International Journal of Health, Economics, and Social Sciences (IJHESS) Vol-2, Issue-4, October 2020
https://doi.org/10.56338/ijhess.v2i4.3384/ijhess e-ISSN: 2685-6689

Tort in Land Grabbing

Meliyani Sidiqah
Sekolah Tinggi Hukum Bandung, Indonesia
Email: ms.meliyanisidiqah@gmail.com

ABSTRACT

Land grabbing is taking or seizing other people's land for personal gain and causing losses to landowners. The lawsuit in Verdict Number 19/Pdt/G/2011/PN. Krw. Originated from the actions of the father of Defendants, who sold the Plaintiffs' land without any rights, as well as the activities of the Co-Defendants, who bought land from the father of Defendants without any rights. This action was very detrimental to the Plaintiffs. This article aims to analyze the activities of the Defendants and the Co-Defendants in tort and the consideration taken by the Panel of Judges in rejecting and or granting a tort lawsuit. This article results from normative juridical research using statutory and case approaches. The data used are secondary data, including primary legal materials, secondary legal materials, and tertiary legal materials, collected by literature study and then analyzed using qualitative analysis methods. Based on the research results, the actions committed by the Defendants and Co-Defendants were a tort, and the Panel of Judges partially granted the Plaintiff's claim.

Keywords — Grabbing; Land; Tort

INTRODUCTION

This case (1) started in 2008 when Plaintiff II, Plaintiff III, and Plaintiff IV gave power of attorney verbally to Plaintiff I (Mr. D) to sell their land with an area of ± 18 Ha. Plaintiff I then gave power of attorney to Mr. Y to offer the land to others for purchase. On July 8, 2008, Mr. Y introduced Mr. S (Defendants' father), who will buy the land for Rp. 6,500 per m^2, bringing a total of Rp. 1,170,000,000, and submitted an advance of Rp. Ten million, witnessed by Mr. Y. Mr. S, said that he would immediately pay the entire land price in cash, not in installments, and after the total land price was paid, a sale and purchase deed would be drawn up before a notary (PPAT). Plaintiff, I agreed so that the land was handed over to Mr. S to be then managed.

Mr. S did not pay the price for the land, so Plaintiff I sent Mr. E to meet Mr. S, so Mr. S returned the land that Plaintiff I handed over. But Mr. S instead gave Rp. 230,000,000 as a sign that the sale and purchase transaction must continue. On December 16, 2008, Mr. S made a statement, witnessed by Mr. T and Mr. W, that Mr. S would return all of the lands fifteen days after the statement was signed. On January 1, 2009, Mr. S signed a statement that Mr. S would pay the land price at the end of January 2009. The payment will be transferred to Plaintiff I's account number. The statement letter was signed by both parties and was known by the local Village Head. But Mr. S still did not pay for the land.

As long as Mr. S buys time to make payment, Mr. S sold part of the land to another party, namely to Co-Defendant I through intermediary Co-Defendant VI in January 2009, covering an area of 3 Ha for Rp. 125,000,000 to Co-Defendant II in January 2009, covering an area of 1 Ha for Rp. 74,500,000 to Co-Defendant III on December 19, 2008, covering an area of 3,718 m^2 for Rp. 40,900,000 to co-defendant IV on February 3, 2009, covering an area of 1.74 Ha for Rp. 107,400,000, and to Co-Defendant V on January 14, 2009,

covering an area of 45,000 m² for Rp. 130.000.000. As for the sale and purchase transactions carried out by Mr. S with the Co-Defendants as evidenced by a payment receipt which included the name of Plaintiff I as the land owner. But Mr. S never paid or returned the land to Plaintiff I until Mr. S passed away. The Defendants did not want to hand over the land to the Plaintiffs and continued cultivating the land.

Based on this background, the actions taken by the Defendants' father and the Co-Defendants are classified as land grabs which are detrimental to the Plaintiffs because the Defendants' father sold land that still belongs to the Plaintiffs without the knowledge and permission of the Plaintiffs as the landowners. Therefore, research must be conducted to analyze the actions of the Defendants and the Co-Defendants in tort and for consideration taken by the Panel of Judges in rejecting and or granting a tort lawsuit.

METHODOLOGY

This article is descriptive, systematic, and factual and accurately describes the unlawful act's characteristics, characteristics, or factors and analyzes related legal phenomena. This article results from normative juridical research examining only secondary data, consisting of primary, secondary, and tertiary legal materials. The approach method used is the statute approach which is carried out by reviewing all laws and regulations related to public order, as well as the case approach, which examines related decisions. The data comprises laws and regulations, reference books or literature, and research reports on research problems. Data was collected by literature study and then analyzed using qualitative analysis methods, without using numbers.

RESULT AND DISCUSSION

Tort by the Defendants and Co-Defendant

The Civil Code does not define tort (2:4) but regulates tort in Article 1365, that states:

> "Any act that violates the law, which causes harm to another person, obliges the person who caused the loss because of his fault, to compensate for the loss." (3:Article 1365) (Every act that violates the law, which causes harm to another person, obliges the person who because of his mistake to issue the loss, compensate for the loss.)

In the beginning, tort had a narrow definition. M.A. Moegni Djojodirdjo said that tort is defined as any act contrary to other people's rights arising from a law (contrary to wettelijkrecht) or any act contrary to one's legal obligations arising from a rule (contrary to with wettelijkeplicht). Then Hoffman said this gives meaning that an act that is not against the law absolutely cannot be used as a reason for demanding compensation for a tort, even if the act is contrary to things that are required by morals or other things that are mandatory in society (4:21). So, this understanding tends to put the judgment of an action based on the activities regulated in statutory regulations or written law (5:34). Thus, a tort is still common (6:294). Through the Verdict of Hoge Raad on January 31, 1919, in the Lindenbaum vs. Cohen case, the definition of tort has expanded. Daad (action) is an unlawful act if it is contrary to the rights of other people, contrary to one's legal obligations, contrary to decency, or contrary to obligations that must be heeded in society regarding other people or objects (7:111).

The elements of the tort are the material conditions that must be met so that an act can be categorized as tort, so it becomes the basis for claiming a loss. These elements are cumulative, which means that all of these elements must be fulfilled as a whole (8:111). So, one of the elements is not fulfilled. In that case, an act cannot be categorized as a tort

(9:47). As for the material conditions for a tort, it consists of an act against the law, there must be a fault (schuld), there must be a loss incurred (schade), and there must be a causal relationship between the act and the failure (8:111). As the facts of the case have been described in the background, to find out that the actions committed by the Defendants' father (Mr. S) and the Co-Defendants constituted a tort, it must be analyzed based on the elements of the tort.

The act against the law

Actions can mean doing something (in an active sense) or not doing something (in a passive mind). (10:6). In this case, the Defendants (Mr. S) and Co-Defendants committed an act against the law by making a sale and purchase transaction of land that was not their right. From the chronology, the Defendants' father said that the land he would buy would be paid off at once without installments. Still, in reality, the Defendants' father (Mr. S) did not even pay in full the land price and made promises to stall for time, but the stakes were never kept by the Defendants' father (Mr. S).

If the land has not been paid off, the ownership status of the land has stayed the same. In other words, it still legally belongs to the Plaintiffs. However, the Defendants' father (Mr. S) and the Defendants sold the land to the Co-Defendant without the Plaintiffs' knowledge. In addition, the Defendants knew that the land had not been paid for by the Defendants' father (Mr. S). There had been no transfer of rights from the name of Plaintiff I to the Defendants' father (Mr. S) to become the land owner, but the transaction of the sale and purchase of land belonging to the Plaintiffs still carried out by the Defendants and the Co-Defendants.

Based on the facts stated above, the actions that the Defendants and the Co-Defendants have committed have been proven to have committed acts that:

Contrary to others' rights

Actions that are contrary to the rights of others are actions that are contrary to the personal rights of other people originating from the rule of law (4:36). According to Meijers, the characteristic of individual rights is a special authority granted by law to a person to use for his interests (11:82). Some subjective rights that have been recognized by case include personal rights (persoonlijkheidsrechten), property rights (vermogensrechtten), rights to freedom, and rights to honor and good name (12:6).

The Defendants and Co-Defendants violated the Plaintiffs' rights to manage the land, which still belongs to the Plaintiffs. Meanwhile, the land sold by the Defendants has not yet become the property of the Defendants' fathers. One way to obtain property rights is by submitting the transfer of property rights from someone who has the right to transfer them to another person who gets the property rights (13:131). One way is by sale and purchase. Thus, the land ownership rights of the Plaintiffs can be transferred to the property of the Defendants' fathers if the land has been paid in full by the Defendants' fathers. In reality, the Defendants' fathers have not paid off the price of the land. Thus, the ownership status of the land still belongs to the Plaintiffs. Based on this, the Defendants do not have the right to sell the land to third parties (Co-Defendants). However, the Defendants' father sold the land to the Co-Defendants without the Plaintiffs' consent.

Thus, the actions committed by the fathers of the Defendants violated the subjective rights of the Plaintiffs, including their property rights (vermogensrechtten), such as the Plaintiffs being unable to cultivate the disputed object as a result of the land having been

sold to the Co-Defendants. In addition, the Plaintiffs violated the personal rights (persoonlijkheidsrechten) of the Plaintiffs, who were also disturbed because the status of the Plaintiffs' ownership of the land became unclear due to the recognition of the Co-Defendants for having purchased the land from the Defendants, resulting in the good name of the Plaintiffs. The Plaintiff became tarnished.

Contrary to its legal obligations

Legal obligations (rechtsplicht) are our obligations based on the law (4:42). Contrary to rechplicht means an act that is contrary to necessity or prohibition and against the law, not only what is contrary to written law (wettelijk plight), but also what is contrary to unwritten law (4:44).

The actions of the Defendants who traded land that was not their right to the Co-Defendants was an act that was contrary to Government Regulation instead of Law Number 51 of 1960 on Prohibition of Use Without a Permit by the Entitled or Their Proxy, Article 2, which stipulates that "it is prohibited to use land without the rightful permission or legal power of attorney" (14:658). So, it was proven the Defendants had violated their legal obligations by using the land belonging to the Plaintiffs for their interests by selling the land to the Co-Defendant.

Contrary to decency

Good decency is the norm of decency as long as these norms are accepted by society as unwritten legal regulations. Rutten said that if an action or neglect of something is contrary to good morals, it is against the law (4:44). The acts committed by the Defendants and Co-Defendants reflected actions that were not commendable because these actions caused losses to the Plaintiffs in various ways, both material and immaterial. This follows what was stated by Munir Fuady, that a tort committed with an element of intent is a characteristic of an uncivilized human being (12:45-47). Based on this, the Defendants should have been able to act better, which can be shown by the Defendants paying off the land in advance or the Defendants giving good faith to the Plaintiffs to hand back land that actually could not be paid off.

Contrary to decency, thoroughness, and prudence

Every human being must have awareness as a member of society, respect each other, and be tolerant of their environment and fellow human beings in their actions. Thus, acting must follow society's propriety, thoroughness, and prudence. Activities that can be considered contrary to decency, thoroughness, and sense are very detrimental to other people without proper interests, as well as useless actions that cause harm to other people where according to a normal human being, this must be considered (11:83).

The Defendants and the Co-Defendants did not pay attention to the interests of either themselves or others. The actions taken by the Defendants and Co-Defendants were to carry out sale and purchase transactions carelessly, not thinking about the final results that could be produced or the risks that could arise as a result of their actions. Supposedly, knowing that the ownership status of the land still belongs to the Plaintiffs, the Defendants did not sell the land. Vice versa, the Co-Defendants should not have accepted the sale and purchase offer because they knew that the land belonged to someone else.

There is a fault (schuld)

M.A. Moegni Djojodirjo gives the notion of fault (schuld) into two, namely intentional (in the narrow sense) and negligence (in the broad sense) (4:66). In the case of intentionality, intention or mental attitude becomes the dominant factor. So, it is clear if someone commits an unlawful act intentionally, he can be said to be guilty. The perpetrator knew and was aware of what he was doing and what the consequences would be as a result of his actions. In contrast to negligence, what becomes dominant is the attitude and actions one performs without considering intentions or what is in one's mind. Van Bemmelen and Evan Hattum have put forward the adage “geen strafe zonder schuld," which means "no punishment without fault", and Rutten has tried to apply this adage in the civil field by arguing that there is no accountability for the consequences of his unlawful actions without fault, or as stated by Meijers, a criminal act requires a fault (een onrechtmatige daa verlangt schuld) (11:68).

In this case, the fault that was proven to have been committed by the Defendants and the Co-Defendants was intentional. Namely, the Defendants and the Co-Defendants made a sale and purchase transaction of land which they knew that the land belonged to the Plaintiffs and was still in the name of the Plaintiffs. As previously mentioned, a human who commits a tort with an element of intent is a characteristic of an uncivilized human being, so the degree of fault of a person who commits a tort exists. The Defendants have dared to sell land belonging to other people to third parties (Co-Defendants). Thus, someone who deliberately harms others has been wrong by committing a tort. In fact, in such circumstances, the Defendants and Co-Defendants could predict the possible consequences and the possibility of preventing or choosing not to carry out the sale and purchase transaction of the land that belonged to another person. In other words, it can be said that the perpetrator should notify the Plaintiffs about the land sale and purchase transaction as the legal owner of the land.

For the author, the Defendants should not have sold the land because they know it has not been paid for. Even if the Defendants wanted to sell the ground, they should have paid off the land they would buy to the Plaintiffs in advance. Besides that, the Co-Defendant should not have purchased the land because they knew it was not in the name of the Defendants' parents but in the name of other people (Plaintiffs) who were not involved in their sale and purchase transaction.

There are losses incurred (Schade)

Loss can be interpreted as a condition where a person does not get what he should get, either at that time or for a long time. Losses caused by tort can be in the form of material losses (vermogensschade) or the form of immaterial losses.

Material losses can consist of losses that are suffered from profits that should be obtained (11:85). Material losses are losses that are suffered and can be calculated based on the amount of money (15:300). Whereas in immaterial loss, the term immaterial itself often interpreted as an intangible loss (16:232), making it difficult to describe the objective and concrete nature and measure of an immaterial loss (17:48). Loss in the ethereal form is a form of loss that focuses more on a person's mental condition, or the victim suffers that in the form of fear, pain, disappointment, trauma, being not free, deprived of pleasure, loss of self-esteem, shame, and so on.

This immaterial loss is a condition that cannot be counted or assessed in terms of money. Still, this condition can be estimated/considered and suspected by the judge of

the victim. Thus, it would be challenging to formulate losses in this immaterial form. As for the consideration of compensation, among others, is the heavy mental burden borne by the victim, the status and position of the victim, the circumstances and conditions in which the unlawful act occurred, the mental situation and state of the victim, the case and mental illness of the perpetrator, the background of a tort, types of tort, namely whether intentional, negligent or absolute responsibility (12:143).

Material Loss	
Harvest	One time
Amount	5 tons
Area	1 Ha
Time	Six months
Production in 1 year of 1 Ha	2 times x 5 tons = 10 tons
Total Area	18 Ha
Total Production in 1 year	10 tons x 18 Ha = 180 tons (180,000 kg)
The price per kg	Rp. 4,000
Income per year	180,000 kg x Rp. 4,000 = Rp. 720,000,000
The plaintiffs' losses from 2008 to 2011	Rp. 720,000,000 x 3 years = Rp. 2,160,000,000
The case management fee	Rp. 500,000,000
Total Material Loss	Rp. 2,660,000,000
Immaterial Loss	
Due to being unable to control the land thoroughly and unable to transfer and sell it to another person	Rp. 500,000,000
TOTAL LOSS	
Rp. 2,660,000,000 + Rp. 500,000,000 = Rp. 3,160,000,000	

There is a causal relationship between the deed and the loss.

The loss suffered by the victim must be a result of the actions committed by the perpetrator, not as a result of other activities. The Defendants and Co-Defendants committed a tort because they had traded land belonging to the Plaintiffs, causing material and immaterial losses to them as the land owners. The actions of the Defendants and the Co-Defendants have resulted in the Plaintiffs not being able to reap the results of the disputed object which is usually harvested by the Plaintiffs every year. The Plaintiffs have also suffered losses because the Defendants have taken advantage of the disputed thing and are enjoying the money from the sale of land that does not belong to the Defendants without the Plaintiffs' knowledge. Thus, it is clear that what the Defendants have done is the leading cause of the losses suffered by the Plaintiffs.

Judge Consideration

Legal Considerations of the Verdict Number: 19/Pdt/G/2011/PN.Krw.

In the verdict of the first level, the Panel of Judges decided to grant part of the Plaintiff's claim by considering the contents of the exception and the subject matter.

In their exception, the Defendants and Co-Defendants stated that the Plaintiff's lawsuit violated civil procedural law because it combined a tort with a case for breach of contract and a suit for canceling a sale and purchase. Based on this exception, the Panel of Judges gave their consideration that tort was born out of an agreement because of the law where the form of unlawful acts is acts that violate their legal obligations or violate the personal rights of other people or violate decency or decency, thoroughness, and prudence. At the same time, a breach of contract arises from an agreement due to an agreement where the form of default is a delay, not following the contents of the deal, or not carrying out the contract.

Considering the posita and petite of the plaintiff's lawsuit, the Panel of Judges believe that the qualifications of the plaintiff's case are tort. In addition, according to the Panel of Judges, there is an argument regarding the deadline for payment. This argument does not mean combining lawsuits for tort with cases for breach of contract because if one pays attention to the plaintiff's petite, they relate to tort. Quoting Supreme Court Verdict No. 214 K/Pdt/1998 (18), which states that the difference between breach of contract on the one hand and tort on the other is only a difference in species, namely that breach of contract creates legal rights and obligations that are born out of an agreement, while tort is taken out of the law. The designation for breach of contract is regulated in Article 1245 to Article 1249 of the Civil Code. In this case, the author agrees with the Panel of Judges. According to the author, the Defendants' and Co-Defendant's exceptions are groundless because the exceptions do not explain which provisions of civil procedural law were violated by the Plaintiffs. As said by M. Ali Boediarto, in a lawsuit, two or more civil cases can be combined, as long as there is a close relationship with each other (19:30).

In addition to these statements, the Defendants also stated that the Plaintiffs' lawsuits are cumulative. Based on this statement, the Panel of Judges gave their consideration that taking into account the subject matter of the Plaintiffs' case, the lawsuit referred to is a lawsuit in a subjective cumulative form, in which there are several Plaintiffs and several Defendants and Co-Defendants, where the land which is the disputed object consists of several parts and under the control of different people. The Panel of Judges paid attention to the Plaintiffs' lawsuit posita that the form of the cumulative lawsuit filed by the Plaintiffs was based on the existence of a legal relationship between Plaintiff I and the late Mr. S (the Defendants' father) to sell the land which is the object of the case where in the legal relationship Plaintiff I is the attorney for Plaintiff II, Plaintiff III, and Plaintiff IV. In addition, the Plaintiff's lawsuit posita proves the existence of the same legal relationship, and the Plaintiffs have an interest in the land which is the disputed object. To achieve a fast, simple, and low-cost trial, the Panel of Judges agreed that the Plaintiffs filed a lawsuit simultaneously against the Defendants and Co-Defendants.

According to the author, tort, and default, in this case, have a close relationship. Such as the actions of Defendant I, who sold Plaintiff's land to the Co-Defendants, even though Defendant I knew that the land was not legally his because a sale and purchase deed had never been drawn up. Vice versa, the actions of the Co-Defendants who bought land from Defendant I, even though they knew that Defendant I did not yet have the legal basis for

the land, was a tort. Meanwhile, the act Defendant I, who did not want to pay off the remaining price of the disputed land, was a default. Based on this, there is a close relationship between tort and defaults committed by the Defendants and the Plaintiffs. So according to the author, the lawsuit of the Plaintiffs is not at all contrary to civil procedural law.

In the subject matter, the Defendants and the Co-Defendants denied the arguments mentioned by the Plaintiffs in their lawsuit because they were considered far-fetched arguments and instead accused Plaintiff I of unilaterally canceling the sale and purchase of the land, which were the disputed object. Based on this statement, the Panel of Judges considered several pieces of evidence: a report dated December 16, 2008, and a notice dated January 1, 2009. The Defendants stated that the statement was only a fabrication because of the persuasion of the Plaintiffs. However, the Panel of Judges considered that there was a contradiction if the reasons for the Defendants were related to things that were admitted to be accurate by the Defendants and Co-Defendants.

The Defendants said that the Defendants' father (Mr. S) never had the slightest intention of not paying the remaining land purchase to Plaintiff I, as in the civil trial case number 34/Pdt.G/2010/PN.Krw and the criminal trial where Mr. S was the Defendant (terdakwa) in Plaintiff I reported to the local Police, and on March 1, 2009, the land surveys were carried out because of an agreement. The Defendants also stated that at the trial of their criminal case, Plaintiff I could not prove that he had obtained power of attorney either orally or in writing from Plaintiffs II, III, and IV to sell their land. The Defendants stated that in the criminal trial, it was revealed that Plaintiff I canceled the sale and purchase of land because of land prices. Verdict No. 114/Pid/B/2010/PN distorts actual legal facts. Krw (20), cannot be used as a reference in this case because the decision does not yet have permanent legal force. In addition, the Public Prosecutor is still making cassation efforts against the verdict. Thus, the Defendants' statements have no legal basis and are without evidence. So, the one who intends to cancel the sale and purchase is Defendant I (Mr. S). There is a statement that contradicts the facts because Defendant I (Mr. S) admitted that he had not paid the remaining land price to the Plaintiffs. With this acknowledgment, Defendant I should have realized that he did not wholly own the land, so Defendant I (Mr. S) was not allowed to sell or mortgage the land to anyone. This means that Defendant I (Mr. S) did not yet have the right to sell the land to another person.

Thus, the authors strongly agree that the Defendants' actions constitute a tort. This is in line with Ali Boediarto's statement quoted in the Supreme Court Verdict No.4340.K/Pdt/1986 (21) that, because there are such suspicions, the buyer should have researched first, who owns this land (22:68). The Co-Defendants did not do anything to examine who the actual owner of the land was, so according to the authors the Co-Defendants were buyers with bad faith. So according to the law, such land buyers cannot obtain legal protection.

Juridically, the basis for land rights is the deed of sale and purchase and ownership certificates. If Defendant I cannot show the deed of sale and purchase and certificate of ownership of the land he will sell, then Defendants II, III, IV, and V may not sell the ground, and the Co-Defendants may not purchase the land. Actions without examining the existence of a sale and purchase deed and certificate of ownership rights as the basis for the right to sell the ground can be categorized as a buyer with bad faith. Thus, according to the law, such land buyers cannot obtain legal protection. Based on the considerations,

the Panel of Judges decided that the Defendants and Co-Defendants had committed a tort detrimental to the Plaintiffs.

Legal Considerations of the Panel of Judges in Verdict Number:149/PDT./2012/PT.BDG

In the appeal level (23), the Appellant parties are the Defendants and the Co-Defendants, and the Appellee is the Plaintiffs.

Regarding the verdict of the Panel of Judges at the District Court, the Appellants stated that the decision was wrong. However, the Appellants did not explain why in their appeal memory. The appeal memory is a letter containing why the Appellant filed an appeal. The appeal memory must clearly state why the Appellant considered the District Court's decision wrong (24:158). Meanwhile, the appeal memory of the Appellant is unclear and obscure (obscure libel) because it does not clearly state the basis for the Appellant to file an appeal. In addition, the Appellant's appeal memory needs to be more consistent with the answers to the Appellant's lawsuit, the statements of the witnesses, and the evidence submitted by the Appellant during the case examination process at the District Court. Among other things, the Appellants stated that the Panel of Judges at the District Court decided on Verdict No. 19/Pdt/G/2011/PN.Krw. This needs to be corrected in applying legal norms. This relates to who is the Defendant and who is the actual Co-Defendant because the Appellant did not know about the sale and purchase of land carried out by Mr. D with Mr. S. Thus, creating anxiety and trouble by not reflecting the sense of justice felt by the Appellant. According to the author, this statement's meaning is unclear because, in the lawsuit, it is clear who the Defendants are. The Appellant should have questioned this when the case was examined at the District Court. Meanwhile, based on the legal facts revealed at trial, the Appellant has never questioned his existence as the Defendant.

If we look back at the previous lawsuit, the contents of which were that the Appellant requested that the Panel of Judges state, first, the sale and purchase of land between Mr. S and Mr. D on July 18, 2008, and the sale and purchase of some of these lands between Mr. S and third parties are legal and legally valuable so that they can continue. Second, to punish the Appellee or anyone authorized to surrender the land confiscated to the Appellant. According to the author, this application is very contrary to the argument of the appeal memory, which states that the Appellant intends to refrain from controlling the land because the land has been purchased and managed by the Appellant. It can be seen that in the appeal memory, the Appellant stated that they had no desire to control the land. However, in response to the lawsuit, the Appellant requested that the land be returned to the Appellant. The truth is the Appellee never confiscated land from the Appellant.

Based on the examination before the trial, the land currently controlled by the Appellee, namely 10 Ha, was voluntarily handed over by Mr. S. Then, the Appellant wants the land to be taken back. Suppose there is no desire from the Appellant to control the Appellee's land. In that case, the Appellant should voluntarily declare that the ground, which is the disputed object, belongs to the Appellee. In addition, if there is no desire from the Appellant not to control the Appellee's land, why did, during mediation, namely before the case was held in court, the Appellant not state that the land which was the disputed object belonged to the Appellee. In reality, the Appellant still wanted to control

the land that was the disputed object, so the mediation failed and continued with the examination process at trial.

In addition to the above, there are other arguments from Appellants which, according to the author, are contradictory, namely that the comparators need to learn about the sale and purchase of the land. The archives and evidence of the Appellants themselves show the realization of the sale and purchase between Mr. S with Mr. D after Mr. S passed away, which was stored in a special cupboard belonging to Mr. S. This is a distortion of facts. Because before this case was filed, the Appellee had already filed a lawsuit concerning the disputed object, namely in civil case No. 34/Pdt/G/2010/PN.Krw. However, the suit was rejected (the decision did not enter into the subject matter). In civil case No. 34/Pdt/G/2010/PN.Krw., the Appellants had come forward to represent the interests of Mr. S. So. It is not true that the Appellants did not know about the sale and purchase process between Mr. S with the Appellee, or because the file was found in a special cupboard. Because in the process of proving civil case No. 34/Pdt/G/2010/PN.Krw., the Appellants has submitted all of the evidence as submitted in civil case No. 19/Pdt/G/2011/PN.Krw.

Another consideration seen by the Panel of Judges lies in the Appellant's petit, which is unclear, obscure (obscure libel), erroneous, and has no relation with the subject matter of the case. According to the author, this is because what the Appellants claimed needed to be clarified. This confusion can be seen, among other things, from the Appellant's petite, which states that in the law, the disputed object (Defendant in a criminal case) is not an Appellant. Based on the small, "sebagai terdakwa" is wrong, a term only used in a criminal case, not in a civil case. Meanwhile, this case is civil. Thus, this Appelant's petite is formal defects.

Legal Considerations of the Panel of Judges in Verdict Number: 305 K/Pdt/2013

It is the same with decisions at the appellate level. The Panel of Judges at the cassation level (25) also upholds the conclusion of the High Court by granting the Plaintiffs' lawsuit in part. Thus, the Cassation Applicants are the previous Appellants, and the Cassation Respondent is the previous Appellee.

In the cassation memory, the Cassation Applicants are still seeking denial of the Plaintiffs' lawsuit by stating that the High Court's opinion was wrong in assessing the Plaintiffs' case. Based on this statement, the Panel of Judges considered that the cassation application from the Cassation Applicants could not be justified because of Judex Factie. This means that the District and High Court did not misapply the law. According to the author, Judex Factie's decision at the first level and Judex Factie's decision at the appellate level were not wrong in considering the Plaintiffs' lawsuit. This is because the Plaintiffs' case is correct and very clear, namely the lawsuit for tort, and there is no merger between the suit for default with the tort or the union of the cancellation of the sale and purchase with the tort. This has been very clearly considered by the Panel of Judges, both at the court of first instance and the court of appeal.

The legal considerations of the Panel of Judges were deemed correct based on the subject matter as described in the lawsuit. That the subject matter was Mr. S will buy the land of the Cassation Respondent, meaning that there has not been a sale and purchase. This can be proven by the fact that there has been no transfer of rights in the form of making a sale and purchase deed, whether done before the PPAT, the village head, or the sale and purchase deed privately.

In the trial process at the first appellate and cassation levels, the Cassation Applicants could not show evidence of ownership of a quo land in the subject matter. But even though there has not been a transfer of rights, Mr. S has sold the land to third parties, namely the Co-Defendants/Cassation Applicants. Mr. S' deeds who sold the land of the Cassation Respondents without any rights to the Co-Defendants/Cassation Applicants was a tort that was very detrimental to the Cassation Respondents. Likewise, the action of the Co-Defendants/Cassation Applicants who bought the land without any rights from Mr. S is a tort that is very detrimental to the Cassation Respondents. Meanwhile, the Cassation Respondents never authorized Mr. S to sell the land to the Co-Defendant/Cassation Applicants.

Based on what is described above, the lawsuit's substance has no relation to defaults and or cancellation of sales and purchases. Still, it is purely a tort committed by the Cassation Applicants. Thus, the Plaintiffs' lawsuit did not violate civil procedural law. In addition, in the convention, it is stated that the Plaintiffs have merged the case between the lawsuit for default and the suit for a tort which was filed by not fulfilling the requirements for the merger of lawsuits, which according to the Supreme Court Verdict Number 291 K/Sip/1974 cannot be justified.

According to the author, in this case, the Cassation Applicants, as the heirs of Mr. S, are responsible for resolving legal issues carried out by Mr. S during his lifetime. This is following Article 175 of the Compilation of Indonesian Islamic Law, which states that the obligation of the heir to the bequeather is to take care and complete until the funeral is completed; settle both debts in the form of treatment, maintenance including the obligations of the bequeather and debt collectors; complete the bequeather's will; dividing the inheritance among the rightful heirs. The responsibility of the heir to the debt or obligation of the bequeather is limited to the amount or value of the estate. Based on these provisions, the Cassation Applicants who are the heirs of Mr. S should complete Mr. S' legal actions during his lifetime. So, the argument of the Cassation Applicants stating that the Plaintiffs' lawsuit filed did not fulfill the requirements for a merger of claims is wrong and unreasonable.

The Cassation Respondents are a family that will collectively sell their land to Mr. S (the Cassation Applicants' father). At the same time, the land was sold by Mr. S (the Cassation applicant's father) to other parties, namely the Co-Defendants/Cassation Applicants. Indeed, the Cassation Applicants were five people, but previously only one person was going to buy the Cassation Respondent's land, namely Mr. S (the Cassation Applicants' father). According to the author, it is right to involve the Cassation Applicants in this case because they are the heirs of Mr. S. (because Mr. S passed away). Therefore, the Cassation Applicants should complete the actions of Mr. S.

The author also needs to emphasize that, in this case, there is no request for cancellation of the sale and purchase because the sale and purchase have not occurred. As previously mentioned, in this case, the main issue is the tort committed by the Cassation Applicants. So, it is not true that there is a merger between the sale and purchase agreement with tort. Thus, the Cassation Applicants have mistakenly made the Supreme Court Verdict No. 201 K/Sip/1974 the reason for declaring that the Cassation Respondent's lawsuit violated the provisions of civil procedural law.

In addition to the reasons mentioned above, Judex Factie's consideration at the first level is correct, considering that achieving a quick, simple, and low-cost trial is appropriate and reasonable if the Plaintiffs filed a lawsuit jointly and simultaneously

against the Defendants and Co-Defendant. Quick, simple, and easy trials are the mandate of Law Number 48 of 2009 on Judicial Power, regulated in Article 2 paragraph (4). This provision is intended to fulfill the hope of justice seekers. This principle should have followed the process of settling cases in Indonesia. The Cassation Respondents, in this case, are parties seeking justice. As a result of the tort committed by the Cassation Applicants, the Cassation Respondents were greatly disadvantaged because the Cassation Applicants had controlled the land belonging to the Cassation Respondents from 2008 to 2013. The Cassation Respondent had not been able to enjoy the proceeds from his land for approximately four years. The Cassation Applicants without the basis of the right to enjoy the proceeds from the land in the subject matter.

Therefore, the author agrees that the Supreme Court Judges of the Supreme Court of the Republic of Indonesia reject the cassation application from the Cassation Applicants and grant the Cassation Respondents' request to uphold the High Court Verdict No. 149/Pdt/2012/PT.Bdg. Jo District Court Verdict No. 19/Pdt/G/2011/PN. Krw.

CONCLUSIONS

The actions committed by the Defendants and Co-Defendants fulfilled the elements of the tort. In addition, the Plaintiffs can claim compensation for these actions because the activities of the Defendants and the Co-Defendants fulfilled the material requirements so that a tort can be held accountable.

Matters form the basis for considerations taken by the Panel of Judges in the Verdict on Case Number: 19/Pdt/G/2011/PN.Krw. by ruling in favor of the Plaintiffs' tort lawsuit, it is stated that the Defendants do not have any legal basis for the quo disputed object in the case. Because, in this case, there has yet to be a sale and purchase.

REFERENCES

1. Putusan Nomor: 19/Pdt/G/2011/PN.Krw. 2011.
2. Dameria R, Busro A, Hendrawati D. Perbuatan Melawan Hukum dalam Tindakan Medis dan Penyelesaiannya di Mahkamah Agung (Studi Kasus Perkara Putusan Mahkamah Agung Nomor 352/PK/PDT/2010). DIPONEGORO LAW J. 2017;6(1):1–20.
3. The Indonesian Civil Code. 1847.
4. Djojodirdjo MAM. Perbuatan Melawan Hukum. Jakarta: Pradnya Paramita; 1979.
5. Salam S. Perkembangan Doktrin Perbuatan Melawan Hukum Penguasa. NURANI Huk. 2018;1(1):33–44.
6. Susilo AB. Reformulasi Perbuatan Melanggar Hukum oleh Badan atau Pejabat Pemerintahan dalam Konteks Kompetensi Ansolut Peradilan Tata Usaha Negara. J Huk dan Peradil. 2013;2(2):291–308.
7. Slamet SR. Tuntutan Ganti Rugi dalam Perbuatan Melawan Hukum: Suatu Perbandingan dengan Wanprestasi. Lex Jurnalica. 2013;10(2):107–20.
8. Meliala DS. Perkembangan Hukum Perdata tentang Benda dan Hukum Perikatan. Bandung: Nuansa Aulia; 2007.
9. Apriani T. Konsep Perbuatan Melawan Hukum dalam Tindak Pidana. GANEC SWARA. 2019;13(1):43–9.
10. Yuniarlin P. Penerapan Unsur-Unsur Perbuatan Melawan Hukum terhadap Kreditur yang Tidak Mendaftarkan Jaminan Fiducia. J MEDIA Huk. 2012;19(1):1–11.
11. Setiawan R. Pokok-pokok Hukum Perikatan. Bandung: Puta A. Bardin; 1999.
12. Fuady M. Perbuatan Melawan Hukum Pendekatan Kontemporer. Bandung: Citra

Aditya Bakti; 2010.
13. Syahrani R. Seluk Beluk dan Asas-asas Hukum Perdata. Bandung: Alumni; 2004.
14. Anggota IKAPI. Kitab Undang-Undang Agraria dan Pertanahan. Bandung: Fokusmedia; 2009.
15. Mantili R. Ganti Kerugian Immateriil terhadap Perbuatan Melawan Hukum dalam Praktik: Perbandingan Indonesia dan Belanda. DE'JURE. 2019;4(2):298–321.
16. Hartanto H, Adiastuti A. Mekanisme Penentuan Ganti Kerugian terhadap Kerusakan Lingkungan Hidup. ADHAPER. 2017;3(2):227–43.
17. Tjoanda M. Wujud Ganti Rugi Menurut Kitab Undang-Undang Hukum Perdata. J SASI. 2010;16(4):43–50.
18. Putusan Mahkamah Agung No. 214 K/Pdt/1998. 1998.
19. Boediarto MA. Kompilasi Kaidah Hukum Putusan Mahkamah Agung Hukum Acara Perdata Masa Setengah Abad. Jakarta: Mahkamah Agung Republik Indonesia; 2005.
20. Putusan No. 114/Pid/B/2010/PN.Krw. 2010.
21. Putusan Mahkamah Agung RI No.4340.K/Pdt/1986.
22. Boediarto MA. Peradilan Kompilasi Abstrak Hukum Putusan mahkamah Agun Tentang Hukum Tanah. Jakarta: Ikatan Hakim Indonesia; 2000.
23. Putusan Nomor:149/PDT./2012/PT.BDG. 2012.
24. Sutantio R, Oeripkartawinata I. Hukum Acara Perdata dalam Teori dan Praktek. Bandung: Mandar Maju; 2009.
25. Putusan Nomor: 305 K/Pdt/2013. 2013.