

Analysis of Justice in the Medan High Court Decision Number 277/PDT/2018/PT MDN Regarding Land Ownership

Vania Atalia Lumingkewas¹, Gunawan Djajaputra²

¹ Faculty of Law Universitas Tarumanagara, Jakarta Indonesia

² Faculty of Law, Universitas Tarumanagara, Jakarta Indonesia

Corresponding author. E-mail: gunawand@fh.untar.ac.id

ABSTRACT

Today the availability of free State lands that are in no way owned or occupied by persons or other interested parties is very limited. Therefore, to regulate the existence of the land is required a rule of law that can later provide guarantees, justice, certainty and legal protection for the actual landowners stipulated in Article 28 D paragraph (1) of the Constitution of the Republic of Indonesia year 1945, Article 33 paragraph (3) of the Constitution of the Republic of Indonesia year 1945, and in Article 19 of the 1960 Constitution. This study aims to find out the fairness in the decision of the Medan High Court No. 277/PDT/2018/PT MDN concerning Land Ownership. This study uses normative legal research methods that are descriptive analytical, using legal and case approaches, obtaining data using primary, secondary, and tertiary legal materials, and analyzing them using qualitative methods in the form of deductive conclusions. The results showed, Justice in the Decision of the High Court of Medan No. 277/PDT/2018/PT MDN concerning Land Ownership has not been fully fulfilled, it is based on the consideration and decision of the judge who is too hasty to cause injury of justice felt by one of the litigants.

Keywords: Justice, Land Ownership, Certainty, Legal Protect.

1. INTRODUCTION

1.1 Back Ground

The state plays an active role in regulating the economy.[1] The general explanation of the 1945 Constitution affirms that the Indonesian state is based on law and not based on power, has been amended with a new formula that asserts that the Indonesian state is a state of law (Rechtstaat) not based on mere power (Machstaat). The founders of this country have entrusted a mandate through Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which reads "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". [2] This mandate is entrusted to the rulers and leaders who will regulate all use of natural resources including land to increase the prosperity and welfare of the Indonesian people.

Land or land availability is the most important asset for agricultural activities, in fact the government pays little attention to this. Land ownership as the most important pillar of production activities is increasingly unfriendly to the needs of the agricultural sector.[3] Land is a fundamental need of every citizen today. The need for land

can be seen from the enthusiasm of everyone to acquire and maintain the land they want and own.[4] Soil has a very important role for human life, as much as human life depends on soil. Land is considered as a property that has a permanent nature and can be reserved for future life.

Currently, the availability of free State lands that are not owned or occupied by people or other interested parties is very limited.[5] Therefore, to regulate the existence of the land, a legal rule is needed which will later be able to provide guarantees, justice, certainty and legal protection for the actual land owners as regulated in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, and Article 19 of the UUPA, PP No. 10 of 1961 jo. PP No. 24 of 1997 concerning Land Registration.

Justice, in the literature is often interpreted as an attitude and character. Attitudes and characters that make people act and hope for justice are injustice, while attitudes and characters that make people act and hope for injustice are injustice. The purpose of law-making is to achieve the advancement of social happiness. Thus, all actions which tend to produce and maintain the happiness of society are just.[6]

Regarding the rights to the land above, the law also obliges the right holder to register their respective lands. Land registration is a very important issue in the LoGA, because land registration is the beginning of the process of producing a proof of ownership of land rights.[7] Regarding the provision of legal certainty and protection for legal holders of land rights who have registered their land rights, as proof of rights, a certificate is issued which is a copy of the register.[8]

The chronology of the plaintiff Alimuddin filing a lawsuit against the defendant Nuh Rambe is that in 1988 the defendant came to Alimuddin Siregar's house to be loaned money amounting to Rp.150,000, - (one hundred and fifty thousand rupiah) as additional money for medical expenses and child care from Nuh Rambe who had an accident last night. After that, Alimuddin agreed and Nuh Rambe gave a guarantee for the fruits on Nuh Rambe's land until the loan money was returned to Alimuddin Siregar. Then the plaintiff Alimuddin sued part of the land with plants; mango, kuini, cempedak, mangosteen, embacak, and langsung listed in the village head's certificate.

The problem occurs when it is known that for every sale and purchase transaction or compensation from one person to another party, the original title from the seller to the buyer of the original letter is handed over to the buyer, it turns out that if it is true that the land rights of the defendant Nuh Rambe were sold to Alimuddin Siregar, then the letter was handed over to Alimuddin Siregar but it turned out that the original letter was in the hands of Nuh Rambe until now. It was further discovered that the defendant Nuh Rambe had borrowed Rp150,000 from Ali Muddin for his son's medical expenses, and as collateral, Ali Muddin Siregar could enjoy the fruits on Nuh Rambe's land as long as the loan money had not been returned. Approximately two years later, Nuh Rambe in front of Ali Muddin Siregar came to return the loan amounting to Rp. 150,000,-, but Ali Muddin did not accept it without reason. Even Nuh Rambe then had good intentions to replace a more productive plant in the form of cassava, to give back the money of Rp. 5,000,000, - without taking into account the loss of money amounting to each year, but Ali Muddin still did not accept it. In the end, Alimuddin's wife filed a lawsuit against Nuh Rambe, complaining because the land on collateral did not produce any fruit and did not produce any fruit.

Based on the description and thoughts above, it is important to study and analyze ownership rights disputes so that in every legal act there is legal justice in it. The problem to be studied is formulated as follows: How is Justice in the Medan High Court Decision Number 277/PDT/2018/PT MDN Regarding Land Ownership? So the title adopted in the study is entitled "Justice in the Medan High Court Decision Number 277/PDT/2018/PT MDN Regarding Land Ownership".

1.2 Formulation Of The Problem

The main problem in this research is How is Justice in the Medan High Court Decision Number 277/PDT/2018/PT MDN Regarding Land Ownership?

1.3 Research Methods

1.3.1 Types of Research

The type of research used in this research is normative legal research. Normative legal research is legal research conducted by examining materials derived from various laws and regulations and other materials from various literatures.[9] In other words, the research literature search was carried out based on library materials or secondary data. This type of normative research will be used to analyze the decisions of the High Court and the prevailing laws and regulations.

1.3.2 Nature of Research

This research is a descriptive analytical research. Analytical descriptive research is a research that seeks to describe, analyze, examine, and explain the fairness of ownership rights over land that is experiencing ownership disputes.

1.3.3 Types and Techniques of Legal Materials

In this study, the authors use sources of legal materials, namely:

1.3.3.1 Primary Law material.

The primary legal materials used consist of statutory regulations, official records, minutes of making legislation and judges' decisions. In this study, the primary legal materials used are:[10]

1. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.
2. Law Number 42 of 1999 concerning Fiduciary Guarantees.
3. Government Regulation Number 24 of 1997 concerning Land Registration.
4. High Court Decision Number 277/PDT/2018/PT.MDN.

1.3.3.2 Secondary legal material.

Materials that provide information and explanations related to the content of primary legal sources, which can be in the form of literature books; Legal Journal and Law Magazine; Papers, seminar results; scientific articles, magazines and newspapers, opinions of legal practitioners, various books relevant to research, as well as literature related to land issues and ownership of land rights.

1.3.3.3 Tertiary legal Material.

Tertiary legal materials are materials that provide instructions or explanations for primary and secondary legal materials. In this study the tertiary legal materials used

include the Legal Dictionary, Encyclopedia, Black Law Dictionary, Big Indonesian Dictionary, as well as legal materials that support primary legal materials and secondary legal materials, such as articles in electronic format (internet).[11]

1.3.4 Research Approach

This research is inseparable from the use of a statutory approach and a case approach, namely by making laws and regulations related to research and judges' decisions as sources of legal material. The statutory approach is an approach taken by examining Law Number 5 of 1960 concerning Agrarian Principles and regulations related to the legal issues being handled. The case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force, namely Decision Number 277/PDT/2018/PT.MDN.

1.3.5 Legal Materials Analysis Techniques

This study uses a qualitative method with drawing conclusions in the form of deductive conclusions. Deductive reasoning or deduction is a process of thinking (reasoning) that departs from an existing proposition, leading to a new proposition in the form of a conclusion. This research will be used to find out the fairness in the decision of the Medan High Court Number 277/PDT/2018/PT MDN regarding land ownership. The legal material analysis technique used is qualitative with a deductive method in drawing conclusions.

2. DISCUSSION

2.1 Overview of Justice

Justice comes from the word fair, according to the Indonesian Dictionary fair is not arbitrary, impartial, not one-sided. Fair mainly means that a decision and action is based on objective norms. Justice is basically a relative concept, everyone is not equal, fair according to one is not necessarily fair to the other, when someone asserts that he is doing a justice, it must be relevant to public order where a scale of justice is recognized. The scale of justice varies greatly from place to place, each scale is defined and fully determined by the community according to the public order of that society.

In Indonesia, justice is described in Pancasila as the basis of the state, namely social justice for all Indonesian people. The five precepts contain values which are the goals of living together. The justice is based on and imbued with the essence of human justice, namely justice in the relationship between humans and themselves, humans with other humans, humans with society, nation and state, as well as human relations with others. man with God.

In the theory of justice proposed by John Rawls, what he actually meant by the theory of justice was the theory of justice as fairness. This theory distinguishes it from other justice theories. So in this chapter the author explains the theory of justice as fairness in relation to the relevant reality of liberal constitutional democracy.

The values of justice must be a basis that must be realized in living together with the state to realize the goals of the state, namely realizing the welfare of all its citizens and the entire territory, educating all its citizens. Likewise, the values of justice are the basis for the association between countries and nations in the world and the principles of wanting to create an orderly life together in an association between nations in the world based on a principle of independence for each nation, eternal peace, and justice in living together (justice). social).

Justice as part of social values has a very broad meaning, even at one point it can conflict with the law as one of the social values. A crime committed is a mistake. However, if it is not greed, it cannot be called causing injustice. On the other hand, an act that is not a crime can lead to injustice. Rawls' main goal in A Theory of Justice is to try to offer an alternative theory of justice that is superior and able to correct the shortcomings of existing theories of justice, especially utilitarianism and institutionalism, which are considered to have failed in reducing errors in the labor paradigm so far. Rawls rejects utilitarianism, which he sees as reducing justice to a kind of social utility.

2.2 Land Ownership

According to Paton, the owner of the object has the right to his property which includes:

- 1) Enjoying his object, for example taking advantage of his object.
- 2) The right to prohibit others from enjoying their property.
- 3) The right to encumber the security of the object owned.
- 4) The right to inherit his object.[12]

A holder of ownership of an object in principle enjoys the following benefits:

- 1) Use right : The right to enjoy the benefits of the object that is the object of ownership
- 2) Management right : The right to decide who will be allowed to use the object that becomes ownership under certain conditions.
- 3) Income right : The right to get income (income) from the object that is the object of ownership.
- 4) *Capital right* : The right to enjoy (consume), destroy and change objects that become the object of ownership.
- 5) *Transfer right* : The right to sell, surrender or bequeath the property that becomes ownership.[13]

For people outside the property that has become the property of another person, he is bound by law or other norms to let the owner of the property enjoy his property. If he forces himself to interfere with objects that have become the property of others, then he can be forced to leave the disturbing act and at the same time be burdened with the obligation to provide compensation if a loss does occur. According to John Locke, belonging means “*without a Man's own consent it cannot be taken from him.*”[14] Thus, a person has ownership only if he can legally prohibit others from revoking or relinquishing some of his rights recognized in the property system. This means that there is an exclusive right to enjoy something, but there is also a right that is not prohibited to get objects that are common property.[15]

A world without ownership is impossible, because it will cause chaos in the coexistence between humans and other humans. Humans will not stop fighting over and defending what is considered theirs. Ownership tells a person whether he or she is allowed to take action on something. An object attached to a property means someone's property, and other people should avoid actions that could disrupt the relationship between the property owner and his property.

In simple terms, property means physical control over an object with the intention of prohibiting others from controlling the object.[16] Munzer put forward two conceptions of property. First, property is seen as things. Property includes tangible or visible objects such as land, buildings, cars, factories, etc. as well as intangible objects such as copyrights, patents, and trademarks.[17] The second conception sees property as relations. Property consists of certain relationships usually legal relationships between people or other entities with an object.[18] According to Weir, ownership has two meanings. Property is any object that can be owned and transferred by a legal subject. This is the first sense of belonging. The second sense, property means the legal relationship between the legal subject and the object, for example I own a car or land.[19]

According to Client Earth, property means bundle of rights which includes the right of ownership and the right to manage.[20] The right of title includes the right to manage and transfer proprietary objects. This transfer right in some ways may be restricted, for example in relation to guardianship then the act of diverting an object can only be done if it is for the benefit of the person under that trust.[21] Managing rights include the right to manage as well as the right to transfer objects of ownership but are limited in nature. The holder of the right to manage the property object may rent it out or grant the right to use it to the other party. The right to use includes the right to use millik objects and basically cannot change the object's ownership by lying.[22] Thus, within the property there are rights of ownership, right of management, and right of use of the property object.

For Bentham, property is nothing but the basis of a hope in the form of the hope of obtaining a certain benefit from the thing we are said to have, as a result of the relationship in which we stand.[23] The idea of possession is the setting of expectations: of trust one can profit from the possessions, as the case may be. Then, in the view of naturalism, the

government does not create property but only protects and enforces property. Even if the government makes a law that contains property, the law does not give birth to property but merely recognizes ownership that already exists naturally. For example, if there is a law containing property rights to land, then such rights are not born because of the law but the law only recognizes them. Even without laws, the property rights still exist. Aristotle stated that the right to property is inherent in the moral order.[24]

Ownership of land generally includes what is above and below the ground.[25] Soil includes the earth's surface, the soil below the surface to the center of the earth, and the air above it.[26] According to the law, what is meant by land is not only the surface but includes whatever is below plus the air space above it and includes buildings and rights that are not visible on the land such as rental rights.[27]

2.3 Analysis of Justice in the Medan High Court Decision Number 277/PDT/2018/PT MDN Regarding Land Ownership

One of the judges' considerations that local examinations were carried out was to make justice quick, concise and low-cost, but in reality the principles of justice were very far from what the judge considered because these principles were obeyed by the litigants, but the judge himself violated what which is considered because in the course of the examination process a case like this alone takes twenty times due to the chairman of the panel of judges Dharma P. Purba, SH. The chairman of the panel of judges is always late in entering the office or in the morning, only signing the absence, then coming out again and going back to take a break and after the break ends the trial of criminal cases so that until the afternoon this civil case is postponed many times, and even the verdict has just been pronounced on the April 11, 2018 when the defendant's attorney returned home because he got a call the defendant's wife was sick and this had been conveyed to the plaintiff's attorney, SIUNITA, SH. if the judge was objective, the trial was decided to be held on April 18, 2018 but it turned out that that afternoon we asked the substitute clerk: SUMARDI, said the case had been decided on April 11, 2018.

In the decision, the judge added one petitum that was not requested by the plaintiff, namely petitum no. 5 states that the defendant must submit and comply with this decision, in which case the addition is strictly prohibited by law. In terms of proof, the plaintiff submits evidence of letters marked P.I to 14, with an explanation of P.I evidence: Statement of compensation from MHD. Nuh Rambe to Alimuddin Siregar, the husband of the plaintiff, dated July 29, 1990., Evidence P.2 Death certificate an. Alimuddin Siregar village head dated 2 September 2016 No.474.3/338/2016., evidence P.3 Community statement letter dated 25 September stating that the plaintiff controlled and owned the land. This statement letter is a unilateral statement letter and is not signed by the local village head, evidence P.4 to proof of tax payment where this evidence does not determine land rights, while evidence P.10 to proof

P.14 is a land compensation transaction between a third party that has nothing to do with the a quo case.

In addition to the evidence of the letter, the plaintiff also submitted 5 witnesses, both sworn in and not sworn in, where these witnesses did not know with their own eyes the land compensation transaction in the case between the defendant and Alimuddin Siregar, only hearing the story from the plaintiff who told them the land was purchased from the defendant. This testimony is in the law of Deaudit's testimony so that it cannot be used as a justification for the defendant to have sold the land in question to Alimuddin Siregar.

That, to support the arguments for the rebuttal, the defendant has submitted documentary evidence, namely evidence T.1 to T.13 with explanations:

- IT evidence is a statement from the head of Sampean Village dated July 9, 1987 No.30/3/sk/sp/1987 stating that it is true that MHD. Nuh Rambe is in control of a piece of land that has not been signed for public/government purposes in Sampean village, right river sub-district, Labuhanbatu Regency with the following limits and sizes:
 - North side: 85 mtr. Bordered by Rokkaya Datuk Rambe;
 - South side: 55 mtr. bordered by Zainuddin Rambe;
 - West : 135 mtr.berbats with Halim Muttasim Rambe;
 - East side: 85 mtr. bordered by Zainuddin rambe. Explanation: the plaintiff only proposed 2 rante from the letter of the village head 30/3/SK/SP/1987.
- Evidence T.2 is the Decision of the Rantauprapat District Court No.224/pid.c/2017/PN-Rap dated July 19, 2017 on the plaintiff's report to the defendant with the following order:
 - Release the accused from all legal charges;\
 - Restoring the rights of the accused in terms of ability, position, dignity and dignity.
- Whereas, the sound of the verdict was because in the trial the defendant presented evidence marked with the T.I. and therefore it becomes one of the evidences supporting the arguments of the defendant's rebuttal in the a quo case.
- Whereas, evidence T.3, T.4, T.5, T.6, T.10, T.11, T.12, T.13 is proof of tax payment and not to determine a right that is the same as being filed plaintiff.
- Evidence T.8 is a statement letter from the head of Sampean Village dated October 25, 2017 stating that he did not go forward to sign the statement presented by the plaintiff which stated that it was true that the plaintiff controlled and owned the land in the case.
- Exhibit T.9 is Sappit Harahap's statement letter dated October 25, 2017 explaining that he does not want to sign the statement presented by the

plaintiff which states that it is true that the plaintiff controls and owns the land in the case the plaintiff has mastered and owns the land in the case.

- Explanation: these two statement letters show that the object of the case is the right of the defendant and at the same time denies the statement submitted by the plaintiff with proof P.3 because this evidence is not known to the village head.
- Whereas, in legal considerations, the judge stated that he had proven his claim based on the statements of the witnesses and the evidence of the documents submitted, whereas on the contrary the defendant could not prove the rebuttal arguments regarding the land rights of the case because the defendant's witnesses and the documentary evidence did not mention the object of the case is the right of the defendant
- Whereas, this consideration clearly favors the judge against the plaintiff because the witnesses presented by the plaintiff only heard from the plaintiff that the plaintiff had purchased the land in dispute from the defendant. - evidence of the letter submitted by the defendant.
- Whereas, to support the rebuttal arguments, the defendant has submitted evidence of a letter marked T.2 wherein this evidence T.2 is the decision of the Rantauprapat District Court No. 224/pid.C./2017/PN Rap dated July 19, 2017 against the defendant whose ruling reads as described above because in the trial of the criminal case the defendant submitted evidence of T.I.
- Whereas, apart from the two pieces of evidence, the defendant's witness, Bahroni Hasibuan, in the trial explained that the defendant's land was never sold to the plaintiff.
- Whereas, it is a question to the judge where did he know the object of the case being sued by the plaintiff is 1 hectare, while the defendant in his answer is that the land being sued by the plaintiff is only a portion of approximately 2 Rante of land rights of the plaintiff in the evidence contained in evidence T.1.
- Whereas, according to reliable information, the delay in the judge's decision was due to the sale and purchase of cases between the plaintiff and the judge amounting to 40 million rupiah.
- Whereas, the judge did not consider evidence that P.1 was suspected to be false because in the original P.1 trial it was seen that the name of the defendant was added to the seller's name, which we had asked the panel of judges to include in the minutes of examination, but the judge refused by saying we can't include this in the minutes of the examination, it will be included in the defendant's conclusion later.
- Whereas, with the alleged fake letter signed P.1, the plaintiff has been reported to the Labuhanbatu Police Station No.STPLP/1255/VII/2017/SU/RES-LBH dated 29 August 2017 using a forged letter as regulated

in Article 263 paragraph (2) The Criminal Code is threatened with 6 years in prison and is still in the process of being investigated.

- Whereas, it turns out that evidence P.1 was not considered by the judge, as well as the statements of the witnesses regarding the defendant borrowing money from Alimuddin's husband and the plaintiff's payment but the plaintiff did not accept and the judge did not consider it.

Thus, we propose this memorandum of appeal and based on God Almighty, we ask that the Medan High Court be pleased to render the following decision:

1. Canceling the decision on which this appeal is requested.
2. Charge the costs incurred in this case to the plaintiff.

Justice is the glue of the order of civilized society. The law was created so that each individual member of the community and state administrators take the necessary actions to maintain social ties and achieve the goals of living together or vice versa so as not to take actions that can damage the order of justice. If the ordered action is not carried out or a prohibition is violated, the social order will be disrupted because justice is violated. To restore order in social life, justice must be upheld. Each violation will be punished according to the level of the violation itself.[28] According to John Rawls, the situation of inequality should be given such rules that most benefit the weakest groups of society. This happens when two conditions are met. First, the situation of inequality guarantees a maximum minimum for the weakest group of people. This means that the situation of society must be such that the highest possible profit is generated for the small group of people. Second, inequality is tied to positions that are open to everyone, meaning that everyone is given equal opportunities in life and fulfills their needs.

John Rawls further emphasized that the justice enforcement program with a populist dimension must pay attention to two principles of justice, namely, first, giving equal rights and opportunities to the broadest basic freedoms as broad as equal freedom for everyone. Second, being able to reorganize the socio-economic disparities that occur so that they can provide reciprocal benefits for everyone, whether they come from lucky or unlucky groups.

One of the weaknesses in the land system in Indonesia is that Law Number 42 of 1999 concerning Fiduciary Guarantees provides an understanding that fiduciary guarantees are security rights over movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights. as referred to in Law Number 4 of 1996 concerning Mortgage Rights that remain in the control of the Fiduciary Giver, as collateral for the repayment of certain debts, which gives priority to the Fiduciary Recipient over other creditors.[29]

From the above understanding, it provides an understanding that if the debtor wants to make collateral for borrowing money, the object that is guaranteed is in the hands of the debtor, this is for movable objects. It is different with fixed objects such as land if the certificate or proof of ownership

is in the bank while the land is still controlled by the debtor. In reality, creditors usually do not complain because in the field the bank does not supervise it.

In the case of a land ownership dispute between Alimuddin's wife and Nuh Rambe, the main issues discussed and analyzed lead to complaints or objections to the issue of fruit on the agricultural land, which is not producing fruit for a long time. In the end, Alimuddin's wife filed a lawsuit against Nuh Rambe, complaining because the land on collateral did not produce any fruit and did not produce any fruit.

In the case of the dispute above, the researcher tries to analyze all the judges' considerations, so that the researcher finds a question and must be answered according to the researcher's opinion. This consideration clearly raises the bias of the judge against the plaintiff because in essence the judge's considerations have not fulfilled the element of justice, including because the witnesses proposed by the plaintiff only heard from the plaintiff that the plaintiff had purchased the land in dispute from the defendant, this testimony the judge should have considered to strengthen the arguments of the defendant's rebuttal are added to the testimony of the defendant and the evidence of the letter submitted by the defendant.

The next consideration is the proof of the land ownership certificate which in the defendant's exception has testified that the letter held by the plaintiff is still in the process of being investigated due to indications of forgery of the letter, but the judge was too hasty to give considerations and decisions that caused injury to justice felt by the the defendant. This is evidenced by the defendant with the alleged fake letter signed P.1 then the plaintiff has been reported to the Labuhanbatu police station No.STPLP/1255/VII/2017/SU/RES-LBH dated 29 August 2017 using a forged letter as regulated in article 263 paragraph (2) of the Criminal Code is punishable by 6 years in prison and is still in the process of being investigated.

To support the rebuttal arguments, the defendant has submitted evidence of a letter marked T.2 where the evidence of T.2 is the decision of the Rantauropat District Court No. 224/pid.C./2017/PN Rap dated July 19, 2017 against the defendant whose ruling reads as described above because in the trial of the criminal case the defendant submitted evidence of T.I.

Likewise, the testimony of the witnesses about the defendant borrowing money from Alimuddin for the medical expenses of his child and when he was about to make the payment of the debt to the plaintiff, the plaintiff did not accept it without a clear reason and was not considered by the judge.

3. CLOSING

3.1 Conclusion

Justice in the Medan High Court Decision Number 277/PDT/2018/PT MDN Regarding Land Ownership has not been fully fulfilled, this is based on the discovery of analytical data which results in that in terms of proof at trial,

especially proof of land ownership certificates which in the defendant's exception has given testimony that the letter held by the plaintiff is still in the process of being investigated due to indications of forgery of the letter, but the judge was too hasty to give considerations and decisions that caused the injury to justice to be felt by the defendant.

3.2 Suggestion

A judge should first consider the considerations to strengthen the arguments of the disputing parties in court, so that justice is created for the disputing parties even though in reality justice can only be fulfilled if it is in accordance with their respective portions, but behind it all a judge must use considerations that should not harm one of the disputing parties. A judge must be able to explore and find the right law that will be the basis for making decisions. This is the role of the judge, adjusting the law in accordance with the prevailing reality in society in order to be able to make truly fair legal decisions based on the purpose of the law.

REFERENCES

- [1] Muh, Risnain. "Peningkatan Daya Saing Bangsa Melalui Reformasi Pembangunan Hukum Dalam Mewujudkan Cita Negara Kesejahteraan". *Jurnal Rechts Vinding, Media Pembinaan Hukum Nasional*, Vol. 5, No. 3, Desember 2016.
- [2] 1945 Constitution, Article 33 paragraph (3).
- [3] A, Setiawan dan Hanim L. "Pelaksanaan Izin Perubahan Penggunaan Tanah Terhadap Alih Penggunaan Tanah Pertanian Ke Rumah Tinggal Di Kantor Badan Pertanahan Nasional/ Agraria Dan Tata Ruang Kabupaten Demak". *Jurnal Akta* Vol. 4. No. 1, Maret 2017: 59-64.
- [4] B, Ch. Eman, Angga. "Penyelesaian Terhadap Sertifikat Ganda Oleh Badan Pertanahan Nasional". *Journal Lex et Siciatatis*, Vol. 5. No. 1, 2013 : 28.
- [5] Sitorus, Oloan dan Dayat Limbong. *Pengadaan Tanah untuk Kepentingan Umum : Mitra Kebijakan Tanah*. (Yogyakarta : Mitra Kebijakan, 2004).
- [6] Dwisvimiari, Inge. *Keadilan Dalam Perspektif Ilmu Hukum*, *Jurnal Dinamika Hukum* Vol. 11, No. 3, 2011: 522-531.
- [7] Supriadi. *Hukum Agraria*. (Jakarta : Sinar Grafika, 2008).
- [8] Harsono, Boedi. *Hukum Agraria Indonesia*. (Jakarta : Djambatan, 2003).
- [9] Soekanto, Soerjono. *Pengantar Penelitian Hukum*. (Jakarta : UI Press, 1984).
- [10] *Ibid*.
- [11] Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. (Jakarta : PT. Raja Grafindo Persada, 2002).
- [12] Paton, George Whitecross. *A Text-Book of Jurisprudence, Second Edition, Second Edition*, Oxford : The Clarendon Press, 1951.
- [13] Marchak, M. Patricia. *Who Owns Natural Resources in the United States and Canada?*, No. 20 , North America : Series Working Paper, 1998.
- [14] Ingram, Attracta, *A Political Theory of Rights*, (Oxford : Clarendon Press, 1993).
- [15] *Ibid*.
- [16] Paton, George Whitecross. *Op.Cit*.
- [17] Munzer, Stephen R. *A Theory of Property*, (Cambridge : Cambridge University Press, 2000)
- [18] *Ibid*.
- [19] Weir, Michael. *Concepts of Property*, *The National Legal Eagle*, Vol. 7, Issue 1, Autumm : 2001 : 16.
- [20] Earth, Client. *Ownership and Use Rights of Forest Natural Resources*, (Ukaid : ClientEarth-Ukaid).
- [21] *Ibid*
- [22] *Ibid*
- [23] Bentham, Jeremy. *Theory of Legislation*, (London : Trubner & Co, 1846).
- [24] Bell, Abraham & Gideon Parchomovsky, *A Theory of Property*, *Cornell Law Review*, Vol. 90, Issues 3, March, 2005 : 541.
- [25] Martin, Elizabeth A. *Dictionary of Law. Fifth Edition*. (Oxford : Oxford University Press, 2002).
- [26] Gebriel, Daniel W & Melkamu Belachew, *Land Law Teaching Material*, (Prepared under the Sponsorship of the Justice and Legal System Research Institute, 2009).
- [27] Oran, Daniel. *Oran's Dictionary of the Law*, 3rd Edition, Canada : West Legal Studies, 2000.
- [28] Sidharta, Arief. *Meuwissen Tentang Pengembanan Hukum, Ilmu Hukum, Teori Hukum dan Filsafat Hukum*, (Bandung : PT. Refika Aditama, 2007).
- [29] Article 1 number (2) of Law No. 42 of 1999 concerning Guarantee of Fiducia.