

# Unlawful Acts According to Civil Law and Criminal Law

(Analysis of Decision Number 30/Pdt.G/2020/Pn.Pkl)

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## Abstract

Land grabbing is not a new phenomenon and has occurred in Indonesia. The term "land grabbing" refers to the act of seizing rights or property arbitrarily, without adhering to laws and regulations, such as occupying land or houses that do not belong to the perpetrator. Unlawful land grabbing constitutes a legal violation and can be categorized as a criminal act. If the act is intentionally committed by someone who seizes the land of others, Article 167 of the Criminal Code (KUHPidana) may be applied. Meanwhile, the civil law aspects encompass Article 1365 and Article 1366, as in cases of land grabbing, there are parties who suffer losses and are entitled to compensation for the damages incurred.

## KEYWORDS

*Land, Encroachment, Civil Law, Criminal*



## Introduction

Community's land rights by Van Vollenhoven is called '*Beschikingsrecht*' or ownership rights, the special nature of ownership rights lies in the reciprocal power of it towards individual rights to land".<sup>1</sup>

Rights to land has important role in life. Basic Agrarian Law (hereinafter referred to as UUPA) Number 5 of 1960, Article 19 paragraph (1) states that "to ensure legal certainty by the government, land registration is carried out throughout Republic of Indonesia"<sup>2</sup>

There are 3 categories of unlawful acts in law as follows:

1. Intentional unlawful acts
2. Unlawful acts without fault (without elements of intention or negligence)
3. Unlawful acts due to negligence.<sup>3</sup>

Unlawful acts (*onrechtmatige daad*) in civil law is further regulated in Article 1365 of Civil code or *Burgerlijk Wetboek* (BW). Where the text of the article is:

*"Every unlawful act that brings harm to another person, the person who is at fault who cause the loss requires to compensate for the loss".<sup>4</sup>*

Meanwhile, according to Criminal Law, unlawful acts in criminal law is regulated in Criminal Code (KUHP).<sup>5</sup> The elements of an unlawful act in criminal law are the act is clearly declared to violate the law, then the act is also carried out without authority and power as well as an act that violates general principles in law. On the other hand, in civil law, the elements of an unlawful act are the existence of an act, the act is against the law, there is an error from the perpetrator, there is a loss for the victim, and there is a causal relationship between the act and the loss.<sup>6</sup>

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<sup>1</sup> Soetomo, *Pedoman Jual Beli Tanah Peralihan Hak Dan Sertifikat*, Pertama (Malang: Lembaga Penerbitan Universitas Brawijaya, 1981), 11.

<sup>2</sup> Soetomo, 12.

<sup>3</sup> Munir Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer* (Bandung: PT. Citra Aditya Bakti, 2005), 3.

<sup>4</sup> For more information, see Article 1365 of Civil Code (BW)

<sup>5</sup> For more information, see Criminal Code (KUHP)

<sup>6</sup> Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 55, <https://doi.org/10.35968/jh.v11i1.651>.

The purpose of this article is to find out about unlawful acts in case Number: 30/Pdt.G/2020/PN Pkl from the perspective of Criminal Law and Civil Law. Unlawful acts in the context of criminal law and civil law have different context. The difference lies in the regulatory law, the nature, and the elements in both laws in Land Dispute Case Number: 30/Pdt.G/2020/PN.Pkl.

## Method

The type of this research is normative research because this research is focused on the whole research, systematic, factual and actual about the facts that are related to case that will be studied. This research will be done by using library research to get secondary data. The approach that will be used in this research is the statute approach, verdict, and historical approach which is explaining the background, history or some solutions that are used. And Decicison Case Number: 30/Pdt.G/2020/PN Pkl. Conceptual approach is using views and thoughts of experts who are interested in unlawful acts and the concept of criminal acts.

## Result and Discussions

### A. Case Outline

Plaintiff owned a piece of land and building with a perimeter fence, Freehold Title No. 293 with an area of  $\pm 232 \text{ m}^2$  in the name of the Plaintiff, which was located in Kauman sub-district, East Pekalongan.

That the eastern fence on the plaintiff's land that was damaged by defendant's mother has not been rebuilt yet, without plaintiff's knowledge and permission on the plaintiff's land, the defendant built a light steel building for motorcycle wash business and the respondent also installed electricity in the building.

That as the owner of the aforementioned land, the plaintiff has reported the actions of the defendant to Kauman Sub-District Chief and Village Trustee NCO of East Pekalongan have repeatedly reminded the defendant to dismantle the aforementioned building, but the defendant has not heeded the warnings until now.

That on the basis of facts as mentioned above, it is clear that the defendant has committed an unlawful act, in the form of without the plaintiff's knowledge and permission, the defendant controlled, enjoyed, managed, and built a motorcycle wash on plaintiff's land as mentioned above.

The Judge's Decision is as follows:

*Declared that the Defendant had committed an unlawful act, without plaintiff's knowledge and permission, the defendant had controlled, enjoyed, and managed a piece of land belonging to Plaintiff's freehold title No. 293 with an area of  $\pm 232 \text{ m}^2$  and built motorcycle wash business on Plaintiff's land.*

## **B. Unlawful Acts (According to Civil Law) in Land Dispute Case**

Land disputes or conflicts are chronic, classic, and last for years and even decades, always appearing in various places. Land disputes and conflicts are complex and have various dimensions.<sup>7</sup>

In the definition of land disputes according to legal experts, Rusmadi Murad states that land rights disputes occur when there are complaints from certain parties (individuals or institutions) containing objections and demands related to land rights. These objections include land status, priority, and ownership with the hope that they can be resolved administratively in accordance with applicable regulations.<sup>8</sup>

Robbins, on the other hand, defines conflict or dispute as the result of antecedent conditions. These conditions, as sources of conflict, fall into three categories: communication, structure, and personal variables.<sup>9</sup>

Any action that is contrary to the law and causes harm to others requires the perpetrator to be responsible by compensating for the resulting losses. Article 1365 of Civil Code states that:

*“any unlawful act that causes harm to another person requires the perpetrator to compensate for the harm. It is important to note that the perpetrator needs to prove that the person is at fault, and the proof of fault must be submitted by the party who suffered the loss due to the unlawful act.”*

In certain situations, the perpetrator must be able to think about the possible consequences of their actions, so that they can be considered guilty. If there is a loss caused by the victim's actions, it is unfair to impose the entire loss on the perpetrator. The principle of liability in joint must be clearly stated. The reason why one of the perpetrators of the unlawful act must pay full compensation is because it is chosen by the victim as the party who is considered most capable of paying the loss. However, the perpetrator

<sup>7</sup> Sumarto, “Penanganan Dan Penyelesaian Konflik Pertanahan Dengan Prinsip Win-Win Solution Oleh Badan Pertanahan Nasional RI,” in *Diklat Direktorat Konflik Pertanahan Kemendagri RI* (Jakarta, 2012), 2.

<sup>8</sup> Rusmadi Murad, *Administrasi Pertanahan: Pelaksanaan Hukum Pertanahan Dan Praktek* (Bandung: CV. Mandar Maju, 2012), 22–23.

<sup>9</sup> Maria S. W. Sumardjono, *Reorientasi Kebijakan Pertanahan* (Jakarta: Margaretha Pustaka, 2011), 65.

should be given equal rights with fellow perpetrators to pay their respective shares.<sup>10</sup>

An example of an unlawful act is the occupation of land and building without the owner's permission, which can lead to disputes. Land as immovable property plays a crucial role in people's lives, and the need for land is increasing. Therefore, understanding and fair handling of such unlawful acts is important in the context of society and governance.<sup>11</sup>

Rusmadi Murad defines land disputes as disputes between two or more parties who feel aggrieved regarding the use and control of land rights, which can be resolved through deliberation or through court.<sup>12</sup>

Meanwhile, according to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 1 of 1999 concerning Procedures for Handling Land Disputes, Article 1 Point 1 states that:

*“land disputes include differences of opinion regarding:*

- a. The validity of a right;*
- b. Granting of land rights; and*
- c. Registration of land rights including the transfer and issuance of evidence of rights between interested parties or between interested parties and Indonesian National Land Office”.*

### **C. Unlawful Acts in the Criminal Aspect in Case Number: 30/Pdt.G/ 2020/ Pn. Pkl**

The definition of Unlawful Acts in Civil Code is not clearly explained. However, the Civil Code contains articles that limitatively regulate the juridical consequences in the event of unlawful acts. In the development of the science and theory of law, the definition and understanding of unlawful acts are mostly expressed by experts. From many experts who formulate the meaning of unlawful acts (PMH), each other will be different, in order to understand it materially, we need elements to classify a certain act into PMH or not. So that with these elements, it is hoped that an understanding of unlawful acts meaning will be created and it is hoped that it can create legal certainty.<sup>13</sup>

In the context of criminal law, according to Satochid Kartanegara's opinion, “unlawful” (*Wederrechtelijk*) in criminal law can be divided into:

- a. Formal *Wederrechtelijk*, which is when an act is prohibited and threatened with punishment by law.

<sup>10</sup> Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, 10.

<sup>11</sup> Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*.

<sup>12</sup> Diana Kolompoy, “Sengketa Tanah Akibat Perbuatan Melawan Hukum Di Tinjau Dari UUPA Nomor 5 Tahun 1960.,” *Duke Law Journal* VII, no. 3 (2019): 135.

<sup>13</sup> Titin Apriani, “Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana,” *Ganec Swara* 13, no. 1 (2019): 44, <https://doi.org/10.35327/gara.v13i1.61>.

- b. Material *Wederrechtelijk*, which is an act that maybe *wederrechtelijk*, even though it is not expressly prohibited and punishable by law. But also general principles that are contained in the field of law (*algemen beginsel*).<sup>14</sup>

Unlawful means: Contrary to the law or not in accordance with legal prohibitions or requirements or attacking an interest protected by law. In this case what is meant by law is positive law (applicable law).<sup>15</sup>

In relation to unlawful nature as one of the offenses, he said that he always refers to the norm of the offense formulated in the criminal law. If there is a dispute as to whether or not the unlawful act exists, the judge is bound by the formulation of the law. This means that what must be proven is only expressly formulated in the law in the context of proving the offense.<sup>16</sup>

Moeljatno and Ruslan Saleh argue that being unlawful must be interpreted as contrary to the law. Unlawfulness as an Element of the Offense in the current system of criminal law legislation, it turns out that unlawfulness is not always included as one of the offenses. As a result, the question arises whether the unlawful nature must always be considered as one of the offenses, even though it is not expressly formulated, or whether it is only considered as an offense if it is formulated in the offense.<sup>17</sup>

Articles in Criminal Code that explicitly include unlawful are: Article 167, Article 168, Article 333, Article 334, Article 335, Article 362, Article 368, Article 378, Article 406, and also Article 302, 392, 282, and so on. Formally or statutory provision, because it is contrary to the law. In other words, all acts that are contrary to the law, or an act that has fulfilled the formulation of the offense in law, whether unlawful is formulated or not, are unlawful acts. The unlawful nature will only be lost or eliminated, if there are grounds for its elimination specified in law.<sup>18</sup>

#### **D. Unlawful Acts in Civil Aspect in Case Number: 30/ Pdt.G/ 2020/ Pn. Pkl**

The element of Unlawful Acts in Decision Number 30/ Pdt.G/ 2020/ PN. Pkl which is regarding the land grabbing that was carried out, in Civil Law,

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<sup>14</sup> Apriani, 46.

<sup>15</sup> Mesdiana Purba and Nelvitia Purba, "Perbuatan Melawan Hukum (Wederrechtelijk) Di Dalam Perspektif Hukum Pidana Dan Perbuatan Melawan Hukum (Onrechtmatige Daad) Di Dalam Perspektif Hukum Perdata," *Kultura, Jurnal Universitassuryadarma* 14, no. 1 (2013): 4.

<sup>16</sup> Purba and Purba, "Perbuatan Melawan Hukum (Wederrechtelijk) Di Dalam Perspektif Hukum Pidana Dan Perbuatan Melawan Hukum (Onrechtmatige Daad) Di Dalam Perspektif Hukum Perdata."

<sup>17</sup> Purba and Purba.

<sup>18</sup> Purba and Purba.



land disputes occur a lot in society, because everyone does not want something they own fall into the hands of others, especially if the object has become property rights. Therefore, to maintain property, especially property rights or land rights, it must be registered, because the registration of land rights is an absolute thing to do.<sup>19</sup>

Violation of land law norms can cover three aspects, which are administrative, civil, and criminal. This is the result of the development of agrarian law. Initially, agrarian law was part of civil law, but along with the state is increasing intervention in regulating land resources, land law also included administrative and criminal dimensions. In fact, in its current development, the criminal dimension in land law has expanded with the introduction of the criminal law of corruption related to violations of the law in land sector. Land-related problems continue and never stop.<sup>20</sup>

Settlement of land disputes through court often takes a long time. This is due to the civil litigation process in District Court. Nonetheless, through this process, legitimate land owners have greater chance of getting justice and restoring their land rights that has been taken. However, land grabbing cases have unique characteristics, and the course of legal proceedings may vary depending on the jurisdiction and applicable regulations.<sup>21</sup>

After District Court issues a decision, a party who is dissatisfied with the decision may file an appeal. The appeal file is then sent from District Court to High Court, and Judicial Panel will examine the file before deciding it through deliberation.<sup>22</sup>

However, if any party is still dissatisfied with the appeal decision, they can appeal it through the cassation procedure. The cassation procedure involves the disputing parties, where the Cassation Petitioner will submit Cassation Memorandum, while the other party submits a Counter Cassation Memorandum. Once all the case files are complete, then they are sent to Supreme Court of Indonesia through District Court where the case was originally heard.<sup>23</sup>

After Supreme Court of Indonesia receives the file, the Chief Justice of Supreme Court will appoint Judicial Panel of Supreme Court to examine, hear, and finally decides the case file for cassation. If in the decision of Supreme Court of Indonesia, there is still party who feels injustice, the law provides an option to file an additional legal remedy, which Judicial Review (PK). Applicants for judicial review are given a time limit of 180 days since Supreme Court decided the case, with the condition that new evidence or

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<sup>19</sup> Noor Rachman Afif Saputra, "Tinjauan Yuridis Sengketa Tanah Akibat Perbuatan Melawan Hukum (Studi Putusan No. 91/Pdt.G/2009/PN. Ska)" (Universitas Muhammadiyah Surakarta, 2015), 2.

<sup>20</sup> Kolompoy, "Sengketa Tanah Akibat Perbuatan Melawan Hukum Di Tinjau Dari UUPA Nomor 5 Tahun 1960.," 135.

<sup>21</sup> Robert L Weku, "Kajian Terhadap Kasus Penyerobotan Tanah Ditinjau Dari Aspek Hukum Pidana Dan Hukum Perdata," *Lex Privatum* 1, no. 2 (2013): 167.

<sup>22</sup> Irsan Rahman, "Analisis Hukum Perdata Terhadap Kasus Penterobotan Tanah," *Tana Mana* 3, no. 1 (2022): 83.

<sup>23</sup> Henny Mono, *Praktik Berperkara Perdata* (Malang: Bayumedia Publising, 2007), 70.

evidence that has never been submitted during the process in District Court, High Court, and Supreme Court has to be attached for the judicial review, it is known as “*Novum*”.<sup>24</sup>

The process of resolving land grabbing cases through civil law involves a series of steps as follows:

1. Proof of land ownership: At an early stage, legitimate land owners need to prove that they have legal title to the land that is controlled by the other party. Acceptable proof of ownership by a civil court includes a land certificate, proof of tax payment or a valid deed of sale. In some situations, expert services may be required to substantiate proof of land ownership.
2. Civil suit: Once ownership of the land is proven, the rightful owner can file a civil suit against the party who committed the illegal occupancy. This lawsuit is filed with the civil court in charge of the area. In the lawsuit, the land owner can request restitution or return the land, as well as compensation for the losses incurred due to the illegal occupancy.
3. Evidence examination: The civil court will examine the evidence presented by both parties, including evidence of ownership and evidence of illegal occupancy. The court will consider all the facts and laws involved in the case to make a fair and objective decision.
4. Court decision: After considering all the evidence and arguments presented, the court will issue a judgement. If the court finds that dispossession occurred, the rightful land owner will likely get a judgement ordering the return of the land and may also get compensation for the losses incurred. However, court rulings may vary depending on the law and facts related to each case.
5. Judgement enforcement: Once the judgement is issued, the party who committed the seizure is required to comply with the judgement. If they do not follow the judgement, the land owner may seek the assistance of the law enforcement or court execution officers to enforce the judgement.<sup>25</sup>

How to overcome these problems can also be done before the conflict occurs, which is by orderly administration, namely by doing land registration or the Dutch language is *Cadastre*. *Cadastre* is the record of land, the value of land, and the rights holders and for tax purposes. Thus, *Cadastre* is an appropriate tool that provides a description and identification of the description and also as a continuous recording of land rights.<sup>26</sup>

Land registration that aims to provide legal certainty is known as *rechts cadaster* or legal cadaster. The purpose of land registration is to ensure the status of the registered rights, the subject of the rights, and the

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<sup>24</sup> Mono, 70.

<sup>25</sup> Rahman, “Analisis Hukum Perdata Terhadap Kasus Penterobotan Tanah.”

<sup>26</sup> Urip Santoso, *Hukum Agraria Kajian Komprehensif, Paper Knowledge . Toward a Media History of Documents*, vol. 3, 2017, 286.



object of the rights. The registration process produces a certificate as proof of legal title. In contrast, there is also a type of land registration called fiscal cadaster, whose purpose is to determine who is responsible for paying taxes on land. This land registration produces Notification of Land and Building Tax Due (SPPTPBB) as proof of tax payment on land.<sup>27</sup>

The application of land registration system in a country depends on the legal principles adopted by the country in transferring land rights. There are two main legal principles, which are principle of good faith and the principle of Nemo Plus Yuris, Nemo Plus Yuris itself is the principle adopted in the land registration publication system applicable in Indonesia. This principle states that a person cannot transfer a land right beyond what they own<sup>28</sup>

### **E. Unlawful Acts in Criminal Aspect in Case Number: 30/Pdt.G/2020/Pn. Pkl**

The Unlawful element in Case Number: 30/ Pdt.G/ 2020/ Pn. Pkl, was proven when the judge handed down the verdict. The judge's decision in the second point *"Stating that the Defendant has committed an unlawful act by controlling, enjoying, and managing a plot of land belonging to the Plaintiff with an area of  $\pm 232 \text{ m}^2$  and built a motorcycle wash business on the Plaintiff's land without Plaintiff's knowledge and permission"*.<sup>29</sup>

In the Criminal Perspective itself, the crime of land grabbing is an act prohibited by law and will be subject to sanctions for the perpetrators of land grabbing. In Criminal Law, taking land right by doing unlawful act is divided into 2:

- a. At the time of acquisition
- b. At the time of recognizing without rights.<sup>30</sup>

It is not enough if there is only strafbaarfeit, but there must be a strafbaar persoo or a person who can be punished if starbaarfeit is committed intentionally or unintentionally.<sup>31</sup> Referring to the criminal offense case number: 30/ Pdt.G/ 2020/ Pn. Pkl, can be categorized into several which are:

#### **1. Pre-Acquisition**

Pre-Acquisition is a series of actions taken before the acquisition of land rights. The main element that must be obtained is the unlawful act or

<sup>27</sup> Tony, *Penyelesaian Hukum Atas Penerbitan Sertipikat Hak Atas Tanah Yang Cacat Hukum Administratif Dikantor Pertanahan* (Batam: UIB Repository, 2015), 15.

<sup>28</sup> Adrian Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftarannya* (Jakarta: Sinar Grafika, 2010), 117.

<sup>29</sup> P.A.F Lamintang, *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan* (Jakarta: Sinar Grafika, 2009), 174.

<sup>30</sup> Lamintang, *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan*.

<sup>31</sup> Lamintang.

violation of the law committed by perpetrator in an effort to convince that he is claiming land that does not belong to him.<sup>32</sup>

## 2. Possession Without Rights

Describes the absence of a legal relationship between the perpetrator (in this case Defendant) and the land that is the object of the dispute. And there has been an aggrieved party, which Plaintiff.<sup>33</sup>

The Perpetrator/Defendant has occupied the land without rights by using it as place of business.

## 3. Acknowledging Without Rights

Recognizing a plot of land that does not belong to him so that the owner in this case is disadvantaged.

In Case Number: 30/ Pdt.G/2020/Pn.Pkl, it was explained that the Defendant denied the Plaintiff's claim, and admitted in his replication that the land belonged to him.<sup>34</sup>

From what has been explained in the discussion above, the criminal elements in three categories have been fulfilled. If referring to the events in the case, the Criminal Article that can be applied is Article 385 of Criminal Code which reads:

*"All forms of crimes contained in Article 385 are called Stellingnaat, which are acts of embezzlement of rights to immovable property belonging to others, such as land, rice field, garden, building, etc."*

# Conclusion

When it is viewed from Civil Law Events in Case Number: 30/ Pdt.G/2020/Pn.Pkl, it can be concluded that the unlawful act in the case has fulfilled the civil elements because the certificate of ownership and who controls the land are different and in this case the party who has the right to ownership of land feels disadvantaged because he cannot enjoy ownership of land. And these actions can be subject to Article 1365 of Civil Code.

When it is viewed from Criminal Law Events in Case Number: 30/ Pdt.G/ 2020/ Pn. Pkl, it can be concluded that the unlawful act in this case has fulfilled the criminal elements in the category of Pre-Acquisition,

<sup>32</sup> Leden Marpuang, *Asas Teori Praktek Hukum* (Jakarta: Sinar Grafika, 2005), 4.

<sup>33</sup> Marpuang, *Asas Teori Praktek Hukum*.

<sup>34</sup> Marpuang.

Acknowledging Without Rights, Possession Without Rights. And the unlawful act in this case can be charged with Article 385 of Criminal Code regarding Land Grabbing.

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