

Protection of Land Ownership Rights in Cases of Unlawful Acts

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Abstract

Land issues, especially those related to the control of cultivated land, are still a complex legal issue in Indonesia. Cultivated land is land managed by another party without certainty of rights, and has not been explicitly regulated in the Basic Agrarian Law Number 5 of 1960. Unlawful acts as regulated in Article 1365 of the Civil Code are the legal basis for demanding compensation for illegal acts such as control of land without permission. Although the legal basis for protecting land rights has been regulated in the Civil Code and the 1945 Constitution, in practice, legal owners often face administrative, socio-cultural obstacles, and weak law enforcement. This study uses a literature study method with a qualitative approach to examine these issues and alternative dispute resolution through civil law, summons, mediation, and arbitration. The complexity of overlapping national law, customary law, and regional regulations exacerbates legal uncertainty so that land rights protection is less than optimal.

Keywords: *Land Disputes; Unlawful Acts; Rights Protection.*

Introduction

Land disputes in Indonesia continue to increase over time, both in terms of quantity and legal complexity. One of the problems that often occurs is the control of cultivated land without a valid legal basis, where a certain party manages or controls a plot of land without the rights or permission of the legal owner. In this context, such control can be categorized as a form of unlawful act (*onrechtmatige daad*) as referred to in Article 1365 of the Civil Code.¹ This unlawful act not only causes material losses, but also creates legal uncertainty in agrarian societies.

¹ Abdulkadir, M. (2000). Indonesian civil law. Bandung: PT Citra Aditya Bakti.

In practice, the existence of cultivated land has not been explicitly regulated in the Basic Agrarian Law (UUPA) Number 5 of 1960, thus creating a legal vacuum in resolving agrarian conflicts.² On the other hand, the principle of the rule of law as stated in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution guarantees every citizen the protection and certainty of the law. Therefore, any action that violates land ownership rights must be resolved through the available legal mechanisms to guarantee justice and protection of citizens' constitutional rights.

Various previous studies have also raised the importance of strengthening the legal protection system for land rights. For example, Winarta emphasized the role of somation as an initial persuasive instrument in resolving land disputes,³ while Khairandy emphasized the importance of alternative dispute resolution such as mediation and arbitration.⁴ Research by Zuhro also shows that weak coordination between national law and customary law contributes to exacerbating agrarian conflicts which lead to legal uncertainty.⁵ Therefore, an in-depth study is needed on how legal protection of land ownership rights can be implemented effectively amidst the limitations of the legal system and its enforcement. This article aims to discuss the legal efforts that can be taken by legitimate land owners in dealing with unlawful land acquisition actions, as well as to analyze the various obstacles that occur in the implementation of such legal protection.

Research Method

This study uses a literature study method or literature study with a qualitative approach. This method is used to collect and analyze descriptive-narrative data, by referring to relevant legal literature sources.

²Murad, R. (1991). Settlement of legal disputes over land. Bandung: Mandar Maju Mundur.

³ Winarta, FH (2015). The role of summons in resolving land disputes. Journal of Law and Development, 45(2).

⁴Khairandy, R. (2016). Alternative dispute resolution. Jakarta: Rajawali Pers.

⁵Zuhro, S. (2019). Agrarian legal issues in Indonesia. Yogyakarta: UII Press.

Results and Discussion

1) Legal measures that can be taken by legal land owners in the face of unlawful acts

An unlawful act (*onrechtmatige daad*) is an act that is contrary to the law and causes harm to others. In the context of land, this act includes taking control of land without rights, destroying land boundaries, or other forms of violations that harm the legitimate landowner. Landowners have the right and obligation to take legal action to restore their property rights, in accordance with the principles of justice and legal certainty.

Common legal remedies are through civil lawsuits in court. Landowners can file a lawsuit for unlawful acts and a lawsuit for vacating the land to stop the violation and claim compensation for the losses suffered. This lawsuit aims to return control of the land to its owner and restore legal rights. If the lawsuit is granted, the court can order the defendant to vacate the land and pay compensation.

Before filing a lawsuit, the landowner can send a summons or legal warning letter to the violating party. This summons is a persuasive initial step and aims to resolve the dispute peacefully without going through the courts. In practice, summons is often effective, especially if the opposing party is willing to respond cooperatively.⁶ However, if the summons is ignored, litigation is a further option that can be taken.

In addition to court mechanisms, alternative dispute resolution such as mediation and arbitration (ADR) is also possible. Through mediation, the parties can sit together and seek an agreement with the help of a neutral third party. This process is faster and more cost-effective than litigation, and is more oriented towards deliberation. If mediation does not produce results, then arbitration or the court route remains an open option.⁷

⁶Winarta, FH (2015). The role of summons in resolving land disputes, *Journal of Law and Development*, 45(2).

⁷Khairandy, R. (2016). *Alternative dispute resolution*. Jakarta: Rajawali Pers.

The legal basis for this legal remedy can be found in Article 1365 of the Civil Code, which states that every unlawful act that causes losses must be compensated. Article 1367 of the Civil Code also strengthens the principle of responsibility of the parties involved in the unlawful act.⁸

On the other hand, if the unlawful act contains criminal elements such as property destruction, forced occupation, or document forgery, then the landowner can report the act to the police. This criminal law enforcement aims to impose sanctions on the perpetrators while strengthening the legal position of the landowner in the civil process. However, synergy between civil and criminal law enforcement needs to be coordinated so as not to cause legal conflicts.

In practice, legitimate land owners often face serious challenges in the process of defending their rights. One of the biggest obstacles is proving legal ownership, especially if land administration documents are incomplete.⁹ In addition, the lengthy and expensive legal process is a significant obstacle. Therefore, understanding the various legal channels and resolution mechanisms is very important for landowners to be able to fight for their rights effectively and efficiently.

2) Obstacles Faced in the Implementation of Legal Protection for Legitimate Land Owners in Cases of Unlawful Acts

The implementation of legal protection for legitimate landowners in the face of unlawful acts often encounters various complex obstacles. These obstacles come from interrelated legal, administrative, and socio-cultural aspects that affect the effectiveness of legal protection itself. One of the most crucial obstacles is the weak law enforcement in the field, where law enforcement officers, both the police and the courts, have not fully carried out their duties optimally in handling land disputes involving unlawful acts. This results in a slow and ineffective legal process, making it difficult for legitimate landowners to obtain justice in a timely manner.

In addition, there is a problem with legal proof of land ownership. Many landowners have difficulty proving their ownership rights due to incomplete

⁸ Civil Code, Articles 1365 and 1367.

⁹ Zuhro, S. (2019). Agrarian legal issues in Indonesia. Yogyakarta: UII Press.

documents or administrative disputes at the National Land Agency (BPN). This unclear ownership status opens up opportunities for other parties to commit unlawful acts such as forced land grabbing. This condition is very detrimental to legitimate landowners, because even though they actually control the land, it is difficult for them to obtain adequate legal protection without strong proof of ownership.

In addition to administrative constraints, another significant obstacle is the lack of legal understanding among the community, especially landowners, regarding their rights and the legal procedures that must be followed when facing unlawful acts. The lack of legal socialization and access to information results in many landowners being unable to take optimal legal action or even being unaware that their rights have been violated. This condition is exacerbated by limited funds and access to competent lawyers, making it difficult for landowners to fight for their rights in court.

Social and cultural factors also become obstacles in the implementation of legal protection. In some areas, land disputes are often resolved through customary or family means without involving formal legal processes. Although customary resolution can strengthen social relations, this method does not always guarantee fair legal protection for legitimate land owners, especially when there is an imbalance of power between parties. In addition, social pressure and intimidation against land owners who claim their rights legally also often occur, causing fear and hesitation to continue the legal process.¹⁰

Indonesia's complex and sometimes overlapping agrarian legal system is also one of the causes of obstacles in legal protection. The inconsistency between national law, customary law, and regional regulations creates legal uncertainty that makes it difficult to resolve land disputes effectively. As a result, legitimate landowners often experience confusion in determining the right legal path and face the risk of their rights being ignored due to conflicts in legal norms.

¹⁰ R. Soeroso, *Customary Law and Land Protection*, Bandung, Mandar Maju, 2018, pp. 102-104.

Overall, these obstacles require legal system reform and stricter law enforcement as well as increased legal understanding in the community. The government and related institutions must provide easy access to information, strengthen the land administration system, and ensure effective legal protection for legitimate land owners so that land rights can be optimally protected.

Conclusion

Legal landowners have the right to take legal action against unlawful acts that harm their property rights through civil lawsuits, summonses, and alternative dispute resolutions such as mediation and arbitration, based on Articles 1365 and 1367 of the Civil Code. However, the effectiveness of legal protection is often hampered by weak evidence of ownership, a suboptimal land administration system, low public understanding of law, and weak law enforcement. Therefore, integrated agrarian law reform, increased capacity of law enforcement officers, and legal education and easy access to dispute resolution mechanisms are needed to realize fair and effective legal protection for legal landowners.

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