



AJUDIKASI

Jurnal Ilmu Hukum

ajudikasi.unsera@gmail.com

e-jurnal.lppmunsera.org/index.php/ajudikasi

THE URGENCY OF LAND TENURE WITHOUT RIGHTS AS A RESULT OF WRONGFUL ACTS LAW

¹Nirwan Junus, ²Nurul Fazri Elfikri

Faculty of Law, State University of Gorontalo, Indonesia

Correspondent Email: nirwan.junus@ung.ac.id

Article History	:	
<i>Submission</i>	:	11 Sep 2024
<i>Last Revisions</i>	:	20 Nov 2024
<i>Accepted</i>	:	17 Des 2024
<i>Copyedits Approved</i>	:	30 Des 2024

Abstract

This research aims to learn more about land tenure without rights due to illegal acts. The research method used in this research is the empirical research method using a qualitative approach. The result of this research is that it is clear that both parties have agreed to exchange their land, which has been outlined in the minutes. The agreement occurs when an agreement is reached between the parties agreeing so that the perpetrator's actions are included as unlawful acts. The elements that are fulfilled are the existence of an action carried out by the perpetrator by continuing to control land that does not belong to him, the action must be against the law, and the action must cause harm to the heirs. Furthermore, compensation for ownership of land rights due to unlawful acts must compensate the person whose fault caused the loss, either in the form of money or in the form of returning to the original state. The amount of compensation depends on the size of the claim filed by the injured party. The size of the compensation fee is measured by looking at the object of the dispute, the grace period, and the costs incurred in deliberation efforts. However, until now, the perpetrator has no good faith to return or compensate for his actions.

Keywords: *Land tenure; against the law; urgency.*

A. INTRODUCTION

The land is a vital natural resource for humans. In addition, land is also a valuable wealth, and every year, it always has a selling value that never decreases. In the relationship between humans and land, not only is it a place to live, but also land provides resources for human survival. The existence of land is an important element for Indonesians, as emphasised by Van Dijk, namely, "land is the main capital, and for most Indonesians, land is the only capital." The founding fathers of this nation then realised this view through the formulation of Article 33, paragraph (3) of the 1945 Constitution.¹

In the scope of agrarian law, the land is part of the earth and is called the surface of the earth. The land in question is not land in one aspect but in a juridical sense called rights. Meanwhile, what is meant by land rights is the right to a specific part of the earth's surface. Land rights are intended to give authority to someone with the right to use or utilise the land.² Land as part of the earth has been regulated in Article 4 (1) of Law Number 5 of 1960 concerning Agrarian Principles, which states that "on the basis of the right to control from the state as referred to in Article 2, various kinds of rights to land from the surface of the earth, called land, have been determined. Land can be given to and owned by individuals, both individually and in groups and legal entities.

The UUPA has various kinds of land rights, namely property rights, business use rights, building use rights, use rights, rental rights, and rights to open land and collect forest products. Land ownership rights are very significant in fulfilling social needs in daily life. Along with the rapid population growth, the demand for land is also increasing by the community's expectations. The increasing number of residents will inevitably increase the importance of the position of land ownership rights.⁶ The ownership right in question is a right to land obtained hereditarily, the strongest and fullest so that people can own land. In connection with this, property rights to land can be proven through land certificates. Therefore, land registration activities are indispensable. Land registration is an ongoing activity by the government, starting with collecting, processing, recording, presenting and maintaining physical and legal information in maps and lists. The purpose of land registration is so that the parties, as holders of land rights, can easily prove that their land rights have been controlled and can strengthen ownership in this case for legal certainty.³

The regulations in the Basic Agrarian Law hold an important position because UUPA contains democratic values and the duty to regulate a civilised and socially just life. In this regard, it can be seen that the content of the UUPA is meaningful:

- 1) Land at the highest level is controlled by the state and used to the greatest extent for the prosperity of the people;
- 2) Excessive ownership or control of land is not justified;
- 3) Land is not a general economic good, so it cannot be bought and sold for profit;
- 4) Every citizen who owns or controls land must cultivate the land he owns and maintain it according to the principle of preservation of environmental quality and productivity of natural resources.⁴

¹ Putu Diva Sukmawati, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia," *Jurnal Ilmu Hukum Sui Generis* 2, no. 2 (2022): 89–102.

² Muhammad Arba, *Hukum Agraria Indonesia* (Sinar Grafika, 2021).

³ Indah Sari, "Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA)," *Jurnal Mitra Manajemen* 9, no. 1 (2020), <https://journal.universitassuryadarma.ac.id/index.php/jmm/article/view/492>.

⁴ H. Idham and M. Kn SH, *Konstitusionalisme Tanah Hak Milik Di Atas Tanah Hak Pengelolaan* (Penerbit Alumni, 2021)

The existence of land in human life cannot be separated from all human activities because the land is a place where humans can realize and continue living in the world. Currently, human needs for land are constantly increasing, and the availability of land is increasingly limited. The increase in human needs for land with the limited availability of land causes conflicts of interest in society, especially regarding the control of land rights.

Controlling or owning land can be done in several ways: buying and selling, leasing, inheritance, grants and expiration. Related to this, humans always try to control and own land. Efforts to obtain land can be made in various ways, as mentioned above. With the need for land rights, the state, based on the 1945 Constitution, has provided guarantees and protected citizens in obtaining, owning and enjoying property rights to land. However, in reality, it cannot be free from land disputes. Land disputes that often occur today are due to unlawful acts committed by irresponsible parties.⁵

An unlawful act is an act that is contrary to the law in the sense that it is contrary to the rights of others. An act is unlawful if it is contrary to an obligation prescribed by law, understood as a general binding rule made by a competent authority, specifically law in the sense of material law. In addition, an unlawful act is not only contrary to the law but also the doing or not doing of an act which has been held to be negligent of the rights of others and contrary to the obligations of the person doing or not doing, which has been held to violate decency or the precautionary principle.⁶

An unlawful act (*onrechtmatige daad*) is an act that is contrary to the rights of others, contrary to the legal obligations of the perpetrator or contrary to decency, the association of life against other people or an object. In contrast, anyone who, through his fault, causes consequences that can harm others is obliged to pay compensation. In the Civil Code, unlawful acts (*onrechtmatige daad*) are regulated in Article 1365, which states that for every act that violates the law and can cause harm to others, the person responsible must compensate for the loss.⁷

The existence of these unlawful acts can undoubtedly lead to land disputes in the community. A case of unlawful acts occurred in Pilohayanga Village, where a land dispute measuring 28 x 23 m² has occurred since 2008 until now. The dispute was caused by exchanging $\frac{1}{4}$ of the land with 1800 m² of land and the house on it. The land belonging to *Opa totu* was given to *Opa elu* with a note that the $\frac{1}{4}$ part belonged to *Opa totu*. Both parties have outlined the results of the exchange in the minutes.

The legal action related to the exchange (*ruislag*) in the case is an agreement in which the two parties bind themselves to give each other land reciprocally as stipulated in Article 1541 of the Civil Code, where between the two parties will later give birth to an agreement that provides rights and obligations for the parties.⁸ However, over time, one of the parties

⁵ Morrets Hendro Hansun, "Kajian Yuridis Peralihan Hak Atas Tanah," *Lex Administratum* 4, no. 1 (2016), <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/11107>.

⁶ Ratna Nur Pratiwi and F. U. Najicha, "Mengenal Macam-Macam Hak Atas Tanah Di Indonesia Sesuai Dengan UUPA," *Jurnal Hukum* 4, no. 2 (2021), https://www.researchgate.net/profile/Ratna-Nur-Pratiwi/publication/356283778_MENGENAL_MACAM_MACAM_HAK_ATAS_TANAH_DI_INDONESIA_SESUAI_DENGAN_UUPA/links/6194b22e07be5f31b78d577a/MENGENAL-MACAM-MACAM-HAK-ATAS-TANAH-DI-INDONESIA-SESUAI-DENGAN-UUPA.pdf.

⁷ Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2021), <https://journal.universitassuryadarma.ac.id/index.php/jihd/article/view/651>.

⁸ Gita Anggreina Kamagi, "Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya," *Lex Privatum* 6, no. 5 (2018), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/21369>.

in this case (*Opa elu*) began to control land that did not belong to him, namely the $\frac{1}{4}$ land, because the land had been agreed to be exchanged for 1800 m² of land and the house on it. *Opa elu* did not heed what had been agreed upon; in fact, *Opa elu* continued to control both the $\frac{1}{4}$ land and the 1800m² land. After controlling the land, *Opa Elu worked on his brother's land by planting cocoa, calamansi, coffee, mangoes, and jackfruit; until his brother died*, the land was still cultivated. Then *Opa elu* bequeathed the $\frac{1}{4}$ land to his son. Legally, this heir is no longer entitled to the $\frac{1}{4}$ land because it has been exchanged for 1800 m² of land, which is clearly stated in the official report. Then, the son sold the land to another person. The party then built a house on the disputed land and, over time, controlled the disputed land little by little by adding buildings so that the heirs who had rights to the land felt disadvantaged. Although various efforts have been made to date, the case has not been resolved because none of the parties to the dispute are willing to give in.

Based on the existing facts, the perpetrator's actions are not by Article 1541 of the Civil Code because an exchange/swap between the two parties will give birth to a relationship called an obligation, and the obligation is based on an agreed agreement. However, one of the parties violated what had become a collective agreement, so the perpetrator's actions were included as unlawful acts because they controlled other people's land without the owner's permission.⁹

The law's starting point is to create a sense of security for the parties. In this case, the theory used to solve this problem is the theory of legal certainty. According to Gustav Radbruch, legal certainty is a certainty in terms of the law itself. Legal certainty has four meanings, namely:

1. The law is positive, meaning that the law determines the law;
2. law based on facts;
3. facts must be disclosed to avoid misinterpretation;
4. Positive law should not be changed frequently.¹⁰

Thus, legal certainty can provide legal protection to the owner of land rights, clarifying who owns the land and ensuring the designation or location of the land.

B. RESEARCH METHODS

The research method used in this study is empirical legal research, which uses data collection techniques through direct observation and interviews with the litigants.¹¹

C. RESULTS AND DISCUSSION

Land Tenure Without Rights as a Result of Unlawful Acts

Land tenure without rights is an action carried out by a person or legal entity to use or enjoy land that is not his right without a clear basis for rights. It is often carried out through various methods contrary to applicable regulations. Most land-related cases are related to illegal acts, especially land tenure without rights. Land disputes arising from

⁹ Rauzatul Mulia, "Wanprestasi Dalam Ruislag Tanah Wakaf Pada Proyek Jalan Tol Sigli-Banda Aceh Dalam Perspektif Peraturan Perundang-Undangan Dan Hukum Islam" (Master's Thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta), accessed September 11, 2024, <https://repository.uinjkt.ac.id/dspace/handle/123456789/77831>.

¹⁰ Mohammad Muslih, "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)," *Legalitas: Jurnal Hukum* 4, no. 1 (2017): 130–52.

¹¹ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

these acts of unlawful possession can impact society.¹² Land disputes can occur due to a violation of an agreement between two or more parties. Problems often arise from acquiring land without legal rights, which is generally considered unlawful. Such actions are clearly against the law if the entitled party cannot benefit from the land another party has controlled. In addition, as a result of this act of unlawful possession, the landowner may lose ownership rights, which in turn causes losses to the owner of the land that the other party has seized.¹³

Article 1365 of the Civil Code outlines the legal basis for unlawful acts. This rule requires individuals who commit unlawful acts and cause losses to other parties to compensate for these losses. In addition to the rules in the Civil Code, regulations related to land tenure without rights are also enacted by the government. This provision is contained in Government Regulation instead of Law Number 51 of 1960, which prohibits using land without the rightful owner's permission or a person with authority. The provisions listed in Article 2 of Perpu No. 51/1960 state that land use must be based on the consent of the rightful owner or a party with official authority.¹⁴ However, in reality, there are many incidents where individuals control, occupy and acquire rights to land without consent, which is considered an "Unlawful Act". For example, a land dispute case in Pilohayanga Village involves a 28 x 23 m² of land that has been ongoing since 2008. The cause of this dispute is the result of a land swap in ¼ of the land involved vacant land with a total area of 1800 m². The vacant land belonging to *Opa totu* was given to *Opa elu* with a note that ¼ of the land belonged to *Opa totu*. Both parties have outlined the results of the exchange in the minutes.¹⁵

In this case, the legal transaction relating to exchange (*ruislag*) is an agreement between two parties to transfer land mutually. This provision is regulated in Article 1541 of the Civil Code, where later, both parties will be bound by an agreement that provides rights and obligations.¹⁶ However, over time, one of the parties, in this case, *Opa elu*, took possession of the land that was not his right, namely the ¼ share of land that should have been exchanged for 1800 m² of land based on the existing agreement. *Opa elu* did not heed what had been mutually agreed upon; in fact, *Opa elu* continued to control both the ¼ land and the 1800m² land. After controlling the land, *Opa Elu worked on his brother's land by planting cocoa, calamansi, coffee, mangoes, and jackfruit; until his brother died*, the land was still cultivated. Then *Opa elu* bequeathed the ¼ land to his son. Legally, this heir is no longer entitled to the ¼ land because it has been exchanged for 1800 m² of land, which is clearly stated in the official report. The son then sold the land to another person. As a further action, the other party began to build a house on the disputed land and gradually

¹² Resa Mahendra, Kairuddin Karim, and Muh Akbar Fhad Syahril, "Kajian Yuridis Terhadap Penguasaan Tanah Secara Melawan Hukum," *Jurnal Litigasi Amsir* 10, no. 4 (2023): 305–14.

¹³ R. Juli Moertiono, "Perbuatan Melawan Hukum Akibat Penguasaan Tanah Tanpa Hak (Studi Kasus Putusan Mahkamah Agung No. 1319 K/Pdt/2011)," *Jurnal Ilmiah METADATA* 2, no. 1 (2020): 1–21.

¹⁴ ELISABETH SIHOTANG, "ANALISIS HUKUM PENYELESAIAN SENGKETA TANAH YANG DIKUASAI SECARA MELAWAN HUKUM OLEH TERGUGAT," 2024, <https://repository.uhn.ac.id/handle/123456789/10712>.

¹⁵ Rizqy Rizqy and Syahrizal Syahrizal, "Tinjauan Yuridis Terhadap Perbuatan Melawan Hukum Dan Sanksi Nya," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 3, no. 2 (2019): 239–55.

¹⁶ Muhammad Ruen Wijokangko Wijokangko and Gunawan Djajaputra, "PERAN PEMERINTAH DAERAH DALAM MASALAH PERDATA TERKAIT SEWA-MENYEWAWA PRIBADI DITINJAU DARI PERATURAN PERUNDANG-UNDANGAN (PERATURAN PEMERINTAH PENGGANTI UNDANG-UNDANG NOMOR 51 TAHUN 1960 DAN KITAB UNDANG-UNDANG HUKUM PERDATA)," *Jurnal Hukum Adigama* 5, no. 1 (2022): 325–48.

expanded its control by adding additional constructions. The heirs who had ownership rights over the land felt aggrieved by this action. The party's actions fall under the category of Unlawful Acts because they do not meet the criteria set out in Article 1321 and Article 1541 of the Civil Code.¹⁷

According to the results of an interview with one of the heirs, since 2011, the party has been contacted regarding land tenure without rights, but there has been no settlement action from the party. It was clear that the disputed land no longer belonged to him. Because there was no settlement, the heirs finally submitted a report to the Pilohayanga village head to obtain mediation to resolve the dispute. In addition, the village head has mediated with the parties several times, but there has been no settlement between the parties, either the heirs or the party controlling the land.

Actions or omissions that violate the rights of others, the legal obligations of the perpetrator, or ethical norms and responsibilities in social interactions with other individuals and objects can be categorised as Wrongful Acts. According to Article 1365 of the Civil Code, a tort is an act that violates the law and causes harm to another person. As a result, the party causing the loss is obliged to provide compensation. A person's behaviour can be classified as an Unlawful Act if it steps on the rights of others, violates applicable legal obligations, contradicts moral norms, or disturbs public order. Actions that violate the law and contradict these standards are called Unlawful Acts. The components required to identify an action as an Unlawful Act are outlined below:

a. The existence of an act

Munir Fuady states that "tort" occurs without a valid agreement or contract and lacks the causality element recognised in treaties. Therefore, a "tort" can occur through an actual act or the willful negligence of not taking any action. In this context, "tortious conduct" can start from the act of a person taking possession of land to which he is not entitled.¹⁸ The act can manifest either through direct action or through negligence. Therefore, the existence of an action or omission to act by the perpetrator becomes the starting point of the implementation of "Unlawful Acts" 61; in this case, Opa's actions have fulfilled the first element, namely, *Opa elu* controls land that does not belong to him, the ¼ share of land that has been exchanged for 1800 m² of land. At the beginning of the agreement, the two agreed to swap.

b. The act must be against the law (onrechtmatig)

When an action meets the criteria of "tort", it is considered a "tort". This definition has two main components: "act" and "against the law", which are closely interrelated. "Against the law" describes the characteristics of the "act", so "against the law" functions as a description, while "act" acts as the underlying verb. The link between these two elements can be explained through two approaches, namely linguistic analysis, which demonstrates that "against the law" is a characterisation of an "act".¹⁹

In this case, the actions taken by *Opa elu* constitute Unlawful Acts, which can be seen from the violation of the agreement that has been agreed by both parties by the rules in Article 1320. The concept of Unlawful Acts is based on several criteria, including violation of legal obligations, violation of other individuals' rights, violation

¹⁷ Rai Mantili, "Tanggung Jawab Renteng Ganti Kerugian Immateriil Atas Perbuatan Melawan Dihubungkan Dengan Asas Kepastian Hukum," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 88–111.

¹⁸ Munir Fuady, "Perbuatan Melawan Hukum," *Bandung: Citra Aditya Bakti*, 2002.

¹⁹ Kamagi, "Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya."

of decency norms, and not in accordance with the principles of justice, accuracy and prudence. Therefore, this tort is usually characterised by an indication that the act is unlawful. In this case, the agreement violated was the exchange of $\frac{1}{4}$ of the land for 1800 m² of land. However, what had been agreed was violated by *Opa elu*. *Opa Elu* controlled the $\frac{1}{4}$ land and the 1800m² land by cultivating his brother's land by planting cocoa, palamanis, coffee, mangoes and jackfruit until his brother died. And then *Opa elu* bequeathed the $\frac{1}{4}$ land that no longer belonged to him to his son.

c. The act must cause harm

Losses that can be material or immaterial are included in the category of losses in "tort actions", in contrast to losses that are only material in cases of default. In the context of "tort", the Law does not explain the dimensions or types of losses covered.²⁰ Such losses, both tangible and intangible, are described as follows:

1. Intangible or immaterial losses include loss of trust from other parties, damage to one's reputation, and a decrease in self-esteem.
2. In contrast, examples of material loss include damage to property such as a home, loss of potential profits, and spending money on certain goods.

In this case, the perpetrator's actions caused harm to the heirs because *Opa elu* had bequeathed $\frac{1}{4}$ of the land to his son. Even though legally, *Opa elu* is no longer entitled to the $\frac{1}{4}$ land because it has been exchanged for 1800 m² of land, which is clearly stated in the minutes. In the context of Article 1365 of the Civil Code, it is outlined that individuals who commit acts that cause harm to others are responsible for recovering these losses. In the given case, the land that was originally divided among the children of the original owner was later sold by them to a third party. The purchasers not only erected houses on the disputed land but also gradually expanded their buildings, thus effectively taking gradual possession of the land. This situation caused harm to the heirs who held the Title Deeds, who felt their rights had been violated.

d. The act must be committed with fault

In order to avoid injustice to the accused individual, proof must be conducted to determine whether a tort has occurred. This is important because, without fault, legal liability cannot be imposed. Actions categorised as unlawful must fulfil the following criteria:

- a. The element of intent must be present;
- b. There must be an element of negligence; and
- c. There must be no reason that can justify or excuse the act, such as duress, self-defence, and so on.²¹

In this case, the actions taken by *Opa elu* show an element of fault and intentionality because *Opa elu* had agreed to exchange 1800m² of land with $\frac{1}{4}$ of his land, as recorded in the minutes. According to Article 1320 of the Civil Code, which sets out the requirements for the validity of an agreement, an agreement has binding legal force for the parties involved. As long as both parties agree to the agreement, it is considered their governing law. However, there is a case where *Opa Elu* continues to possess the 1800m² land and part of the $\frac{1}{4}$ land and has even passed it on to his

²⁰ Rivo Krisna Winastri, Ery Agus Priyono, and Dewi Hendrawati, "Tinjauan Normatif Terhadap Ganti Rugi Dalam Perkara Perbuatan Melawan Hukum Yang Menimbulkan Kerugian Immateriil (Studi Kasus Putusan Pengadilan Negeri Istimewa Jakarta No. 568/1968. G)," *Diponegoro Law Journal* 6, no. 2 (2017): 1–18.

²¹ Titin Apriani, "Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana," *Ganec Swara* 13, no. 1 (2019): 43–49.

descendants. This shows that despite the agreement, control over the land remains in *Opa Elu's* hands. Even though *Opa elu* and his heirs are no longer legally entitled to it, In addition, *Opa elu* has been negligent towards the agreed agreement because he still controls the two lands that have been exchanged and continues to be passed on to his children even though he has signed the minutes he made with *Opa to*.

e. There must be a connection between the act and the harm caused.

According to the provisions in Article 1365 of the Civil Code, the causal relationship arises from sanctioning actions that result in losses due to the negligence of the perpetrator. An act causes loss, or loss arises due to an act. The question here is whether the act caused the loss and to what extent it can be proven. All losses result from an act if there is a causal link between the two. A prerequisite for the occurrence of a tort is the existence of a causal link between the act performed and the loss that arises as a result.²²

Individuals or groups occupying other people's land without legal ownership can be seen as an unlawful act or possession of land without rights. Such occupation or taking of land violates established legal norms or rights. In addition, it is known that arbitrary actions in unauthorised control of land violate the law because they disregard the rights or Land Rights Ownership of others; an example is the takeover of a house or land that does not belong to the individual. Such acts are unauthorised acts of lawlessness.

Based on the land swap agreement that both parties have agreed, an agreement regarding the substance of the agreement has been successfully reached and recorded in the minutes of the agreement. Article 1320 of the Civil Code stipulates that an agreement is considered valid and has legal force from the moment an agreement is reached between the parties involved. This indicates that both parties have agreed to the land exchange, which legally confirms the agreement's validity. According to the provisions of Article 1541 of the Civil Code, it is understood that a land swap is an agreement that requires both parties to bind themselves to give goods to each other reciprocally in exchange for other goods.

Article 1545 of KUHPer explains that the agreement will become invalid if the goods agreed to be exchanged are lost without the owner's will. This shows that the two parties' legal subjects have obligations arising from the agreed exchange agreement. This provision also states that if one of the parties has completed its obligations, that party has the right to demand the return of the goods it has given. The legal consequences arising from the execution of the agreement create responsibilities for both parties involved in the agreement by Article 1545 of the Civil Code, which regulates obligations in exchange agreements. In the implementation of land exchange agreements, failure to fulfil obligations often occurs due to negligence or intent of one of the parties.²³

Losses incurred by dishonest and irresponsible parties due to this negligence are often referred to as default, also known as a breach of agreement, broken promise, or negligence. This default can occur for various reasons, such as negligence or bad intentions of one of the parties to the agreement that the two legal subjects have reached.⁶³ The default in an exchange agreement resulting in a dispute results from non-

²² Bing Waluyo, "Kajian Terhadap Perbuatan Melawan Hukum Berdasarkan Pada Pasal 1365 Kitab Undang-Undang Hukum Perdata," *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 24, no. 1 (2022): 14–22.

²³ JODI PAKPAHAN, "AKIBAT HUKUM PERBUATAN MELAWAN HUKUM DALAM MENGUASAI SEBIDANG TANAH SECARA TANPA HAK," 2023, <https://repository.uhn.ac.id/handle/123456789/9683>.

compliance made unilaterally, which results in difficulties in realising the agreement by the expectations or norms that have been set. The agreement, which is initially binding and valid, seems to have a position equivalent to the law governing the two parties involved. However, the existence of the default causes misunderstanding and loss.

The leading cause of this default is the absence of clear legal regulations supporting implementation guidelines or technical instructions that explicitly regulate the exchange of land located in two different regions or between regions when the ownership rights to land transition occur through an agreement or agreement. Based on these three fundamental principles, namely justice, benefit, and legal certainty, as Gustav Radbruch expresses, the primary purpose of the law is to create balance in every legal action for both parties. The absence of clear legal rules creates a risk for parties with bad intentions to ignore their obligations according to the agreed agreement, resulting in non-performance of the performance that should be given and harming the other party.

The economic approach to law proposed by scholars asserts that a just law must be efficient, and efficiency is one of the goals of law enforcement. Therefore, justice, benefit, and certainty must always be the basis of law enforcement to achieve these goals. In the context of legal certainty, Gustav Radbruch emphasised the importance of certainty as one of the main objectives of law. Uncertainty may occur when transferring Land Rights Ownership through an exchange agreement. This risk of uncertainty arises from the gap between the agreement's implementation and the agreement reached by all parties involved. Thus, transferring ownership rights over the land may face obstacles due to misalignment in implementing the agreed agreement.²⁴

This highlights the importance of ensuring that the exchange agreement is executed by the consensus that has been reached to guarantee legal certainty in the transaction. Legal uncertainty in an agreement can lead to default, where one party fails to fulfil its obligation to deliver the land as the agreed object of Land Rights Ownership. Inaccuracy in the implementation of matters regulated in the agreement, such as the failure to deliver land (levering), can lead to violations of the rights of other parties. This condition often ends in unlawful actions so that the injured party suffers losses. This breach of contract due to negligence or non-compliance illustrates the weaknesses in the agreement that lack a clear legal basis.²⁵

Given the increasing dependence of individuals on land, the importance of strengthened legal protection and legal certainty needs to be improved to prevent land disputes in the community. With the achievement of this situation, certainty of regulation and control in the transfer of ownership of land rights will be guaranteed. As a consequence of the above-mentioned problem description, this becomes crucial.

D. CONCLUSION

Article 1365 of the Civil Code states that anyone who commits an unlawful act that harms another person must compensate the victim for his or her harmful actions. In the case of Pilohayanga village, there was an agreement between two parties to exchange land. However, if one of the parties commits an unlawful act, the injured party has the right to

²⁴ Masrukhin Masrukhin, "Rekonstruksi Regulasi Tanggung Jawab Pelaku Usaha Dalam Rangka Mewujudkan Perlindungan Konsumen Yang Berbasis Nilai Keadilan" (PhD Thesis, UNIVERSITAS ISLAM SULTAN AGUNG, 2023), <http://repository.unissula.ac.id/id/eprint/31040>.

²⁵ Addina Sabyla Ahsanicka et al., "Kepastian Hukum Penyelesaian Wanprestasi Perjanjian Jual Beli Tanah Di Wilayah Kabupaten Badung Provinsi Bali," *Indonesian Journal of Law and Justice* 1, no. 4 (2024): 15–15.

claim compensation for the losses they suffered due to the unlawful act. There is no sign of goodwill from the perpetrator to return or compensate for the losses caused by his actions. However, Article 1365 of the Civil Code opens up the possibility of suing the party who committed an unlawful act, such as unlawful possession of land, which includes financial compensation and compensation in restoring the situation to its original condition. The amount of compensation is determined based on the size of the object of dispute, the period, and the costs incurred during the settlement process through deliberation at the village level.

REFERENCES

- Ahsanicka, Addina Sabyala, Nadira Fariza Sukma, Nadiyah Farhah Mashuri, Ruth Hanna Nainggolan, Shafira El Zahra, and Dwi Aryanti Ramadhani. "Kepastian Hukum Penyelesaian Wanprestasi Perjanjian Jual Beli Tanah Di Wilayah Kabupaten Badung Provinsi Bali." *Indonesian Journal of Law and Justice* 1, no. 4 (2024): 15–15.
- Ali, Zainuddin. *Metode Penelitian Hukum*. Sinar Grafika, 2021.
- Apriani, Titin. "Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana." *Ganec Swara* 13, no. 1 (2019): 43–49.
- Arba, Muhammad. *Hukum Agraria Indonesia*. Sinar Grafika, 2021.
- Fuady, Munir. "Perbuatan Melawan Hukum." *Bandung: Citra Aditya Bakti*, 2002.
- Hansun, Morrets Hendro. "Kajian Yuridis Peralihan Hak Atas Tanah." *Lex Administratum* 4, no. 1 (2016). <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/11107>.
- Idham, H., and M. Kn SH. *Konstitusionalisme Tanah Hak Milik Di Atas Tanah Hak Pengelolaan*. Penerbit Alumni, 2021.
- Kamagi, Gita Anggreina. "Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya." *Lex Privatum* 6, no. 5 (2018). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/21369>.
- Mahendra, Resa, Kairuddin Karim, and Muh Akbar Fhad Syahril. "Kajian Yuridis Terhadap Penguasaan Tanah Secara Melawan Hukum." *Jurnal Litigasi Amsir* 10, no. 4 (2023): 305–14.
- Mantili, Rai. "Tanggung Jawab Renteng Ganti Kerugian Immateriil Atas Perbuatan Melawan Dihubungkan Dengan Asas Kepastian Hukum." *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 88–111.
- Masrukhin, Masrukhin. "Rekonstruksi Regulasi Tanggung Jawab Pelaku Usaha Dalam Rangka Mewujudkan Perlindungan Konsumen Yang Berbasis Nilai Keadilan." PhD Thesis, UNIVERSITAS ISLAM SULTAN AGUNG, 2023. <http://repository.unissula.ac.id/id/eprint/31040>.
- Moertiono, R. Juli. "Perbuatan Melawan Hukum Akibat Penguasaan Tanah Tanpa Hak (Studi Kasus Putusan Mahkamah Agung No. 1319 K/Pdt/2011)." *Jurnal Ilmiah METADATA* 2, no. 1 (2020): 1–21.
- Mulia, Rauzatul. "Wanprestasi Dalam Ruislag Tanah Wakaf Pada Proyek Jalan Tol Sigli-Banda Aceh Dalam Perspektif Peraturan Perundang-Undangan Dan Hukum Islam." Master's Thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta. Accessed September 11, 2024. <https://repository.uinjkt.ac.id/dspace/handle/123456789/77831>.
- Muslih, Mohammad. "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)." *Legalitas: Jurnal Hukum* 4, no. 1 (2017): 130–52.

- PAKPAHAN, JODI. “AKIBAT HUKUM PERBUATAN MELAWAN HUKUM DALAM MENGUASAI SEBIDANG TANAH SECARA TANPA HAK,” 2023. <https://repository.uhn.ac.id/handle/123456789/9683>.
- Pratiwi, Ratna Nur, and F. U. Najicha. “Mengenal Macam-Macam Hak Atas Tanah Di Indonesia Sesuai Dengan UUPA.” *Jurnal Hukum* 4, no. 2 (2021). https://www.researchgate.net/profile/Ratna-Nur-Pratiwi/publication/356283778_MENGENAL_MACAM-MACAM_HAK_ATAS_TANAH_DI_INDONESIA_SESUAI_DENGAN_UUPA/links/6194b22e07be5f31b78d577a/MENGENAL-MACAM-MACAM-HAK-ATAS-TANAH-DI-INDONESIA-SESUAI-DENGAN-UUPA.pdf.
- Rizqy, Rizqy, and Syahrizal Syahrizal. “Tinjauan Yuridis Terhadap Perbuatan Melawan Hukum Dan Sanksi Nya.” *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 3, no. 2 (2019): 239–55.
- Sari, Indah. “Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA).” *Jurnal Mitra Manajemen* 9, no. 1 (2020). <https://journal.universitassuryadarma.ac.id/index.php/jmm/article/view/492>.
- . “Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata.” *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2021). <https://journal.universitassuryadarma.ac.id/index.php/jihd/article/view/651>.
- SIHOTANG, ELISABETH. “ANALISIS HUKUM PENYELESAIAN SENGKETA TANAH YANG DIKUASAI SECARA MELAWAN HUKUM OLEH TERGUGAT,” 2024. <https://repository.uhn.ac.id/handle/123456789/10712>.
- Sukmawati, Putu Diva. “Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia.” *Jurnal Ilmu Hukum Sui Generis* 2, no. 2 (2022): 89–102.
- Waluyo, Bing. “Kajian Terhadap Perbuatan Melawan Hukum Berdasarkan Pada Pasal 1365 Kitab Undang-Undang Hukum Perdata.” *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 24, no. 1 (2022): 14–22.
- Wijokangko, Muhammad Ruen Wijokangko, and Gunawan Djajaputra. “PERAN PEMERINTAH DAERAH DALAM MASALAH PERDATA TERKAIT SEWA-MENYEWAWA PRIBADI DITINJAU DARI PERATURAN PERUNDANG-UNDANGAN (PERATURAN PEMERINTAH PENGGANTI UNDANG-UNDANG NOMOR 51 TAHUN 1960 DAN KITAB UNDANG-UNDANG HUKUM PERDATA).” *Jurnal Hukum Adigama* 5, no. 1 (2022): 325–48.
- Winastri, Rivo Krisna, Ery Agus Priyono, and Dewi Hendrawati. “Tinjauan Normatif Terhadap Ganti Rugi Dalam Perkara Perbuatan Melawan Hukum Yang Menimbulkan Kerugian Immateriil (Studi Kasus Putusan Pengadilan Negeri Istimewa Jakarta No. 568/1968. G).” *Diponegoro Law Journal* 6, no. 2 (2017): 1–18.