
IMPLEMENTATION OF PROPERTY RIGHTS LIMITATION PROVISIONS IN COMMUNITY LIFE IN BANTUL DISTRICT SPECIAL REGION OF YOGYAKARTA

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ABSTRACT

property rights are material rights that are absolute. based on article 570 of the kuhpdt, property rights are rights that are fully and freely used, however, the freedom to use property rights is not unlimited, but there are limitations. the problem in this research is: how is the application of the provisions on the limitation on the use of property rights in social life in bantul regency, diy? the results showed that the application of restrictions on the use of property rights in people's lives in bantul regency can be seen in the yogyakarta state administrative court decision number 04/g/2013/ptun.yk which was corroborated by the surabaya state administrative high court decision number: 149/b/ 2013/pt. tun. sby. the decision was declared null and void and revoked the decree of the head of the bantul regency licensing service number: 3497/dp/001/xi/2012 concerning disturbance permits for "hikmah" chicken livestock business at the location of dusun mangir lor rt.03, sendangsari village, pajangan district, district bantul, because it contradicts article 5 paragraph (4) of bantul regency regional regulation number 6 of 2011 concerning nuisance permits, and the decree of the governor of the special region of yogyakarta number 176 of 2003 concerning standard levels of vibration, noise and odor in the province of the special region of yogyakarta and the principles general good governance especially the principle of accuracy. with the cancellation of the nuisance permit, the owner of a broiler farm business is no longer allowed to continue his livestock business, meaning that the owner cannot use his property in the form of a cage on his private land for a chicken farm business. so the use of this property is not free without limits, but there are limitations

INTRODUCTION

Humans cannot live if they are not together with other humans in a group. By living in groups, humans will more easily fulfill their interests. Living in groups in society does not rule out the possibility of clashes between humans when they try to fulfill their interests. To reduce the collisions that occur, a guideline for behaving in life together is needed. These guidelines for behavior are called social norms or rules.

One of the social norms or rules in shared life is the rule of law. Legal rules are reflected in rights and obligations. In each right there are four (4) elements, namely: Legal subject, legal object, legal relationship that binds other parties with legal obligations and protection (Sudikno, 2005).

Rights are divided into two types, namely. Absolute rights mean rights that can be defended against anyone (Suhardana, 2001). One example of an absolute right is property rights. Property rights are the main rights of all material rights.

Property rights according to Article 570 of the KUHPdt (hereinafter abbreviated as the KUHPdt) are 'rights to use or enjoy an object to the fullest and to use it freely as long as it does not conflict with laws, or general regulations and does not interfere with the rights of others. others, without reducing the possibility of revocation of rights in the public interest with appropriate compensation and according to the provisions of the law'.

Property rights are material rights that are absolute. Everyone must respect. The law protects a person for his ownership of an object. With the control of an object based on property rights, a holder of property rights is given the authority to control it peacefully and to defend it against anyone who intends to disturb his peace in controlling, utilizing and using objects (Widjaja Gunawan & Muljadi, 2003).

After the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter abbreviated as UUPA) which repealed all regulations related to land, water and natural resources contained therein, the definition of property rights as regulated in Article 570 of the Indonesian KUHPdt This only applies to objects other than land.

The definition of property rights to land is regulated in Article 20 of the UUPA which states that 'Property rights are hereditary, strongest and most fulfilled rights that people can have over land, bearing in mind the provisions in Article 6 of the UUPA.'

Based on Article 570 of the KUHPdt , it can be seen that property rights are rights that are fully and freely used, however, it turns out that freedom in the use of property rights is not free without limits (Zaidan, Rainis, Abdurrahman, & Abdulkadir, 2020). The use of property rights has limitations, as stated in Article 570 of the Criminal Code, that is, using property rights may not conflict with laws or general regulations, may not interfere with other people's rights, and there is the possibility of revocation of rights in the public interest. Apart from Article 570 of the Criminal Code, there are still property rights restrictions, namely the Neighbor Law and abuse of rights (Sofwan, 1981).

Neighboring Law is the law that regulates the rights and obligations of people who live in neighbours (Muhammad, 1990). These rights and obligations relate to the use and control of property rights that are located adjacent or side by side. The existence of the Neighbor Law can limit a person's freedom in using his property, because that person lives close together, side by side with his neighbors. Restrictions by neighboring law aim to create peace in neighboring life for the common good. Neighboring means living with other people in a certain environment that is near or far away. Living in neighbors has not a few problems that arise, concerning issues of unhealthy competition, security and the environment, matters of cleanliness and waste (Lismayana & Akib, 2019).

The use of property rights that interfere with the rights of others if it causes material losses is called destruction of objects (zaakbeschadiging), if the disturbance caused results in immaterial losses then it is called interference (hinder). In everyday life, it is possible that the use of property rights will interfere with the rights of others, for example; rice milling business, this business will cause noise from the milling machine, and also cause air pollution, because the air can become dirty due to the grains of rice bran flying from the rice milling machine.

The t-shirt production business will also cause noise from factory machines, besides that it will also cause disturbance in the form of a strong odor from the paints used for screen printing t-shirts. Likewise the chicken farming business, this business can also cause disturbance to other people, such as the strong smell of chicken manure.

METHOD RESEARCH

This research is a normative legal research. Normative legal research is legal research conducted by examining literature or secondary data (Soerjono & Mamudji, 2006).

In order to obtain the research material, this research was conducted with library research. Library research is carried out by studying documents that examine legal materials. This legal material is taken from library materials in the form of primary legal materials and secondary legal materials.

Primary legal materials are library materials that contain laws and regulations which include:

1. Civil Code.
2. Bantul Regency Regional Regulation Number 6 of 2011 concerning Nuisance Permits.
3. Decree of the Governor of the Special Region of Yogyakarta Number 176 of 2003 concerning Standard Levels of Vibration, Noise and Odor in the Province of the Special Region of Yogyakarta.

The data obtained from the research were analyzed in the following way; data from library research which is secondary data, arranged systematically, in order to obtain an overall picture of the principles, and legal provisions relating to the issues studied, then grouped according to their respective sections to be recorded systematically. Then it was analyzed using a descriptive method with a qualitative approach, to then be given an in-depth and thorough explanation.

RESULT AND DISCUSSION

Property rights are material rights that are absolute. Everyone must respect. The law protects a person for his ownership of an object. Article 362 of the Criminal Code stipulates 'anyone who takes an item, which completely or partly belongs to another person, with the intention of possessing the object against his rights, is punished for theft. Thus, everyone should not carelessly take other people's belongings. This shows that someone's ownership of an object is protected by law.

According to Article 570 of the Criminal Code, property rights are the right to fully use or enjoy an object and to use it freely, as long as it does not conflict with laws or general regulations and does not interfere with the rights of other people, without reducing the possibility of revocation of the right to public interest with appropriate compensation and according to the provisions of the law. From Article 570 of the Criminal Code it can be seen that the use of property rights has limitations, namely; may not conflict with laws or general regulations and do not interfere with the rights of others, without reducing the possibility of revocation of rights in the public interest with appropriate compensation. In addition to being regulated in Article 570 of the Indonesian Civil Code, restrictions on the use of property rights are also regulated by the Neighboring Law. Neighboring law is the law governing the rights

and obligations of people who live in neighbours. These rights and obligations relate to the use and control of property rights that are located adjacent or side by side (Muhammad, 1990). The existence of neighboring laws can limit a person's freedom to use his property, because that person lives close to each other, side by side with his neighbors. The existence of restrictions by neighboring law aims to create peace in neighboring life for the common good.

Thus, even though the property right is an absolute right, there are restrictions on its use. Provisions for restrictions on the use of property rights are not only sourced from the provisions contained in the Criminal Code and Neighboring Law, but also for restrictions on the use of property rights, namely;

- a. Bantul Regency Regional Regulation Number 6 of 2011 concerning Nuisance Permits
- b. Decree of the Governor of the Special Region of Yogyakarta Number 176 of 2003 concerning Standard Levels of Vibration, Noise and Odor in the Province of the Special Region of Yogyakarta.

Bantul Regency is part of the jurisdiction of the Special Region of Yogyakarta. Thus, they must also follow the provisions that apply in the Special Region of Yogyakarta.

The owner of an object is not free to use his property according to his own will, without regard to the interests of other people. The use of property rights that cause disturbance to other people can be sued. As an example is the case that occurred in the jurisdiction of Bantul Regency. A man set up a chicken farm business. The location is close to people's homes. As a result, it causes environmental disturbances in the form of air pollution, groundwater pollution, and flies which are feared to spread disease. After 4 years of operation, local residents have just protested directly and have submitted a request to the local government to stop the operation of the cage. The local government has attempted to bring together residents who are located close to where the chicken coop is to find a solution using mediation. The mediation process has been carried out by the local government 5 (five) times, but residents still object and continue to demand that the cage be stopped or moved to a location farther from the settlements. The existence of these cages continues to operate and in fact the business owner increases the number of cages even though they have received rejection and demands from residents, and it turns out do not yet have a Nuisance Permit issued by the Licensing Service, so do not have valid administrative documents. Requirements for submitting an application for a Nuisance Permit to the Licensing Service must obtain approval from the residents. The number of residents who refused to give their consent was higher, but the chicken farming business in the middle of the settlement continued to operate. In the end, the livestock businessman has applied for a nuisance permit and has obtained a nuisance permit from the Head of the Bantul Regency Licensing Service Number: 3497/DP/001/XI/2012 concerning Nuisance Permits for Chicken Livestock Businesses. Thus the business already has a legal basis to carry out its activities. This is contrary to the aspirations of residents who refuse and demand termination or relocation from the place of business. In life The General Principles of Good Governance can be used as a basis for seeking justice, if the community feels disadvantaged by State Administration decisions that do not refer to the General Principles of Good Governance and burden the community in making decisions or regulations that are applied in people's lives (Andy Gunawan & Arthanaya, 2019). As a result of the farming business, the neighbors have lost the comfort of enjoying their daily life, due to the very pungent stench from

the chicken droppings, especially when the rainy season arrives, so they experience difficulty sleeping and difficulty breathing. Residents' health is also threatened because flies, as insects that can transmit disease, land on chicken droppings in cages and also land elsewhere. On this basis, community members as plaintiffs filed a lawsuit to cancel the Nuisance Permit for the broiler farming business. The lawsuit was registered at the Jogja State Administrative Court Number 04/G/2013/PTUN.YK. The object of the case is the Decree of the Head of the Bantul Regency Licensing Service Number: 3497/DP/001/XI/2012 concerning Disturbance Permits for Chicken Livestock Business "HIKMAH" at the location of Dusun Mangir Lor RT.03, Sendangsari Village, Pajangan District, Bantul Regency.

The plaintiff filed a demand for the Judge to declare null and void the Decree of the Head of the Bantul Regency Licensing Service Number: 3497/DP/001/XI/2012 regarding the Disturbance Permit for "HIKMAH" Chicken Livestock Business at the location of Dusun Mangir Lor RT 03, Sendangsari Village, District Pajangan, Bantul Regency, and revoked the Nuisance Permit for the "HIKMAH" Chicken Livestock Business.

Before giving a decision, the judge gives several considerations. Whereas the provisions of Article 28 H of the 1945 Constitution of the Republic of Indonesia stipulate that a good and healthy environment is a basic right of every Indonesian citizen, including the plaintiffs. The issuance of a decision on the object of dispute by the defendant was not addressed directly to the plaintiffs. However, because of the publication, the plaintiffs felt their interests had been harmed because they had caused losses and disturbances. The next judge's consideration regarding the issuance of the decision which became the object of this dispute was because the issuance was carried out without the complete approval requirements of the plaintiffs as one of the neighbors, who rejected the existence of the intended chicken farming business, this is contrary to Bantul Regency Regional Regulation Number 6 of 2011 concerning Permits Disturbance to Chapter IV Article 5 concerning Requirements for Permits point f and their Explanations, and has violated the General Principles of Good Governance, especially on the principle of accuracy and the principle of motivation. Article 5 paragraph (3) provisions of local regional regulations regarding Business Permits, are considered by the Judge gave his opinion that even though the required neighbor approval has been fulfilled but there are still neighbors who do not agree, objections from these neighbors must be considered because the basic regulations still accommodate the possibility of objections from nearby neighbors who refuse and are thought to be affected. The authorized official before granting the requested permit must consider as wisely and objectively as possible all aspects that occur in the field. The judge also considered the act of testing air quality parameters, that the unavailability of a measuring device could not be used as a basis by the defendant to ignore the provision that there are seven parameters that must be tested to determine the standard smell level as specified in Attachment III to the Decree of the Governor of the Special Region of Yogyakarta Number 176 of 2003 regarding Standard Levels of Vibration, Noise and Odor in the Province of the Special Region of Yogyakarta. Not testing all of these parameters has not been able to guarantee human or environmental comfort and health, so that the parameter test activities that have been carried out cannot be said to be appropriate according to applicable standards, in this case the defendant has violated the principle of accuracy. The judge also gave an opinion that

the Defendant should have known and examined the provisions of the Decree of the Governor of the Special Region of Yogyakarta Number 176 of 2003 as referred to above, to be able to provide good directions and solutions so that the broiler business can live and develop and the plaintiffs obtain sound environmental governance based on applicable laws and regulations. In addition, the defendant in issuing Decision Letter Number: 3497/DP/001/XI/2012 regarding the Nuisance Permit for the "HIKMAH" Broiler Chicken Livestock Business at the location of Dusun Mangir Lor RT 03, Sendangsari Village, Pajangan District, Bantul Regency, was based on facts and the consideration of the panel of judges, can be considered to have contradicted Article 5 paragraph (4) of Bantul Regency Regional Regulation Number 6 of 2011 concerning Nuisance Permits.

Finally the judge handed down a decision which contained in favor of the plaintiffs' claim in its entirety, and declared null and void the Decree of the Head of the Bantul Regency Licensing Service Number: 3497/DP/001/XI/2012 concerning Disturbance Permits for Chicken Livestock Business "HIKMAH" at the Dusun Mangir Lor RT location .03, Sendangsari Village, Pajangan District, Bantul Regency.

Decree of the Head of the Licensing Service of Bantul Regency Number: 3497/DP/001/XI/2012 regarding Disturbance Permits for chicken livestock business "HIKMAH" in its issuance violated the provisions of Bantul Regency Regional Regulation No. in Article 5 point f. the defendant in issuing a Nuisance Permit is a form of violation of the provisions of the Bantul Regency Regional Regulation Number 6 of 2011 concerning Nuisance Permits Chapter IV Article 5 point f and its explanation. In addition, the Nuisance Permit issued has violated the General Principles of Good Governance, namely the Principle of Accuracy. The Defendant carelessly published the object of the dispute without conducting further research and clarification, and did not pay attention to the objections of residents, including the plaintiffs, which had been submitted since 2008 and during mediation and outreach. The defendant's decision regarding the nuisance permit issued also violated the principle of motivation because he was unable to be responsible for the motive for issuing the nuisance permit decision. The actions of the Defendant in issuing Decree Number: 3497/DP/001/XI/2012 regarding Disturbance Permits for the broiler chicken business "HIKMAH" have violated the provisions of Bantul Regency Regulation No. 6 of 2011 concerning Disturbance Permits in Chapter IV Article 5 concerning Permit Requirements point f and its explanation and the General Principles of Good Governance, especially the principle of accuracy and the principle of motivation so that there is sufficient legal reason to be annulled or declared invalid. With the General Principles of Good Governance, it is hoped that the government as a public service provider can accept the General Principles of Good Governance as a legal norm that must be used as a basis for public service providers in exercising their authority, as well as a means for citizens to sue public service providers who deviate (Solechan, 2019).

The Panel of Judges at the Surabaya State Administrative High Court was of the opinion against the decision of the Yogyakarta State Administrative Court Panel of Judges No. 04/G/2013/PTUN.Yk which is being appealed for must be strengthened. On the basis of these considerations, the Panel of Judges at the State Administrative High Court decided: (1) Accepted the appeal from the Defendant/Appellant, (2) Upheld the decision of the Yogyakarta

State Administrative Court, dated 12 June 2013 No. 04/G/2013/PTUN.Yk, who is being appealed.

The Yogyakarta State Administrative Court Decision Number 04/G/2013/PTUN.YK was confirmed by the Surabaya State Administrative High Court Decision Number: 149/B/2013/PT.TUN.SBY, which declared null and void the Decree of the Head of the District Licensing Service Bantul Number: 3497/DP/001/XI/2012 concerning Disturbance Permits for Chicken Livestock Business "HIKMAH" at the location of Dusun Mangir Lor RT.03, Sendangsari Village, Pajangan District, Bantul Regency, because it contradicts Article 5 paragraph (4) Bantul Regency Regional Regulation Number 6 of 2011 concerning Nuisance Permits, Decree of the Governor of the Special Region of Yogyakarta Number 176 Year 2003 concerning Standard Levels of Vibration, Noise and Odor in the Province of the Special Region of Yogyakarta and General Principles of good governance, especially the principle of accuracy.

Thus the application of the regulation on the limitation of the use of property rights in people's lives in Bantul Regency is contained in the Decision of the Yogyakarta State Administrative Court Number 04/G/2013/PTUN.YK which was strengthened by the Decision of the Surabaya State Administrative High Court Number: 149/B/2013 /PT. TUN. SBY. which declared null and void the Decree of the Head of the Bantul Regency Licensing Service Number: 3497/DP/001/XI/2012 concerning Disturbance Permits for Chicken Livestock Business "HIKMAH" at the location of Dusun Mangir Lor RT.03, Sendangsari Village, Pajangan District, Bantul Regency.

The two court decisions show that there are limits to the use of property rights. In this example case, the owner had obtained a nuisance permit issued by the Bantul Regency Licensing Service to run the "HIKMAH" broiler livestock business but it turned out that the livestock business was causing disturbance so that the permit issued by the Bantul Regency Licensing Service was revoked by the State Administrative Court. With the revocation of the disturbance permit, the owner of the farm is no longer allowed to continue his livestock business, meaning that the owner cannot use his property rights for the chicken farm.

The use of property rights in addition to not being in conflict with Regional Regulations, or Governor Regulations, also may not cause disturbance as stipulated in Article 570 of the Criminal Code, as well as the Neighboring Law.

In the case of the use of property rights that cause disturbances, compensation can also be demanded under Article 1365 of the Criminal Code, so that in the case mentioned above, neighbors who experience interference due to the use of property rights for livestock businesses can actually claim compensation based on Article 1365 of the KUHPdt concerning acts against the law. There are 2 types of losses; namely material loss and immaterial loss. Material loss is a loss that can be valued in money. Immaterial losses are losses suffered as a result of unlawful acts that cannot be proven, recovered and or cause temporary loss of enjoyment of life, fear, illness, shock so that they cannot be calculated based on money (Waruwu, SH, & Humas, n.d.). Fulfillment of claims for immaterial compensation often experiences obstacles that are not easy to fulfill, this is because the applicant must prove his argument which is of course not as easy as proving material loss (Mantili, 2019).

CONCLUSION

Based on the results of the analysis, the following conclusions can be drawn: The application of the provisions on restrictions on the use of property rights in people's lives in Bantul Regency can be seen from the Decision of the Yogyakarta State Administrative Court Number 04/G/2013/PTUN.YK which was strengthened by the Decision of the Administrative High Court State of Surabaya Number: 149/B/2013/PT.TUN.SBY. which declared null and void the Decree of the Head of the Bantul Regency Licensing Service Number: 3497/DP/001/XI/2012 concerning Disturbance Permits for Chicken Livestock Business "HIKMAH" at the location of Dusun Mangir Lor RT.03, Sendangsari Village, Pajangan District, Bantul Regency, because it contradicts Article 5 paragraph (4) of Bantul Regency Regional Regulation Number 6 of 2011 concerning Nuisance Permits, and the Decree of the Governor of the Special Region of Yogyakarta Number 176 of 2003 concerning Standard Vibration, Noise and Odor Levels in the Province of the Special Region of Yogyakarta and General Principles Good governance, especially the principle of accuracy. With the cancellation of the Nuisance Permit, the owner of a broiler farm business may no longer continue his livestock business, meaning that the owner cannot use his property in the form of a drum over land ownership rights for a chicken farm business.

Thus the use of an object, even though the object is private property, has limitations, it may not cause disturbance to other parties. The use of property rights that cause disturbance to other parties can be canceled by the Court. So the use of property rights is not free, but there are restrictions.

REFERENCES

- Gunawan, Andy, & Arthanaya, I. Wayan. (2019). Fungsi Asas-Asas Umum Pemerintahan Yang Baik Dalam Menyelesaikan Sengketa Hukum Acara Tata Usaha Negara. *Jurnal Analogi Hukum*, 1(1), 28–33. [Google Scholar](#)
- Gunawan, Widjaja, & Muljadi, Kartini. (2003). Seri Hukum Perikatan Jual Beli. *Raja Grafindo Persada, Jakarta*. [Google Sholar](#)
- Lismayana, Lismayana, & Akib, Muhammad. (2019). Etika Bertetangga Dalam Pendidikan Akhlak Berdasarkan Al-Quran. *Pendais*, 1(2), 129–143. [Google Scholar](#)
- Mantili, Rai. (2019). Ganti Kerugian Immateriil Terhadap Perbuatan Melawan Hukum Dalam Praktik: Perbandingan Indonesia Dan Belanda. *Jurnal Ilmiah Hukum De'jure: Kajian Ilmiah Hukum*, 4(2), 298–321. [Google Scholar](#)
- Muhammad, Abdulkadir. (1990). Hukum Waris. *Remaja Rosda Karya, Bandung*. [Google Scholar](#)
- Soerjono, Soekanto, & Mamudji, Sri. (2006). Penelitian Hukum Normatif. *Jakarta: Raja Grafindo Persada*. [Google Scholar](#)
- Sofwan, Sri Soedewi Masjchoen. (1981). *Pengaturan Hukum Tentang Hipotek, Credietverband Dan Fidusia. Dalam Badan Pembinaan Hukum Nasional. Seminar Hukum Jaminan*. Binacipta: Bandung. [Google Scholar](#)

- Solechan, Solechan. (2019). Asas-Asas Umum Pemerintahan Yang Baik Dalam Pelayanan Publik. *Administrative Law And Governance Journal*, 2(3), 541–557.[Google Scholar](#)
- Sudikno, Mertokusumo. (2005). Mengenal Hukum Suatu Pengantar. *Yogyakarta: Liberti*.[Google Scholar](#)
- Suhardana, F. X. (2001). Hukum Perdata I. *Prenhallindo, Jakarta*.[Google Scholar](#)
- Waruwu, Riki Perdana Raya, Sh, M. H., & Humas, M. A. (N.D.). Praperadilan Pasca 4 Putusan Mk. *On-Line*, Tersedia Di: <https://kepaniteraan.mahkamahagung.go.id/index.php/peraturan.html> (15 September 2018).[Google Scholar](#)
- Zaidan, Ashammari Eissa, Rainis, Ruslan, Abdurrahman, A. B., & Abdulkadir, Muhammad. (2020). Flash Flood Causes In Ha'il City Kingdom Of Saudi Arabia Using Remote Sensing Data And Gis. *J. Crit. Rev.*, 7, 144–153.[Google Scholar](#)

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