

**IMPLEMENTASI PASAL 1365 KUH PERDATA ATAS HAK AHLI**  
**WARIS SEBIDANG TANAH BERDASARKAN SURAT TANAH**  
**TRADISIONAL DI DESA JATILUWIH**

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**ABSTRAK**

Perbuatan Melawan Hukum (PMH) yang dilakukan seseorang, selalu menuntut adanya pertanggungjawaban atas kerugian yang diderita pihak lain. Perbuatan Melawan Hukum menimbulkan perikatan diantara para pihak yaitu pelaku Perbuatan Melawan Hukum mempunyai kewajiban untuk membayar ganti kerugian yang ditimbulkan karena kesalahannya dan bagi pihak yang dirugikan mempunyai hak untuk menuntut ganti rugi. Setiap Perbuatan Melawan Hukum yang membawa kerugian kepada orang lain, maka orang yang terbukti bersalah berdasarkan Pasal 1365 KUHPerdata wajib mengganti kerugian tersebut. Persoalannya bagaimana pertanggungjawaban seseorang terhadap kerugian akibat PMH yang telah dilakukan, terkait sebidang tanah pekarangan milik Ahli Waris Tunggal yang memiliki status perkawinan Sentana Rajeg Putrika, berdasarkan alas hak lama tanah pekarangannya yang berupa Surat Tanah Petok D atas nama almarhum ibunya. Penelitian ini bertujuan untuk mengetahui (1) Implementasi Pasal 1365KUHPerdata di Desa Jatiluwih, (2) Bagaimana upaya serta kendala Ahli Waris dalam memperoleh hak atas tanahnya, Lokasi penelitian ini dilakukan di Desa Jatiluwih menggunakan sistem penelitian hukum empiris. Teknik yang digunakan dalam penelitian ini adalah teknik non probabilitas dengan cara yang digunakan dalam menentukan subjek penelitian adalah dengan teknik Purposive Sampling. Untuk teknik pengolahan dan analisis data, menggunakan cara kualitatif. Hasil penelitian menunjukkan bahwa Implementasi Pasal 1365KUHPerdata di Desa Jatiluwih, memang belum pernah digunakan untuk menyelesaikan kasus yang tergolong ke dalam Perbuatan Melawan Hukum (PMH) yang disebabkan oleh mayoritas masyarakat di Desa Jatiluwih dan juga Perangkat Desa Jatiluwih kurang mengetahui dan juga memahami akan adanya pasal tersebut, sehingga segala penyelesaian kasus yang ada di Desa Jatiluwih hanya sebatas ditingkat mediasi yang dilakukan di Kantor Desa Jatiluwih yang ditutup dengan Surat Perjanjian Kesepakatan diantara kedua belah pihak yang berkonflik. Terkait upaya yang dilakukan oleh ahli waris didalam memperoleh hak atas tanahnya, sebenarnya perlu diapresiasi dikarenakan ahli waris bersangkutan telah berusaha untuk menjalankan tujuan dari diciptakannya Undang-Undang Republik Indonesia Nomor 5 Tahun

1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, terkait pengkonversian alas hak lama agar menjadi Sertifikat Hak Milik, namun terkait hal tersebut hasil penelitian menunjukkan Ahli Waris tersebut mengalami sebuah kendala yang disebabkan oleh Kepala Dusun bersangkutan yang memiliki kesalah pemahaman dasar hukum, dengan tidak mempercayai bukti-bukti otentik yang menunjukkan Ahli Waris tersebut adalah Ahli Waris Tunggal atas tanah pekarangan yang peniliti teliti.

**Kata Kunci:** Pasal 1365 KUHPerdata, Perbutan Melawan Hukum, Hukum Waris, Peraturan Dasar Pokok-Pokok Agraria



**IMPLEMENTATION OF CLAUSE 1365 OF THE CIVIL CODE ON THE  
RIGHTS OF HEIRS OF A PIECE OF LAND BASED ON TRADITIONAL  
LAND DECISIONS IN JATILUWIH VILLAGE**

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**ABSTRACT**

An Unlawful Act (PMH) committed by a person always demands responsibility for the losses suffered by another party. Unlawful acts create obligations between the parties, namely the perpetrator of the unlawful act has the obligation to pay compensation for losses incurred due to his or her fault and the injured party has the right to demand compensation. For every unlawful act that brings loss to another person, the person who is proven guilty based on Article 1365 of the Civil Code is obliged to compensate for the loss. The problem is how someone is liable for losses resulting from PMH that has been carried out, regarding a plot of land belonging to the Sole Heir who has the marital status of Sentana Rajeg Putrika, based on the old rights to the land in the yard in the form of a Petok D Land Certificate in the name of his late mother. This research aims to find out (1) the implementation of Article 1365 of the Civil Code in Jatiluwih Village, (2) What are the efforts and obstacles of heirs in obtaining rights to their land. The location of this research was carried out in Jatiluwih Village using an empirical legal research system. The technique used in this research is a non-probability technique with the method used to determine research subjects is the Purposive Sampling technique. For data processing and analysis techniques, use qualitative methods. The results of the research show that the implementation of Article 1365 of the Civil Code in Jatiluwih Village has never been used to resolve cases classified as Unlawful Acts (PMH) because the majority of people in Jatiluwih Village and also Jatiluwih Village Officials do not know or understand the existence of this article., so that all case resolution in Jatiluwih Village is limited to the mediation level carried out at the Jatiluwih Village Office which is closed with a Letter of Agreement between the two parties in conflict. Regarding the efforts made by the heirs in obtaining rights to their land, it actually needs to be appreciated because the heirs concerned have tried to carry out the objectives of the creation of Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Principles Regulations, regarding the conversion of old rights so that become a Certificate of Ownership, however, in relation to this, the research results show that the Heir experienced an obstacle caused by the Head of the Hamlet concerned who had a basic

*misperception of the law, by not believing in authentic evidence which showed that the Heir was the Sole Heir of the plot of land. who are careful researchers.*

**Keywords:** Article 1365 Civil Code, Unlawful Acts, Inheritance Law, Basic Regulations on Agrarian Principles

