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**Analysis Of Judges' Decisions In Unlawful Causes Of Land  
Cultivation Without Permits (Study of Decision Number  
23/Pdt.G/2020/PN Kis)**

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# **Analysis Of Judges' Decisions In Unlawful Causes Of Land Cultivation Without Permits (Study of Decision Number 23/Pdt.G/2020/PN Kis)**

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## **Abstract**

This research examines the analysis of the judge's decision in the case of unlawful acts of cultivating land without a permit (Study of Decision No. 23/Pdt.G/2020/Pn.Kis) in accordance with Article 1365 concerning Unlawful Acts. The formulation of Article 1365 of the Civil Code is "any unlawful act, which causes harm to other people, obliges the person who because of the mistake of issuing the loss, compensates for the loss". The purpose of this study was to find out the judge's consideration of the decision Number 23/Pdt.G/2020/PN Kis and to find out the legal consequences of the decision Number 23/Pdt.G/2020/PN Kis. This type of research uses normative juridical research with a statutory approach and a sociological approach. In making a decision, the judge must be able to provide legal certainty and also justice for the decision made. Taking into account the Court Decision Number 23/Pdt.G/2020/PN Kis regarding unlawful acts of cultivating land, the factors that were taken into consideration by the Panel of Judges in determining the evidence to make a decision. judge if it has permanent legal force.

## **Keywords**

Judge's Decision, Unlawful Acts, Land

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## **1. Introduction**

Land for human life, contains a multidimensional meaning. First, economically, land is a means of production that can bring prosperity. Second, politically, land can determine a person's position in community decision-making. Third, as cultural capital, it can determine the level of social status of its owner. Fourth, land has a sacred meaning, because at the end of one's life everyone will return to the land (Sudjito, 1987:1).

The role of land in human life is the mother of all basic needs apart from food and clothing needs. Land can be assessed as permanent assets, as assets with sustainable economic value for the future. Not only have high economic value but also have other values that can sustain the prosperity and welfare of society. However, the urgent need for land is not the basis for someone to easily own and control land. According to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency (BPN) Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights. Management Right is the right to control from the State whose authority is partly delegated to the holder.

Unlawful acts in the form of cultivating land that is cultivated by the community, regulated in Article 1365 of the Civil Code includes "Any unlawful act, which causes harm to other people, obliges the person who because of the mistake of issuing the loss,

compensates for the loss". This provision regarding unlawful acts is often called the rubber article because a person can be sued for unlawful acts not only for violating the law, but also if the said act is contrary to the legal obligations of the perpetrator, contrary to the rights of others, and contrary to decency, propriety, and prudence. As with the case raised in this paper, it can be seen that this case began with the issuance of the Defendant I's Cultivation Rights (HGU) Number 1/Desa Huta Padang and the Defendant II's Cultivation Rights (HGU) Number 2/Desa Huta Padang which were issued by Head of the Asahan District Land Office.

That the plaintiff owns a plot of land which was obtained based on traditional rights handed down from the plaintiff's family with evidence of land certificate Number: 381/3/Ket/Bpm/1980 which was signed and issued by the Head Of Huta Padang Village, On March 17 1980. Which Was Worked On Since 1843 by the plaintiff and opened a village (huta) and fields, which are in Bandar Pasir Mandoge District, Asahan Regency, North Sumatra Province with a total area of 5,250,000, M<sup>2</sup> or ±525 Ha (five hundred twenty five hectares) hereinafter referred to as the object of the case.

Since 1991, Defendant I and Defendant II have taken forcefully by destroying 8 houses of the plaintiff in Huta Padang Village along with all their plants in Huta Padang Village, Defendant I unlawfully controlled the object of the case by planting rubber plants, and Defendant II planted the object of the case with plants rubber and some oil palm plantations. With the plaintiff's painstaking struggle to protect the legacy of the plaintiff's ancestors, he continued to control some of the object of the case with an area of ± 8 hectares, from the original 525 hectares.

In the Civil Procedure Code itself it has been outlined that not only the legal basis but also must be accompanied by clear legal facts, it could also be in a lawsuit the legal basis is clear but the legal facts are not explained, so such a lawsuit does not meet the formal requirements, especially since both are good If the legal basis or legal facts are not explained at all in the plaintiff's lawsuit, then the plaintiff's lawsuit can be categorized as an Unclear and Uncertain Claim. Based on the foregoing, the authors are interested in examining the decision about Analysis Of The Judgment's Decision In Cases Of Unlawful Actions For Land Citation Without A Permit (Study Of Decision Number 23/Pdt.G/2020/Pn Kis).

## **2. Research Methods**

This research has two formulations of the problem, namely what are the judges' considerations of the decision Number 23/Pdt.G/2020/PN Kis regarding acts against the law on cultivating land without a permit and what are the legal consequences of the decision Number 23/Pdt/G/2020/PN Kis regarding unlawful acts of cultivating land without a permit. This research is normative juridical in nature, namely where this research is based on law research (law in book) and is based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations.

The research approach is carried out by using the law approach. The statutory approach, in this case Law Number 5 of 1960 concerning the basic agrarian regulations known as UUPA. Government Regulation Number 18 of 2021 concerning the management

of land rights. This approach is used to understand the unlawful act of cultivating land without a permit, so that it is hoped that the rule of law will no longer allow ambiguous and vague understandings.

This study uses library research data sources to systematically analyze books, laws and regulations, lecture notes and other literary sources. The source of legal material is primary legal material, namely legal material consisting of national legal regulations ordered by hierarchy and secondary legal material, namely those obtained from textbooks, foreign journals, and the opinions of scholars.

### **3. Results And Discussion**

#### **3.1. Judge's Consideration of Decision Number 23/Pdt.G/2020/PN Kis**

##### **3.1.1 Position of the Case Against Civil Case Number 23/PDT.G/2020/PN Kis regarding unlawful acts.**

A case submitted to the court aims to obtain a judge's decision. Judge's decision or often referred to as a court decision is a provision or statement from a judge regarding the settlement of a case that occurs between one party and another party based on legal certainty and justice (M.Nur Rasid, 2003: 48). According to Sudikno Mertokusumo, the judge's decision is a statement delivered by the judge as an official who has the authority to resolve a case in court between the parties to the dispute. processes and procedures are carried out to resolve a case (Lilik Mulyadi, 2007:127).

Based on the explanation above regarding the judge's decision, it can be understood that the judge's decision or court decision is a stipulation or provision read out by a judge who aims to resolve a case that occurs between parties based on a sense of justice and also the provisions of laws and regulations that apply. In making a decision, the judge must be able to provide legal certainty and also justice for the decision made. The judge must know about the problem or situation that actually happened. In addition, the judge must also know the governing regulations that must be used to decide a case in writing. This is as stated in the judicial law that judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society (Riduan Syahrini, 1998:83).

According to the author's analysis, in the Civil Procedure Code itself it has been outlined that not only the legal basis but also must be accompanied by clear legal facts, it could also be in a lawsuit the legal basis is clear but the legal facts are not explained, so such a lawsuit does not meet the formal requirements, let alone both the legal basis and legal facts are not explained at all in the plaintiff's lawsuit, so the plaintiff's lawsuit can be categorized as an Unclear and Uncertain Claim.

##### **3.1.2 Considerations of Judges in Deciding Cases of Unlawful Actions on Land Cultivation Without Permits (Court Decision Number 23/Pdt.G/2020/PN Kis)**

The judge's consideration is needed to make a decision on a dispute that occurs between parties litigating in court. The decision made by the judge to decide on a case is expected to fulfill a sense of justice for both parties to the dispute, even though there are parties who feel dissatisfied with the judge's decision, the judge must still decide based on evidence of testimony and so on to provide a sense of justice.

The judge's consideration is one aspect of realizing the value of a judge's decision which contains justice (*ex aequo et bono*) and contains legal certainty, and contains benefits for the parties concerned so that the judge's consideration must be addressed carefully, properly and carefully. If the judge's consideration is not thorough, good and careful, then the judge's decision will be canceled by the High Court or the Supreme Court (Mukti Arto, 2004: 140).

- 1) In essence, the judge's consideration should also contain the following matters:
- 2) In the subject matter and also regarding acknowledged or based on undeniable arguments.
- 3) It contains the existence of a juridical analysis of decisions in all aspects involving all facts/matters that were proven in court.
- 4) There are all parts of the plaintiff's petition that must be considered or argued one by one so that the judge can draw conclusions about whether or not the claim is proven and can be granted / not in the verdict (Mukti Arto, *Ibid*: 142).

The authority given to judges to adopt a policy in deciding cases is regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning judicial power which stipulates "Judges and constitutional judges are obliged to explore, follow and understand legal values and a sense of justice that lives in society.

According to Law Number 48 of 2009 concerning judicial power, the judge's considerations are the judge's thoughts or opinions in making a decision by looking at things that can lighten or burden the perpetrator. Every judge is obliged to submit written considerations or opinions on the case being examined and becomes an integral part of the decision.

### **3.2. Legal Consequences of Decision Number 23/Pdt.G/2020/PN Kis**

#### **3.2.1. Legal Consequences of the Judge's Decision**

Decision is a statement by a judge who is authorized as a state official to be able to end and resolve a case against the party in dispute, as the decision is made in written form and then pronounced in front of a trial open to the public with the aim that a case that has been decided gets legal certainty for disputing parties. According to Indra Bachri in his journal, it states that there are 3 (three) types of power to be enforceable against decisions that have permanent legal force, namely: (Indra Bachir: 88).

##### **1) Binding Strength**

If the disputing parties cannot resolve the dispute between them amicably, then submit and entrust the dispute to the judge in court to be examined and tried. This means that the disputing parties will submit to the decision handed down. This means that the court aims to be able to show its rights and law in resolving cases against both parties. So that later the decision will have binding legal force for the parties to the dispute.

##### **2) The Power of Proof**

Even though the judge's decision does not have binding force against a third party, if it has the power of evidence by a third party, then it can be said to have legal force as long as the evidence has been proven correct, therefore by making a decision in written

form, the decision may be intended to be used as evidence for the parties which may be required if they wish to file a legal remedy.

### 3) Executive Power

The executorial power of the judge's decision is basically words for the sake of justice based on the one and only God. This is contained in Article 4 paragraph (1) of Law Number. 4 of 2004 concerning judicial power. However, Indonesian legal experts, including Soepomo, are of the opinion that executorial power is that which is exercised by force by means of the state against parties who do not carry out the decision voluntarily.

Article 1918 of the Civil Code and Article 24 of Law Number 49 of 2009 concerning judicial power is the existence of a court decision that has obtained binding legal force. Therefore, if the judge 's decision has obtained binding legal force, then the decision can no longer be used to use ordinary legal remedies against the decision that has been handed down.

### **3.3. Legal Consequences Against Convention Plaintiffs/Reconvention Defendants in Decision Number 23/Pdt.G/2020/PN Kis.**

Legal consequences are the consequences caused by legal events and an action taken to obtain an effect that is regulated by the perpetrator and desired by law or any consequences that occur from all legal actions carried out by legal subjects against legal objects.

Legal actions can also give birth to a legal relationship, something that can be said to be a legal consequence if there is an act committed by a legal subject against a legal object and there is an act that is immediately carried out intersects with the development of rights and obligations that have been regulated by law (law).

Legal consequences can be divided into 3 (three) forms, namely:

- a. The emergence, change, or disappearance of a legal situation, for example when a person is even 21 years old (twenty one years) as a result of a change in law, from those with the status of being unable to legally change to being competent at law. So that the ability to carry out legal actions has been lost.
- b. The emergence, change or disappearance of a legal relationship between two or more legal subjects, in which the rights and obligations of one party face the rights and obligations of the other parties.
- c. The birth of sanctions when actions are against the law. That is, if an act creates a law, so that as a result of his actions it has been proven to take other people's goods without rights, which means it is against the law.

According to KBBI, an effect is something that is the end or result of an event, condition or condition that precedes it. Meanwhile, legal consequences are circumstances, events, or attitudes that lead to legal action (Kbbi, 2022). Therefore it can be concluded that a legal consequence is something that is caused by a legal event. For example, in the Kisaran District Court decision regarding the unlawful act of cultivating the land of PT. Bakrie Sumatera Plantation Tbk Without a Permit which is carried out in a way against the law, the action will result in legal consequences for the Plaintiffs of the Convention/Reconvention Defendants.

#### **4. Conclusion**

The provisions of the applicable laws and regulations. In making a decision, the judge must be able to provide legal certainty and also justice for the decision made. According to the author's analysis, in the Civil Procedure Code itself it has been outlined that not only the legal basis but also must be accompanied by clear legal facts, it could also be in a lawsuit the legal basis is clear but the legal facts are not explained, so such a lawsuit does not meet the formal requirements, let alone both the legal basis and legal facts are not explained at all in the plaintiff's lawsuit, so the plaintiff's lawsuit can be categorized as an Unclear and Uncertain Claim.

The author concludes that the decision handed down by the judge must be considered properly, carefully and with conscience. Then the results applied in the decision must be based on the law and relevant facts at trial, so as to give rise to legal certainty. If a decision is valid or deemed valid, then the decision is deemed to have legal force, the main objective expected by the litigants is how the decision is made in the fairest way possible. The legal force of a decision can be in the form of formal legal force and material legal force.

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