

Gangguan ketenangan hidup (hinder dan nuisance): analisis perbandingan perbuatan melawan hukum Indonesia dan Inggris = Interference to enjoyment of life (hinder and nuisance): comparative analysis of torts in Indonesia and UK

Meyliana Santy, author

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Abstrak

Skripsi ini dilatarbelakangi oleh ketiadaan pedoman khusus mengenai hinder mengingat hak atas tanah sudah tidak lagi menjadi subjek Pasal 570 KUH Perdata. Terlepas dari ketentuan umum dalam Pasal 1365 KUH Perdata, hinder sering dicampuradukkan dengan misbruik van recht dan kerusakan fisik. Gangguan atas ketenangan hidup itu sendiri pada dasarnya tidak hanya berlaku di Indonesia, melainkan juga misalnya di Inggris, dengan istilah private nuisance. Hal tersebut menimbulkan pertanyaan yakni bagaimana konsep hinder di Indonesia dan private nuisance di Inggris, praktik penggunaan dalil hinder di Indonesia dan dalil private nuisance di Inggris, serta bagaimana perbandingan di antara keduanya. Metode penelitian yang digunakan adalah penelitian yuridis normatif dengan pendekatan perbandingan dan pendekatan kasus. Adapun hasil penelitian ini adalah bahwa cakupan private nuisance lebih luas daripada hinder. Di samping itu, penerapan dalil hinder masih belum didasarkan pada pertimbangan yang komprehensif, sementara dalil private nuisance telah berkembang pesat dengan berbagai landmark case. Terdapat beberapa perbedaan antara hinder dan private nuisance mengenai ruang lingkup, klasifikasi, jenis gangguan, syarat utama, jenis dan pertimbangan atas ganti rugi, sifat melawan hukum, pertimbangan atas gangguan, para pihak terkait, pembelaan. Sementara itu, persamaannya adalah fokus, jarak, hubungan dengan ketentuan perizinan izin gangguan maupun planning permission, dan batasan.

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The background of this research is the lack of specific guidance of hinder regarding that the title of land is no longer subject of Article 570 Indonesia Civil Code ICC . Regardless of general provision in Article 1365 ICC, hinder often confused with misbruik van recht and material damage. The interference of enjoyment of life itself basically applies not only in Indonesia, but also ndash for example ndash in England, with the term private nuisance. That raises question of how the concept of hinder in Indonesia and private nuisance in England, the practice of using hinder in Indonesia and private nuisance, as well as how the comparison between the two. The method used is a normative juridical research with comparative and case approach. The result of this study is the scope of private nuisance is wider than hinder. Besides, hinder implementation is still not based on a comprehensive consideration, while private nuisance has been growing rapidly through various landmark cases. In addition, there are some differences between hinder and private nuisance on the scope, classification, types of interference, main requirements, damages and its consideration, unlawful conduct, interference consideration, parties, and defence. On the other side, the similarities are the focus, distance, relation to permission hinder permission and planning permission , and restriction.