

Legal Study of Unlawful Acts by The Opponents In Land Dispute Decision Number 6/Pdt.Bth/2024/Pn Bpp

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Abstract

This study aims to conduct a juridical analysis of the elements and legal reasoning used by the panel of judges in establishing the existence of an unlawful act (onrechtmatige daad) committed by the Defendants in a land dispute case, as stipulated in the Decision of the Balikpapan District Court Number 6/PDT.BTH/2024/PN BPP. Employing normative legal research with a conceptual and case approach, this study focuses on the interpretation of Article 1365 of the Indonesian Civil Code (KUHPerdara) and the judicial construction applied by the court in assessing the Defendants' actions. The urgency of this study lies in the increasing complexity of land disputes in Indonesia, which demand clearer doctrinal and judicial guidance in determining the threshold of unlawful acts in civil litigation. The novelty of this research is its integrative use of abuse of rights theory and good faith principles as analytical tools to assess the boundaries of civil liability, which have not been thoroughly explored in previous studies. The findings reveal that the Defendants' act of filing for execution over a parcel of land that had been lawfully transferred to the Plaintiff, without a legitimate legal basis, constitutes a clear instance of an unlawful act. Such conduct satisfies the juridical elements of tort as outlined in both doctrine and jurisprudence: the existence of an act, its unlawfulness, fault, actual damages, and a causal relationship between the act and the harm incurred. The court's decision reflects a balanced consideration of good faith principles, legal protection doctrines, and the abuse of right theory in determining the Defendants' civil liability. This study recommends a more consistent application of these doctrines to ensure legal certainty and justice in future land dispute adjudications.

Keywords: Good Faith; Land Dispute; Unlawful Act

1. INTRODUCTION

Land rights have a foundational role in human life, especially with the development of society and the increasing population, making these rights increasingly crucial.¹ Land ownership is a major factor in ensuring the welfare of individuals and society as a whole. In the land law system in Indonesia, there are various types of land rights, where ownership rights have the strongest position compared to other rights. This provision is confirmed in Article 20, Paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, which explains that ownership rights to land are hereditary, full, and can be transferred.²

However, not all transfers of land rights are carried out in accordance with applicable laws. In some cases, there are legal acts carried out in a manner that is contrary to existing laws and regulations. For example, transfer of rights without the consent of the legal owner, falsification of ownership documents, or control of land without a clear legal basis. Such

¹ Fitriana Trinengsi Taolin, Dian Aries Mujiburohman, and Koes Widarbo, "Kesadaran Hukum Masyarakat Dalam Pendaftaran Peralihan Hak Atas Tanah," *Tunas Agraria* 7, no. 1 (2024): 68–85, <https://doi.org/10.31292/jta.v7i1.277>.

² Indah Sari, "Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA)," *Jurnal Mitra Manajemen* 9, no. 1 (2017): 27–28.

actions are categorized as unlawful acts (*onrechtmatige daad*), which can lead to legal disputes in court. Every transaction or legal act related to land rights must be carried out transparently and in accordance with applicable laws in order to protect the interests of all parties involved.³

Ownership and transfer of land rights not only concern aspects of private ownership but also have broad legal implications.⁴ The government, through related institutions, also has an important role in ensuring that every transfer of land rights is carried out in accordance with applicable legal provisions, so that community rights to land remain protected and do not cause legal problems in the future. Land disputes are one of the legal problems that often occur in Indonesia, both between individuals, companies, and the government. The main causes of these land disputes vary, ranging from dual ownership, document forgery, eviction without fair compensation, to unlawful acts committed by certain parties.⁵

Parties with greater access to resources and power often have greater advantages in resolving disputes, making it difficult for small communities who feel disadvantaged to obtain justice. A fair and transparent land law system is essential to protect the rights of communities to their land. The approach often used in resolving land disputes is through the judicial mechanism, where judges must consider various legal aspects and evidence submitted by the disputing parties. In many cases, the courts not only assess the legal aspects of land ownership but also the elements of *onrechtmatige daad* that may have been carried out by one of the parties. A legal study of court decisions in land dispute cases is important for understanding the extent to which justice can be upheld in land cases in Indonesia.⁶

Land disputes are still a common phenomenon in various regions, especially due to overlapping ownership, document forgery, and unlawful acts committed by certain parties. Unlawful acts in the context of land disputes can be in the form of unlawful control of land, issuance of duplicate certificates, or other actions that harm the legitimate party. One interesting case to study is the decision Number 6/Pdt.Bth/2024/PN Bpp, which highlights the alleged unlawful acts committed by the Defendants. In this decision, the court provides legal considerations regarding the limits of the parties' responsibilities, as well as how the actions taken by the Defendants can be categorized as unlawful acts according to the *Civil Code*.

³ Romi Ardiansyah, Imam Asmarudin, and Tiyas Vika Widyastuti, "Tinjauan Yuridis Perbuatan Melawan Hukum Dalam Perkara Peralihan Hak Atas Tanah Dengan Sertipikat Hak Milik," *Pancasakti Law Journal* ..., 2023, 270.

⁴ Mustafha Habibi, Abdul Khair, and Reza Noor Ihsan, "Upaya Pengembangan Home Industry Oleh Pemerintah Daerah Kota Palangka Raya," *Jurnal Ilmu Syariah Dan Hukum (JISYAKU)* 3, no. 1 (2024): 18–30, <https://doi.org/10.23971/jisyaku.v3i1.7595>.

⁵ Maria Avelina Abon, Komang Febrinayanti Dantes, and Ni Ketut Sari Adnyani, "Akibat Hukum Peralihan Hak Atas Tanah Waris Berdasarkan Pasal 20 Ayat (1) Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria," *Jurnal Komunitas Yustisia* 5, no. 3 (2022): 68–69, <https://doi.org/10.23887/jatayu.v5i3.51871>.

⁶ Aris Sunandar Suradilaga, "Politik Hukum Keperdataan Islam Di Masa Kolonial Belanda," *Jurnal Ilmu Syariah Dan Hukum (JISYAKU)* 1, no. 2 (2022): 161–70, <https://doi.org/10.1093/jcs/35.4.781>.

In civil law, an unlawful act (*onrechtmatige daad*) is a normative concept regulated in Article 1365 of the *Civil Code*, which is often encountered in practical life in society. Based on the provisions of this article, an act can be qualified as an unlawful act if a number of elements are met, namely: first, there is an act carried out by a legal subject; second, the act is contrary to legal provisions, both written and unwritten; third, there is an element of error or negligence from the perpetrator; fourth, there is a real loss for another party; and fifth, there is a clear causal relationship (*cause and effect*) between the act carried out and the loss incurred. These five elements must be cumulatively met so that an act can be considered an unlawful act that can give rise to civil liability.

Some relevant studies, one of which discusses the legal consequences of the act of controlling land owned by others without rights, which is qualified as an unlawful act based on the provisions of Article 1365 of the *Civil Code*.⁷ The study uses a normative legal approach through a study of decisions, which aims to analyze the judge's legal considerations regarding the lawsuit filed by the plaintiff. From the results of the legal investigation, it was found that the plaintiff's lawsuit was rejected by the panel of judges because they were unable to prove the elements of *onrechtmatige daad* completely, especially regarding the causal relationship between the defendant's actions and the losses experienced by the plaintiff. The advantages of this study lie in its consistency in dissecting the legal elements that form an unlawful act. The researcher succeeded in presenting legal arguments systematically and in depth against applicable norms, and based his analysis on classical legal doctrine and positive legislation. However, the main weakness of this study is the absence of an empirical approach that can strengthen the legal relevance of the facts revealed. This study also does not explore the institutional and structural dimensions that trigger the emergence of land disputes more broadly, so it seems to isolate legal problems at the litigation level alone.

Furthermore, the research focuses on unlawful acts in the context of the issuance of Land Ownership Certificates (*SHM*) by the National Land Agency (*BPN*), which are considered to be contrary to the general principles of good governance (*AUPB*) and violate formal and material provisions in land administration.⁸ This research combines a normative legal approach with an empirical approach, through interviews with related parties, such as advocates, judges, and land officials. The relevance of this research lies in the emphasis on the importance of procedural integrity and legal protection in the land administration system. The author carefully identifies the existence of physical and legal data engineering in the

⁷ Masnida Malau, Yuniar Rahmatiar, and Muhamad Abas, "Perbuatan Melawan Hukum Atas Penyerobotan Tanah Milik Orang Lain Dihubungkan Dengan Pasal 1365 KUH Perdata," *Binamulia Hukum* 12, no. 2 (2023): 299–307, <https://doi.org/10.37893/jbh.v12i2.427>.

⁸ S Endang and Rizka Dewi Aprillia Ramadan, Suta Ramadan, "Tinjauan Yuridis Terhadap Perbuatan Melawan Hukum Dalam Penerbitan Sertifikat Hak Milik (SHM) Atas Bidang Tanah Sebagai Objek Sengketa Yang Tidak Memiliki Kekuatan Hukum Mengikat Secara Sepihak (Studi Putusan Nomor 6/Pdt.G/2023/PN.Kla) S.," *Journal Presumption Of Law* 6, no. 2 (2024): 203–21, <https://doi.org/https://ejournal.unma.ac.id/index.php/jpl>.

SHM issuance process, which results in losses for legitimate landowners. The main advantage of this research is its ability to dismantle the structural and institutional dimensions of unlawful acts, while also offering a corrective perspective on administrative practices that violate the principles of agrarian law and state administration. However, the disadvantage of this research lies in its tendency to be too complex in the structure of the analysis, which can make it difficult for readers to understand the main focus of the legal argument. In addition, the analytical aspects of the elements of *onrechtmatige daad* as regulated in Article 1365 of the *Civil Code* are not discussed in depth as was done in the first study.

The last research found that the basis of the plaintiff's lawsuit in the land dispute was weak because the evidence submitted was not strong enough to prove the claim of land ownership. The plaintiff was unable to show valid evidence and witness statements that strongly supported his rights to the disputed land. On the other hand, the defendant was able to present stronger evidence and relevant witnesses to strengthen their claim of ownership. However, the judge in this decision still rejected the defendant's exception, even though the evidence submitted by the defendant was stronger. The author is of the opinion that the judge should have accepted the defendant's exception, considering the strength of the evidence he had and its conformity with the facts of the trial. Thus, this study criticizes the judge's considerations, which are considered to have paid less attention to the strength of the defendant's evidence, which has the potential to result in injustice in the land dispute.

Meanwhile, this study discusses unlawful acts (*onrechtmatige daad*) in the case of *derden verzetor* resistance by third parties to the application for execution of land that has been legally transferred. This is very relevant compared to the three previous studies. all highlight the practices of illegal control or claims over land, but through different forms of unlawful acts, ranging from administrative engineering, execution disputes, to violations of ownership rights. The main relevance lies in the similarity of the object (*land as a legal object*), the legal instruments used (*Article 1365 of the Civil Code*), and the importance of the principle of good faith, legal certainty, and protection of property rights in every transfer or claim to land. The research conducted by Aprillia et al. focuses on the analysis of unlawful acts in the issuance of Certificates of Ownership (*SHM*) for disputed land plots, using a normative and empirical legal approach. The main advantage of this study lies in its ability to touch on administrative and procedural aspects that are often ignored in conventional civil law studies. By involving interviews with judges and the National Land Agency (*BPN*), this study not only explores violations of the norms of Article 1365 of the *Civil Code* but also touches on violations of the general principles of good governance (*AUPB*). However, the weakness of this study lies in its inability to explore the elements of *onrechtmatige daad* in depth theoretically and the lack of criticism of the quality of the judge's legal arguments in the decisions studied.

Meanwhile, research by Masnida Malau et al. examines unlawful acts in the context of land grabbing through a normative approach based on case studies. Its strength lies in the systematic description of the basis for the lawsuit based on Article 1365 of the *Civil Code*, so it is useful for an initial understanding of the *PMH* structure. However, this study is descriptive in nature and does not explore the sociological and philosophical aspects of land conflicts, and does not critically evaluate the judge's considerations or the institutional structures that support the dispute. In a different context, research conducted by Febra Alfain entitled Legal Review of Land Disputes Due to Unlawful Acts (Study of Decision Number 33/Pdt.G/2021/PN.Selong), highlights the weaknesses in the plaintiff's evidence who cannot show strong evidence for their ownership claim, while the defendant presents more relevant evidence and witnesses. The strength of this study lies in its focus on evidence-based justice, namely the importance of evidence as a basis for considering a decision. However, the glaring weakness lies in the inconsistency of criticism of the judge, which is only conveyed in the form of an opinion, without a comprehensive analysis of the structure of legal considerations in the decision. This study also does not discuss the legal construction of unlawful acts in depth, and does not elaborate on the position of jurisprudence and doctrine as the basis for evaluating the decision.

Different from the three previous studies, this study stands out with a multidimensional analysis of unlawful acts in cases of resistance to execution (*derden verzet*). The main advantage lies in the conceptual depth in dissecting the elements of *onrechtmatige daad*, as well as the application of the doctrine of abuse of legal process and *misbruik van omstandigheden*, which reflect an understanding not only of written legal norms, but also of the value of substantive justice. This study also explicitly raises criticism of legal manipulation in the execution process that is procedurally valid but substantially flawed, something that has not been raised in previous studies.

In addition to the objectives of this study and which will excel with others, this study will answer important gaps that have not been touched on by previous studies. If Rizka's research focuses on administrative damage by state institutions, Masnida on normative violations of property rights, and Febra on the weakness of evidence in cases, then this research combines all of these elements by highlighting how the legal system can be manipulated by parties with bad intentions through a legal process that appears formal but in substance violates the principle of justice. Thus, this research not only fills the gap in the literature on agrarian and civil law, but also enriches academic discourse on the integrity of legal procedures in land disputes, and builds critical reflection on the responsibility of judges in carefully and fairly assessing evidence and the hidden motives of the parties in the litigation process.

The main focus of this study is directed at two main aspects, namely the identification of the form of unlawful acts committed by the Defendants and the analysis of the judge's

legal considerations in stating that there were unlawful acts involving the parties. Based on the description above, the author is interested in researching and analyzing more deeply the unlawful acts related to the illegal control of land rights, especially in the context of land ownership disputes. In this case, the actions taken by the Defendants are considered as a form of unlawful act that has legal consequences for the disputing parties.

2. METHOD

The method used in this research is normative legal research,⁹ namely a type of research that focuses on the analysis of one of the decisions of the Balikpapan District Court in 2024 regarding the *derden verzet* lawsuit case. The aim is to identify the dynamics of the judge's legal considerations and the legal reasons underlying the decision. Normative legal research is a scientific approach that aims to find the truth through legal logic from a normative perspective. In the context of studying court decisions as a primary source of law, the main focus lies on the *ratio decidendi*, which is the part of the decision that contains legal considerations. This type of research does not involve field research because the object of study is limited to legal materials, so it is also known as library-based research, which focuses on reading and analyzing primary and secondary legal sources¹⁰.

3. RESULTS AND DISCUSSION

3.1 Conceptualization and Normative-Theoretical Dimensions of Unlawful Acts in Civil Law

Unlawful acts in civil law are known as (*onrechtmatige daad*), which is a legal concept that refers to actions carried out by a person that are contrary to the law and result in losses for others. In practice, these acts not only include violations of laws and regulations, but can also be violations of legal obligations, the subjective rights of other parties, moral norms, and the principles of propriety¹¹ and prudence that apply in society. According to Rosa Agustina, in order for an act to be categorized as an unlawful act, it must fulfill a number of elements, namely the existence of an act that is contrary to the legal obligations of the perpetrator, violates the rights of others, is not in accordance with moral norms, and is contrary to the principles of propriety and prudence.¹² These four criteria show that unlawful acts are not limited to violations of written laws alone, but also include values that exist in society.

⁹ Mohammad Agus Maulidi, "Problematika Hukum Implementasi Putusan Final Dan Mengikat Mahkamah Konstitusi Perspektif Negara Hukum," *Jurnal Hukum Ius Quia Iustum* 24, no. 4 (2017): 535–57, <https://doi.org/10.20885/iustum.vol24.iss4.art2>.

¹⁰ Yensa Margareth Tarigan Ayu Lestari Malau Muhammad Yasid, Lestari Victoria Sinaga, dan Universitas Darma Agung, "Disparitas Putusan Hakim Dalam Perkara Perceraian Perkawinan Katolik (Kajian Normatif Terhadap Putusan No. 686/Pdt.G/2017/Pn Bks. Dan No. 478/Pdt/2018/Pt.Bdg Serta Hukum Kanonik)," *Journal Diktum* 3, no. 686 (2024): 126–34.

¹¹ Mendy Cevitra dan Gunawan Djajaputra, "Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya," *UNES Law Review* 6, no. 5 (2023): 57–65.

¹² Indah Sari, "Perbuatan Melawan Hukum (Pmh) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 53–70, <https://doi.org/10.35968/jh.v11i1.651>.

In the Indonesian legal system, provisions regarding unlawful acts are explicitly regulated in Article 1365 of the *Civil Code*. This article states that every act that violates the law and causes harm to another person requires the perpetrator to compensate for the loss. This norm indicates that civil liability can arise if there is a causal relationship between the unlawful act and the loss suffered by another party. More broadly, the term "act" in the context of unlawful acts can be interpreted in various forms. In legal theory, such acts can be in the form of failure to carry out legal obligations (*nonfeasance*), the implementation of obligations incorrectly or inappropriately (*misfeasance*), or the implementation of an action that is not legally within his authority (*malfeasance*). Each of these forms reflects a violation of applicable legal norms and therefore, has the potential to result in legal consequences in the form of an obligation to compensate. Unlawful acts are an important concept in civil law that serves as a basis for enforcing justice and legal protection for the injured party. Understanding this concept requires an approach not only from a normative perspective but also from a philosophical and theoretical one, considering that unlawful acts touch on fundamental aspects of the interaction of law and social life in society.¹³

Unlawful acts in the context of civil law not only have legal consequences, but also real consequences for the victim, both in the form of material and immaterial losses.¹⁴ Material losses can be in the form of property damage, such as in the case of a vehicle collision, while immaterial losses include psychological suffering, such as anxiety, stress, or even health problems. In the framework of civil law, efforts to recover these losses are realized through claims for compensation, as a form of legal responsibility from the perpetrator to the victim.¹⁵ In civil law, there are three main forms of unlawful acts, namely, unlawful acts committed intentionally, unlawful acts due to negligence, and unlawful acts without fault, which occur without any element of intent or negligence.¹⁶ These categories show that responsibility for unlawful acts is not solely based on intent or negligence, but can also arise due to a violation of legal norms that results in losses, even though the perpetrator cannot be proven subjectively guilty.¹⁷

To determine whether an action can be categorized as an illegal act, there are four main elements that must be fulfilled.¹⁸ First, there is an act, either in the form of an active or

¹³ Gisni Halipah et al., "Tinjauan Yuridis Konsep Perbuatan Melawan Hukum Dalam Konteks Hukum Perdata," *Jurnal Penelitian Serambi Hukum* 16, no. 01 (2023): 138–43, <https://doi.org/10.59582/sh.v16i01.923>.

¹⁴ Halipah et al.

¹⁵ Mantili Rai, "Ganti Kerugian Immaterial Terhadap Perbuatan Melawan Hukum Dalam Praktik: Perbandingan Indonesia Dan Belanda," *Jurnal Ilmiah Hukum De'Jure* 4, no. 2 (2019): 298–321, <https://journal.unsika.ac.id/index.php/jurnalilmiahhukumdejure/article/download/6460/3229/17049>.

¹⁶ Ariadin, "Perbuatan Melawan Hukum Dalam Perspektif Hukum Kontrak Di Indonesia," *Jurnal Pelita Nusantara* 1, no. 3 (2023): 449–56, <https://doi.org/10.59996/jurnalpelitanusantara.v1i3.505>.

¹⁷ Muhammad Khoiruddin and Kuswardani, "Parameter Perbuatan Melawan Hukum Peralihan Hak Ganti Rugi Tanah Dalam Jual Beli Tanah (Studi Putusan Tingkat Pertama 18/Pdt. G/2016/PN.Rgt Sampai Peninjauan Kembali 681 K/Pdt/2018)," *UNES Law Review* 5, no. 3 (2023): 1256–64, <https://doi.org/https://doi.org/10.31933/unesrev.v5i3>.

¹⁸ Ririh Titis Yusriyyah and Zakki Adlihyati, "Perbuatan Melawan Hukum Terhadap Sengketa Kepemilikan Hak Atas Tanah Masyarakat Adat," no. 31 (n.d.): 12–21, <https://doi.org/10.20961/jolsic.v12i1.836>.

passive action (*negligence or omission*), carried out by a person. Second, the act must violate applicable legal norms, whether derived from laws and regulations, morality, or propriety in society. Third, the act must cause harm to another party, either in the form of measurable material losses or immaterial losses that are non-economic in nature. Fourth, there must be a causal relationship between the unlawful act and the losses experienced by the victim.¹⁹

It should be understood that the element of action in this context is not only limited to active actions that violate the law, but also includes passive actions, namely, the failure to do something that should be done based on legal obligations or social responsibilities.²⁰ In other words, a person can be considered to have committed an unlawful act not only because he does something that is prohibited, but also because they fail to do something that is required, which ultimately causes harm to others. This is also emphasized by Prodjodikoro, who states that both active and passive actions can be the basis for an unlawful act as referred to in Article 1365 of the *Civil Code*.²¹

In the perspective of legal protection theory, the concept of unlawful acts is based on the principle of justice and efforts to restore the state before the violation occurred (*status quo ante*). This theory emphasizes the importance of providing compensation as a form of legal responsibility that aims to restore the victim's position as if the unlawful act had never occurred.²² In addition, legal philosophy also provides a normative basis for legal theory and practice related to *PMH*. The principle of individual responsibility for actions taken, both in the contractual and non-contractual realms, emphasizes that every individual must be responsible for the legal consequences of their actions. In civil law, unlawful acts are a crucial issue because they are directly related to the protection of individual rights and interests in society. Therefore, the study of unlawful acts is not only a normative and theoretical aspect, but also a philosophical dimension that underlies the principles of justice and accountability.

3.2 Identification of Forms of Unlawful Acts and Legal Analysis of the Judge's Legal Considerations in Declaring the Existence of Unlawful Acts by the Defendants in Decision Number 6/PDT.BTH/2024/PN BPP

Decision Number 6/PDT.BTH/2024/PN BPP is a civil case filed by the Plaintiff against the Defendants on suspicion of having committed an unlawful act. In this case, the Plaintiff alleges that the Defendants have committed acts that are detrimental both

¹⁹ Reynaldi Febrian Akbar, "Pertanggungjawaban Perusahaan Terhadap Pekerja / Buruh Yang Melakukan Kelalaian Kerja," *Lex Positivis* 2(8): 2, no. 8 (2024): 1001–14.

²⁰ Ubaidillah Kamal, "Kausalitas Dalam Perbuatan Melawan Hukum Pada Perjanjian Kredit Yang Telah Diasuransikan," 2025, 39–57, <https://doi.org/10.24843/JMHU.2025.v14.i01.p03>.

²¹ Yulianto Manurung, "Tinjauan Yuridis Perbuatan Melawan Hukum Terhadap Cacat Badan Di Indonesia," *Dharmasisya* 1, no. November (2021): 1631–54.

²² Melisa Safitri Ferdi Irawan, Erlina B, "Pertimbangan Hakim Dalam Perkara PMH Oleh Prumnas Way Halim Akibat Kelalaian Pembuatan Sertifikat Tanah," *Jurnal Kewarganegaraan* 6, no. 2 (2022): 4099–4108.

materially and immaterially, both through active actions and negligence in fulfilling their legal obligations. The object of the dispute involves control of an asset or right that is claimed to be the Plaintiff's legal property. Based on the description in the lawsuit and the facts of the trial, the forms of the Defendants' actions that are considered unlawful include acts of control of rights without a valid legal basis, as well as neglect of certain legal obligations that should be carried out. These actions can be qualified as forms of *PMH* that are positive (*active actions*) or negative (*negligence or omission*), as developed in civil law jurisprudence and doctrine.²³

In this case, the actions of the Respondents show elements of negligence²⁴, where they do not act properly in conditions that legally require certain attention or action to protect the rights of others. Referring to Article 1365 of the *Civil Code*, an act can be qualified as unlawful²⁵ if it meets the following elements: *First*, the existence of the Opponents' actions in the form of control or intervention over the object of dispute has been proven in the trial. This act is declared as a real action that can be subject to legal liability. *Second*, the Defendants' actions do not have a valid legal basis and are contrary to the principles of justice, propriety, and norms that exist in society. In this case, the actions are contrary not only to written regulations but also to unwritten legal principles as stipulated in the jurisprudence of the Supreme Court. *Third*, the Plaintiff suffered material losses in the form of loss of rights to an object and immaterial losses arising from the failure to fulfill a sense of justice and legal protection. This element is proven through evidence submitted during the trial process. *Fourth*, a direct causal relationship between the Defendants' actions and the losses suffered by the Plaintiff. This is associated with the principle of adequate causality, where losses are a logical and reasonable consequence of the Defendants' actions.

The panel of judges in this decision considered all elements of the *PMH* systematically and stated that the Defendants had been proven to have committed acts against the law.²⁶ Judges use normative and sociological approaches in analyzing legal facts revealed in court.²⁷ The judge's considerations also show concern for the principles of justice, propriety, and protection of individual rights, where the absence of a legal basis for the Defendants' actions is considered a violation of the Plaintiff's property rights or legitimate legal interests. In addition, the judge refers to relevant jurisprudence as a basis for

²³ Mendy Cevitra dan Gunawan Djajaputra, "Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya."

²⁴ Saul Levmore, "Richard Posner, the Decline of the Common Law, and the Negligence Principle," *The University of Chicago Law Review*, n.d.

²⁵ Wiene Wardhani, "Unsur Kesalahan Dalam Gugatan Perbuatan Melawan Hukum (Onrechtmatige Daad) Pada Sengektta Lingkungan Hidup (Putusan Nomor 118/Pdt.G/Lh/2016/Pn.Plk)," *Jurnal Verstek* 8, no. 3 (2020): 460–69, <https://doi.org/https://dx.doi.org/10.20961/jv.v8i3.47068>.

²⁶ Toga Rizky Anugrah, "Pertimbangan Hakim Terhadap Unsur Melawan Hukum Dalam Perkara Pengadaan Barang Dan Jasa (Studi Putusan Pengadilan Negeri Marissa Nomor : PDS-02/MRS/06/2009)" (Malang, 2016).

²⁷ Ifिता Zahra Anggraeni and Harjono Harjono, "Analisis Pertimbangan Hakim Dalam Memutus Perkara Pencemaran Nama Baik Melalui Facebook," *Verstek* 11, no. 3 (2023): 498, <https://doi.org/10.20961/jv.v11i3.73336>.

strengthening the opinion, including in assessing the measure of negligence and neglect as a form of violation of the law. Normatively, this decision has fulfilled the elements of an unlawful act as described in the doctrine and theory of civil law. However, several things need to be considered, such as whether the assessment of the amount of loss is proportional²⁸ or simply relies on general estimates. Also, how legal liability extends to other parties (if any) who participate or conspire.

PMH, or in Dutch known as *onrechtmatige daad*, is one of the important institutions in civil law that provides space for every individual to claim compensation for a loss suffered due to the actions of another party that are contrary to the law. Article 1365 of the *Civil Code* is the normative basis that regulates this matter, with a simple formulation but has a broad scope, namely *"Every act that violates the law and causes loss to another person, requires the person whose fault causes the loss, to compensate for the loss."* In practice, this provision not only concerns violations of written regulations, but also of norms of propriety, morality, and the principle of caution recognized in society.²⁹

Along with the development of doctrine and jurisprudence, the concept of unlawful acts has expanded, especially since the Supreme Court Decision Number 31 K/Sip/1958, which emphasized that unlawful acts are not limited to violations of the law, but also include violations of propriety, public order, and the subjective rights of others. With this basis, the court no longer only assesses the formal legality of an action, but also explores the moral and social substance of the action. Therefore, identifying the form of unlawful act in a case is a foundational aspect initial step, because from here the process of legal reasoning begins to be built by the panel of judges.³⁰

In the Balikpapan District Court Decision Number 6 of 2024, the panel of judges has decided that the Defendants have committed an unlawful act. However, to fully understand the decision, it is necessary to critically read the legal facts revealed in court and how the panel of judges constructed their legal arguments. The *a quo* case began with a legal act in the form of a sale and purchase of land objects carried out by Defendant III to the Opponent, which was carried out legally according to civil law and fulfilled the elements of a sale and purchase agreement. However, without the knowledge and consent of the Opponent as the party who obtained the rights to the land object in question, Defendant I and Defendant II then filed an execution application to the Balikpapan District Court for Decision Number: 113/Pdt.G/2023/PN.Bpp.

²⁸ Siti Chairunissa, Sulkiah Hendrawati, and Faturrohman, "Dasar Pertimbangan Hakim Dalam Menjatuhkan Sanksi Pidana Penjara Terhadap Pelaku Penyalahgunaan Narkotika," *Jurnal Hukum Indonesia* 1, no. 1 (2022): 19–29.

²⁹ Anggun Isma, "Dasar Pertimbangan Putusan Hakim Diluar Dakwaan Jaksa Penuntut Umum Dalam Tindak Pidana Narkotika," *Journal of Legal Studies* 1, no. 3 (2023): 190–213.

³⁰ Brian Khukuh Wijaya, Nur Rochaeti, and Ani Purwanti, "Dasar Pertimbangan Hakim Dalam Menjatuhkan Putusan Kasus Anak Yang Berkonflik Dengan Hukum (Studi Kasus Putusan Nomor. 14/PID.SUS.ANAK/2015/PN SMG)," *Diponegoro Law Journal* 5, no. 4 (2016): 1–12.

The execution application was submitted based solely on the existence of a peace agreement between Defendants I and Defendants II, and Defendants III, without considering the juridical fact that Defendants III had previously transferred the rights to the land object to the Defendant through a legal sale and purchase mechanism. The actions of Defendants I and Defendants II not only contradict the principle of good faith in civil law, but have also caused losses to the Defendant, both materially and immaterially. The actions of Defendants I and Defendants II can be qualified as unlawful acts (*onrechtmatige daad*) as referred to in Article 1365 of the *Civil Code*, so that they form the basis for the filing of this lawsuit by the Defendant.

The Panel of Judges has considered that the land ownership argument from Defendants I, II, and III is solely based on documents in the form of State Land Control Statements (*SPPTN*) in the names of individuals, namely Paita, Kerah, Hasanah, and Tekko, each with different land areas, but all issued on the same date, namely April 16, 1992, and issued and known only by the Head of *RT* and the Head of Karang Joang Village. The *SPPTN* was then used as the basis for the sale and purchase to Defendant II, Peri Munafri Nur, which was carried out only with a payment receipt, and without an authentic deed that is legally valid under national land law.

However, the Panel of Judges noted that the authority of the *RT* Head and *Lurah* in issuing *SPPTN* does not have a strong legal basis, especially in the context of formal recognition of the status of control or ownership of state land. It should be emphasized that based on the Indonesian land law system, as regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (*UUPA*), recognition of land rights requires formal proof through documents issued by the authorized land agency (in this case *BPN*) or at least with adequate administrative support from government elements above the sub-district or village level. In this case, there was no involvement of the Sub-district Head or other agrarian officials in issuing or knowing about the *SPPTN* in question, thus raising doubts about the validity and legality of the document as the basis for land rights.

On the other hand, the Opponent, in this case, Hj. Fitriani, submitted evidence of ownership that is legally more valid and stronger in terms of formality, namely in the form of; Deed of Sale and Purchase Agreement (P-5), Copy of Deed of Statement (P-6), Statement of Release of Land Rights (P-7), and Statement of Control of State Land Number: 35/SPPTM/KRJ/BU16/VII/88 dated 23 July 1988 in the name of Paita which has been legally transferred to Hj. Fitriani. The existence of these documents shows that the process of transfer of rights carried out by Pelawan has gone through a more orderly legal procedure and is in accordance with the principle of legality in land law. The Assembly also considered the fact of physical control of the land by Pelawan which was carried out continuously and in real terms, including by building a cow shed, planting rambutan and jackfruit trees, and installing a fence on the disputed land object. These activities show good

faith and continuous possession,³¹ which is in line with Article 10, Article 15, and Article 52 paragraph (1) of the *UUPA*, which in essence stipulates that every owner of rights to agricultural land is obliged to actively and directly cultivate, manage, and maintain their land.³²

The opponents have legally proven that the land ownership. The act was not only legally carried out in formal documents, but also empirically proven through physical control and use of the land for a long period of time. In the unlawful act (*onrechtmatige daad*), the Panel stated that Defendants I, II, and III had committed abuse of circumstances (*misbruik van omstandigheden*)³³ by submitting an execution application based on the Peace Deed and Peace Decision Number: 113/Pdt.G/2023/PN.Bpp, against the land object which is legally owned by the Opponent. This action legally fulfills the elements of an unlawful act as referred to in Article 1365 of the *Civil Code*, namely: The existence of an unlawful act, Losses³⁴ caused to another party (*Opponent*). There is a causal relationship between the act and the loss, and there is an element of fault on the part of the perpetrator (*Resistant*).

The submission of an application for execution against land owned by another party whose rights are legally more valid is an action that cannot be justified legally. The application not only causes material and immaterial losses for the Opponent, but it also reflects abuse of legal process, namely the use of legal procedures for purposes that deviate from justice and legal certainty. The Panel also rejected *petitum* point 9, which requested the immediate implementation of the decision (*uitvoerbaar bij voorraad*) because there was no urgent reason (*urgency*) that could justify the request for immediate execution, showing a cautious attitude and enforcement of the principle of a fair and proportional legal process.³⁵

Finally, based on Article 192 of the Regulation on Burgerlijke Rechtsvordering (*R.Bg*), the Panel sentenced the Defendant to pay all court costs because they were in a losing position, which was a logical consequence of the legal position of the parties in a civil case. With all the legal considerations above, the Panel stated that the Defendant's lawsuit was partially granted, and stated that Defendants I, II, and III had committed unlawful acts (*onrechtmatige daad*) and abused the situation (*misbruik van*

³¹ Mulida Hayati and Elin Sudiarti, "Ajaran Misbruik Van Omstandigheden Sebagai Alasan Hakim Dalam Memperbaiki Suatu Perjanjian (Analisis Putusan Pengadilan Negeri Palangka Raya Nomor 160 / Pdt . G / 2016 / PN Plk)," *Unes Law Review* 6, no. 3 (2024): 8503–11, <https://doi.org/https://doi.org/10.31933/unesrev.v6i3>.

³² Rafli Dwilianto et al., "Penegakan Hukum Yang Berkeadilan," *GARUDA: Jurnal Pendidikan Kewarganegaraan Dan Filsafat* 2, no. 3 (2024), <https://doi.org/https://doi.org/10.59581/garuda.v2i3.3761>.

³³ Mahsun Ismail, "Telaah Terhadap Konstruksi Proses Hukum Yang Adil Dalam Sistem Peradilan Pidana," *Jurnal Hukum Ekonomi Syariah* 1, no. 1 (2018): 99, <https://doi.org/10.30595/jhes.v1i1.3714>.

³⁴ Barnabas Dumas Manery, "Makna Dan Fungsi Itikad Baik Dalam Kontrak Kerja Konstruksi," *Sasi* 23, no. 2 (2018): 136, <https://doi.org/10.47268/sasi.v23i2.101>.

³⁵ Abdul Latif, "Jaminan UUD 1945 Dalam Proses Hukum Yang Adil," *Jurnal Konstitusi* 7, no. 1 (2016): 049, <https://doi.org/10.31078/jk714>.

omstandigheden).³⁶ However, this decision has not escaped criticism, especially regarding the judge's performance at the previous stage which appeared to be less than thorough when conducting a local review (*descente*). The judge did not appear to have dug up in-depth information from various relevant sources, such as testimonies from local residents, land administration history, or historical traces of land ownership. As a result, the Panel was "caught off guard" by granting the Defendants' lawsuit, which was later revealed to be part of a scenario engineered to take control of land that was not legally theirs. This negligence shows the weakness of the judge's prudence principle and investigative accuracy in digging up substantive facts, and shows how important integrity and thoroughness are at every stage of the case examination, including when in the field. Evaluation of this practice is important to encourage systemic improvements in the civil justice process, especially in agrarian cases, which are full of conflicts of interest and potential manipulation of evidence.

4. CONCLUSION

Based on the results of research and analysis of Decision Number 6/PDT.BTH/2024/PN BPP, it can be concluded that the actions taken by the Defendants, in the form of submitting an application for execution of the land object whose rights have been legally transferred to the Opponent, are a real form of unlawful acts (*onrechtmatige daad*) as regulated in Article 1365 of the *Civil Code*. These actions are not only contrary to formal legal provisions but also to the principles of justice, good faith, and norms of propriety that apply in society. The Defendants have been proven to have carried out control without a valid legal basis, ignored the legal process that had occurred previously, and abused legal procedures for illegitimate interests (*abuse of legal process*). The elements of unlawful acts are cumulatively fulfilled, namely the existence of an act, violation of the law, losses caused to the Opponent, a causal relationship between the act and the loss, and the element of error on the part of the Defendant. The panel of judges in this case has considered the normative, factual, and philosophical aspects in depth in assessing the actions of the Defendants. Based on the above considerations, it can be concluded that the judge correctly applied the elements of PMH, but the evaluation of the integrity and thoroughness of the examination process, especially at the *descente* stage, is an important reflection for improving the agrarian justice system in Indonesia

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³⁶ Sharon Clarins, "Penerapan Doktrin Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Dalam Putusan Pengadilan Indonesia," *"Dharmasisya"* 1, no. 4 (2021): 2143–58.

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