defendants were proven to have committed a tortious act and fulfilled the criteria of a tortious act, namely violating the subjective rights of others in the form of property rights to land and contrary to their own legal obligations based on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles Article 20 and Government Regulation in Lieu of Law Number 51 of 1960 concerning Prohibition of Use of Land without the Permission of the Rightful Owner or his Proxy Article 2. In the research results it was found that the Panel of Judges had not clearly considered whether the requirements for applying for compensation that the cumulative requirements in Article 1365 had been fulfilled in order to apply for compensation before the court, and the author is of the opinion that the lawsuit of the Appellant, originally the Plaintiff, has fulfilled the requirements as stipulated in Article 1365 of the Civil Code, namely the existence of unlawful acts, losses suffered cumulatively Rp. 10,600,000,000.00 (ten billion six hundred million rupiah), the existence of fault on the part of the Appellants, originally the Defendants, and the existence of a causal relationship between the losses suffered and the actions of the Appellants, originally the Defendants.

Keywords: *Unlawful Acts, Land Tenure Without Rights, Compensation*