

## THE DEVELOPMENT OF NEIGHBOR LAW IN INDONESIA

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### ABSTRACT

Neighbor law was born in the midst of community life to regulate and limit rights and obligations in neighborly relationships. One of the developments in neighbor law is the concept of servitude or property easement. Issues related to servitude right in Indonesia are still frequently encountered, often resulting in illegal actions that lead to losses for others. Therefore, based on several court decisions in Indonesia, it is necessary to conduct an in-depth study of property easements as a limitation on property rights and legal protection for those who are harmed in cases involving property rights restrictions. This research is a legal study that employs three approaches: legislative approach, conceptual approach, and case approach. The results reveal that servitude right is a restriction on property rights over land that is still applicable according to civil law provisions and is based on the social function found in agrarian law. Legal protection provided through the judicial system in Indonesia regarding cases involving property rights restrictions and violations of servitude right involves filing lawsuits by the injured party based on illegal actions. If it is proven that the defendant has committed an illegal act, the judge will issue a court order (*aanmaning*) to perform or cease a certain action, as well as award compensation to the harmed party for actions that violate the servitude right.

**Keywords:** neighbor law; property rights limitation; servitude right.

### INTRODUCTION

Aristotle stated that humans are social creatures (*zoon politicon*).<sup>1</sup> Therefore, it is inherent for humans to interact with one another. As living beings, humans naturally possess different personal interests. Hence, there is a need for rules that can regulate and protect these personal rights and interests. On the other hand, there are two types of law: public law and private law. This division is based on the interests they govern. In public law, the interests regulated pertain to public matters related to the functioning of the state. In contrast, in private law, the interests regulated are private. Essentially, private interests are those that individuals can pursue on their own. This means that individuals have the freedom to determine their own will and desires. However, to establish legal certainty, the state has the authority to set boundaries on what individuals can do to ensure that the rights and interests of other individuals are also protected.

This is what forms the background for the existence of neighbor law as regulated in the Civil Code or *Burgerlijk Wetboek* (“**BW**”). Neighbor law is the law that applies to neighbors, including the rights and obligations among property owners who are neighbors. The provisions regarding neighbor law have been stipulated in the BW, specifically in Book Two of the BW, Chapter IV, concerning the

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<sup>1</sup> Muhammad Amirullah, “Zoon Politicon Menjadi Zoom Politicon?”, *Jurnal Rechtsvinding*, 2020, p.5. [https://rechtsvinding.bphn.go.id/jurnal\\_online/ZOON%20POLITICON%20MENJADI%20ZOOM%20POLITICON](https://rechtsvinding.bphn.go.id/jurnal_online/ZOON%20POLITICON%20MENJADI%20ZOOM%20POLITICON) (Accessed on 29<sup>th</sup> May 2022)

Rights and Obligations Among Property Owners Who Are Neighbors. Article 625 of the BW states, "Property owners who are neighbors have rights and obligations towards each other, whether arising from the natural location of the properties or as prescribed by the law."

With these provisions, it can be understood that neighbor law arises both due to the natural location of properties and as prescribed by the law. Further provisions related to neighbor law can be categorized as follows:<sup>2</sup>

1. Provisions concerning the flow and use of flowing water.
2. Provisions regarding the creation of boundary markers and the enclosure of properties.
3. Provisions concerning jointly-owned walls.
4. Provisions regarding restrictions on property rights (*eigendom*).
5. Provisions concerning exit paths (as emergency exits) and neighborly paths.

In addition to the provisions mentioned above, neighbor law also recognizes the concept of "property easement" or "servitude rights." Servitude rights are regulated in Chapter VI concerning Servitude Rights, starting from Article 674 to Article 710 of the Civil Code (BW). Servitude rights or "property easement" grant certain rights to others to use the property in question. In other words, the existence of servitude rights itself is a deviation from the rights that should be respected under neighbor law. Servitude rights consist of obligations to allow or refrain from doing something.<sup>3</sup> In the Netherlands, these servitude rights are also known as "*dienstbaarheid*" or, in English, "easement." Easements are regulated in Book 5.6 of the Dutch Civil Code. Simply put, "*dienstbaarheid*" or easement involves the limited encumbrance of a property with the obligation to tolerate certain actions or refrain from certain actions. Article 5:70 of the Dutch Civil Code defines easement as follows: "An easement is a burden with which an immovable thing, the 'servient land', is encumbered on behalf of another immovable thing, the 'dominant land'." Similar to the provisions regarding servitude rights in the BW, the Dutch Civil Code also requires that the implementation of easements is carried out in a manner that is least burdensome for the owner of the land encumbered.<sup>4</sup>

With the provisions regarding rights and obligations in neighborly relationships and the provisions concerning servitude rights over a property, in essence, they ensure rights and affirm obligations for parties who are neighbors. However, in practice, violations of rights that should be granted in neighborly relationships still occur. One of these violations is related to the right of way. Even though in the neighbor law provisions and the provisions regarding servitude rights over a property, there is an obligation to grant a right of way. The right of way is a right that can arise due to the proximity of neighboring properties and falls within the regulations of neighbor law. The right to access a way is governed by Article 671 of the Civil Code (BW). Furthermore, concerning the right

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<sup>2</sup> Yeni Septi Hastuti, "Tinjauan Terhadap Gugatan Perbuatan Melawan Hukum Atas Kerugian Immateriil (Stud Kasus Putusan Mahkamah Agung RI Nomor: 1022K/Pdt/2006, tanggal 13 Desember 2006)", *Skripsi*, Program Kekhususan I Hukum tentang Hubungan Sesama Anggota Masyarakat, Universitas Indonesia, Depok, 2011, p. 74-75. <<https://lib.ui.ac.id/file?file=digital/2016-9/20323003-S21563-Yeni%20Septi%20Hastuti.pdf>> (Accessed on 1<sup>st</sup> September 2023)

<sup>3</sup> Article 675 BW.

<sup>4</sup> Article 5:74 Exercising the Rights Based on an Easement, the Dutch Civil Code.

of way, it has also been recognized in customary law, making its implementation a matter of customary practice.<sup>5</sup>

As examples of violations of the right of way, there are several related cases: **First**, in 2021 in Brebes, Central Java, there was a wall built that was 1.5 meters high and 15 meters long, blocking access to two houses in the village of Janegara, Jatibarang, Brebes.<sup>6</sup> **Second**, there is the case of Muhammad Ridwan in Surabaya, where the access to the entrance and exit of his house was blocked by a wall built by his neighbor.<sup>7</sup> **Third**, violations of the right of way can be found in Case Decision No. 738/Pdt.G/2016/PN.Jkt.Sel and Case Decision No. 558/Pdt.G/2019/PN.Mdn.

Based on Case Decision No. 738/Pdt.G/2016/PN.Jkt.Sel, it is known that in early 2015, a dispute arose between Jongkie Kusuma Lie and Rusli Wahyudi, which resulted in the closure of Jongkie Kusuma Lie's servitude right to a road. The road that was closed was a combined road that passed through the land and the corridor of a building owned by Rusli Wahyudi, leading to the public road used daily. Rusli Wahyudi unilaterally denied Jongkie Kusuma Lie's servitude right and proceeded to close the combined road with a fence, hiring individuals associated with a non-governmental organization to prevent anyone from accessing it. Furthermore, according to Case Decision No. 558/Pdt.G/2019/PN.Mdn, it is explained that Askaris Chioe, Haryanto Lukman, and Irwanto entered into a land purchase agreement for a piece of land owned by Ajid, located on the Medan-Belawan Toll Road, Kel. Belawan II, Kota Medan, through an intermediary named Mujianto. The land purchase was done through land partitioning, and there was a remaining portion of land from Certificate of Ownership No. 720 that had been voluntarily released for the purpose of a connecting road to the public road and had received confirmation from the Head of the Land Office of Kota Medan, as indicated in the certificate as a Road Plan. However, in mid-2018 to early 2019, there were large-sized gravel deposits placed directly on the road on that land, causing obstruction and disturbance to its use.

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<sup>5</sup> Rizal Sofyan Gueci, "Penguatan Kedudukan Pranata Hak Servituut dan Hukum Bertetangga dalam Yurisprudensi" *Jurnal Surya Kencana Dua*, Vol. 3, No. 1, July 2016, p. 160-163.

<sup>6</sup> Imam Suropto, "Curahan Hati Penghuni 2 Rumah di Brebes yang Akses Jalannya Ditembok", 14 Desember 2021, <https://news.detik.com/berita-jawa-tengah/d-5855202/curahan-hati-penghuni-2-rumah-di-brebes-yang-akses-jalannya-ditembok> (Accessed on 16th June 2022).

<sup>7</sup> Deny Prastyo Utomo, "Petugas Datangi Rumah yang Aksesnya Ditembok Tetangga di Rungkut Menanggal", 01 November 2021, <https://news.detik.com/foto-news/d-5791892/petugas-datangi-rumah-yang-aksesnya-ditembok-tetangga-di-rungkut-menanggal> (Accessed on 16th June 2022).

558/Pdt.G/2019/PN.Mdn, it is explained that Askaris Chioe, Haryanto Lukman, and Irwanto entered into a land purchase agreement for a piece of land owned by Ajid, located on the Medan-Belawan Toll Road, Kel. Belawan II, Kota Medan, through an intermediary named Mujianto. The land purchase was done through land partitioning, and there was a remaining portion of land from Certificate of Ownership No. 720 that had been voluntarily released for the purpose of a connecting road to the public road and had received confirmation from the Head of the Land Office of Kota Medan, as indicated in the certificate as a Road Plan. However, in mid-2018 to early 2019, there were large-sized gravel deposits placed directly on the road on that land, causing obstruction and disturbance to its use.

Based on the cases that have occurred, it can be observed that violations of the right to use roads in neighbor law and servitude rights to roads can be classified as unlawful acts (*onrechtmatigedaad*). This research aims to determine whether servitude rights provide a limitation on property rights and legal protection for parties who suffer losses in cases involving property rights restrictions in Indonesia and the Netherlands. Additionally, this study will also refer to the interpretation of servitude rights as stipulated in regulations in Indonesia and the Netherlands. Several other studies have been conducted regarding servitude rights, including issues related to the use of another person's land, parties suffering losses resulting in reduced access to light on their property, and so on. What sets this research apart from others is the analysis of the regulation of servitude rights and the cases that have occurred in the Netherlands.

## **METHODS**

This research is a normative legal study that employs several approaches in examining the formulated research questions. The approaches used in this study are the statutory approach, conceptual approach, and case approach. Statutory approach involves an examination of all legal regulations and regulations related to legal issues concerning property rights limitations and servitude rights in Indonesia. It focuses on analyzing and interpreting the relevant laws and regulations. Conceptual approach is based on perspectives and doctrines that have evolved in the field of law. It involves examining the conceptual framework and theoretical aspects of property rights limitations and servitude rights. Case approach involves an examination of cases related to legal issues that have received legally binding judgments. It analyzes previous legal cases that are relevant to property rights limitations and servitude rights to provide insights into how the law has been applied in practice.<sup>8</sup>

## **DISCUSSION**

### **Servitude Rights as a Property Rights Limitation**

The right to control land can be obtained by placing eigendom rights or ownership rights on the land. Land itself is an object that falls within the scope of property law. According to Subekti, ownership rights are the most complete rights over an object. Holders of ownership rights can do

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<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Rev. Ed., Penerbit Kencana, Jakarta: 2010, p. 133-136.

anything with the object they own. Therefore, ownership rights are known for their absolute and inviolable nature (*droit inviolable et sacre*).<sup>9</sup> However, this concept has changed with the introduction of the principle of sociality, particularly in the context of land ownership. According to Law Number 5 of 1960 regarding the Basic Agrarian Principles (“**Agrarian Law**”), Article 16, paragraph (1), states that one of the rights to land is ownership rights. Ownership rights are the strongest and fullest rights that a person can have over land, considering the provisions in Article 6 of the Agrarian Law, which stipulates that all land rights have a social function. This is what is known as the principle of sociality. This principle requires that in the utilization of land, even though ownership rights are recognized as the strongest and most complete rights, they must still consider the common interest. In other words, not all actions can be taken by the owner of the rights because the exercise of ownership rights can be considered as an unlawful act if the actions taken harm others (*misbruik van recht*).<sup>10</sup>

The concept of land having a social function imposes a limitation on land utilization. This limitation arises from the recognition of property rights over another person's property, which means that the use of a property cannot be done unilaterally by the owner for their own benefit but must also consider the public interest. When related to neighbor law, limitations on property rights are restricted as long as they do not interfere with the inherent rights that exist when neighboring. In terms of property rights, according to Book II of the Civil Code (BW), property rights are divided into two categories:<sup>11</sup>

1. Property rights that provide enjoyment

Property rights that provide enjoyment (*zakelijk genotsrecht*) divided in two type, as follows:

- a. Property rights that provide enjoyment of one's own property
- b. Property rights that provide enjoyment of another person's property.

2. Property rights that provide security:

Servitude rights are property rights that provide enjoyment of another person's property. Subekti defines servitude rights or “*erfdienstbaarheid*” as a burden placed on a property for the benefit of another property that is adjacent.<sup>12</sup> Article 674 of the Civil Code (BW) provides the definition of servitude rights as follows: “Servitude is a burden imposed on a piece of land for the use and benefit of another piece of land, whether it relates to its obligations or its benefits, the servitude may be attached to the person.”

In the Netherlands, these servitude rights are referred to as “*dienstbaarheid*” or easement. According to Article 5:70(1) of the Dutch Civil Code, the definition of easement is as follows: “An easement is a burden with which an immovable thing, the ‘servient land,’ is encumbered on behalf of another immovable thing, the ‘dominant land’.”

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<sup>9</sup> Erwin Wirandhana, “Tinjauan Hukum Hak Servituut Jika Melintasi Tanah Milik Orang Lain”, *Lex Administratum*, Vol. V, No. 6, August 2017, p. 37.

<sup>10</sup> Erwin Wirandhana, *Ibid*.

<sup>11</sup> P. N. H. Simanjuntak, *Pokok-Pokok Hukum Perdata Indonesia*, Rev. Ed., Penerbit Djambatan, Jakarta: 2009, p. 212.

<sup>12</sup> Subekti, *Pokok-Pokok Hukum Perdata*, PT. Intermasa, Jakarta: 2005, p. 69.

Based on the definition provided, it can be concluded that the existence of servitude rights is an implication of the non-absolute nature of property rights over an object, in this case, land. With servitude rights on a property, the owner's use of that property will be restricted by the rights held by neighbors as part of the land's function for the common good.<sup>13</sup> A property can be burdened with servitude rights if it meets the following conditions:<sup>14</sup>

1. There must be two properties, each owned by different owners.
2. The purpose must be to enhance the utility or benefit of the property owner.
3. The burden placed on a property must be passive, meaning it is only to allow or prohibit something.

Servitude rights can be divided into four types: perpetual, non-perpetual, apparent, and non-apparent. Perpetual and non-perpetual servitude rights are explained in Article 677 of the Civil Code (BW), which states:

*"Property easement is either continuous or discontinuous. Continuous servitude is one whose use is continuous or can be continuous without requiring human action, such as the right to flow water, the right to a sewer, the right to an outward view, and the like. Discontinuous servitude is one whose exercise requires human action, such as the right to cross a property, the right to take water, the right to graze livestock, and the like."*

Meanwhile, apparent and non-apparent servitude rights are explained in Article 678 of the Civil Code (BW), which states:

*"Property easement is either apparent or non-apparent. Apparent servitude is one that has outward signs, such as doors, windows, water pipes, and the like. Non-apparent servitude is one that has no outward signs, such as the prohibition to build on a property, the prohibition to build higher than a certain height, the right to graze livestock, and others that require human action."*

Additionally, servitude rights consist of several types, including:

1. The right to an outward view and the right to obtain illumination;
2. The right to prohibit construction exceeding a certain height for the benefit of another property;
3. The right to flow and discharge water;
4. The right to install beams or anchors in another person's wall;
5. The right to navigate in a neighbor's waters;
6. The right to walk through another person's property;
7. The right to channel water.

Similar to the provisions regarding servitude rights or servitude, in the Dutch Civil Code, the burden referred to in easement pertains to a convenience on the land, consisting of the obligation to tolerate an object or activity on, above, or below the land or to refrain from placing an object or

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<sup>13</sup>Septarina Budiwati, "Penegakan Hukum Bertetangga Demi Terjaminnya Keselarasan Lingkungan", *Prosiding Seminar Nasional: Tanggung Jawab Pelaku Bisnis dalam Pengelolaan Lingkungan Hidup*, p. 147.

<sup>14</sup>P. N. H. Simanjuntak, *Op.Cit.*, p. 257-259.

carrying out an activity on, above, or below any of these lands. Additionally, this burden also includes the right to erect buildings or structures or to plant vegetation necessary for the exercise of rights arising from the easement, provided that the buildings, structures, and vegetation are wholly or partially located on the land subject to a burden.<sup>15</sup>

The differentiation of servitude into perpetual, non-perpetual, apparent, and non-apparent, as mentioned in the Indonesian Civil Code, is not known in the provisions of the Dutch Civil Code. However, concerning the types of servitude rights, they are also regulated in the Dutch Civil Code. Nevertheless, the provisions regarding servitude rights in the Dutch Civil Code are quite advanced. This is evident as the Dutch Civil Code contains provisions regulating leaseholders, superficiary rights, and usufructuary rights.<sup>16</sup> A servitude over a property has distinctive characteristics that set it apart, as it is not tied to an individual owner but rather to the property itself. Therefore, if the property changes ownership, the servitude rights over the property also transfer to the new owner. These rights are more closely tied to the property, even if not explicitly mentioned during the transfer.<sup>17</sup>

Regarding servitude rights themselves, they can arise in three ways: through a legal act and through prescription, as provided in Article 695 of the Indonesian Civil Code. A servitude that arises through a legal act can be explained by referring to Article 584 of the Civil Code, which outlines five ways to acquire a property: through possession, attachment, prescription, inheritance, and transfer. As for the emergence of servitude rights through prescription, this can be explained by referring to Article 1963 of the Civil Code, which states that it occurs when a person has possessed for twenty or thirty years with good faith.

Apart from the methods outlined in Article 695 of the Civil Code, servitude rights can also arise through an agreement between neighboring property owners. However, if servitude rights arise through an agreement, their implementation is not as property rights but as obligations and rights to be performed based on the agreement of the parties. Consequently, servitude rights must be re-negotiated when the property changes ownership, as stated in the Hoge Raad decision of March 3, 1905.<sup>18</sup> An easement or servitude can be said to arise when there is an implied consent, provided that certain conditions are met. These conditions include the clear existence of the servitude, the divided land that has been released as the servitude, continuous use of the servitude, and the servitude being based on necessity or requirement.<sup>19</sup> In contrast, under the provisions of the Dutch Civil Code, an easement or *dienstbaarheid* arises through the establishment or the declaration of a right to act, as stated in Article 5:72 of the Dutch Civil Code, which states, "Easements can come into existence by means of an establishment or the prescription of a right of action."

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<sup>15</sup> Article 5:71 Content of the Burden on the Servient Land, the Dutch Civil Code.

<sup>16</sup> Article 5:84 Establishment of Easements by Limited Proprietors, the Dutch Civil Code.

<sup>17</sup> P. N. H. Simanjuntak, *Op.Cit.*, p. 255.

<sup>18</sup> P. N. H. Simanjuntak, *Ibid*, p. 256.

<sup>19</sup> The Michigan Law Review Association, "Easements by Implication: Implied Grant of Easement" *Michigan Law Review*, Vol 15. No. 3, 1917, p. 271. <https://doi.org/10.2307/1276587> (Accessed on 15th July 2022).

Similar to the provisions in the Indonesian Civil Code where servitude rights can arise, in part, due to prescription, the Dutch Civil Code also recognizes the exercise of an easement in good faith over a sufficient period. This provision can be found in Article 5:73 of the Dutch Civil Code, which states:

*“The content of an easement and the way its rights are to be exercised are specified in the notarial deed by which the easement is established and, as far as this deed does not provide a regulation, by local common practice. When the rights derived from an easement have been exercised in good faith for a considerable time in a certain way without any objection from the owner of the servient land, then this way of exercising these rights is decisive as far as there is realistic doubt with regard to the content of the easement or the way in which it is to be exercised.”*

From the above article, it can also be understood that in the Netherlands, the provisions regarding easements must be determined in a notarial deed. This notarial deed will then specify the content and manner of exercising a right. This becomes a limitation on the exercise of servitude rights, as they cannot exceed what is specified in the deed. The notarial deed may also include an obligation to pay a certain amount known as the ground fee to the party enjoying the right, as stated in Article 5:70 (2) of the Dutch Civil Code. The requirement for easement to be declared in a notarial deed can be inferred as a form of registration obligation in the Netherlands. As a property right, easements are subject to the obligation of registration as an implementation of the publicity principle, as provided in Article 696 of the Civil Code. Specifically, under Article 696, registration is done as stipulated in Article 620 of the Civil Code.

Servitude rights can come to an end through several ways. *First*, servitude rights can terminate due to the impossibility of further exercising the easement, caused by conditions rendering the servient land unusable, as stated in Article 703 of the Civil Code. However, it should be noted that servitude rights may be revived if the servient land's conditions return to a state where it can be utilized again, as specified in Article 705 of the Civil Code. Nevertheless, it's important to know that these provisions may not apply if the damage to the servient land has persisted for an extended period, in which case it may expire over time. The expiration of servitude rights, as per Article 707 of the Civil Code, occurs when they remain unused for a continuous period of thirty years. This is the *third* way servitude rights can end. *Fourth*, servitude rights can terminate if the servient land falls into the possession of a single individual. In other words, when the land between the grantor of the burden and the recipient of the burden merges and becomes the property of one person, the servitude rights over that land will terminate without prejudice to the provisions of Article 701, as stated in Article 706 of the Civil Code.

In contrast, under the Dutch Civil Code, the termination of servitude right or property servitude rights can be initiated by the court at the request of the landowner burdened by the easement. Such a request can be based on two grounds:<sup>20</sup>

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<sup>20</sup>Article 5:78 Alteration or Termination of an Easements, the Dutch Civil Code.

1. Due to unforeseen circumstances of such a nature that, for standards of fairness and justice, the continued, unchanged use of the easement cannot be expected from the serving landowner;
2. If at least twenty years have passed since the easement first arose, and the continued, unchanged use would conflict with the public interest.

At the request of the landowner, the court is also empowered to terminate an easement if it is impossible to use the rights derived from it or if the landowner burdened by the easement no longer has a reasonable interest in exercising those rights.<sup>21</sup> However, at the landowner's request, the court can also reinstate an easement so that it can be used again, provided that it meets the standards of fairness and justice.<sup>22</sup> In essence, there is a similarity in the regulations regarding the termination of servitude or easement in the Indonesian Civil Code (BW) and the Dutch Civil Code. The main difference lies in the fact that in the Netherlands, to terminate or modify an easement, a request can be submitted to the court by the landowner.

The regulations regarding easement in Indonesia are reasonably clear, but there are still some obstacles related to the implementation of servitude rights. These include a lack of understanding among the Indonesian public about servitude rights, which are part of neighbor law, leading to conflicts that often arise among neighbors. Frequently, landowners do not comprehend the social function of land ownership in Indonesia. Clearer regulations are also needed at the legislative level, such as servitude rights attached to the land object rather than the landowner, agreements concerning the use of servitude rights, and so on.

### **The Legal Protection for Parties Who Suffer Losses in Cases of Property Rights Limitations**

Land serves a social function as a limit on property rights over land, and therefore, legal subjects are not allowed to use or not use their land rights solely for personal gain.<sup>23</sup> Moreover, if such actions could harm public interests, property rights can be revoked if the public interest demands it, as regulated by Article 18 of the Agrarian Law. Therefore, Article 7 of the Agrarian Law stipulates that property rights that exceed limits and harm public interests are not allowed. Furthermore, Article 17 of the Agrarian Law emphasizes the maximum and minimum limits of property rights over land.

The concept of unlawful act (*onrechtmatige daad*) was initially defined narrowly as an act that directly violates a legal provision. However, after the decision of the Hoge Raad on January 31, 1919, the definition of unlawful acts was expanded to include acts contrary to decency or deemed improper in societal life.<sup>24</sup> According to Wirjono Prodjodikoro, the consequence of an unlawful act is a

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<sup>21</sup> Article 5:79 Termination of an Easement by the Court, the Dutch Civil Code.

<sup>22</sup> Article 5:80 Change of the Content of the Easement, the Dutch Civil Code.

<sup>23</sup> Triana Rejekiingsih, "Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (Suatu Tinjauan dari Teori, Yuridis dan Penerapannya di Indonesia)" *Yustisia*, Vol. 5, No. 2, August 2016, p. 308.

<sup>24</sup> Wirjono Prodjodikoro, *Perbuatan Melanggar Hukum*, Edisi Revisi, CV. Mandar Maju, Bandung: 2020, p. 13.

disturbance in the balance of society or what he calls imbalance (*keganjilan*). Imbalance can affect individual interests, including wealth, physical, and mental well-being.<sup>25</sup> If these interests are violated,<sup>26</sup> it will always result in losses for the individuals whose interests have been harmed.<sup>27</sup>

Nevertheless, the law still delineates the boundaries between rights and obligations when someone commits an error or negligence that results in harm to others. In principle, unlawful act (*onrechtmatigedaad*) arises when a person's actions or inactions violate the rights of others, contravene their legal obligations, or run counter to ethical norms or the expected level of caution in social interactions towards oneself and others.<sup>28</sup> Essentially, accountability arises due to the harm caused by an action. Therefore, when a legal subject engages in unlawful behavior, there is an obligation of accountability. The concept of accountability can be categorized into three forms: accountability, responsibility, and liability. Liability, or responsibility is a specific form of accountability that refers to a situation in which an individual or a legal entity is required to provide compensation after a legal event or action.<sup>29</sup> Consequently, in the case of the deliberate closure of access to a road, such an act falls under unlawful behavior, leading to an obligation for the perpetrator to pay compensation. This is in accordance with Article 1365 of the Civil Code, which states, "Indeed, every act that violates the law and causes damage to others due to one's fault obligates them to provide compensation."

According to Lambers, to claim compensation under Article 1365 of the Civil Code, certain requirements must be met, namely, the act must be unlawful, the perpetrator must be at fault, there must be resulting damages, and there must be a causal relationship between the act and the damages.<sup>30</sup> On the other hand, according to Hamzah, the requirements specified in Article 1365 of the Civil Code that must be fulfilled are fault, damages, causal relationship, and relativity.<sup>31</sup>

Compensation in cases of unlawful acts, as regulated by Article 1366 of the Indonesian Civil Code, states, "Every person is responsible not only for the damages caused by their actions but also for damages caused by negligence or lack of due care." Unlike damages resulting from non-performance (*wanprestasi*), which only recognizes material damages, damages resulting from wrongful acts, in addition to material damages, also acknowledge the concept of immaterial damages, which can be assessed in monetary terms. Immaterial damages are losses related to the

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<sup>25</sup> Wirjono Prodjodikoro, *Ibid*, p. 18.

<sup>26</sup> Wirjono Prodjodikoro, in his book titled "*Perbuatan Melanggar Hukum*," refers to it as 'violation of interests.' He explains that human interests in wealth, property, body, and soul can be violated by an unlawful act.

<sup>27</sup> Wirjono Prodjodikoro, *Op.Cit.*, p. 20.

<sup>28</sup> Sri Redjeki Slamet, "Tuntutan Ganti Rugi dalam Perbuatan Melawan Hukum: Suatu Perbandingan dengan Wanprestasi", *Lex Jurnalica*, Vol. 1 No. 2, August 2013, p. 108.

<sup>29</sup> Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Prenada Media Group, Jakarta: 2008, p. 220.

<sup>30</sup> Lambers, dalam Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan dalam Proses Pembangunan Nasional Indonesia*, Universitas Airlangga, Surabaya, p. 176 dalam Absori, *Hukum Penyelesaian Sengketa Lingkungan Hidup*, Muhammadiyah University Press, Surakarta: 2006, p. 84 dalam Septarina Budiwati, "Penegakan Hukum Bertetangga Demi Terjaminnya Keselarasan Lingkungan", *Prosiding Seminar Nasional: Tanggung Jawab Pelaku Bisnis dalam Pengelolaan Lingkungan Hidup*, p. 152. <https://publikasiilmiah.ums.ac.id/xmlui/bitstream/handle/11617/9464/10.%20Septarina%20Budiwati.pdf?sequence=1&isAllowed=y> (diakses tanggal 25 Juni 2022)

<sup>31</sup> Hamzah, *Penegakan Hukum Lingkungan*, Arikha Media Cipta, Jakarta: 1995, p. 129-132 dalam Absori, *Hukum Penyelesaian Sengketa Lingkungan Hidup*, Muhammadiyah University Press, Surakarta: 2006, p. 85 dalam Septarina Budiwati, *Ibid*, p. 153.

reduction in the enjoyment of life, such as humiliation, injury, or disability.<sup>32</sup> However, individuals who commit wrongful acts are not always obligated to provide compensation for immaterial losses.

Case Decision No. 558/Pdt.G/2019/PN.Mdn, previously, the judge considered whether the disputed property, which had been designated and agreed upon as a public road, was indeed a public road. Upon finding out that the disputed property had been donated for road development and had been a public road since 2012, as emphasized in Article 6 of the Agrarian Law, any prohibition or construction of a permanent wall blocking access to the public road for public use was deemed an unlawful act. Based on this, in their decision, the Panel of Judges in the case *a quo* partially granted the plaintiff's claim and ruled that the parcel of land was validly a public road. They ordered the defendants to dismantle the permanent wall that obstructed access to and from the public road. Additionally, in Case Decision No. 738/Pdt.G/2016/PN.Jkt.Sel, the Panel of Judges stated in their considerations that the servitude right claimed by the plaintiff was indeed valid. Despite the existence of a Withdrawal of Defendant's Ownership Statement dated November 23, 2015, which stated that the defendant withdrew their previous statement allowing access through their land and building, prohibiting anyone from using it without the defendant's permission, the servitude right was acknowledged to have existed since the time the plaintiff and defendant's parents were alive. Therefore, the servitude right remained valid, as confirmed in Supreme Court Jurisprudence No. 1729 K/Sip/1976.

Furthermore, the defendant's act of placing a large padlock/lock on the access gate, having security guards, and prohibiting the plaintiff and those under the plaintiff's authority from using the servitude right and going up and down the stairs, which could endanger lives and property, was deemed an unlawful act. In their decision, the Panel of Judges in the case *a quo* ordered the defendant to remove the padlock blocking the servitude right and to pay compensation in the form of damages for the inconvenience of using the stairs over the wall while the servitude right was blocked, estimated at Rp20,000,000 (twenty million Indonesian Rupiah).

Furthermore, there was a case decided by the Gerechtshof Amsterdam, with case number 200.248.885/01, regarding a piece of land designated as an adjacent road. In the deed of transfer for this land, an easement or servitude right was stated, granting the applicant and the respondent the right to use it with the condition that they were not allowed to install fences or plants at the boundary of the dominant property and serve from behind the house, and parked cars should not obstruct the view from the north wall. However, in this case, the respondent parked their car in a way that obstructed the view from the north side. The Panel of Judges in the case *a quo*, in their considerations, mentioned that the easement or servitude right outlined in the deed was meant to encroach upon a piece of land owned by the applicant, located adjacent to the north outer wall of their house.<sup>33</sup> The

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<sup>32</sup> Article 1371 BW.

<sup>33</sup> Amy Goymour, "Easements, Servitude, and the Right to Park" *The Cambridge Law Journal*, Vol. 67. No. 1, 2008, p. 22. <http://www.jstor.org/stable/25166368> (Accessed on 15th July 2022).

agreement between the parties determined that the easement only applied to the ownership of a piece of land, so in this case, it only concerned a one-meter-wide piece of land owned by the applicant. Therefore, the respondent's actions of parking more than one car on the road and obstructing the view from the north side of the house violated the applicant's servitude right as stipulated in the deed. The parked cars should have been parked next to the fence and should not have exceeded the rear façade of the residential house on the road plot.

As for the decision of the Hoge Raad (Supreme Court), the Panel annulled the decision of the Gerechtshof Amsterdam and upheld the decision of the Rechtbank Noord-Holland, which stated that cars allowed to be parked on the road should be parked next to the fence and should not exceed the rear façade of the residential house, which was in the form of a plot, and parking them in front (or in between) was not allowed, particularly not on the north outer wall façade of the house. Therefore, the appeal and cassation filed by the appellant in response to the decision of the Gerechtshof Amsterdam were rejected. Based on this violation, the Panel of Judges, in their decision, prohibited the appellant from parking more than one car on the road, with a fine of €250.00 per day, or part thereof, in case this order was not complied with.

In conclusion, it can be summarized that in these three decisions, namely the Decision of Case No. 738/Pdt.G/2016/PN.Jkt.Sel, the Decision of Case No. 558/Pdt.G/2019/PN.Mdn, and the Hoge Raad Decision with Number ECLI:NL:HR:2021:1423, the Panel of Judges provided legal considerations that the concept of property rights in Indonesia related to ownership of property is not absolute and must also consider the rights of others, and the parties are obligated to refrain from actions that could obstruct the enjoyment of those rights.<sup>34</sup> Where servitude rights or easements are a burden placed on one property for the benefit of another neighboring property, and these rights remain attached to the property in question even if it is sold to someone else. In the event of a violation of these rights, the party in violation will be issued an court order (*aanmaning*) to either perform or refrain from certain actions, and compensation will be awarded to the injured party for actions that contravene the servitude right. If either party fails to comply with the decision, the injured party can take legal action by requesting execution from the Chief Judge of the District Court, and if this is still not adhered to, a bailiff will carry out the execution.

## CLOSING

Ownership is an absolute property right. One of the concepts that limits property rights can be seen in the provisions related to neighbor law and servitude rights over a piece of land. Servitude rights are burdens imposed on a neighboring property. With servitude rights, there are exceptions to the absolute property rights of the neighbor that should be respected. These exceptions can include rights to views, rights to flow, drip, and channel water, and even rights to a road. Issues related to neighbor law and their connection to servitude rights cannot be separated from land regulations, as

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<sup>34</sup>Keang Sood Teo, "Easement – A Proprietary Interest in the Servient Tenement? Wee Siew Bock v. Chan Yuen Yee Alexia Eve" *Singapore Journal of Legal Studies*, December 2012, p. 495. <http://www.jstor.org/stable/24872224> (Accessed on 15th July s2022).

they intersect. In cases that result in damages within the bounds of property rights, the party in violation will be issued a warning to either do or refrain from certain actions, and compensation in the form of money will be awarded to the injured party for actions that violate servitude rights. The regulation of neighbor law in Indonesia has not received specific attention, even though the development of neighbor law in other countries is a priority for adjustment. Although there have been no significant developments in its regulation, the principles in several court decisions in Indonesia indicate that neighbor law sets boundaries for enjoying property rights. Violations of neighbor law can be categorized as unlawful acts. Given the issues that often arise due to conflicts between the exercise of absolute property rights and neighbor law, it is necessary to provide more detailed regulations on criteria, boundaries, and legal protection for all parties involved.

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