

## Judge's Considerations in the Case of Claims for Property Rights Certificates which have been Canceled Without the Knowledge of the Legal Owners at the Tanjungkarang District Court (Decision Study Number: 101/Pdt.G/2021/PN.Tjk)

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### Abstract

Land is the surface of the earth while land rights are rights over a certain portion of the earth's surface which is bounded, has two dimensions with length and width. The factors causing the lawsuit for the Property Rights Certificate which was canceled without the knowledge of the legal owner at the Tanjungkarang District Court Study of Decision Number 101/Pdt.G/2021/Pn Tjk, there are 3 main factors namely: the factor of unlawful acts committed by the Defendants, Factors the two Plaintiffs suffered losses in the form of material and immaterial losses, and the last factor was the existence of a causal relationship between the parties in which the co-defendant had deliberately issued SHM No. 511 which still contains an ownership dispute between the Defendant and the Plaintiff. The consideration of the panel of judges in the lawsuit for a Property Rights Certificate which was canceled without the knowledge of the legal owner at the Tanjungkarang District Court Study of Decision Number 101/Pdt.G/2021/Pn Tjk is that the Plaintiff's lawsuit has not can be used as a reference for the Panel of Judges to examine the lawsuit material because there is still a shortage of parties in this case.

**Keywords:** Judge's Consideration, Certificate, District Court.



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### INTRODUCTION

Land is the surface of the earth while land rights are rights over a certain portion of the earth's surface which is bounded, has two dimensions with length and width. Land is very closely related to humans because it has economic value for all aspects of human life in creating prosperity and well-being. Many people are competing to master and own a piece of land. Therefore, it is not surprising that many people do everything they can to own and control land, which also creates land problems, such as misusing a piece of land and breaking promises that can trigger disputes between people.

According to the Big Indonesian Dictionary, the right is the right power over something or to demand something. Property rights are interpreted as the strongest rights among the existing rights, in Article 570 of the Civil Code (hereinafter abbreviated as the Civil Code), these property rights are formulated that property rights are rights to enjoy the use of an object, with sovereignty, as long as it does not conflict with laws or general regulations stipulated by a power that has the right to arrest them, and does not interfere with the rights of other people.

In the Basic Agrarian Law (hereinafter abbreviated as UUPA) all land rights have a social function (Article 6 UUPA). it belongs to all that is on it and in the ground. However, in some cases property rights can be canceled due to violation of statutory provisions, while the cancellation can be filed by a party who feels aggrieved by the issuance of a legal basis such as a Certificate of Property Rights. The cancellation must go through a court mechanism and the party who has the certificate must be involved in the trial process, otherwise the cancellation of the certificate can be said to be formally or materially flawed because it does not attract

interested people to the trial. For example, as in the Tanjungkarang District Court Decision Number: 101/Pdt.G/2021/PN Tjk where the Plaintiff is the legal owner of a plot of land located in the Korpri Housing Complex Block G 2 Number 10, Jl. Major General Ryacudu, Korpri Jaya Village, Sukarame District, Bandar Lampung City with an area of 600 m<sup>2</sup> (six hundred square meters) as based on the Deed of Sale and Purchase Number 142/20/S/1994 made before Notary/PPAT Jenmerdin, S.H. dated December 1, 1994 and/or as before based on Certificate of Property Rights Number 10045 in the name of Meliana Tjandra.

The Plaintiff has owned and controlled the Plaintiff's Land since 1994, in which the Plaintiff obtained ownership of the aquo land, namely based on the history of buying and selling from Mr. Charman Hoesin, on December 1, 1994 according to the Deed of Sale and Purchase Number 142/20/S/1994 made before Notary/PPAT Jenmerdin dated December 1, 1994 (hereinafter referred to as "AJB Number 142/1994") which has been legally registered and recorded at the Office National Land Agency/Bandar Lampung City Land Office. So that in this case, the Plaintiff has continuously controlled and occupied the Land for more than 20 (twenty years) since it was purchased and reversed the name of Mr. Charman Hoesin.

As for the Defendants, namely the heirs of (Almh.) Yuliatun who in 2003 had filed a lawsuit at the Bandar Lampung State Administrative Court, which was later canceled by the Co-Defendant as many as 31 (thirty one) of the canceled certificates including the Plaintiff's Property Rights Certificate namely Certificate of Ownership Number 10045 in the name of Meliana Tjandra (hereinafter referred to as "SHM No.10045"), which in fact the Plaintiff did not know because the Plaintiff did not receive any information, summons and/or notification regarding a lawsuit from (the late .) Yuliatun, so that the Plaintiff was unable to defend himself as an intervening party in the a quo lawsuit, which in the end the Plaintiff received news that SHM No. 10045 had been canceled by the Office of the National Land Agency/Bandar Lampung City Land Office.

After the Plaintiff's Certificate of Ownership was canceled In March 2020, the Defendants asked the Plaintiff to vacate and/or stop control of the Plaintiff's land, at which point the Defendants and their representatives unlawfully carried out forced physical control and damaged fences and property the Plaintiff's property (car, cctv) then the Defendants built concrete panels along the west (front) side of the Plaintiff's land, so they could not enter the building or house built by the Plaintiff.

## **RESEARCH METHODS**

This research uses the type of normative juridical legal research, namely by examining various literature that is not limited by time and place, as well as examining various literature in the form of books, the results of previous research and laws and regulations both printed and online related to the problems studied. To answer the existing problems, this study used 3 (three) research approaches, namely, the statutory approach, the conceptual approach, and the comparative approach).

The types and sources of legal materials used in this study consist of primary, secondary and tertiary legal materials. Collection of legal materials is carried out by identifying and inventorying positive law rules, researching library materials (books, scientific journals, research reports), and other sources of legal materials that are relevant to the legal issues being studied. The legal materials that have been collected are then classified, selected and ensured that they do not conflict with each other, to make it easier to analyze and construct them.

## **RESEARCH RESULTS AND DISCUSSION**

### **Factors Causing Lawsuits for Property Rights Certificates that Have Been Canceled Without the Knowledge of the Legal Owners at the Tanjung Karang District Court Study of Decision Number 101/Pdt.G/2021/Pn Tjk.**

Based on the results of the author's interview with Mr. M. Randy Pratama as the Legal Counsel explained that the factors for the occurrence of a lawsuit were as follows:

1. Factors of the Defendants and Co-Defendant Against the Law. The actions of the Defendants who deliberately used methods that violated the law to take physical possession of the Plaintiff's land by building concrete panels along the western (front) side of the Plaintiff's Land, and also the actions of the Co-Defendant who deliberately issued SHM No. 511 which still contains ownership disputes and ignores the whereabouts of the Plaintiff who at the time of publication still has physical control of the Plaintiff's Land, which these things are a form of action, namely:
  - a. Contrary to the Rights of others. The Defendants and Co-Defendant have violated the rights of the Plaintiff in which the Defendants deliberately used methods that are contrary to the law to physically control the land belonging to the Plaintiff and the Co-Defendant who has deliberately issued SHM No. 511 which still contains ownership disputes and ignores the whereabouts of the Plaintiff who at the time of publication still has physical control of the Plaintiff's Land.
  - b. Actions that conflict with their own legal obligations. The legal obligation here is an obligation given by law to a person, both written law and unwritten law. Therefore, the actions of the Defendants and Co-Defendant constituted an unlawful act because they contradicted the applicable regulations.
  - c. Actions that are contrary to decency. The actions of the Defendants using methods that are contrary to law to physically control the land belonging to the Plaintiff and the actions of the Co-Defendant who deliberately issued SHM No. 511 which still contains ownership disputes and ignores the whereabouts of the Plaintiff who at the time of publication still has physical control of the Plaintiff's Land. So this is contrary to the good moral values that apply in society.
2. Error Factors of the Defendants and Co-Defendant. The Defendants have deliberately used methods that are against the law to physically control the land belonging to the Plaintiff and the Co-Defendant who has deliberately issued SHM No. 511 which still contains ownership disputes and ignores the whereabouts of the Plaintiff, who at the time of publication still has physical control of the Plaintiff's Land, is a manifestation of the intentional unlawful act which is detrimental to the Plaintiff.
3. Loss Factor. Loss (schade) for the Plaintiff is also a condition for the lawsuit based on Article 1365 of the Civil Code to be used. Whereas losses for unlawful acts committed by the Defendants and Co-Defendant resulted in both material and immaterial losses to the Plaintiff, jurisprudence also recognizes the concept of immaterial losses, which will also be valued in money. As for the material losses suffered by the Plaintiff as a result of the construction of concrete panels by the Defendants, then the Plaintiff's land is damaged or at least a fee is required to carry out the demolition; - Whereas the immaterial losses suffered by the Plaintiff were in the form of difficulties for the Plaintiff to manage the land where social services for people with disabilities stopped and did not even materialize because of this problem and the feeling of discomfort for the Plaintiff caused by the arbitrary actions of the Defendants -arbitrary.
4. Causal Relationship Factors Between the Actions of the Defendants and the Co-Defendant with the Plaintiff's Losses. The actions of the Defendants who deliberately used methods

contrary to law to physically control the land belonging to the Plaintiff and the actions of the Co-Defendant who deliberately issued SHM No. 511 which still contains ownership disputes and ignores the whereabouts of the Plaintiff who at the time of publication still has physical control of the Plaintiff's Land is a causal relationship between the actions committed by the Defendants and Co-Defendant and the losses incurred by the Defendants and Co-Defendant so that this causes the Plaintiff to suffer losses, both material and immaterial, as stated by the Plaintiff above, so that in this case it is clear and obvious that the actions of the Defendants and Co-Defendant are the cause of the losses currently being experienced by the Plaintiff.

Based on the descriptions above, it can be analyzed that the factors that led to a lawsuit against the Certificate of Property Rights which had been canceled consisted of several factors, namely as follows:

1. First, the actions of the Defendants who deliberately used methods that violated the law to physically control the land belonging to the Plaintiff and the Co-Defendant who deliberately issued SHM No. 511 which still contains ownership disputes and ignores the whereabouts of the Plaintiff.
2. The two loss factors as for the material losses suffered by the Plaintiff due to the construction of concrete panels by the Defendants, the Plaintiff's land is damaged or at least costs are required to carry out the demolition and the immaterial losses suffered by the Plaintiff are in the form of difficulties for the Plaintiff to manage the land which is where to carry out social services for people with disabilities was stopped and even not realized because of this problem and the feeling of discomfort for the Plaintiff caused by the arbitrary actions of the Defendants.
3. The three factors of causal relationship between parties, namely Co-Defendant who has deliberately issued SHM No. 511 which still contains ownership disputes and ignores the whereabouts of the Plaintiff who at the time of publication still has physical control of the Plaintiff's Land is a causal relationship between the actions committed by the Defendants and Co-Defendant and the losses incurred by the Defendants and Co-Defendant so that this causes the Plaintiff to suffer losses both material and immaterial.

So thus the author is of the opinion that the factors causing the lawsuit for the Property Rights Certificate which has been canceled without the knowledge of the legal owner at the Tanjungkarang District Court Study of Decision Number 101/Pdt.G/2021/Pn Tjk, there are 3 main factors namely: the factor of unlawful acts carried out by the Defendants, the second factor is that the Plaintiffs suffered losses in the form of material and immaterial losses, and the last factor is the existence of a causal relationship between the parties in which the Co-Defendant deliberately issued SHM No. 511 which still contains an ownership dispute between the Defendant and the Plaintiff.

### **Judge's Considerations in the Case of Lawsuits for Property Rights Certificates which have been Canceled Without the Knowledge of the Legal Owners at the Tanjung Karang District Court Study of Decision Number 101/Pdt.G/2021/Pn Tjk.**

Based on the results of the author's interview with Mr. Zuhairi, as a Judge at the Class IA Tanjungkarang District Court, he explained that the consideration of the Panel of Judges in case Number: 101/Pdt.G/2021/PN.Tjk is based on the provisions of the Laws that apply as follows:

1. The first consideration of the Panel of Judges is the Plaintiff's lawsuit error in persona, the Panel of Judges is of the opinion that the parties to be sued are parties who are felt to have

harmed the interests of the plaintiff so that it is the plaintiff's right to determine which party and who has harmed their interests and rights. This is also in accordance with the decision of the Supreme Court of the Republic of Indonesia No. 1072 K/Sip/1982 dated August 1, 1983 which stated that who should be sued is the right of the Plaintiff. II and co-Defendant who actually feels detrimental to the interests of the Plaintiff until the issuance of the letters or deeds regarding the object of the dispute.

2. The second consideration of the Panel of Judges is based on jurisprudence in the Supreme Court Decision Number. 1777 K/Sip/1983 dated 17 January 1985, stated that: The results of the local inspection can be used as a basis for clarifying the location, area and boundaries of the disputed land object, with that the *judex facti* has the authority to make the results of the local inspection to determine the area of the disputed land object.
3. The third consideration of the Panel of Judges was that at the time of the local examination the litigants were present, at that time the plaintiff through his attorney pointed out the stretch of land object in dispute which was previously controlled by the Plaintiff from the proceeds of land inherited from the Plaintiff's parents and currently the object in question is controlled by Defendant, but when the local inspection was carried out, the Plaintiff could not clearly show the boundaries of the north, south, west and east of the object of dispute being sued as stated in the lawsuit, because the land which was the object of the dispute turned out to have been sold to another party, namely Mr. Suyono, which at that time was not in place and the land object of the dispute was locked, so that the Panel of Judges had difficulty determining the boundaries and area of the object of dispute *a quo*;
4. The fourth consideration of the Panel of Judges is that another party, namely Mr. Suyono, who currently has control over the object of the dispute, turns out to be not a party to this case, whether he is the Plaintiff, Defendant or Co-Defendant, so it would be unfair if the owner of the object of the dispute Now they are not given the opportunity to defend their rights at trial, with the lack of parties drawn in this case, the Panel of Judges is of the opinion that the Plaintiff's lawsuit has been incomplete, inaccurate and unclear. Thus according to the Panel of Judges, with the lack of parties withdrawn in this case and the location of the object of dispute has been controlled by another party so that there is blurring and unclear boundaries of the object of dispute in the field, so that a lawsuit whose object of dispute is unclear is that it contains a juridical defect and must be declared unacceptable (*Niet Onvankelijkverklaard*).

Based on the descriptions above, the author can analyze that the considerations of the panel of judges in the lawsuit for a Property Rights Certificate which have been canceled without the knowledge of the legal owner at the Tanjungkarang District Court Study of Decision Number 101/Pdt.G/2021/Pn Tjk, there are several considerations, namely: first is the Plaintiff's lawsuit error in persona, the Panel of Judges is of the opinion that the parties to be sued are parties who are felt to have harmed the plaintiff's interests so it is the plaintiff's right to determine which party and who has harmed their interests and rights, secondly is based on jurisprudence in the Court Decision Supreme No. 1777 K/Sip/1983 Dated January 17 1985, the third is because the land which was the object of the dispute turned out to have been sold to another party, namely Mr. Suyono, who at that time was not in place and the land object of the dispute was locked, so the Panel of Judges had difficulty determine the boundaries and extent of the *a quo* object of dispute, and the fourth is that the other party, namely Mr. Suyono, who currently has control over the object of the dispute, turns out to be not a party to this case, whether he is the Plaintiff, Defendant, or Co-Defendant, so that it will become it is unfair if the owner of the object of the dispute is now not given the opportunity to defend his rights in court,

with the lack of parties withdrawn in this case, the Panel of Judges is of the opinion that the Plaintiff's lawsuit has been incomplete, inaccurate and unclear.

## **CONCLUSION**

Based on the results of the research and discussion in the previous chapter, the following conclusions can be drawn: The factors causing the lawsuit for a Property Rights Certificate which have been canceled without the knowledge of the legal owner at the Tanjungkarang District Court Study of Decision Number 101/Pdt.G/2021/Pn Tjk, there are The 3 main factors are: the factor of unlawful acts committed by the Defendants, the second factor for the Plaintiffs to suffer losses in the form of material and immaterial losses, and the last factor is the existence of a causal relationship between the parties in which the Co-Defendant deliberately issued SHM No. 511 which still contains an ownership dispute between the Defendant and the Plaintiff. The consideration of the Panel of Judges in the lawsuit for the Property Rights Certificate which was canceled without the knowledge of the legal owner at the Tanjungkarang District Court Study of Decision Number 101/Pdt.G/2021/Pn Tjk is that the Plaintiff's lawsuit cannot yet be used as a reference for the Panel of Judges to examine the lawsuit material because there is still a shortage of parties in this case, that based on the foregoing, the plaintiff's lawsuit must be declared unacceptable (*Niet Ontvankelijke verklaard*).

The suggestions that the author can convey are as follows: Suggestions for the public to be more careful and careful in buying property such as land or houses, don't just look at strategic places and cheap prices, because if you buy without checking the completeness of the property's documents it can result in the occurrence of disputes and losses from property purchased at a later date. Suggestions for law enforcers, especially in this case, are advocates/lawyers to be more thorough and careful in filing lawsuits, especially if the case being handled is in the form of a Property Rights dispute, as Lawyers we must be detailed and know the history and history of the object of dispute so that mistakes will not occur in a lawsuit that will be submitted to the Court because if it is not careful it will cause you to experience losses both materially and immaterially.

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