

## NORMATIVE ANALYSIS OF UNLAWFUL ACTS IN THE CONTEXT OF INHIBITION OF THE CERTIFICATE NAME REVERSAL PROCESS

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**Abstract:** This paper discusses illegal acts that hinder the process of turning over the certificate's name. An unlawful act can be categorized as an unlawful act if the act causes harm to other parties. There are two kinds of losses incurred by unlawful acts, namely material losses, and immaterial losses. With a normative approach, this article finds that an act is categorized as an act against the law if it meets the five elements of an unlawful act. Unlawful acts committed by the seller if based on the Cilacap District Court Decision number 25/Pdt.G/2017/PNClp, namely the existence of an act (the act of buying and selling land), an unlawful act (reselling the object of sale and purchase and delaying the process of returning the name of the certificate), victim losses (immaterial losses), a causal relationship between the act and losses (defendants whose whereabouts are unknown), the offender's fault (reselling the object of buying and selling land). Thus, the author agrees with the judge of the Cilacap District Court that the lawsuit over the dispute is an illegal act.

*Tulisan ini membahas tentang perbuatan melawan hukum yang timbul dalam menghambat*

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*proses balik nama sertifikat. Suatu perbuatan melanggar hukum dapat dikategorikan sebagai perbuatan melawan hukum apabila perbuatan tersebut menimbulkan kerugian bagi pihak lain. Ada dua macam kerugian yang ditimbulkan oleh perbuatan melawan hukum yaitu kerugian materiil dan kerugian immaterial. Dengan pendekatan normatif, artikel ini menemukan bahwa suatu perbuatan dikategorikan sebagai perbuatan melawan hukum jika memenuhi lima unsur perbuatan melawan hukum. Perbuatan melawan hukum yang dilakukan oleh penjual jika berdasarkan pada Putusan Pengadilan Negeri Cilacap nomor 25/Pdt.G/2017/PNClp yaitu adanya Suatu perbuatan (perbuatan jual beli tanah), perbuatan melawan hukum (menjual kembali objek jual beli dan menunda proses balik nama sertifikat), kerugian korban (kerugian immaterial), hubungan kausalitas antara perbuatan dengan kerugian (tergugat yang tidak diketahui keberadaannya), kesalahan pelaku (menjual kembali objek jual beli tanah). Dengan demikian, penulis sependapat dengan hakim Pengadilan Negeri Cilacap bahwa gugatan atas sengketa tersebut termasuk perbuatan melawan hukum.*

**Keywords:** Unlawful Acts; Selling; Soil.

## INTRODUCTION

The interaction that exists in society is one form of human nature, which is a social being. Every day people interact with other communities, easy examples of interactions that exist in the community are greeting each other, shaking hands, and talking. But every time society interacts, there will be legal consequences for everything that is done in each interaction. For example, easy interaction that can have legal consequences is the making of

agreements made by the parties. Agreements that are often implemented by the community are sale and purchase agreements.

For example, a sale and purchase agreement that is still carried out in the community, namely the sale and purchase of land, land is an important need for people's lives. Land is used as a place to build a dwelling which is one of the basic human needs in the form of board needs. The high need for the community to have a place to live makes the price of land sold and bought soar. Currently the human need to make a dwelling is very high. To make a dwelling, it requires land obtained from buying and selling. Apart from buying and selling, one can get land through inheritance obtained from the family.

The implementation of the sale and purchase agreement carried out in public life will not be separated from the problems arising from negligence or carelessness committed by one of the parties contained in the agreement. Negligence committed will cause losses to other parties contained in the agreement. The incurrance of losses is the result of a legal act that gives rise to an Unlawful Act committed by the party who made the loss appear.

In civil law rules, Unlawful Acts have been regulated in detail in the Civil Code. Unlawful Acts are actions that provide losses to other parties involved in the implementation of legal acts. Unlawful Acts contained in Article 1365 of the Civil Code, it is said that "every act that violates the law and causes a loss to another person, it is obligatory for the person who for his mistake publishes the loss, to compensate for the losses that arise".

Grigorev (2023), Mulyanto (2022) Parkhomenko (2019), Sukhova (2020), Yudin (2023), Ho (2016) all discuss the legal and social implications

of unlawful acts in the context of the inhibition of the certificate name reversal process. Grigorev emphasizes the public wrongfulness of falsifying public registries (Grigorev 2023), while Mulyanto focuses on the protection of land rights certificate holders and the potential financial losses they may incur due to the blocking of their certificates. These studies collectively underscore the need for legal protection and the potential consequences of inhibiting the certificate name reversal process (Mulyanto and Adillah 2022).

Parkhomenko write that the absence of these norms in Russian criminal legislation is a specific legal phenomenon (Parkhomenko, Milyukov, and Nikulenko 2020); Sukhova focuses the meaning of legitimacy and unlawfulness is ambiguous and limited (Sukhova 2020); Yudin emphasizes with the court's ability to overcome the judicial act that has entered into force by adopting a new decision of similar content is the most significant criterion (Yudin 2023), and Ho explain with The admission of unlawfully obtained evidence is inherently problematic). However, this article generally reviews the same topics as its predecessors from a different substance than the previous article (Ho 2016).

Thus, after explaining the background of the problem in this study, the author makes a formulation of the problem, namely whether the act of hindering the process of turning the name of the certificate can be categorized as an act against the law.

## **METHODS**

Research conducted by researchers is a type of normative legal research. Normative legal research is research that uses secondary data sources obtained through literature studies (Hanitijo 1983). Normative

research is carried out by exploring literature materials obtained through literature studies. There are two kinds of research materials used, namely primary legal materials and secondary legal materials (Fajar and Achmad 2015). Primary legal materials are sourced from the Civil Code. While secondary legal materials are sourced in the Journal of Law and Related Literature. The analysis technique used is qualitative descriptive. Descriptive qualitative is a method that uses research material that has been obtained for later analysis and is not used as a reference in making conclusions (Sugiyono 2013).

## **RESULT AND DISCUSSION**

### **Unlawful Acts**

Unlawful Acts in Dutch terms known as "*onrechmatige daad*" the term is also known by continental European countries. While in English terms Unlawful Acts are known as "*Tort*" or in Indonesian known as wrong, wrong what is meant in terms of unlawful acts is an error in implementation in the application in the field of law. The existence of errors in the implementation in the field of law can be categorized as Unlawful Acts (Fuady 2017).

In civil law rules, Unlawful Acts have been regulated in detail in the Civil Code. Unlawful Acts are defined as acts that cause losses to other parties involved in the implementation of legal acts. Unlawful Acts contained in Article 1365 of the Civil Code state that every unlawful act that brings harm to others, then gets an obligation for the person who because of his fault caused the loss and is obliged to compensate for the loss.

It can be interpreted that the one who provides compensation to the other party is the party who makes the loss appear to the other party. Initially, Unlawful Acts were known as violations contained in written articles of law. In the provisions of article 1365 of the Civil Code, it is explained that the elements of Unlawful Acts include:

- [1]. The existence of an act, an act arises preceded by an act that violates the law and is committed by one of the parties. In an act there are two criteria that can be categorized as an act, namely actions committed intentionally by one party and or actions that arise due to negligence by one party (Projodikoro 1984).
- [2]. The act is against the law, an Act can be categorized as an Unlawful Act when it meets the following three criteria: Contrary to the subjective of others, Contrary to legal obligations for the perpetrator, and There is guilt on the part of one offender. Errors defined in Unlawful Acts are errors defined as "Legal errors" and "Social errors". Mistake in Unlawful Acts as a person's failure to do the ideal in doing something (Fuady 2014).
- [3]. Loses for the victim. Losses arising from those committed by someone who commits an Unlawful Act then cause two losses, namely material losses and immaterial losses which will also be assessed by money or the amount of loss. Immaterial losses are losses that have no form so it is difficult to determine immaterial losses (Mantili 2019). There is a causal relationship between the actions done and the losses incurred. A cause of loss relates to an Unlawful Act committed by one party in carrying out a legal action and causes a loss to the other party; There is a mistake on the part of the perpetrator. Article 1365 of the Civil Code on Unlawful

Acts provides a condition that the parties who commit mistakes must contain elements of guilt in carrying out the act.

There are three kinds of elements of guilt that can be categorized as Unlawful Acts, namely: There is an element of intentionality in doing actions (the element of intentionality is carried out with the intention from the heart of the perpetrator to cause a certain harm aimed at the victim) and there is an element of negligence in doing the deed; Legal science teaches that an act can be categorized as negligence if it meets several main elements of negligence, namely (there is an act that should not be done but done; There is an obligation of prudence in doing an action; Non-performance of prudential obligations; Inflicting harm to others committed by either party; There is a causal relationship between the act of doing or not doing and the occurrence of a loss); and there are justifier reasons such as self-defense, insanity, overmacht, etc.

The flow of Unlawful Acts arises because of the thought that an Unlawful Act is not always categorized into an element against the law. But there is an element of guilt by one party that causes harm to others which can be categorized as Unlawful Acts. There are three schools that develop, namely (Sari 2020): The school that states that the element of unlawful acts alone is sufficient; A school that states that the element of error alone is sufficient; and a school that states that there is still an element of unlawfulness and an element of error in it.

Unlawful acts are defined as actions that are directly categorized as violating the law, but there is an act that only violates the rules of decency without directly violating existing laws. But acts of violating decency can

violate customary norms that apply in people's lives. There are several kinds of factors that can eliminate unlawfulness, namely (Projodikoro 2018):

- 1) Privacy rights. A person's personal rights can be a factor if someone who makes rules can provide reasons for his personal rights that are used as the basis for actions committed. One example is: two people have a yard next to each other. In one of the yards grew a tree branch that grew to reach the yard next to it. Thus, the owner of the yard next to him has the right to cut the branch of the tree that does not belong to him. On the basis that a tree branch has grown in his yard.
- 2) Self-defense. Self-defense is almost the same as personal rights, self-defense has the purpose of committing unlawful acts. In self-defense, it can occur if someone gets attacked by himself by someone else, then that person has the right to defend himself. In conducting self-defense, a person must be able to determine whether he is in a state of force or not. And in self-defense, a person is prohibited from defending himself to the extent of exceeding the limit to the person who attacked him.
- 3) Forcing situation. Force majeure generally commits unlawful acts. Coercive acts committed by someone can eliminate the nature of being against the law. The force majeure has two kinds of meanings, namely: Forcing circumstances of an absolute nature and force majeure is not absolute.
- 4) Implementing the Law. An act that is not against the law if an act is done to implement a law and regulation. For example, the police who make arrests and deprive them of their independence, the judge who sentences a defendant, the clerk who confiscates bail.

- 5) Top order. Acts done to carry out the orders of superiors are not unlawful. The superior's order is only a justification for the person carrying out the superior's order.

In Unlawful Acts, there are several criteria that can be categorized as an Unlawful Act, namely as follows (Salam 2018): acts that violate the rights of others, acts that violate their own legal obligations, legal acts that violate the norms of decency, and acts that violate the principle of prudence or necessity in society.

### **Sale and purchase of land**

Buying and selling land is defined in customary law as a legal act to hand over land within eternity by accepting payment by the seller as the purchase price of the land. Thus, that the sale and purchase of land occurs when the seller receives payment and hands over the title to the land to the buyer in perpetuity (Supomo 1982). According to Boedi, Harsono gives the definition of buying and selling land as a legal act carried out to hand over ownership rights to land by the seller to the buyer and at that time the buyer has the obligation to hand over the agreed payment to the seller (Harsono 1971).

According to Urip Santoso, the practice of buying and selling land juridically is only carried out to buy and sell land rights by sellers. It is true that the purpose of buying and selling land to buy land rights is so that buyers can legally control and use their land (Santoso 2019). From the description described above, in the sale and purchase of land is achieved when there is an agreement between the two parties who carry out the sale and purchase, and the process of buying and selling land has the aim of transferring rights

to the land to the buyer. However, the word agreement in the sale and purchase has not been able to transfer the rights to the land to the buyer. This is because, it must go through a Notary Deed. According to the Subekti of sale and purchase in the Civil Code, it states that sale and purchase has an obligatoir nature, which means that a sale and purchase agreement has not transferred property rights but only gives rights and lays obligations to both parties.

The obligatoir sale and purchase is strengthened by the provisions in Article 1458 of the Civil Code which states that the sale and purchase is considered to have occurred between the two parties. After reaching an agreement on the material and the price even though the material has not been handed over and has not been paid.

When going to buy a piece of land, prospective buyers must be able to pay attention and be careful in carrying out the buying and selling process. This is because during the buying and selling process there are several losses that arise and arise in the future which cause losses to buyers. An example of loss to a buyer is that the land to be sold is disputed land that is still in dispute in court. So that it will give losses to buyers.

When carrying out the sale and purchase of land, there are two things that must be considered by the parties, namely: subject and object. The subject is someone who has the authority to act as a seller and who is the buyer. Things that must be considered as subjects in buying and selling land are whether the seller has the right to sell the rights to the land to be sold, whether the seller or buyer has the authority to carry out the act of buying

and selling, and whether the seller can sell the land. These three things must be considered by the subject who will carry out the sale and purchase of land.

The object of buying and selling land is a right to land that will be sold through the process of buying and selling. Although the object of buying and selling land is land rights, the buyer must be able to know the boundaries of the land so that there is no doubt. If the land has been certified, the boundaries of the land, area, length, and width have been written. If the land has not been certified, then the boundaries must be explained by the seller and buyer.

### **Land Sale and Purchase Procedure**

The process of buying and selling land can be done through several stages that must be carried out by sellers and buyers. Some stages of buying and selling land that must be considered are certificate check, implementation of act-making, registration of rights transfer and certificate submission.

The first stage that must be carried out in buying and selling land is the certificate examination carried out by PPAT. The title certificate to the land must be in accordance with the list listed at the local District or City Land Office. The inspection process must be carried out and must be in accordance with what is stated in the land certificate. The content of the land certificate includes the name of the owner of the land title, location, and land area. In addition, in the land certificate there are land boundaries that have been listed in it.

The process of making a deed by PPAT must be attended by the seller and buyer who make a sale and purchase transaction. In the process of

making a sale and purchase deed must be attended by at least two witnesses, both from the seller and the buyer. Process Furthermore, the PPAT reads the sale and purchase deed to the parties who are buying and selling land which provides information to the seller and buyer to provide an explanation of the contents of the deed and the purpose of making the deed. After the PPAT provides information about the contents of the deed and the purpose of the deed, the seller and buyer sign the deed that has been made before the notary.

This process PPAT has the obligation to submit the documents needed to carry out the registration process of land rights transfer. Furthermore, the local district or city land office gives a file submission mark on the documents that have been submitted for land registration application and the PPAT notifies the buyer of the land registration application to the local district or city land office.

The assignment of the certificate of rights to the land is carried out during the process of changing the ownership in the name of the stipulation. The process of changing from the owner of the right to the old land as the seller is transformed into the owner of the new land rights as a buyer through the district land office or the local city and then handed over to the applicant the registration of the transfer of rights to the land through the buyer as the owner of the new land rights.

Evidentiary tools must be written evidence (Samudra 1992; Subekti 1972). The Evidence include the authentic deed, deed under hand, letters are not deed, copy evidence, witness evidence, evidence of suspect, proof of confession and proof of oath (Pitlo 1978). The proof of oath namely, breaker

oath, additional oaths, and assessment oath (Muljono et al. 2021; Patni, Suwitra, and Sukadana 2020; Saepullah 2018; Towoliu 2022)

### **Analysis Based on Elements of Unlawful Acts**

Elements of Unlawful Acts by obstructing the process of turning the name of the certificate carried out by the seller in decision Number 25/Pdt.G/2017/PN.Clp include: The existence of an act, the act is against the law, there is a loss that arises for the victim, there is a causal relationship between the actions done and the losses incurred, and there is a mistake on the part of the perpetrator.

The existence of an act included the evidence submitted, the act of buying and selling land and buildings carried out, the evidence presented by the Plaintiff regarding the underhand land sale and purchase agreement, the same evidence was presented. Based on the description that has been analyzed above, the element of an act as an act against the law has been fulfilled.

The act is against the law and included the act of selling land and buildings, the process of buying and selling the land, and the Defendant's action of delaying land registration carried out. Based on the description that has been analyzed above, the existence of elements of unlawful acts committed by Defendant I has been fulfilled as one of the elements in unlawful acts. This is evidenced by the three analyses above.

There is a loss that arises for the victim including losses to be borne, the losses suffered. Based on the description above, the element of loss to the victim as an element of unlawful acts committed by Defendant I has fulfilled as one of the elements in unlawful acts.

There is a causal relationship between the actions done and the losses incurred including the Defendant's act of selling the object of the land and the Defendant's actions that could not be found and whose existence was unknown made the process of turning over the name of the land certificate longer. Based on the description above, the element of causal relationship between the actions done and the losses incurred has been fulfilled. This element is one of the elements in unlawful acts.

There is a mistake on the part of the perpetrator including the mistake made by Defendant, the whereabouts of Defendant, the Defendant's negligence by pawning the car lent. Based on the description above, the element of guilt on the part of the perpetrator has been fulfilled by proving the three analyses above. Thus, one of the elements in unlawful acts has been fulfilled based on the description that has been explained.

Analysis based on the Criteria of Unlawful Conduct, including:

1. Acts contrary to the rights of others. Contrary to the rights of others is a legal act committed by someone that results in the rights of others being violated because of their actions. Based on the above analysis, Defendant I have met the criteria as an act contrary to the rights of others. This criterion is one of the criteria for unlawful acts.
2. Acts contrary to his/her own legal obligations. The conflicting obligation is Aris's obligation to sign the Deed of Sale and purchase to be made by Ngudiran. With Aris's whereabouts unknown, Aris could not fulfill his obligation to sign the sale and purchase deed. Based on the above analysis, the acts committed by Defendant I have contradicted his own

legal obligations. Thus, it has fulfilled one of the elements in the criteria for unlawful acts.

3. Legal acts contrary to decency. In the element contrary to decency, the act of not being able to fulfill the contents of the agreement can be classified as lying and lying. Because the Defendant was unable to fulfill its own obligations to fulfill its obligations to the Plaintiff. Thus, the acts committed by Tergugat I have fulfilled the element as an act contrary to decency.

Conflicting acts in the association of society. Conflict in society arises when an action done by someone is not in accordance with the values and customs that develop in the community. The acts committed by Defendant I are clearly contrary to association in society. So that Defendant I have fulfilled one of the criteria as an unlawful act. Based on the four criteria analyzed above, the act committed by Defendant I has met the four criteria as unlawful.

## CONCLUSION

An act is categorized as an unlawful act if it meets the five elements of an unlawful act. Unlawful acts committed by sellers based on Cilacap District Court Decision number 25/Pdt.G/2017/PNClp namely the existence of an act (act of buying and selling land), unlawful acts (reselling the object of sale and purchase and delaying the process of returning the name of the certificate), victim losses (immaterial losses), causality relationship between the act and losses (defendants whose whereabouts are unknown), the fault of the perpetrator (reselling the object of buying and

selling land). Thus, the author agrees with the judge of the Cilacap District Court that the lawsuit over the *sengekta* is an illegal act. The author hopes that the government will socialize about land registration so that the community knows the land registration process so that the land they own has legal force. In the process of buying and selling land, it should be carried out before an authorized official to get legal protection in the process of buying and selling land. [W]

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