



# Juridical Analysis Regarding The Settlement of Land Disputes of The Heirs with The Government (Verdict Number: 2862/K/Pdt/1994)

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## Abstract

Land is a very important role in the community. In Indonesia, the problem of land is quite common, and it is referred to as land disputes in court. Land disputes are issues that occur between people or legal organizations and institutions that do not have a large socio-political impact. Researchers analyze further with the problem raised, which are the document can evidence of ownership of land be won in court, and judge's consideration in determining land disputes in Verdict Number: 2862.K/Pdt/1994. The sort of analysis that the researcher employs is normative juridical in nature. The intention of this analysis is to find what constitutes evidence of ownership of land rights, under the norms of law. As well as the judge's conclusion in court disputes, using legal sources such as No. 5 of 1960, PP No. 10 of 1961, and PP No. 24 of 1997. This study concludes that to win land disputes in court, physical possession with a period of more than 20 years in good faith, accompanied by written evidence such as a letter of evidence from the headman of the village.

**Keywords:** Land Dispute; Proof of Land Ownership; Cultivation Rights; Judge's Decision.

## 1. Introduction

The land is a site of human habitation, a place for doing any activities, it plays an important role and is meaningful in human daily life and activities. Despite lands having an economic value, and allocated as a future source of sustenance for human life. Discussing land, can't be denied that there is a conflict due to land tenure. Many people that are trying to take over the land that belongs to others and resulted in a continued conflict, usually come to the realm of trial in court. The minister of agrarian affairs and national land agency (ATR/BPN) cases involving land disputes in Indonesia, there are 9.000 cases in court, making it the country's biggest land conflict. Based on Indonesian law about the land dispute issues, it can be overcome with various solution, through a various judicial institution such as the general court, PTUN, or dispute settlement that takes place outside of the courtroom, such as mediation, arbitration, as well as settlements carried out with customary institutions,

and the method of resolving court land disputes is through the National Land Agency (BPN). The land cases which usually happened are the status of the land itself, the cases of the ownership of the land, and the problem of proof of acquisition which is the basis for granting rights to the land<sup>1</sup>.

Land dispute is a dispute that occurs between individuals or legal entities and institutions that do not have a broad socio-political impact. People generally know the dispute is the ownership problem between two sides, which generally happens because they claim each other's land authorization. In the juridical analysis regarding the ownership of Land Rights from the Heirs. Researchers arrange the problem formulation as follows :How is the evidence of land ownership that can be won in a court case And what is the basis for the judge's consideration in deciding land disputes in cases number: 2862.K/Pdt/1994.

A theoretical framework is required as a framework for discussing difficulties in research. In addition, the author employs the idea of legal certainty and the philosophy of dispute resolution in examining the concerns presented in the title. Legal certainty is the objective of object certainty, rights certainty, and subject certainty, according to Budiman Adi Purwanto.<sup>2</sup> Legal certainty can be seen as a sign on land that acts as a land boundary sign. And he has the ability to act on his property because of the certainty of his land rights. As long as it is legal and does not infringe on the rights and interests of others, it is permissible.

The theory of dispute resolution also seeks to restore the land to its original state, and dispute resolution can be carried out through the courts, and ADR (Alternative Dispute Resolution). According to Richard Abel, a dispute is a statement that discusses claims that are inconsistent with something of value.

Based on the explanation above, researchers are considering proposing a thesis with the title "Juridical Analysis Regarding the Settlement of Land Disputes of The Heirs With The Government (Verdict Number: 2862/K/Pdt/1994)." In the juridical analysis regarding the ownership of Land Rights from the Heirs. Researchers arrange the problem formulation as follows :How is the evidence of land ownership that can be won in a court case? And what is the basis for the judge's consideration in deciding land disputes in cases number: 2862.K/Pdt/1994. With the formulation of the problem above, writers has the purpose as follows To know anything that is proof of ownership of land rights in accordance with the provisions of the law and to know the decision of the Panel of Judges in the matter of disputes in court.

## 2. Methods

Basically, research is a tool used to search, and observe an object to improve and modify knowledge and an object. This research creates an object using scientific methods to address issues and to investigate the truth by gathering existing data. The

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<sup>1</sup>Endang Sri Wahyuni. 2015." Penyalahgunaan Wewenang Oleh Lurah Dalam Membuat Surat Keterangan Tanah Yang sebagai Alas Hak Atas Tanah Berdasarkan Surat Edaran Menteri Dalam Negeri NOMOR 593/5707/SJ TAHUN 1984", hlm 5.

<sup>2</sup>DjokoPrakosodanBudiman Adi Purwanto.1999.Eksistensi PronaSebagaiPelaksanaMekanisme FungsiAgraria.Jakarta: Ghalia. Hlm. 71

researcher's research technique consists of the following The type of research used is normative juridical. Normative juridical is a data collection technique that is a literature study whose sources come from books, laws, and related writings. The source of legal material used is secondary data, which is collecting data that has existed before, such as books, laws and regulations, and related writings. Primary Legal Materials founded on legislation is UUPA No. 5 of 1960, PP No. 10 of 1961, PP No. 24 of 1997, Secondary Legal Materials that provide explanations of primary legal materials, such as articles, laws, and Tertiary Legal materials discuss secondary legal materials and primary legal materials, such as in Bahasa

Research writing uses data collection methods to get data and information from libraries. The technique of library research is for researchers to analyze diverse library items with cases of research-related difficulties. The data that has been obtained and collected will then be analyzed qualitatively. The author chooses research that includes legal laws that control and debate land conflicts, and then does a systematic review of the articles that have been chosen, generating a categorization that is in agreement with the difficulties in the study and explanation.

### **3. Result an Analysis**

#### **3.1 Proof Of Land Ownership**

In the problems of a land dispute in court, proof of ownership including as evidence is necessary. Evidence is something related to the problems that occur, where evidence can be used as evidence that creates confidence in the Panel of Judges on the truth and proof of ownership of the land in the case. The following is proof of ownership of land that can be used as evidence that can be proven in court.

##### **a. Physical Control**

Physical control of land for many years and continuously and in good faith can also give new rights to the land. In PP No. 24 of 1997 article 24 paragraph 2 has stated that land rights are for someone who has cared for/guarded the land for a period of 20 years or more, has open good faith, is strengthened by testimony from a trusted person, and is not disputed by the community.

A letter of evidence from the headman of the village in the presence of witnesses. A person who legally controls a land for 20 consecutive years without any claims from other parties, has the right to apply for recognition of land rights.

##### **b. Transferring Land Inheritance**

Transferring land rights transferred by the previous right holder to another person or a new owner of a legal event can result in the new owner receiving legal ownership rights. The transfer of land rights from the previous owner, the new owner can be done by switching and being transferred. The transfer of land rights is also based on Government Regulation no. 24 of 1997.

The transfer of land is legal. The transfer of land rights refers to the transfer of land rights through activities such as purchasing and selling land, auctions, and grants, while the transfer of land is the transfer of land rights without any actions carried out by the previous landowner. Inheritance refers to the transfer of land rights by the owner without the use of legal means.

Indonesian civil code article 832 states that heirs who are entitled to receive the inheritance are the transfer of land rights from the old owner to the new owner who is designated as the heir and inheritance also occurs because of the provisions in the law. in this case, also regulated in PP No. 24 of 1997 in article 36.

**c. Indonesian Civil Code**

The legal evidence according to the civil law article 1866 in Indonesian Civil Code.

Article 1866 Burgerlijk Wetboek :

1) Written evidence

Written evidence might be in the form of a letter or a deed, which is the most important element in civil procedural law since civil procedural law requires a formal proof. Written evidence is really important as evidence in the trial as a rebuttal of the argument of the lawsuit that has been given to the plaintiff or the defendant. The existence of original letters or supporting documents is very important in the court and can be considered for the Panel of Judges.

2) Witnesses

Witnesses who will testify before a panel of judges in order to strengthen the events that have been argued at trial. The testimony of one witness in front of the court can not be trusted as long as there is no other evidence support, according to the article 1905 in Indonesian Civil Code (*KUHPerdata*) contains "In court, a witness' testimony on its own, without any other forms of proof, cannot be trusted". Witnesses who can attend the court at least two or more adults and are legally capable because the quality of testimony from witnesses is considered very carefully, what the witness saying of how the witness know the problems, the source of the witness' knowledge of the issue, and the witness must explain his testimony properly so that the Panel of Judges will accept it. According to article 1907 Indonesian Civil Code the testimony of a witness cannot be accepted if it comes from his suspicions, thoughts, or opinions.<sup>3</sup>

3) Presupposition

In article 1915 of the Indonesian Civil Code, there are two kinds of allegations. The following is an explanation of the two assumptions:

a) Prejudice according to law

Article 1916 of the Indonesian Civil Code regulates this presumption, which is determined in line with special regulations and is linked to certain activities.

b) Prejudice that are not based on the law

The Panel of Judges has the authority to assess an allegation based on reality in this supposition. Article 1922 of the Indonesian Civil Code and article 173 of the HIR both regulate this accusation.

4) Recognizance

<sup>3</sup><https://litigasi.co.id/hukum-acara/6/jenis-alat-bukti-dalam-hukumacaraperdata> (diakses pada tanggal 20 Maret 2021 pukul 12.50)

In Article 1923 of Indonesian Civil Code, Recognizance is evidence of a statement or statement conveyed by one party to another party in the examination process at a trial conducted before the Panel of Judges, the acknowledgment contains information about what is argued by the opponent.

5) Oath

In the civil trial, the panel of judges can decide on a basis of sufficient evidence and decide on the basis of sufficient evidence (preponderance of evidence). It can be said as evidence that is said to be sufficient, it has several qualifications that have quite binding and perfect proof power.<sup>4</sup>

According to PP No. 24 year 1997 said that if someone has controlled the physical property of a land for a period of 20 years can continuously register himself as the legal owner of the land.

6) UUPA (*Basic Agrarian Law*)

According to Basic Agrarian Law (UUPA) Law no. 5 of 1960, proof of land ownership might be in the form of a certificate of land history, which is one of the written evidence<sup>5</sup>. Land Ownership Certificate ("SKT"), according to the Minister of Agrarian Affairs and Spatial Planning/National Land Agency, is a land history. If the right is transferred, the proof of consecutive transfer of rights must be sent to the right holder, and the right must be documented<sup>6</sup>.

### 3.2 Judges' Considerations in Deciding Land Disputes in Decisions Reg.No.2862 K/Pdt/1994.

#### a. Judges consideration

According to the supreme court the decision of Medan high court was incomplete or inaccurate so that it required improvements, namely:

Whereas, based on the Plaintiff's evidence, the Supreme Court believes that the original plaintiff is a cultivator, not an owner, of the disputed land. Because the Basic Agrarian Law does not control cultivation rights, the original plaintiff's request must be dismissed.

Whereas the Plaintiff's evidence has been proven, proving ownership, but the original Plaintiff has worked on the disputed land for years as a cultivator, the original Plaintiff is fair if compensation is given in the amount of Rp. 500.000.000 (five hundred million).

In consideration of the above considerations, then the cassation application that has been submitted by the cassation applicant: *Pemerintah Republik Indonesia Cq. Menteri Dalam Negeri Cq. Gubernur KDH.TK. I Sumatera Utara Cq. Walikota madya Tk. II Medan* must be rejected by amending the decision of the Medan

<sup>4</sup><https://manplawyers.co/2019/1007/mengenal-alat-alat-buktidalamhukumacara-perdatai/#:~:text=Alat%20Dalat%20bukti%20yang%20sah,pengakuan%2C%20sumpah%2C%20persangkaan%20hakim.> (diakses pada tanggal 24 Maret 2021 pukul 21.30)

<sup>5</sup>[https://www.hukumonline.com/klinik/detail/ulasan/lt591d53cb37b54/surat-kepemilikan-tanah-atau-surat-keterangan-riwayat-tanah/#\\_ftn1](https://www.hukumonline.com/klinik/detail/ulasan/lt591d53cb37b54/surat-kepemilikan-tanah-atau-surat-keterangan-riwayat-tanah/#_ftn1)(diakses pada tanggal 25 Mei 2021 pukul 13.50)

<sup>6</sup>[https://www.hukumonline.com/klinik/detail/ulasan/lt591d53cb37b54/surat-kepemilikan-tanah-atau-surat-keterangan-riwayat-tanah/#\\_ftn2](https://www.hukumonline.com/klinik/detail/ulasan/lt591d53cb37b54/surat-kepemilikan-tanah-atau-surat-keterangan-riwayat-tanah/#_ftn2)(diakses pada tanggal 19 April 2021 pukul 19.30)

High Court dated January 29, 1994 No. 366/pdt/1993/PT.Mdn. The rulings are as follows: Taking into account the articles of Law no. 14 of 1970 and Law no. 14 of 1985 concerned.

#### **ADJUDICATE**

Rejecting the cassation request from the cassation applicant: PEMERINTAH REPUBLIK INDONESIA Cq. MENTERI DALAM NEGERI Cq. GUBERNUR KDH. TK. I SUMATERA UTARA Cq. WALIKOTAMADYA Tk. II MEDAN with the improvement of the decision of the Medan High Court dated January 25, 1994 No. 366/Pdt/1993/PT.Mdn so that the order reads as follows:

- a) Partially granted the Plaintiff's claim;
- b) Sentencing Defendants I, II, III, and IV jointly and severally to pay compensation in the amount of Rp. 500,000,000 (five hundred million rupiah) in cash to the Plaintiff;
- c) Reject the Plaintiff's claim in part
- d) Sentencing the original Respondent for cassation I/Defendant I, the original Petitioner of cassation/Defendant II, Co-Defendant of cassation III/Defendant IV of the origin jointly and severally paying court fees at all levels of justice and at the level of cassation

#### **b. Author's Analysis**

In this judgment, the author contends that the Panel of Judges' decision is unjust and improper since the Panel of Judges only accepts a portion of the plaintiff's request. However, the Panel of Judges was correct in determining that the High Court's ruling was incomplete. According to A.M. Donner, if one of the requirements in the prior decision was not met, the judge did not decide whether the unmet condition was a significant or minor flaw that influenced the conclusion. Inadequate implementation of these regulations may result in:

- 1) The stipulation is considered null and void
- 2) Enactment of the provisions that can be challenged in:
  - a) Submission of appeal (beroep)
  - b) Cancellation of office (ambtshalve vernietiging) because it is contrary to the provisions of the law
  - c) Withdrawal (intrekking) by the competent authority to issue the decision
- 3) If a provision requires the permission of a higher state agency before it may be implemented, the approval is not granted.
- 4) The edict is given a new function in addition to its original one<sup>7</sup>.

The judges further observed that the plaintiff had held the physical land for 20 years without compensation, and the plaintiff also possessed Land Certificate No. 370/PT/63 dated July 25, 1963 issued by the head of the village, which may be used as proof of possession of the land.

#### **4. Conclusion**

- a. To win the land dispute in court, physical control with more than 20 years of good faith, and followed by proving tools written such as a letter of evidence from the headman of the village.

<sup>7</sup>SutediAdrian, *Sertifikat hak atas tanah* (Jakarta: Sinar Grafika, 2011), hlm.240

- b. According to the supreme court the cultivator of the disputed land is not the owner of the land, and the cultivation rights are not regulated by UUPA, but if cultivation have in good faith by guarding the disputed land for many years, the cultivator is thus treated fairly if he receives remuneration of Rp.500.000.000 (five hundred years).

## 5. Reference

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