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Juridical Review of Causality of Unlawful Acts and Compensation in Land Tenure Disputes by Local Governments (Study of Supreme Court Decision Number 1123 K/Pdt/2022)

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Abstract: This research aims to analyze the regulation of unlawful acts and compensation according to the Civil Code, examine the elements of causality of losses to unlawful acts, and analyze the judges' legal considerations in the Supreme Court Decision Number 1123 K/Pdt/2022. The research method used is normative legal research with a legislative approach and a case approach. The legal materials used consist of primary, secondary, and tertiary legal materials that are analyzed qualitatively by prescriptive methods. The results of the study show that the regulation of unlawful acts in the Civil Code is centered on Article 1365 which requires the fulfillment of four elements cumulatively, namely the existence of unlawful acts, faults on the perpetrators, losses suffered by other parties, and the causal relationship between acts and losses, where the damages that can be claimed include material and immaterial damages. The element of causality is the most difficult element to prove because it requires a direct and real cause-and-effect relationship, where the proof is not enough to show the relationship between the action and the loss but also must be proven that the legal provisions violated are indeed intended to protect the legitimate interests of the landowner as known in the schutznorm theory. The Supreme Court in Decision Number 1123 K/Pdt/2022 has appropriately established a causal relationship between the possession of land by the Defendant without a valid procedure and the Plaintiff's losses and granted material damages of Rp14,940,750,000.00.

Keywords: Unlawful Conduct, Causality, Indemnity

Introduction

Land has a very important meaning and role for human life, because everyone needs land during life until death and considering the structure of life and economic patterns for the most part which are still agrarian. Soil for human life contains a multidimensional meaning, namely from the economic side of land is a means of production that can bring prosperity. Politically, land can determine a person's position in decision-making in society. As cultural capital, land can determine the high and low social status of its owners. Land means sacred because at the end of life everyone will return to the land.¹ On the other hand, in daily life in society, it is often found that land is often the object of disputes, disputes and conflicts until it ends in court. This arises on the basis that land has a very important role in the lives of the general public, so that people will try to get land and are even willing to do all kinds of ways to acquire the land even though they have to take over the land owned by others by transferring ownership of the land illegally and illegally.

Based on one of the cases that clearly illustrates this complexity is the dispute between H. Syamsul Bachri and the Government of the Republic of Indonesia cq. President of the Republic of Indonesia cq. Minister of Home Affairs qq. Governor of the Regional Head of Level I of North Kalimantan Province qq. Regent of the Second Level Regional Head of Nunukan Regency. Sitting in the case, Syamsul Bachri as

¹ Heru Nugroho, *Kekuasaan Negara* (Surakarta: Muhammadiyah University Press, 2001), 237.

the plaintiff postulated that he was the legal owner of a plot of land covering an area of 19,921 m² which was certified as Property Rights Number 11/South Nunukan which was then divided into SHM Number 1301/South Nunukan covering an area of 15,737 m² and SHM Number 1315/South Nunukan covering an area of 4,184 m². The land has been controlled by the Regional Government of Nunukan Regency since around July 2003 without the permission and knowledge of the plaintiff, namely on the land was then established the building of the Joint Office of Agencies I (Office of GADIS I) which until now is still used as the office of several Regional Apparatus Work Units (SKPD). The material losses claimed by the plaintiff include the value of the land based on the estimated market price of Rp750,000.00 per square meter multiplied by the land area, plus the loss of plantation profits for 17 years that should have been enjoyed by the plaintiff, so that the total material loss reached Rp16,640,750,000.00. The plaintiff also seeks immaterial damages of Rp500,000,000.00 for the mental suffering and health impact he experienced due to the defendant's actions.²

This case has passed through all levels of justice in Indonesia and resulted in verdicts that contradict each other from one level to another. The Nunukan District Court through Decision Number 9/Pdt.G/2020/PN.Nnk dated December 16, 2020 granted the plaintiff's lawsuit in part and sentenced the defendant to pay damages of Rp14,940,750,000.00. The decision was then canceled by the East Kalimantan High Court through Decision Number 22/PDT/2021/PT. SMR dated April 1, 2021, which rejected all plaintiffs' lawsuits on the grounds that the land object of dispute had been released by the local government based on the Statement of Relinquishment of Land Rights dated June 25, 2003.³

Method

The research method used in this study is normative legal research, which is research conducted by examining and analyzing legal materials in the form of laws and regulations, doctrines, legal principles, and court decisions related to the problems being studied.⁴ The research approach used consists of a statute approach and a case approach. The legislative approach is carried out by examining all laws and regulations related to the problem being studied, while the case approach is carried out by examining legal cases that have obtained a court decision that has permanent legal force and is relevant to the problem being studied.⁵ In this study, especially the Supreme Court Decision Number 1123 K/Pdt/2022 to understand how judges apply the elements of unlawful acts, causal relationships, and the determination of compensation in land tenure disputes involving local governments. The source of legal materials consists of primary, secondary, and tertiary legal materials. Primary legal materials include the Civil Code (KUHPerdata), the Constitution of the Republic of Indonesia in 1945, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, and Supreme Court Decision Number 1123 K/Pdt/2022. Secondary legal materials include legal textbooks, scientific journals, research results, papers, and other scientific works related to unlawful acts, causality, compensation, and land disputes, while tertiary legal materials include legal dictionaries, legal encyclopedias, and other relevant sources.⁶ The technique of collecting legal materials is carried out through library research by searching, identifying, and inventorying various legal materials that are relevant to research problems. The data analysis technique used is qualitative analysis with a prescriptive method, which is to analyze legal materials that have been collected systematically to gain an understanding of the relationship between legal norms and legal facts in the case being researched through the interpretation of legal provisions related to unlawful acts and damages, causality theory and norm protection theory (schutznorm), as well as judges' legal considerations in Supreme Court Decision Number 1123 K/Pdt/2022.

² Putusan Mahkamah Agung Nomor 1123 K/Pdt/2022, 2-5.

³ Putusan Pengadilan Tinggi Kalimantan Timur Nomor 22/PDT/2021/PT.SMR, 52-53.

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Jakarta: Kencana Prenada Media Group, 2014), 55-57.

⁵ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2015), 13-14.

⁶ Zainuddin Ali, 2014, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, hlm.105

Findings and Discussion

Regulation of Unlawful Acts and Compensation According to the Civil Code

Regulation of Unlawful Acts in the Civil Code

Based on Article 1365 of the Civil Code, an act can be categorized as an unlawful act if it meets four elements cumulatively:

- a. There is an unlawful act.
- b. There is a mistake on the part of the perpetrator, both in the form of intentionality (*opzet*) and negligence (*culpa*).
- c. There are losses suffered by other parties.
- d. There is a causal relationship between the act and the loss that arises.⁷

The four elements are cumulative, meaning that if one of the elements is not met, the lawsuit for unlawful acts cannot be granted. There is also a basis for other unlawful acts lawsuits as stipulated in Article 1366 of the Civil Code which regulates unlawful acts without an element of intentionality but due to negligence, as well as Article 1367 of the Civil Code which regulates responsibility for the actions of persons under the responsibility of the perpetrator.⁸

Article 1367 paragraph (3) of the Civil Code expressly states that employers and persons who appoint others to represent their affairs are liable for losses incurred by their servants or subordinates in performing the work assigned to them. This construction of liability is known in civil law doctrine as *vicarious liability* or substitute liability, which is a mechanism for imposing legal responsibility on parties who have a position as superiors or givers of orders for losses directly caused by the actions of subordinates or persons under their supervision in the context of carrying out the duties ordered.⁹

Regulation of Compensation for Unlawful Acts in the Civil Code

Compensation is a legal consequence that must be fulfilled by the perpetrator of an unlawful act as a form of recovery for the losses suffered by the aggrieved party. Damages for unlawful acts are grouped into two approaches, namely general damages that apply to all cases of both default and unlawful acts, and special damages that only apply in the context of certain unlawful acts.¹⁰ The main purpose of compensation in civil law is to restore the position of the aggrieved party to its original state before the unlawful act occurred, or at least to provide appropriate compensation for the losses it has suffered.¹¹

The types of compensation that can be demanded in cases of unlawful acts include three categories, namely:

- a. Nominal compensation is given as a form of justice even though there is no real loss that can be measured with certainty.
- b. Compensatoire *schadevergoeding*, which is a payment to the victim that is equivalent to the actual losses suffered as a result of the unlawful acts, includes real losses that have been suffered (*damnum emergens*) and profits that should have been obtained but failed to obtain (*lucrum cessans*).
- c. Punitive *damages* are payments in an amount that exceeds the actual losses that serve as punishment for the perpetrator in serious cases.¹²

In determining the amount of compensation, the provisions regarding compensation for losses due to breach of contract as stated in Articles 1243 to 1248 of the Civil Code can be applied by analogy to compensation for losses due to unlawful acts. The application of this analogy is carried out because the provisions regarding unlawful acts do not specifically regulate the form, type, and mechanism of

⁷ Munir Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer* (Bandung: Citra Aditya Bakti, 2013), hlm. 10-12.

⁸ Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Bandung: Citra Aditya Bakti, 2014), 241-243

⁹ Munir Fuady, *Op.Cit*, hlm 13

¹⁰ Gisni Halipah dkk., "Tinjauan Yuridis Konsep Perbuatan Melawan Hukum dalam Konteks Hukum Perdata," *Jurnal Serambi Hukum*, Vol. 16 No. 01 (2023): 138-139

¹¹ Syaiful Badri, Pristika Handayani, Tri Anugrah Rizki, "Ganti Rugi Terhadap Perbuatan Melawan Hukum Dan Wanprestasi Dalam Sistem Hukum Perdata", *Jurnal USM Law Review* Vol 7 No. 2 (2024): 2621.

¹² Gisni Halipah dkk., *Loc.Cit.*, 138.

compensation payment.¹³ However, it should be emphasized that only losses that are directly caused by the unlawful act can be asked for compensation, because if the mistake in the unlawful act is not directly related to a certain loss, then the perpetrator is not obliged to compensate for the loss.

Elements of Causality of Losses for Unlawful Acts According to the Civil Code

The causal relationship or *causaal verband* is one of the most difficult elements to prove in unlawful acts based on Article 1365 of the Civil Code. Causality in civil law is basically used to find a causal relationship between unlawful acts and losses incurred in order to impose responsibility on the perpetrator.¹⁴ Without proof of the causal relationship between the perpetrator's actions and the losses suffered by other parties, the lawsuit for unlawful acts cannot be granted even though the other elements have been met cumulatively. This shows that causality is not just a complementary formal requirement, but rather a logical bridge that normatively connects the prohibited act with the consequences of the loss that must be recovered through the civil redress mechanism¹⁵.

There are three main theories used to determine whether there is a causal relationship in the case of unlawful acts, including:¹⁶

- a. The theory of *conditio sine qua non* developed by Von Buri tests causality by asking the question of whether without such an act harm would still occur. If the answer is no, then the act is the cause of the loss that arises. The fundamental weakness of this theory is that it has the potential to expand liability indefinitely because every factor that contributes to an outcome is considered to be the cause, so that in cases involving a long and complex series of events this theory can lead to disproportionate conclusions.
- b. The theory of *adequate justification* developed by Von Kries is present as a refinement of the weakness of the *theory of conditio sine qua non* by limiting liability only to losses that can reasonably be expected as a result of the perpetrator's actions based on general experience, so that losses that are too remote or unforeseen cannot be imposed on the perpetrator.
- c. The theory of *toerekening naar redelijkheid* developed by Van Schellen determines causality based on propriety and reasonableness after considering all the existing circumstances, so that liability is only imposed on the perpetrator if it is considered reasonable and just to do so as a whole.

The relationship between causality and compensation in unlawful acts is direct and inseparable. Compensation can only be claimed as long as the loss suffered has a causal relationship that can be proven by the perpetrator's actions, so that the amount of compensation that can be granted by the court is basically limited by the scope of causality that the plaintiff has successfully proved.¹⁷ The principle applies that compensation must not exceed the losses that are causally caused by the unlawful acts of the perpetrator, both in the context of material losses in the form of *damnum emergens*, namely real losses that have been suffered and *lucrum cessans*, which are profits that should have been obtained but failed to be obtained due to the unlawful acts. This principle is known in civil law doctrine as the principle of *restitutio in integrum*, which is the restoration of the aggrieved party to its original state before the occurrence of the unlawful act, which is the main purpose of the compensation mechanism in civil law.¹⁸

Immaterial losses can also be demanded for compensation in cases of unlawful acts as long as the causal relationship with the perpetrator's actions can be adequately proven. Proving the causal

¹³ Livya Asifah Magfira Ngabito dkk., "Tuntutan Ganti Rugi dalam Perbuatan Melawan Hukum Kepemilikan Hak Atas Tanah (Studi Di Desa Pilohayanga)," *Amandemen: Jurnal Ilmu Pertahanan, Politik dan Hukum Indonesia*, Vol. 1 No. 3 (2024), 59.

¹⁴ Ariadin, "Perbuatan Melawan Hukum Dalam Perspektif Hukum Kontrak Di Indonesia," *Jurnal Pelita Nusantara*, Vol. 1 No. 3, (2023), 449.

¹⁵ Brahmana, Herman., Nasution, B., Suhaidi, S., & Siregar, M. Eskalasi Dan Force Majeur Dalam Perundang-Undangan Jasa Konstruksi. *USU Law Journal*, Vol. 3 No. 1, (2015), 78-86.

¹⁶ Nadiva dan Ubaidillah Kamal, "Kausalitas dalam Perbuatan Melawan Hukum pada Perjanjian Kredit yang Telah Diasuransikan," *Jurnal Magister Hukum Udayana*, Vol. 14 No. 1, (2025), 45-47.

¹⁷ Rosa Agustina, *Perbuatan Melawan Hukum* (Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2003), 51-53.

¹⁸ Munir Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer* (Bandung: Citra Aditya Bakti, 2013), 134-136.

relationship between unlawful acts and immaterial losses is indeed more difficult because these losses are non-economic and cannot be measured with certainty. However, the difficulty of proving does not mean that the immaterial loss does not have a causal relationship with the unlawful act committed by the defendant. In this case, the judge is given the authority to assess the causal relationship and determine the amount of immaterial damages *ex aequo et bono* based on a sense of justice and propriety, taking into account the intensity of the suffering experienced by the aggrieved party and the length of the impact that must be borne due to the perpetrator's unlawful acts.¹⁹ The discretionary authority of the judge in determining immaterial damages is a manifestation of the function of civil law as a comprehensive protection instrument for parties who suffer losses due to the unlawful acts of another party.

Legal Considerations of Judges in Determining Compensation for Unlawful Acts in the Supreme Court Decision Number 1123 K/Pdt/2022

a. Position Case

This case began with a lawsuit filed by H. Syamsul Bachri as the Plaintiff against the Government of the Republic of Indonesia cq. President of the Republic of Indonesia cq. Minister of Home Affairs qq. Governor of the Regional Head of Level I of North Kalimantan Province qq. The Regent of the Regional Head of Level II of Nunukan Regency as the Defendant who was registered at the Nunukan District Court Clerk on May 13, 2020 under register Number 9/Pdt.G/2020/PN.Nnk.

The plaintiff postulates that he is the legal owner of a plot of land covering an area of 19,921 m² which is certified as Property Rights Number 11/South Nunukan dated December 14, 2001 recorded in the name of Syamsul Bachri, Land Plot Identification Number (NIB) 16.06.13.04.00017, Survey Letter Number 16/NS/2001 dated November 22, 2001. The land was originally a plantation planted with coffee trees, banana trees, and other perennials that were harvested twice a year with a net profit of IDR 100,000,000.00 per year.

The Plaintiff postulates that since around July 2003 without the Plaintiff's permission, knowledge, and consent, the Defendant has ordered its workers to cut down all the coffee trees, banana trees, and other perennials planted by the Plaintiff on the land, then erect foundations and buildings known as the Joint Office of Agencies I (Office of GADIS I) which until the time of the case was still used as the office of several Apparatus Work Units Nunukan Regency Regional (SKPD). The plaintiff also postulated that he repeatedly tried to meet the Regent of Nunukan for deliberations but only received promises that his land would be replaced at a reasonable price which until the end of the regent's term of office was never realized.

In 2016, because part of the land with an area of approximately 4,000 m² will be leased to Telkomsel providers for the construction of the Tower Base Transceiver Station (BTS), the Plaintiff submitted an application for the termination of the land certificate certified as Property Rights Number 11/South Nunukan covering an area of 19,921 m² so that two new certificates were issued, namely SHM Number 1301/South Nunukan dated October 19, 2016 covering an area of 15,737 m² and SHM Number 1315/South Nunukan dated October 19, 2016 covering an area of 4,184 m². both were recorded in the name of Syamsul Bachri.

On this basis, the Plaintiff demands that the Defendant be ordered to pay material damages of Rp16,640,750,000.00 calculated from the value of the land based on the market price of Rp750,000.00 per m² multiplied by the land area plus the loss of plantation profits for 17 years of Rp1,700,000,000.00, as well as immaterial damages of Rp500,000,000.00 for the mental suffering and health impact experienced by the Plaintiff, so that the total compensation claim is IDR 17,140,750,000.00.

To the lawsuit, the Defendant filed an *obscuur libel* exception and an answer in the subject matter which basically postulated that in 2003, the Regional Government of Nunukan Regency through the Land Acquisition Project Leader, namely Roby Nahak Serang, S.H. had freed the Plaintiff's land in its

¹⁹ Ridwan Khairandy, *Hukum Kontrak Indonesia dalam Perspektif Perbandingan* (Yogyakarta: FH UII Press, 2013), 313-314.

entirety covering an area of 115,006.99 m² based on the Statement of Relinquishment of Land Rights signed by the Plaintiff himself, namely Syamsul Bachri on 25 June 2003, accompanied by a map of the location and payment of compensation that had been received by the Plaintiff. The Defendant also filed a reconvention lawsuit which basically requested that it be declared that SHM Number 1301 and SHM Number 1315 were part of the land that had been freed and that the Plaintiff be ordered to hand over the certificates to the Regional Government of Nunukan Regency.

This case has gone through all levels of justice with conflicting results. The Nunukan District Court through Decision Number 9/Pdt.G/2020/PN.Nnk dated December 16, 2020 granted the Plaintiff's lawsuit in part and sentenced the Defendant to pay damages of Rp14,940,750,000.00. The decision was then canceled by the East Kalimantan High Court through Decision Number 22/PDT/2021/PT. SMR dated April 1, 2021 which rejected all of the Plaintiff's lawsuits. At the cassation level, the Supreme Court through Decision Number 1123 K/Pdt/2022 dated May 31, 2022 annulled the High Court's decision and granted the Plaintiff's lawsuit in part by punishing the Defendant to pay damages of IDR 14,940,750,000.00.²⁰

b. Judge's Legal Considerations

In Decision Number 1123 K/Pdt/2022, the Supreme Court provided several legal considerations that determine the following:

1. Regarding the fulfillment of the elements of unlawful acts and causality

The Supreme Court stated that the Defendant's actions of having controlled, utilized, and erected the GADIS I Office building on the Plaintiff's land without the Plaintiff's permission and knowledge and without providing appropriate compensation constituted an unlawful act as referred to in Article 1365 of the Civil Code. The Supreme Court considered that the Defendant had fulfilled all elements of unlawful acts cumulatively, namely the existence of unlawful acts in the form of land possession without rights, the existence of errors in the form of negligence in the land procurement procedure, the existence of real losses suffered by the Plaintiff, and the existence of a direct causal relationship between the possession of land by the Defendant and the losses suffered by the Plaintiff. The Supreme Court implicitly established such a causal relationship by basing it on the fact that the land certified in the Plaintiff's name was controlled and utilized by the Plaintiff without a lawful land acquisition procedure, thereby directly resulting in the loss of the Plaintiff's rights to the land and all the economic benefits it should have enjoyed.

2. On the amount of damages awarded

The Supreme Court granted the Plaintiff's claim for partial material damages, namely Rp14,940,750,000.00 calculated from the market land price of Rp750,000.00 per m² multiplied by the land area of 19,921 m². The claim for compensation for the loss of plantation profits for 17 years of Rp1,700,000,000.00 and the claim for immaterial compensation of Rp500,000,000.00 were not granted by the Supreme Court. The claim for immaterial damages was not granted on the grounds that the immaterial losses claimed by the Plaintiff did not have a clear basis for calculation and were so abstract that they could not be calculated in real terms and also because they could not be proven.

Conclusion

The regulation of unlawful acts in the Civil Code is centered on Article 1365 which obliges everyone who, because of their actions, causes harm to others to compensate for the loss. An act is categorized as an unlawful act if it meets four elements cumulatively, namely the existence of an unlawful act. The element of causality in unlawful acts according to the Civil Code is an element that requires a direct and tangible cause-effect relationship between the perpetrator's actions and the losses suffered by the aggrieved party

²⁰ Putusan Mahkamah Agung Nomor 1123 K/Pdt/2022

The judge's legal considerations in the Supreme Court Decision Number 1123 K/Pdt/2022 have established a causal relationship between the Defendant's actions and the Plaintiff's losses by basing on the fact that the land certified in the Plaintiff's name is controlled and utilized by the Defendant without a valid land acquisition procedure, thus directly resulting in the loss of the Plaintiff's rights and all the economic benefits that he should be able to enjoy.

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