

The Implementation of a Judge's Decision on Returning Disputes of Property Landrights Incondong Island (SULAH)

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ABSTRACT

This journal aims to learn and analyse the judge's consideration in deciding the dispute in Condong Island, also to find out the implementation of Condong Island cases on judge's decision number: 41/Pdt.G/2019/PN.KIA. the method of this research is using the juridical and normative approach by viewing legal problems as rules that are considered with normative juridical research where its carried out by studying the principles of law in undergraduate theory/opinion, as well as other related laws and regulation. The empirical approach is carried out by seeing and observing directly to the object of the research concerning the implementation of the judge's decision on the decision of Condong Sulah island case. The results of this research show that there has been a transaction between the plaintiffs according to the convention/reconvention defendant and defendant I, Defendant II, Defendant III/ Reconvention of defendants over the disputed land which located in the area of Tarahan village, Katibung district, south of Lampung regency, covering an area of 93,693 (ninety-three thousand six hundred ninety-three) square meters.

Key word: Implementation; Judges Rules; Cases Condong Sulah Island

INTRODUCTION

Indonesia called as an archaeology state, according to the existing data there are 17,508 (seventeen thousand five hundred and eight) island in Indonesia including the small and large islands, the main islands are Kalimantan, Irian or Papua, Sulawesi and Java. In addition, Indonesia is naturally called as an archipelago state, grammatically the word Indonesia comes from Greek terms, namely "Indos" which means "India" and "Nesos" which means island. The origin terms of Indonesia have a meaning of the Indian islands or island in Indian territory. Apart from being known as the largest archipelago state in the world, Indonesia also listed as a country with the second longest coastline after Canada.¹

There are groups of islands in Indonesia that are inhabited and some are not inhabited by humans, many of which have yet to be named. Generally, the island that occupied by humans

¹ Gamal Komandoko. (2010). Ensiklopedia Pelajar dan Umum, Yogyakarta : Pustaka Widyatama. p. 7

are large islands while the island that are not occupied usually the small islands where a natural resource is limited or not available to support the sustainability of human needs in the island, such as basic human needs where human needs plots of land to build a house (housing) and a place for daily living in the form of agricultural (non-housing). Initially, the human who inhabit in some islands lived in individually or in groups then cultivated it by farming. Clearing land in a certain place, including own an island as the beginning of the land ownership whether for individuals or groups, according to customary law the clearing of a land must be notified to the legal association and given a certain mark.²

Land has a big role in the dynamics of development, as stipulated under the 1945 Constitution Article 33 paragraph 3 states “the earth, water and natural resources contained therein shall be controlled by the state and are used maximally for the prosperity of the people”. The term “land” can be understood in various meanings, so the use of it needs to be defined in order to acknowledge the sense of the term. Under the land law, the term of a “land” is used in juridical sense, as a definition that legally defined by the basic agrarian law (UUPA). The basic agrarian law number 5 of 1960 stipulated the basic regulation of agrarian principles, the meaning and broad scope of agrarian law. Namely, the various laws that regulating the right of natural resources under the form of legal institutions and concrete legal relationship with natural resources, land law, water law, mining law and also governing mastery law (such as certain elements of space).³

The importance of land for human life is because human life cannot be separated from the ground. They live on the land and obtain food by utilizing the land. The history of its development or destruction is also determined by the land, land problems can cause terrible disputes because human or a nation wants to control the land of another person / nation because of the natural resources⁴.

Based on Article 4 of the Basic Agrarian Law (UUPA) stated that: “On the basis of the right to control of the State as mentions under Article 2, it is determined that there are various rights to the surface of the earth, which are called land, which can be given to and owned by people. people either independently or together with other people and legal entities”. Land is given to and owned by people with the rights provided by the Basic Agrarian Law (UUPA) to be used or utilized. The granting and ownership of land with these rights will not be meaningful if their use is limited to land as the surface of the earth. Regarding the land parcels, there is

² Mukhtar Wahid. (2008). *Memaknai Kepastian Hukum Hak Milik Atas Tanah*. Jakarta:Republika. p. 59

³ TutiSusilawati Kartadimadja. (2020). *Analisis Keabsahan Kepemilikan Tanah Oleh Orang Asing Di Indonesia (Studi-KasusNomor: 9/PT.G/2018/PN.SKB)*, PALAR.*Pakuan Law Review*, 6 (1), Januari 2020, 28-52, <https://journal.unpak.ac.id/index.php/palar>.

⁴ G. Kartasapoetra, A. Setiady. (1991) *Hukum Tanah (Jaminan UUPA Bagi Keberhasilan Pendayagunaan Tanah*. p. 1

arrangement under the government regulation which is the government regulation Number 16 of 2004 concerning the land use which is also pertains to the arrangement of small islands.

The high demand of a land arises disputes that are unavoidable this is occurred due to the limited availability of the land parcels. This demand the improvement of a land management and use for the community's welfare especially the certainty of the law. For this reason, various efforts have been made by the government, such as trying to resolve the land disputes quickly to avoid the accumulation of land disputes, which can harm the community, for example the land cannot be used because the land is in dispute⁵.

The island of Sulah, has an important area. The island is able to be used for fishing / pond activities, and the tourism area can also be used for higher interests, however it is related to the environmental issues, defense, and security or interests of local communities, especially fishermen and planters. While on the other hand, the island area of the island of Lean Sulah does not pay attention to the natural loss, either due to the coastal abrasion, drowning or loss due to the rising sea levels because of global warming or an earthquake which may cause tsunami or vice versa, it could be expanded due to the emergence of land arises due to sea waves.

One of the cases currently experienced by H. Raden Amirudin Bin Sulaiman Amancik, who sold the island of leaning sulah, and sold it to individuals or the community, that has created separate problems for both the selling and buying parties.

According to the facts, mentions that the land of the dispute object is currently controlled by Defendant I, Defendant II, Defendant III and although the Plaintiff states that he is the holder / maker of the entrance ticket for the inclined island / land of dispute object, however, this does not become an evidence which automatically proved that the person who hold/issuing the entry ticket of the dispute object as an owner, because it must be made according to existing regulations, namely through a certificate of ownership and this has been proven by Defendant I, Defendant II, Defendant III with certificate of ownership Number 313 / Tarahan covering an area of 19,285 (nineteen thousand two hundred and eighty five) square meters in the name of Defendant I, certificate of ownership Number 314 / Tarahan covering an area of 17,855 (seventeen thousand eight hundred and fifty five) square meters in the name of Defendant I, certificate Right of ownership Number 315 / Tarahan covering an area of 17,135 (seventeen thousand one hundred and thirty five) square meters in the name of defendant II, certificate of ownership number 316 / Tarahan covering an area of 19,980 (nineteen thousand nine hundred and eighty) square meters in the name of Defendant II, certificate of ownership number 317/

⁵ Lokollo, L., Patty, J. M., & Saimima, J. M. (2020). Penegakan Hukum Pidana Terhadap Penguasaan Tanah Yang Bukan Hak Milik Pasca Konflik Sosial. *Jurnal Belo*, 6(1), 101-125.

Tarahan covering an area of 19,435 (nineteen thousand four hundred and thirty five) square meters over name of Defendant III.

The Plaintiff cannot prove that he is the legal owner of the land object of the dispute or in other words, according to the Panel of Judges, the Plaintiff cannot prove that there is a default which can break the proof of issuance of the certificate of ownership based on invalid reasons; that from the evidence presented by the Plaintiff as described above in relation to one another, the Plaintiff cannot prove the arguments for his claims; Considering, therefore, that the Plaintiff's claim must be rejected.

Other problems that are no less important are related to the aspects of land management, including: (a) unclear arrangements for control and ownership of land, resulting in conflicts over tenure and ownership; (b) the whole land parcels have not been mapped; (c) conflicts over the use and utilization of the land; (d) there is institutional confusion between ministries / agencies and local governments; (e) the licensing mechanism for spatial use / land has not been synchronized with the processes for granting land rights.

METHOD

The method of this research is using the approach of normative juridical approach and empirical approach; the normative juridical approach is the approach by looking at legal issues as a rule that considered according to normative juridical research. This normative juridical research carried out by studying the principles of law in undergraduate theory / opinion, as well as other related laws and regulations. The empirical approach is carried out by seeing and observing directly to the object of research concerning the implementation of the Judge's decision in deciding the Condong Sulah Island Case (Study of Decision Number: 41 / Pdt.G / 2019 / PN.Kla).

ANALYSIS AND DISCUSSION

The Judges' considerations in deciding the case of Condong Sulah Island, study of decision Number: 41 / Pdt.G / 2019 / PN.Kla.

The Plaintiff is the first child born to a legal couple named Alm. R.Hi.Sulaiman Amancik Bin R.Hi.Entik Zainal Abidin and the late.Hj.Incik Hindun Rauf Binti Daeng Abdul Rauf. During his life, the Plaintiff's parents had assets in the form of a plot of land (Condong Sulah Island) covering an area of 93,693 (ninety-three thousand six hundred ninety-three) square meters with proof of ownership in the form of Land Certificate No.594.55 / XI / 01.6 / 1990 dated November,16 ,1990.

Whereas the contents of the Plaintiff's lawsuit constitute a lawsuit regarding default of non-payment of the land price (Condong Sulah Island) in the amount of Rp. 700,000.00 (seven hundred thousand rupiah) to the Plaintiff for the purchase of a land located in Condong Sulah Island, Tarahan Village, Katibung District, South Lampung Regency covering an area of 93,693 (ninety three thousand six hundred ninety three) square meters of the land, in April 2001 The plaintiff has made land certificate Number 594.5.01.6.2001 dated April 23, 2001, land certificate Number 594.6.01.6.2001 dated 23 April 2001, land certificate Number 594.7.01.7.2001 dated 23 April 2001, land certificate Number 594.5.01.8.2001 dated 23 April 2001, land certificate Number 594.9.01.6.2001 dated 23 April 2001 then made 5 (five) Minutes of Land Inspection and Statement of Village Elders which are all dated 23 April 2001 and around May 2001, the Plaintiff and Defendant I, Defendant II, Defendant III have agreed to buy and sell the land at a price of Rp. 1,100,000,000.00 (one billion and one hundred thousand rupiah) then the Plaintiff feels that Defendant I, Defendant II, Defendant III are paid Rp. 400,000.00 (four hundred thousand rupiah) and had not paid the remaining of Rp. 700,000.00 (seven hundred thousand rupiah) until now. All of the letters on behalf of the Plaintiff were issued 5 (five) Deeds of Sale and Purchase in the name of the Plaintiff. Co-made by Defendant I and 5 (five) certificates of ownership in the names of Defendant I, Defendant II, Defendant III made by Co-Defendant II, causing losses to the Plaintiff.

Whereas in the facts of the trial, it was found that the Plaintiff in his lawsuit could not argue that the Defendants committed the default act which is meant as default as regulated under Article 1243 of the Civil Code, which reads: , even though it has been declared negligent, it remains negligent to fulfil the agreement, or if something that must be given or done can only be given or done within a time that exceeds the stipulated time ". what it means by the elements of default are:

- a. There is an agreement by the parties;
- b. There is a party violating or not carrying out the contents of the agreement that has been agreed upon;
- c. Has been declared negligent but still does not want to carry out the contents of the agreement;

Considering, that based on the criteria of the default above, the Panel of Judge's opinion is that the actions of the Plaintiff who sold the land of the disputed object to Defendant I, Defendant II, Defendant III cannot be categorized as default because, according to the prevailing regulations in Indonesia the basis for issuing a certificate of ownership, one of which is a Sale and Purchase Deed, therefore the Panel of Judges considers the Reconstruction of the Defendants as follows: The Reconvension Plaintiffs / Defendants II, III, IV of the Convention have purchased the object of the dispute from Defendant I of the Convention;

1. That the purchase is valid and proven by a sale and purchase deed and then a certificate of ownership is issued;
2. Whereas the existence of this lawsuit has harmed the Reconvension Plaintiffs / Defendant II, III, IV of the Convention so that the Defendant I of the Convention is declared to have committed an illegal act;

Whereas Actions against the Law (*onrechtmatigedaad*) in a civil context are regulated under Article 1365 of the Civil Code which basically states “Every act that violating the law, which brings harm to others, obliges the person who due to his wrongdoing the loss to compensate for the loss” with the provisions in Article 1365 of the Civil Code, it can be said to be an act against the law if on an event there are:

- a) An act;
- b) The act is against the law;
- c) Losses for the victim;
- d) The causal relationship between acts against the law and losses;

The Reconvension Defendant / Defendant of the Convention is an unlawful act as argued by the Reconvension Plaintiffs / Defendants of the Convention, so a careful assessment must be carried out whether the actions of the Reconvension Defendant / Defendant of the Convention can be categorized as illegal acts which regulated under Article 1365 of the Civil Code. In relation to the provisions under Article 1365 of the Civil Code, an act can be categorized as an act against the law if the act is against the prevailing legal rules and or the legal obligation of the perpetrator, is against the subjective rights of others, is against morality, is against the existing principles of decency. in society;

based on the criteria for the unlawful act mentioned above, the Panel of Judges opinion is that the act of the Reconvension Defendant / Plaintiff of the Convention who had sold the land object of the dispute to the Reconvension Plaintiffs / Defendants of the Convention but it turned out that after the issuance of 5 (five) certificates of ownership it turned out to be the Reconvension Defendant. / The defendant of the Convention does not acknowledge that they have received a payment of money which causes a loss, which can be categorized as an illegal act.

Even though the Reconvension Defendant / Plaintiff of the Convention stated that he had never received the money for the sale of the land object of the dispute because in these letters there was evident that the signature of the Reconvension Defendant / Defendant of the Convention as an evident and even though in the trial, the Reconvension Defendant / Convention Defendant

reject it but the Reconvention Defendant / Plaintiff The Convention does not present evidence, either letters or witnesses, to refute it;

Considering, that because the act committed by the Reconvention Defendant / Plaintiff of the Convention can be said to be an illegal act, so that the second petitem can be granted;

Based on the matters described in the main considerations of the case above, the Panel of Judges opinion stated that there has been a sale and purchase between the Plaintiffs in the Convention / Reconvention Defendant and Defendant I, Defendant II, Defendant III / Reconvention Defendants on the land of the dispute object which located in Tarahan Village, Katibung District, South Lampung Regency, covering an area of 93,693 (ninety three thousand six hundred ninety three) square meters, which then made 5 (five) Sale and Purchase Deeds and 5 (five) certificates of ownership, namely certificate of ownership title Number 313 / Tarahan covering an area of 19,285 (nineteen thousand two hundred and eighty five) square meters in the name of Defendant I of the Convention / Plaintiff I of Reconvention, certificate of ownership number 314 / Tarahan covering an area of 17,855 (seventeen thousand eight hundred and fifty five) square meters in the name of Defendant I of the Convention / Plaintiff I Reconvention, ownership certificate Number 315 / Tarahan covering an area of 17,135 (seventeen thousand one hundred and thirty five) meters square in the name of Defendant II of the Convention / Plaintiff II of Reconvention, certificate of ownership number 316 / Tarahan covering an area of 19,980 (nineteen thousand nine hundred and eighty) square meters in the name of Defendant II of the Convention / Plaintiff II of Reconvention, certificate of ownership number 317 / Tarahan covering an area of 19,435 (nineteen thousand four hundred and thirty five) square meters in the name of Defendant III of the Convention / Defendant III of the Reconvention;

Therefore, based on the aforementioned matters, the third and fourth petitem of the reconciliation lawsuit can be granted, because the Reconvening Plaintiffs / Defendants of the Convention do not physically control it, the Reconvention Defendant / Defendant of the Convention and whoever controls the land to vacate and hand over the land that has been purchased to the Reconvention Plaintiffs / Defendants of the Convention in good and empty condition, so that the fifth petitem of the counterclaim can be granted.

Whereas based on the description above, the writer concludes that the Plaintiff in his lawsuit could not prove the truth of the contents of his claim by the reason that the Plaintiff's Lawsuit was rejected by the Panel of Judges and in the Reconvention Suit it was said that the Reconvention Defendant was originally a Plaintiff of the Convention having committed acts against the law in the aquo case in the Kalianda District Court.

The implementation of the Judge's Decision in deciding the Condong Island case, study of decision Number: 41 / Pdt.G / 2019 / PN.Kla.

The certainty of the law means there is a guarantee of law where the procedure and the legal event have a legitimate content, whether forceful or not, of the legal action or event before the law. Law which actually means not only written law but also includes unwritten law. A legal action is legitimate and protected by law as long as the procedure meets subjective and objective requirements, and is carried out in good faith, and is not against decency⁶.

From the civil dispute in the decision Number: 41 / Pdt.G / 2019 / PN.Kla. whereas the sale and purchase carried out between the Plaintiffs and the Defendants were transferring their rights based on sale and purchase. In the Civil Code itself, there are principles that must be adhered to in an agreement, one of which is the principle of good faith asisted under Article 1338 of the Civil Code, every agreement must be carried out in good faith.

Therefore, based on the process of buying and selling land between the Plaintiffs and the Defendants. The legal requirements for the sale and purchase of land according to customary law are that the seller and the buyer must meet the material and formal requirements. The material requirement is that the seller and buyer must be legal subjects according to the law of the land being traded. Meanwhile, the formal requirement is that the sale and purchase is carried out in front of the village head (customary head, but must be carried out in front of a Land Deed Making Official (PPAT). This is in accordance with the provisions of Article 37 paragraph (1) PP No. 24 of 1997 on land which is a material and formal requirement.

The material requirements are as follows: (1) Buyer is a person who has the right to own the land in question and has good intentions to purchase the said land. The buyer as the recipient of the rights must meet the requirements to own the land to be purchased. To determine whether or not the buyer is entitled to obtain the rights to the land he has purchased, it depends on what types of the land rights, whether ownership rights, rights to build or use rights. (2) The seller is the person entitled to the land to be sold. Those who have the right to sell the land are the owners and legal rights holders of the land. If the owner of the land is only one person, then he has the right to sell the land himself. Meanwhile, if the owner of the land is more than one person, then all of them are entitled to sell the land together. Not only one person may act as a seller without the power or approval of the other owner. (3) The land object in question can be traded and is not in dispute.

The formal requirements of the sale and purchase of land rights is the deed as proof of the sale and purchase agreement as well as the official authorized to make the deed. In the

⁶ Arba, The Making of Land Deed and the Registration of Land Rights Transition through the Inheritance by the Village Community and its Legal Implications (A Study in Sub District of Lingsar, the District of East Lombok). *UNRAM Law Review*, 4 (2), 160.

context of registering the transfer of rights, the formal requirements for the sale and purchase of land rights must be proven by a deed drawn up by and in the presence of the Land Deed Making Official (PPAT). As stipulated under Government Regulation No.24 / 1997, the sale and purchase is carried out in the presence of PPAT which will issues a sale and purchase deed, the deed as a condition to registering the land, at the Land office. Deed made by The PPAT constitutes or qualifies as an authentic deed. Based on the material conditions above, if one of the material conditions is not fulfilled, then the sale and purchase of land between the buyer and seller is considered invalid, null and void. As a result, it is deemed that the sale and purchase has never occurred between the buyer and the land rights that have been legally returned to its original state as before the sale and purchase took place.

Judging by the terms of the sale and purchase of a land, the sale and purchase of land between the Plaintiffs and the Defendants have met the material requirements, namely the sale and purchase of land. Thus, the acquisition of land rights was carried out by buying and selling between the Plaintiffs and the Defendants through the decision of the Kalianda District Court Number: 41 / Pdt.G / 2019 / PN.Kla. sale and purchase of land made before the Head of South Lampung Regency as the Official for Making Land Deeds as referred to in: Sale and Purchase Deed No: 24 / V / 2001 on 11 May 2001, Sale and Purchase Deed No: 25 / V / 2001 on 11 May 2001, Deed of Sale and Purchase No: 26 / V / 2001 on May 11, 2001, Deed of Sale and Purchase No: 27 / V / 2001 on May 11, 2001, Deed of Sale and Purchase No: 28 / V / 2001 on May 11, 2001 .

Declares the land as referred to in: Freehold Certificate M. 313 An. SuryadiAngga Kusuma (Defendant I) dated August 16, 2001, Freehold Certificate M. 314 An. SurayadiAngga Kusuma (Defendant I) dated August 16, 2001, Freehold Certificate M. 315 An. Jessica Windy (Defendant II) dated August 1, 2001, Freehold Certificate M. 316 An. Hand Pick (Defendant III) dated August 16, 2001, Freehold Certificate M. 317 An. Jessica Windy (Defendant II) dated August 16, 2001; located at the island of Condong Sulah, Tarahan Village, Katibung District, South Lampung Regency, is the property of the Plaintiffs.

The Convention / Defendants of the Convention; To order the Reconvention Defendants / Defendants of the Convention and anyone who has controlled the land to vacate and surrender the land that has been purchased by the Reconvention Plaintiffs / Convention Defendants to the Reconvention Plaintiffs / Defendants of the Convention in good and empty condition.

Therefore, the acquisition of land rights was carried out by buying and selling between the Plaintiff and the Defendants in the Sale and Purchase Deed of the Sale and Purchase Deed No: 24 / V / 2001 on 11 May 2001, the Sale and Purchase Deed No: 25 / V / 2001 on 11 May 2001, Deed of Sale and Purchase No: 26 / V / 2001 on May 11, 2001, Deed of Sale and Purchase No:

27 / V / 2001 on May 11, 2001, Deed of Sale and Purchase No: 28 / V / 2001 on May 11, 2001 Co-Defendant II is valid.

CONCLUSION

According to the Judges' considerations in deciding cases on Condong Sulah Island Decision Number: 41 / Pdt.G / 2019 / PN.Kla. The author concludes that the Plaintiff in his lawsuit cannot prove the truth of the contents of his lawsuit because the Plaintiff's Lawsuit was rejected by the Panel of Judges and in the Reconstruction Suit it was stated that the Defendant in the Reconvention Plaintiff had originally committed the Actions of the Lawsuit. The law in the aquo case at the Kalianda District Court, the judge's decision is that it is necessary to have evidence that must be submitted by all the plaintiffs in the trial, in order to accelerate the tourism in the sloping island the plaintiff must do his best in buying selling the land which is proved through the rights of a land as the formality requirement on sale and purchase transaction. It is including the deed as the proof of transaction, purchase agreement and a deed authorized by the official maker. In the context of registering the transfer of rights, the formal requirements for the sale and purchase of land rights must be proven by a deed drawn up by and in the presence of the Land Deed Making Official (PPAT). As stipulated under the Government Regulation No.24 / 1997, the sale and purchase is carried out before the PPAT which will issues a sale and purchase deed, the deed as a condition to registering a land, at the Land office. The deed made by PPAT is qualifies as an authentic deed.

The result of the discussion concerning the implementation of the Judge's Decision in deciding cases on Condong Island a decision studied Number: 41 / Pdt.G / 2019 / PN.Kla. are; first, the Kalianda District Court Decision Case Number: 41 / Pdt.G / 2019 / PN.Kla. Reject all of the Plaintiff's claim by considering the written evidence and testimony of the Plaintiff's witnesses which are contradictory and cannot prove the arguments of the lawsuit as well as the lack of evidence from the Plaintiff. The Defendant has legally controlled the Plaintiff's Land Ownership Certificate. Sale and Purchase Deed of Sale and Purchase No: 24 / V / 2001 dated 11 May 2001, Deed of Sale and Purchase No: 25 / V / 2001 dated 11 May 2001, Deed of Sale and Purchase No: 26 / V / 2001 dated 11 May 2001, Deed of Sale Buy No: 27 / V / 2001 dated 11 May 2001, Sale and Purchase Deed No: 28 / V / 2001 dated 11 May 2001, where the legal provisions of the agreement according to Article 1230 of the Civil Code fulfilled through the sale and purchase of land. And to punish the Reconvention Defendants / Defendants of the Convention and anyone who has controlled the land to vacate and surrender the land that has been purchased by the Reconvention Plaintiffs / Defendants of the Convention in good condition and vacant them on this matter in full.

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