

Legal Review of The Basis of The Judge's Considerations In Issuing a Decision to Acquit All Legal Claims For The Criminal Act of Using Land Without Permit (Study of Decision Number 7/Pid.C/Daf.Pid/2023/Pn.Sbw)

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Abstract. Land as a gift from God Almighty is a natural resource that is greatly needed by humans to meet their needs. Land has an important role in people's lives, both as a place to live, a place to plant crops, a means of production, construction of facilities and infrastructure, and economic assets. Soil consists of mineral particles, organic matter, water, air, and living things. Given the importance of land, the management, utilization and control of land is carried out by the state. This is as mandated in Article 33 paragraph (3) of the 1945 Constitution which emphasizes that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Thus, the prosperity of the people is the spirit and ultimate goal of the welfare state which must be realized by the state and government of Indonesia. The approach method used in this research is normative juridical, namely legal research conducted by examining library materials (secondary data) which includes research on legal principles, legal systematics, the level of synchronization of laws and regulations, comparative law or legal history. Considering, that based on the facts revealed in relation to the understanding of the element of using land according to the Judge, it has been proven that the Defendants have cultivated and planted coconut trees, banana trees, corn trees and built a hut on the land, where the Defendants planted trees on the land because the Defendants believe that the land belongs to their parents named M. Daud, which statement of the Defendants is also strengthened by the statement of witnesses M. Yunus and witness Rabusi Andang, even the land has also been controlled by other parties, which is proven by the statement of witness Mardi who has purchased land from the reporting witness Fahrizal with an area of 10,000 M² (ten thousand square meters), where the land purchased by witness Mardi is a unit of land owned by M. Daud's parents with a total area of 3 (three) hectares 20 (twenty) ares where currently the Defendants control the land with an area of 22,000 M².

Keywords: Basis for Judge's Considerations; Criminal Act; Verdict.

1. Introduction

Land as a gift from God Almighty is a natural resource that is greatly needed by humans to meet their needs. Land has an important role in people's lives, both as a place to live, a place to plant crops, a means of production, construction of facilities and infrastructure, and economic assets.¹ Soil consists of mineral particles, organic matter, water, air, and living things.² Given the importance of land, the management, utilization and control of land is carried out by the state. This is as mandated in Article 33 paragraph (3) of the 1945 Constitution which emphasizes that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Thus, the prosperity of the people is the spirit and ultimate goal of the welfare state which must be realized by the state and government of Indonesia.³

The existence of land in life has a dual function, namely as a social asset and a capital asset. As a social asset, land is a means of binding social unity among people to live and live, while capital assets of land are capital factors in development and have grown as a very important economic capital as well as a trading material and object of speculation, meaning that in addition to being a place to live, land can also be used to seek income from the results planted on the land.⁴

Land utilization must be adjusted to its nature, purpose, and condition so that it can provide benefits for the welfare and happiness of its owners as well as for society and the state. The interests of society and individual interests must balance each other to achieve the main goal, namely welfare, justice, and happiness for all people.⁵

The role of land is so important that everyone will try to get land rights. Every citizen of the Republic of Indonesia has the opportunity to gain benefits by using land according to their life needs. Every citizen can control and have land rights to be used in everyday life according to the limits of use set by law, such as building buildings, agricultural land, rented or other needs. Land rights authorizes someone who has the right to use or take advantage of the land. However, land rights do not just appear, but must be obtained in a way that is not against the law. Obtaining rights in an unlawful way will certainly cause losses to others which will result in disputes or violations of rights, namely actions that limit or hinder the use of rights by those who are entitled.⁶

Awareness of the special position of land in the minds of the Indonesian people is stated in

¹Sunardi, 2005, *Agrarian Law*, Iblan, Jakarta, p. 1

²Renanda Bagus Wijaya, *The Law Enforcement against Offenders Owning Land and Buildings Without Own Permits*, *Ratio Legis Journal (RLJ)*, Volume 1 No.4, December 2022, p. 910.

³Khoirulika Nur Harinda, Amin Purnawan, and Aryani Witasari, *The Law Enforcement of Environmental Law against Illegal Mining*, *Law Development Journal*, Volume 3 Issue 4, December 2021, p. 693.

⁴Aisyah Nasution and Tetty Marlina Tarigan, *Legal Analysis of State Land Acquisition Without Land Owner Consent in Stm Hilir District, Deli Serdang Regency*, *Wahbah Az – Zuhaili Perspective*, *Al-Mashlahah*, Special Issue, 2022, p. 344.

⁵Dwi Anas Rudiyanoro and Sri Kusriyah, *Mechanism for Handling of Criminal Action Prohibiting the Use of Land Without Permission*, *Law Development Journal*, Volume 2 Issue 4, December 2020, p. 520

⁶Nikson Silitonga, Mhd. Ansori Lubis, Syawal Amry Siregar, *Legal Analysis of Law Enforcement Against Criminal Acts of Use of Land Areas Without Permission from the Authorized Person or Their Authorization in the Jurisdiction of the North Sumatra Regional Police (Polda-SU)*, *Retentum Journal*, Volume 2 Number 1, February 2021, p. 71.

the Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).⁷Article 2 paragraph (1) of the UUPA states that on the basis of Article 33 of the Constitution, the earth, water and space, including the natural resources contained therein, are at the highest level controlled by the State, as the organization of the power of all the people. Furthermore, Article 2 paragraph (2) of the UUPA states that the state has the authority to regulate and organize the allocation, use, supply and maintenance of the earth, water and space; determine and regulate legal relationships between people and the earth, water and space; determine and regulate legal relationships between people and legal acts concerning the earth, water and space.

The provisions of the articles above show that the state has regulated every legal relationship between people and land, as well as the relationship between people and legal acts with land. Human dependence on land is very large for various interests, while the availability of land is limited.⁸ The imbalance between the amount and area of available land and the increasing use of land causes violations of the law in people's lives.

The government continues to strive to implement legal regulations to resolve land conflicts that occur in society, but the development of the problems that arise are increasingly complex and complicated, so that in reality it is often not possible to find a good solution.⁹The facts that occur in society, it is not uncommon for violations of land rights to occur, one of which is the use of land without permission from the legitimate owner.

The act of using land without permission is not only contrary to the principle of justice in the management of natural resources, but also has the potential to cause agrarian conflicts and losses to the community. Therefore, the use of land without permission can be categorized as a criminal act, as regulated in the laws and regulations.

The prohibition on using land without permission is regulated in Article 2 of Law Number 51 of 1960 concerning the Prohibition on Using Land Without Permission from the Authorized Person or His/Her Authorized Person, which states that "It is prohibited to use land without permission from the authorized person or his/her authorized person". Furthermore, Article 6 paragraph (1) letter a of Law Number 51 of 1960 concerning the Prohibition on Using Land Without Permission from the Authorized Person or His Authorized Person states that without reducing the validity of the provisions in articles 3, 4 and 5, a person who uses land without permission from the authorized person or his/her authorized person may be subject to a maximum imprisonment of 3 (three) months and/or a maximum fine of Rp. 5,000 (five thousand rupiah) for those who use land without permission from the authorized person or his/her authorized person, with the provision that if it concerns plantation and forest lands, those who will be settled according to article 5 paragraph (1) are excluded.

One example of a case of unauthorized land use is in Decision Number 7/Pid.C/Daf. Pid/2023/PN Sbw which was resolved through a fast procedure in a minor criminal case. The defendants were three siblings, namely RB, SH, and TH. According to investigators, the three defendants had committed a crime as regulated in Article 6 paragraph (1) letter a of Law

⁷Roni et al., Legal Sanctions for Perpetrators Who Control Land Belonging to Others Without Permission Based on Law Number 51 of 1960 Concerning the Prohibition of Land Use Without Permission from the Authorized Person or Their Authority, *Consensus: Journal of Legal Science*, Volume 1 Number 3 February 2023, p. 65

⁸Hambali Thalib, 2009, *Criminal Sanctions in Land Conflicts*, Kencana, Jakarta, p. 1

⁹Seodjono Didjosisworo, 2008, *Introduction to Legal Science*, Raja Grafindo Persada, Jakarta, p. 17.

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Number 51 of 1960 concerning the Prohibition of Land Use Without Permission from the Authorized Person or Their Attorney. The chronology of the case is that the defendants controlled the disputed land located in Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency around August 2019 belonging to FH, where FH obtained the land from his uncle (AJ) who had bought the land from the defendants' father named DA, and the land was certified in FH's name. However, the disputed land has been controlled by the Defendants since 2016 until now. The reason the defendants control the disputed land is because the defendants' parents never sold the disputed land, and the land has been controlled by the defendants' parents since 1973 until now. In this case, the judge decided that the defendants were declared free from all legal charges (onlag).

The above case examples show that land conflicts, especially using land without permission, still occur in society. The onlsag decision in the case of using land without permission is interesting to analyze legally, because the decision shows that there are legal considerations that assess the defendant's actions as materially proven, but do not meet the elements of a crime.

Based on the description above, the author is interested in conducting research with the title: "Legal Review of the Basis for Judges' Considerations in Issuing a Decision to Acquit All Legal Charges Against the Criminal Act of Using Land Without Permission (Study of Decision Number: 7/Pid.C/Daf.Pid/2023/PN.Sbw)"

2. Research Methods

The approach method used in this research is normative juridical, namely legal research conducted by examining library materials (secondary data) which includes research on legal principles, legal systematics, the level of synchronization of laws and regulations, comparative law or legal history.¹⁰

The research specification is analytical descriptive, which is to describe clearly, in detail and systematically about the object being studied. Descriptive research is research that aims to create a systematic picture or painting of a phenomenon that occurs in society.¹¹

3. Results and Discussion

3.1. The Judge's Consideration Basis in Issuing a Decision to Acquit All Legal Charges for the Criminal Act of Using Land Without Permission in Decision Number:7/PID.C/DAF.PID/2023/PN SBW

1. Witness testimony

During the trial, witnesses were presented. After swearing an oath according to their religion, namely Islam, the witnesses gave statements which were essentially as follows:

a. Witness :Fahrizal alias Rizal bin H. Galeb Jawas

Witnesses who are known to be present at the trial regarding the alleged use of land

¹⁰Soerjono Soekanto and Sri Mamuji, 1995, Normative Legal Research, A Brief Review, Raja Grafindo, Jakarta, p. 15.

¹¹ M.Djunaidi Ghoni and Fauzan Almansur, 2012, Qualitative Research Methodology, Yogyakarta: ar-Ruzz Media, p. 25.

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without permission from the rightful party or their attorney, carried out by the defendants RABUSI, M. TAHIR and SAHRIL DA, provided the following information:

- 1) The Defendants took possession of the disputed land around August 2019.
- 2) That the location of the disputed land is in Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;
- 3) That the total area of the disputed land is 32,000 m²;
- 4) That the disputed land belongs to the Witness;
- 5) That the witness obtained the disputed land from a gift from the witness' uncle named H. AMIR JAWAS;

b. Witness: Mardi alias Adi Bin Bahri

The witness who was present at the trial regarding the alleged use of land without permission from the rightful party or their attorney, carried out by the defendant RABUSI, defendant M. TAHIR and defendant SAHRIL DA, provided the following information:

- 1) That the Defendants took control of the disputed land around August 2019;
- 2) That the location of the disputed land is in Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;
- 3) That the total area of the disputed land is 22,000 m²;
- 4) That the disputed land belongs to witness FAHRIZAL;
- 5) That the Witness had purchased land from witness FAHRIZAL in 2019 with an area of 10,000 m²;

c. Witness: MARHABAN Alias ABAN Bin AMAQ MUJNAH;

The witness who was present at the trial regarding the alleged use of land without permission from the rightful party or their attorney, carried out by the Defendants RABUSI, M. TAHIR and SAHRIL DA, provided the following information:

- 1) That the Defendants took control of the disputed land around August 2019;
- 2) That the location of the disputed land is in Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;
- 3) That the total area of the disputed land is 32,000 m²;
- 4) That the disputed land belongs to Mr. H. AMIR JAWAS;
- 5) That H. AMIR JAWAS entrusted his land to the Witness, who at that time was the Head of the Hamlet;

Regarding the witness's statement, the Defendants did not confirm it because the witness never reprimanded us on the disputed land and it is not true that the witness worked on the disputed land until 2016 because the Defendants have controlled the disputed land since 2005 and it has been worked by Defendant III since 2013;

d. Witness: MERLIZA Alias MERLIZA Binti H. AMIR H AHMAD;

The witness who was present at the trial regarding the alleged use of land without permission from the rightful party or their attorney, carried out by the defendant RABUSI, defendant M. TAHIR and defendant SAHRIL DA, provided the following information:

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- 1) That the Defendants took control of the disputed land around August 2019;
- 2) That the location of the disputed land is in Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;
- 3) That the total area of the disputed land is 32,000 m²;
- 4) That the disputed land belongs to the witness named H. AMIR JAWAS who has been given power of attorney to the witness FAHRIZAL;
- 5) That the disputed land was purchased by the Witness in 1995 from Mr. M. DAUD, the father of the Defendants;

e. Witness: MUTHAHAR SHAFI Bin MUHAMMAD (deceased)

The witness is aware of being present at the trial regarding the alleged use of land without permission from the rightful party or their attorney, carried out by the Defendants RABUSI, M. TAHIR and SAHRIL DA. Provided the following information:

- 1) That the Defendants took control of the disputed land around August 2019;
- 2) That the location of the disputed land is in Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;
- 3) That the total area of the disputed land is 32,000 m²;
- 4) That the disputed land belongs to Mr. H. AMIR JAWAS who has been given power of attorney to witness FAHRIZAL;
- 5) That the disputed land was purchased by H. AMIR JAWAS in 1995 from M. DAUD, the father of the Defendants;

Regarding the witness's statement, the Defendant did not confirm it because it was not true that the witness had ever come to measure the disputed land. At the trial, the Defendants' Legal Counsel presented a mitigating witness (A De Charge) who gave a statement under oath as follows:

f. Witness A De Charge: RABUSI ANDANG

The witness gave the following statement:

- 1) That the Witness knows the Defendants;
- 2) That the Defendants have controlled the disputed land since 1973 together with their father named M. DAUD;
- 3) That the location of the disputed land was previously in the Batu Tering Block and is now located in Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;
- 4) That the total area of the disputed land is 32,000 m²;
- 5) That the disputed land belongs to M. DAUD which was given by the Village Government due to the Independent Transmigration program in 1975;

Regarding the witness's statement, the Defendants stated that it was true and did not object.

g. Witness A De Charge : M. YUNUS

The witness gave the following statement:

- 1) That the Witness knows the Defendants;

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- 2) That the Defendants have controlled the disputed land since 1973 together with their father M DAUD;
- 3) That the location of the disputed land was previously in the Batu Tering Block and is now located in Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;
- 4) That the total area of the disputed land is more than 2 (two) hectares;
- 5) That the disputed land belongs to M. DAUD which was given by the Village Government due to the Independent Transmigration program in 1975;
- 6) That the Witness did not know that the disputed land had a certificate;
- 7) That the Witness often visited the Witness' land but never saw anyone other than the Defendants and their father who were working on the disputed land;
- 8) That the Witness saw M. DAUD and the Defendants working the disputed land by planting bananas, corn and cassava;

Regarding the witness's statement, the Defendants stated that it was true and did not object.

2. Defendant's Statement

Furthermore, the Defendants RABUSI gave statements in essence as follows in court:

1. The defendant, RABUSI, provided information which in essence was as follows:
 - a. That the Defendant understands that he is being presented as a Defendant in connection with allegations of using land without permission from the rightful owner or his attorney;
 - b. That the Defendant has controlled the dispute since 1973 together with the Defendant's father named M. DAUD along with the defendant SAHRIL DA and the defendant M. TAHIR, namely the Defendant's biological brother until now;
 - c. That the area of land controlled by the Defendant and the Defendant's siblings is 22,000 m²;
 - d. That the disputed land is located in Planong Block, Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;
 - e. That the Defendant and the Defendant's siblings worked the disputed land by planting corn, green beans, banana trees, building houses and making a fence around the disputed land;
 - f. That the land in dispute between the Defendant and the Defendant's siblings was obtained from the Defendant's parents, namely M. DAUD, which was given by the former Head of Beru Village, Jereweh District, West Sumbawa Regency, namely PATAHOLA R (deceased) in 1973;
 - g. That the Defendant has proof of land ownership in the form of a Statement of Physical Control of the Land Area (SPORADIK) issued by the Head of Beru Village dated 30 July 2010 with a land area of 10,000 m²;
2. Defendant SAHRIL DA, provided information which in essence is as follows:
 - a. That the Defendant understands that he is being presented as a Defendant in connection with allegations of using land without permission from the rightful owner or his attorney;
 - b. That the Defendant has controlled the dispute since 1973 together with the Defendant's

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father, namely M. DAUD, along with the defendant RABUSI and the defendant M. TAHIR, who are my biological brothers until now;

c. That the area of land controlled by the Defendant and the Defendant's siblings is 22,000 m²;

d. That the disputed land is located in Planong Block, Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;

e. That the Defendant and the Defendant's siblings worked the disputed land by planting corn, green beans, banana trees, building houses and making a fence around the disputed land;

f. That the land in dispute between the Defendant and the Defendant's siblings was obtained from the Defendant's parents, namely M. DAUD, which was given by the former Head of Beru Village, Jereweh District, West Sumbawa Regency, namely PATAHOLA R (deceased) in 1973;

g. That the defendant RABUSI has proof of land ownership in the form of a Statement of Physical Control of the Land Area (SPORADIK) issued by the Head of Beru Village dated 30 July 2010 with a land area of 10,000 m²;

3. Defendant M. TAHIR Bin M. DAUD, at the trial gave the following statement in essence:

a. That the Defendant understands that he is being presented as a Defendant in connection with allegations of using land without permission from the rightful owner or his attorney.

b. That the Defendant has controlled the dispute since 1973 together with the Defendant's father, namely M. DAUD, along with the defendant SAHRIL DA and the defendant RABUSI, namely my biological brother until now;

c. That the area of land controlled by the Defendant and the Defendant's siblings is 22,000 m²;

d. That the disputed land is located in Planong Block, Jelenga Hamlet, Beru Village, Jereweh District, West Sumbawa Regency;

e. That the Defendant and the Defendant's siblings worked the disputed land by planting corn, green beans, banana trees, building houses and making a fence around the disputed land;

f. That the land in dispute between the Defendant and the Defendant's siblings was obtained from the Defendant's parents, namely M. DAUD, which was given by the former Head of Beru Village, Jereweh District, West Sumbawa Regency, namely PATAHOLA R (deceased) in 1973;

g. That the defendant RABUSI has proof of land ownership in the form of a Statement of Physical Control of the Land Area (SPORADIK) issued by the Head of Beru Village dated 30 July 2010 with a land area of 10,000 m²;

3. Verdict

After the examination of the witnesses and the defendants had been completed, the Judge was of the opinion that the examination of this case was sufficient and then issued the following verdict:

Considering that the examination of witnesses and the Defendants has been completed, the

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Judge is of the opinion that the examination of this case is sufficient and then issues the following verdict:

DECISION

FOR THE SAKE OF JUSTICE BASED ON THE ALMIGHTY GOD

The Sumbawa Besar District Court, which tries criminal cases using fast procedures in cases of minor crimes, has issued a verdict in the cases of the following defendants:

1. RABUSI alias RIADI Bin M. DAUD.
2. SAHRIL DA alias SAHRIL Bin M. DAUD.
3. M. TAHIR alias TAHIR Bin M. DAUD.

The judge has read the Minutes of Examination and other letters related to the case. The judge has also heard the statements of the witnesses and the Defendants.

Considering, that the Defendants were brought to trial because they were accused of violating Article 6 paragraph (1) letters a and b of Law No. 51 of 1960 concerning the Prohibition of Using Land Without Permission from the Authorized Person or His Attorney.

Considering, that in order to accuse the Defendants or to determine that the Defendants are proven to have committed the crime as charged, all elements contained in the article charged must be fulfilled. The Judge will then prove the charges with the following elements:

Whoever;

Using land without permission from the rightful owner or his/her legal representative;

Considering that the Judge will further consider the above elements as follows:

Ad.1. Whoever.

Considering, that regarding the word Whoever or Whoever indicates who the person is who must be responsible for the act/incident that is accused or at least regarding who the person is who is the Defendant in this case. Strictly speaking, the word "Whoever" according to the Guidelines for the Implementation of Duties and Administration Book II, Revised Edition 2009, Page 208 of the Supreme Court of the Republic of Indonesia and the Decision of the Supreme Court of the Republic of Indonesia Number: 1398 K/Pid/1994 dated June 30, 1995, the terminology of the word "Whoever" or "Hij" as anyone who must be made a Defendant/dader or every person as a legal subject (supporter of rights and obligations) who can be held accountable for all his actions;

Considering, that therefore the words "Whoever" or "Whoever" historically chronologically, humans as legal subjects automatically have the ability to be responsible unless the law explicitly determines otherwise;

Considering that the logical consequence of this element is that the existence of the capacity to be responsible (Toerekeningsvaabaarheid) does not need to be proven any more because every legal subject is closely associated with the capacity to be responsible as emphasized in the Memorie van Toelichting (MvT);

Considering, that based on the statements of the Witnesses before the Sumbawa Besar District Court trial, the statements of the Defendants, the Investigation Order against the

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Defendants, then the Indictment, as well as the Defendants' own Plea before the trial and the justification of the Defendants regarding the examination of their identities at the first trial as contained in the list of notes in this case and the justification of the Witnesses who were brought before the trial that those being tried before the Sumbawa Besar District Court trial are indeed the Defendants, then it is clear that the definition of "Whoever" who is the Legal Subject in this case is indeed the Defendants named RABUSI Alias RIADI Bin M. DAUD, SAHRIL DA Alias SAHRIL Bin M. DAUD and M. TAHIR Alias Bin M. DAUD who are being brought before the incasu trial so that there is no Error In Persona in trying this case;

Considering, that thus the element of whoever has been fulfilled;

Ad.2. Using land without proper permission or legal authority.

That before explaining the facts that are the basis for proving the second element above, the Judge is of the opinion to first explain the meaning of the word element so that its meaning becomes clear. The meaning of the words in question is:

- a. Using land;
- b. Land;
- c. The rightful person or legal proxy;

That according to Law No. 51 of 1960 concerning the Prohibition of Use of Land Without Permission from the Authorized Person or His/Her Attorney (see the book Land Problems, MA-RI Publisher, 1998, Page 26) the meaning of these words is as follows:

- a. using land means: "occupying, working on and/or controlling a plot of land or owning land or buildings on it, regardless of whether the building is for personal use or not";
- b. land is: "which is owned with a right by an individual or legal entity";
- c. The person entitled is: "if the person or legal entity concerned with the land is the person or legal entity who has the right to the land";

Another definition of rights can be found according to JCT Simurankir et al. (see Legal Dictionary, Sinar Grafika Publisher 2002, page 60) rights are: "the power/authority that a person has to obtain or do something, recht (Dutch), right (English)".

Considering, that based on the facts revealed in relation to the understanding of the element of using land according to the Judge, it has been proven that the Defendants have cultivated and planted coconut trees, banana trees, corn trees and built a hut on the land, where the Defendants planted trees on the land because the Defendants believe that the land belongs to their parents named M. Daud, which statement of the Defendants is also strengthened by the statement of witnesses M. Yunus and witness Rabusi Andang, even the land has also been controlled by other parties, which is proven by the statement of witness Mardi who has purchased land from the reporting witness Fahrizal with an area of 10,000 M² (ten thousand square meters), where the land purchased by witness Mardi is a unit of land owned by M. Daud's parents with a total area of 3 (three) hectares 20 (twenty) ares where currently the Defendants control the land with an area of 22,000 M²;

Considering, that based on the description above it is clear that although witness Fahrizal is of the opinion that he has a certificate of ownership of the land, it has been proven that the control of the land has also been claimed by the Defendants since long ago, namely by the

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parents of the Defendants, namely M. Daud, with the existence of long-term plants planted by the parents of the Defendants, even apart from the Defendants there are other parties who have purchased part of the total land area of 3 (three) hectares 20 (twenty) ares. then according to the Judge the existence of the certificate of ownership number: 2048 in the name of Fahrizal and the certificate of ownership number: 2049 in the name of Fahrizal is not yet clear and must be proven in the field of civil law not based on the elements in the article charged by the investigator in the field of criminal law in this case because there are still claims by the parties based on real evidence of control;

Considering, that it has been expressly stated in Article 32 paragraph (2) of Government Regulation of the Republic of Indonesia No. 24 of 1997 concerning Land Registration, for a plot of land that has a certificate must also be proven to have real control and it turns out that in this case even though witness Fahrizal stated that he had a certificate of ownership number: 2048 in the name of Fahrizal and a certificate of ownership number: 2049 in the name of FAhrizal for the land, but did not actually control the land, then once again the existence of good faith in the control of the certificate of ownership must be proven based on Article 621 BW, 1865 BW and 283 RBg or the determination of the status of ownership of rights is the scope of civil relations (civil law), moreover our land registration system adopts a negative system that contains positive elements or Data presented in registration with a negative system cannot be simply trusted for its truth. The state does not guarantee the truth of the data presented;

Considering, that even though the Defendants have been proven to have committed acts of using the land as charged, this does not constitute a criminal act, because the ownership status of the land (including buildings, plants or vegetation growing on it) is not yet clear and according to the Judge's considerations, determining the status of ownership rights is within the scope of civil relations (civil law);

Considering, that because the actions of the Defendants did not constitute a criminal act, the Defendants cannot be blamed for their actions;

Considering that, from the entire description regarding the consideration of the elements contained in the indictment, the Judge concluded thatThe Defendants have been proven to have committed the acts as charged in the indictment, however, even though the Defendants have been proven to have committed the acts, the Judge is of the opinion that the acts committed by the Defendants do not constitute a criminal act, therefore in accordance with Article 191 paragraph (2) of the Criminal Procedure Code, the Defendants must be released from all legal charges (onstlag van alle recht vervolging);

Considering, that because the Defendants have been released from all legal charges, then based on Article 97 paragraph (1) and (2) of the Criminal Procedure Code in conjunction with Article 14 of PP No. 27 of 1983, the Defendants' good names must be restored by restoring the Defendants' rights in terms of their ability, position, dignity and honor and the costs of the case must be borne by the state;

Pay attention to Article 6 paragraph (1) letter a of the LawNumber: 51 of 1960 concerning the Prohibition of Use of Land Without Permission from the Authorized Person or His Attorney and other Articles of the Criminal Procedure Code and other relevant regulations.

The judge also opined that considering that there was a dispute over ownership, and the

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Defendants acted in good faith based on the belief that the land belonged to their family, the elements of a criminal act were not met. Determination of ownership status should be carried out through a civil lawsuit. The Defendants' actions in cultivating and erecting huts did occur, but did not fulfill the elements of a criminal act, for example encroachment or control without rights, because there was a civil dispute and real physical control. Therefore, this case is not within the realm of criminal law, and the defendants cannot be punished.

In the author's opinion, the judge's considerations in the acquittal decision regarding the crime of using without rights are correct. In his considerations, the judge is consistent with the doctrine of agrarian law and interprets the certificate proportionally. The judge also relates it to the land registration system in Indonesia which is a negative system with limited positive elements so that the implication is that the certificate is not absolute evidence, and can be sued if there is a party that actually controls it or there is an administrative/legal defect in the issuance process. The judge's consideration is that the dispute case is not a criminal law realm, but a civil law realm. The judge considers the element of good faith and the existence of an ownership dispute make this case not a criminal realm but a civil law realm. So it is appropriate if the resolution of the dispute is not a criminal realm but a civil realm.

The judge's considerations in issuing a verdict of acquittal from all legal charges against the criminal act of using land without permission in case Number 7/PID.C/Daf. Pid/2023/PN Sbw analyzed using the theory of punishment are as follows:

1. Absolute (retributive) theory, in this case views punishment as retribution for evil deeds that have been committed, without considering other effects such as prevention or rehabilitation. In decision Number 7/PID.C/Daf. Pid/2023/PN Sbw, the judge did not apply the absolute theory because no element of guilt or malicious intent (*mens rea*) was found from the defendant, where the defendant controlled the land with the belief that the land belonged to his family, so there was no basis for retribution.
2. Relative theory (utilitarian), in relative theory aims to prevent future crimes through a deterrent effect or rehabilitation of the perpetrator. In decision Number 7/PID.C/Daf. Pid/2023/PN Sbw, the judge considered that there was no need for prevention or rehabilitation because the defendant's actions were not based on malicious intent, but on a belief in property rights. Therefore, the application of the relative theory is also irrelevant in this case
3. The combined theory, combining elements of absolute and relative theories, considers both retaliation and prevention. However, decision Number 7/PID.C/Daf. Pid/2023/PN Sbw because there is no element of error, there is no need for prevention, the combined theory was also not applied by the judge in this decision.

Based on the analysis above, then viewed from the theory of punishment shows that the judge's consideration in the decision to release the defendant from criminal charges is appropriate. The judge considered the absence of elements of error or malicious intent, and encouraged the resolution of disputes through civil mechanisms, in accordance with the legal principles applicable in Indonesia.

3.2. Weaknesses in the Basic Considerations of Judges in Handing Down Decisions to Acquit All Legal Charges for the Criminal Act of Using Land Without Permission

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The basic weakness of the judge's consideration in issuing a verdict of acquittal from all legal charges against the crime of using land without permission is that, even though the act is proven, the judge does not make it a crime. The judge may think that the act does not fulfill the elements of a crime or there is a justification/excuse.

Elaboration:

1. Proven Act, Not a Criminal Act

Even if the act of using land without permission is proven to be legal and convincing, the judge can release the defendant from all legal charges if the act does not meet the requirements of a criminal act.

2. Legal Uncertainty

An acquittal decision can create legal uncertainty, because actions that should be the object of legal prosecution are deemed not to fulfill the elements of a crime.

3. Injustice

An acquittal can also be detrimental to the victim, because it does not provide a sense of justice and a deterrent effect to the perpetrator who has committed a detrimental act.

4. Justifying or Excusing Reasons

Judges may consider the existence of justification or excusing reasons that make the defendant's actions no longer fulfill the elements of a crime, such as coercive circumstances, or actions carried out due to certain circumstances.

5. Legal Considerations

The judge's legal considerations in issuing an acquittal decision involve the legal facts in the trial, such as the indictment, charges, witness statements, and evidence.

6. Additional information

1) An acquittal is different from an acquittal, because an acquittal states that the defendant did not commit the act charged, whereas an acquittal states that the act committed does not fulfill the elements of a criminal act.

2) In issuing a verdict of acquittal, the judge must consider various factors, including legal facts, mitigating circumstances, and justification or excusing reasons.

4. Conclusion

Considering, that regarding the word Whoever or Whoever indicates who the person is who must be responsible for the act/incident that is accused or at least regarding who the person is who is the Defendant in this case. Strictly speaking, the word "Whoever" according to the Guidelines for the Implementation of Duties and Administration Book II, Revised Edition 2009, Page 208 of the Supreme Court of the Republic of Indonesia and the Decision of the Supreme Court of the Republic of Indonesia Number: 1398 K/Pid/1994 dated June 30, 1995, the terminology of the word "Whoever" or "Hij" as anyone who must be made a Defendant/dader or every person as a legal subject (supporter of rights and obligations) who can be held accountable for all his actions. The basic weakness of the judge's consideration in issuing a verdict of acquittal from all legal charges against the crime of using land without permission is that, even though the act is proven, the judge does not

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make it a crime. The judge may think that the act does not fulfill the elements of a crime or there is a justification/excuse. Elaboration: Proven Act, Not a Criminal Act: Even if the act of using land without permission is proven to be legal and convincing, the judge can release the defendant from all legal charges if the act does not meet the requirements of a criminal act. Legal Uncertainty: An acquittal decision can create legal uncertainty, because actions that should be the object of legal prosecution are deemed not to fulfill the elements of a crime. Injustice: An acquittal can also be detrimental to the victim, because it does not provide a sense of justice and a deterrent effect to the perpetrator who has committed a detrimental act. Justifying or Excusing Reasons Judgemay consider the existence of justification or excusing reasons that make the defendant's actions no longer fulfill the elements of a crime, such as coercive circumstances, or actions carried out due to certain circumstances.

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