

# Evidence in Civil Action Procedures against the Law by Controlling and Owning Land without Legal Rights

Juben MS Sagala<sup>1</sup>, Faisal Santiago<sup>2</sup>  
{jubenmitrosagala@gmail.com<sup>1</sup>, faisalsantiago@borobudur.ac.id<sup>2</sup>}

Universitas Borobudur, Jakarta, Indonesia<sup>1,2</sup>

**Abstract.** In civil evidenceOne of the judge's responsibilities is to investigate whether or not the case is founded on a legal relationship. If the plaintiff wants to win a case, he or she must prove the existence of a legal relationship. The claim will be dismissed if it cannot be confirmed by the arguments that form the basis of the lawsuit. The type of qualitative descriptive research used in this study takes a normative approach. The research data comes from secondary sources, and the data was gathered through a literature review and qualitative normative analysis of documents. Civil cases must be substantiated by letters or written evidence, witnesses, and suspicions, according to this study. Written evidence, often known as letter evidence, includes Evidence P-1 (authentic deed), P-2, P-3, P-4 (unilateral deed of confession), and P-5 (unilateral deed of confession) (underhanded deed). Defendant I was found guilty of default offenses based on evidence of suspicion. Default is the process of proving civil cases of unlawful conduct committed by holding and owning land without legal rights with proof that the defendants have broken the law. The evidential procedure begins with the submission of proof of the arguments..

**Keywords:** Civil Action; Controlling; Owning Land; Legal Right

## 1 Introduction

A person's control over land is not his property but occupies it in good faith, and as long as there is no disturbance or objection to the control within a certain period, the land can become his property [1]. However, the problem now is the ownership of land without rights [2]. Land tenure without rights is a land control carried out by a person or legal entity to enjoy or use the land that is not his land without rights and against the law [3]. The fact shows that almost all cases related to land are an act against the law, namely by controlling land belonging to other people without rights [4]. With this, it can cause a land dispute in the community. The disagreement can occur due to an agreement between two or more parties in which one of the parties is in default. There are so many actions against the law of land tenure without legal rights. Where a person cannot enjoy the results of his land which another person controls against the law, but because of the actions of other people who have influenced his land, it causes a person to lose enjoyment in his life because these actions always bring losses to people whose land has been controlled by others [5].

Although the regulation of unlawful acts in the Civil Code (from now on abbreviated to the Civil Code) is only in a few articles, as has happened in countries that adhere to other Continental European systems, the reality on the ground shows that civil lawsuits in court are dominated by a lawsuit against the law, in addition to a lawsuit for breach of contract. Therefore, it can be understood how important it is to know the legal arrangements and juridical theories regarding these unlawful acts and how they are practiced in reality, especially what happens in court. The illegal act here is intended as an illicit act of the civil field. Because actions against criminal law or offenses or the term "criminal act" have a completely different meaning, connotation, and legal arrangement. Likewise, unlawful acts by state authorities or what are called "*onrechmatige overheidsdaad*" also have different meanings, definitions, and legal structures.

The unlawful act here is intended as an illegal act in the civil field [6]. Because actions against criminal law or offenses or the term "criminal act" have a completely different meaning, connotation, and legal arrangement. Likewise, unlawful acts by state authorities or what are called "*onrechmatige overheidsdaad*" also have different meanings, purposes, and legal agreements. "Every unlawful act that causes injury to another person obligates the person who, because of his mistake in issuing the loss, must compensate for the loss," according to article 1365 of the Civil Code. In addition to the rules of the Civil Code, the government governs the management of land without rights, namely through the Government Regulation in place of Law Number 51 of 1960 concerning the Prohibition of Land Use without the Rightful Permit or Proxy. It is established in Article 2 of Perpu Number 51 of 1960, which specifies that using land without permission is prohibited proper permit or legal proxy.

In reality, many people are without the right to control, occupy, and enjoy land rights in a way that is against the law. There are many ways the community can resolve these acts against the law, among others, by providing compensation. In settlement of control, occupying, and violating the law on property rights over land, many things are done by providing compensation, either by way of deliberation between the two parties, through land tenure agreements. Nor the decision of the competent authority.

## **2 Methodology**

Research is a scientific way to get data with certain goals and uses [7]. The purpose of this research should be stated clearly and concisely to give direction to the research [8]. The function of a study is to find out a problem to be studied, both social sciences, legal sciences, and other sciences. This study uses a normative juridical approach.

## **3 Results and Discussion**

### **3.1 Efforts to Settle Land Tenure Problems Unlawfully/Without Rights**

The problem of land tenure without rights is a problem that is very closely related to the control over land or land that is still vacant. Still, there is also control over land that is deliberately carried out due to a common origin or proof of ownership but only the owner's property. A landowner is a person who owns a piece of property. This problem is a problem that requires serious handling by the judiciary and even other related institutions or bodies to resolve it.

For the settlement efforts depending on the case's position, if all of the disputing parties do not yet have a valid certificate or proof of ownership, the actual owner is still unclear because the parties defend each other's rights to the land. Whoever feels entitled can file a lawsuit in court. (civil matters) regarding claims for ownership of the land (finding and ascertaining who is entitled to the ground) or claims for unlawful acts (PMH) so that it can be known who controlled the land without rights and who the real owner was. If both parties have issued a certificate (Dual Certificate), then a lawsuit can be submitted to the Administrative Court regarding the cancellation of the certificate. And also, other parties have not, and some already have a certificate, so the resolution depends on the case's position. For the settlement efforts, everything goes back to finding and ascertaining who the real owner of the land is by looking at the evidence and the origin of the land [1].

For this reason, the settlement can be submitted through the District Court with a lawsuit against the law, namely control without rights, and also a claim so that it can be determined who the real owner is. In resolving cases in court, one party can also use another person as a proxy. A power of attorney acts for and on behalf of the power of attorney (for civil and administrative matters and out-of-court and mediation efforts). The meaning of the words "for and on behalf of his name" means that the authorized person acts for and on behalf of the authorizer so that all causes and effects of this agreement become the full responsibility of the authorizer within the limits of the power given. However, some only represent or accompany (for criminal matters). The mechanism for resolving land tenure disputes without rights can be explained as follows:

**a) File a lawsuit to the General Court (Civil)**

In civil procedural law, it is known as Unlawful Acts of Law (PMH Lawsuit), a claim for compensation due to an unlawful act (PMH) that results in harm to another person. Article 1365 of the Civil Code has accommodated this provision: everyone has the right to claim compensation for an unlawful act that harms him. The relationship between the unlawful act and the loss it causes must be causally direct. The PMH directly caused the loss as the only reason for the loss (Adequate Veroorzaking). The loss must be the result of the perpetrator's wrongdoing, without which the loss would not have arisen. With the fulfillment of the elements above, a person can claim compensation based on an unlawful act. Compensation claims can be submitted through civil lawsuits to the local district court, negotiations between the parties, or mediation mediated by a mediator. Claims for compensation through civil cases can refer to Article 1365 of the Civil Code (KUH Perdata). The dispute resolution mechanism utilizes complaints, research, mutation prevention, deliberation, and courts.

**b) File a Lawsuit to the Administrative Court (Administrative Legal Efforts)**

In addition to problems that occur within the scope of civil law, it can also be done through filing a lawsuit to the Administrative Court.[9] Every lawsuit that goes to the Administrative Court is a lawsuit related to state administrative decisions. Land disputes, especially directly related to property rights certificates, are State Administrative Law disputes. The occurrence of a dispute because of the object in dispute means a starting point for the dispute arising from the government's legal action. In administrative law literature, disputes that occur are called administrative disputes because the object in dispute is an administrative decision (beschikking), namely a decision a document issued by a State Administration Agency or a Government Official. In positive Indonesian law, the two measuring instruments are referred

to in Article 53 Law No. 5 of 1986, as amended by Law No. 9 of 2004, and Law No. 51 of 2009, as amended by Law No. 9 of 2004 the State Administrative Court. Article 53 The said law contains the reasons used to sue the government for the decisions of the State Administration that have been issued, which cause losses to the parties affected by the said State Administrative Decisions. In full, Article 53 is referred to as follows:

Article 53

- 1) Persons or civil legal entities who believe a State Administrative Decree has harmed their interests may file a written lawsuit with a demand that the disputed State Administrative Decree be declared null or void, with or without a compensation claim, and rehabilitated before a competent court..
- 2) The grounds mentioned in paragraph 2 that can be utilized in a lawsuit (1) are:
  - a. The challenged State Administrative Decision is in violation of existing laws and regulations;
  - b. The challenged State Administrative Decision is in violation of general governance norms.

According to the author, Indonesian law can provide justice to every citizen who needs legal defense. Every direction has a nature and presentation that can give a fair decision for each disputing party. Every decision that arises in the presence of a moral law provides an opportunity for each person/party to the dispute to accept or re-submit a lawsuit against the PTUN decision that is not following applicable government principles and laws. There proves that the law in Indonesia provides an opportunity for every citizen to get a legal defense.

**c) File a Report to the Police Investigator (Criminal Effort)**

Ownership of land without rights is not only an act against the law (civil term). It can also be called land grabbing (criminal representation According to Article 2 of Law No. 51 PRP of 1960 concerning the Prohibition of Use of Land without the Rightful Permit or Proxy (Law No. 51 PRP of 1960), using land without the permission of the rightful person or his legal proxy is a banned act that can result in punishment. Article 6 of Law No. 51 PRP 1960 stipulates a maximum sentence of 3 (three) months in prison or a maximum fine of Rp. 5,000 (five thousand Rupiah).

Other articles that are also often used in criminal acts of land grabbing are Article 385 paragraph (1) of the Criminal Code (KUHP), with a maximum penalty of four years, in which anyone with the intent to benefit himself or others against by law, selling, exchanging or encumbering with creditverband a land right that has not been certified, even though he knows that someone else has the right or also has the right or also has the right to it. A person who feels aggrieved has the right to file a report to the police or investigators to be examined or investigated regarding this matter. For this reason, the first process is to conduct an investigation, and it is carried out by investigators and even assistant investigators/civil servants. The The term "research" refers to a sequence of steps used by investigators to seek for and locate an incident that is suspected of being criminal act. The investigation is a sub-function and an inseparable part of the investigative function.<sup>43</sup> If an investigator has started investigating an event suspected to be a criminal act; the investigator shall notify the Public Prosecutor (Vide Article 109 paragraph (1) of the Criminal Procedure Code). Notification of commencement of investigation is carried out with SPDP (Notification of Commencement of Investigation), which shall be accompanied by: Police report; Resume of the witness's BAP; Resume of the suspect's BAP; Minutes of arrest; Minutes of detention; Minutes of the search;

Minutes of confiscation. The next process is the submission of case files by the police to the prosecutor's office.

In the event that the investigation has been declared complete (P.21), the investigator will hand over the responsibility of the suspect and the evidence. Then if after being examined by the prosecutor, the evidence is clear and complete, the prosecutor will delegate the case to the court for examination. However, the claim may be rejected or not accepted if it is not within the court's jurisdiction. In the case of a court hearing, the judge orders the public prosecutor to summon the Defendant. After that, the head of the district court appoints a judge who will hear the criminal case concerned. Then in the trial, the judge asked the public prosecutor for an indictment and read it out. The next is the examination of evidence (the evidentiary process). Furthermore, Defendant was allowed to make a defense (pleidoi) or exception. Next is the judge's decision or court decision. And by the conclusion of the PN, the other party feels aggrieved or feels unfair. The convict can file an appeal to the PT within seven days after the PN decision is handed down. Furthermore, legal action can be taken to a higher level, namely to the Supreme Court, within 14 (fourteen) days after submitting a cassation request. If not or not satisfied. Furthermore, PK and cassation can also be carried out in the interests of the law on the Supreme Court Decision. The implementation of the decision can be carried out under the leadership and supervision of the public prosecutor. Namely with imprisonment/confinement and payment of fines.

#### **d) Mediation and Out of Court Dispute Resolution**

##### **1) Mediation**

The purpose of arranging dispute resolution outside the court is to protect the civil rights of the disputing parties quickly and efficiently. This is considering that dispute resolution through litigation tends to take a long time and relatively high costs. This is due to the slow dispute resolution process, expensive court fees. The court is considered less responsive in resolving cases, so decisions are often unable to resolve problems, and the accumulation of patients at the Supreme Court level is not determined. In Perma No. 1 of 2008, the definition of mediation is stated in Article 1 point 7: „Mediation is a way of settling disputes that involves the parties negotiating to reach an agreement with the help of a mediator”.Based on this description, mediation is a process to enable the disputing parties to discuss their differences with the assistance of a neutral third party. The main task of the neutral party (the mediator) is to help the parties understand the other party's views regarding the issue in dispute. That happened.

##### **2) Arbitration (Out of Court Dispute Resolution)**

According to the author, Arbitration is a method of resolving civil disputes between contending parties outside of the ordinary judicial system Agreement. In Arbitration, the parties authorize the Arbitrator (Arbitration Council) to decide the dispute at the first and last level. With Arbitration, each disputing party can resolve their problems openly and not take the court route. This provides convenience for dispute resolution between the disputing parties.

According to the "Arbitration and Alternative Dispute Resolution" Law No. 30 of 1999 " (in the future referred to as "Arbitration Law"), there are various options for an out-of-court settlement, namely Arbitration and also Alternative Dispute Resolution consisting of: Negotiation, mediation, conciliation, or expert judgment are all options.

Alternative Dispute Resolution (ADR) and Arbitration are tiered settlements. If the Alternative Dispute Resolution cannot resolve or decide, the parties will resort to Arbitration either through arbitration institutions or ad-hoc Arbitration. However, when the parties have agreed on a way of settlement through Arbitration, the opportunity is closed to choose payment Article 3 of the Arbitration Law and Alternative Dispute Resolution states: "The District Court is not permitted to judge the disputes of the parties who have been bound by an arbitration agreement".

Disputes or civil differences of opinion can be settled by the parties through Alternative Dispute Resolution based on good faith by setting aside litigation before the District Court, according to Article 6 paragraph (1) of the Arbitration Law. Following the provisions of Article 29 of Law no. 30 of 1999, the parties to the dispute have the same rights and opportunities in expressing their individual opinions. If their proxies with a special letter represent necessarily the parties, then by the chairman of the assembly, both parties are invited to explain their respective positions and submit evidence. Which they deem necessary to strengthen their stance. If deemed necessary, the chairperson, either at the request of the parties or at the initiative of the arbitral Tribunal itself, may summon witnesses or experts for their statements to be heard. This is under the provisions of Article 37 Paragraph (3) of Law no. 30 of 1999. Suppose the panel considers the examination to be sufficient. In that case, the chairman will close the investigation by setting a day for a hearing to pronounce the decision to be taken by the panel. The Tribunal will make its decision within one month after the close of the examination. For this reason, all forms of efforts to resolve land tenure without rights mentioned above, civil measures are often used to fix this problem.

### **3.2 Proof in Civil Procedure Against the Law By Controlling and Owning Land Without Legal Rights**

Rechtsverweking refers to the term expiry in land law, which is to obtain property rights to land. Rechtsverweking or expired is an institution that overtime where:

- a. A person who has held land rights loses land rights because the holder of land rights does not cultivate the land for a certain time;
- b. A person who in good faith has mastered and utilized and managed the land has the right to obtain rights to the land that he has used.

According to article 1946 of the Civil Code, expiration is a method for obtaining something or being released from an engagement after a set period of time and under particular legal conditions. It is not permissible for a person to let go of expiration before the time comes, but he may let go of extinction that has been earned.

"Whoever, in good faith, and based on a legal right, receives an immovable property, an interest, or another receivable that does not have to be paid on an appointment, obtains the right owned by it, with an expiry date, with a tenure of twenty years," according to Article 1963 of the Civil Code. For thirty years, whomever manages it in good faith acquires property rights, without being compelled to demonstrate the basis of his rights".

To obtain ownership of something, a person is required to control it continuously, uninterrupted, undisturbed in public, and explicitly declare himself the owner. And if someone is now in control of an object and proves that he has mastered it from a long time ago, then he is considered to have learned it during the time between then and now, without reducing the evidence to the contrary. According to Prof. Subekti, S.H, as explained in the section on property law, an honest better over an immovable object can eventually acquire

ownership rights to the thing. If he can show a legal basis for righteousness, twenty years have passed since he began to control the object [10]. Bezitter refers to the law of the place where the rights holder to the immovable property. Meanwhile, a bezitter with good intentions is someone who gets the object under his control by one way to obtain property rights, where he does not know the defects contained therein. For example, according to Prof. Subekti, S.H, someone honestly bought a piece of eigendom land from someone who had no right to sell it. After twenty years have passed, and if there have never been parties to dispute their rights during that time, then the land rights will become the legal property of the land. Before the twenty years have elapsed, by law, he is only regarded as an honest bezitter, but if he thinks that he obtained the property from a person who has the right to transfer the property.

Eigendom land refers to absolute property rights, where the goods are in a state of complete or most perfect control according to applicable law. Rights owned by a person with these rights can do anything with the objects he has or the rights that are the broadest in scope. With the passage of thirty years, a bezitter who. The honest person is not required to show the basis of his rights in a certificate or other evidence of land ownership. That is, he can refuse any form of the claim by only showing the material he has for thirty consecutive years without being disturbed, and he will be deemed to have obtained legal property rights as well. Land rights without certificates according to the expiration date in Article 1963 of the Civil Code, formulate that anyone who in good faith and based on a legal right, to acquire an immovable object, which is in the form of land, can obtain his right to the ground, with an expiry date, where he can get land rights with tenure for twenty years. If he controls and manages the land for thirty years in good faith, he can obtain his rights to the ground without being forced to show the basis for his rights in the form of a land certificate or other evidence of land ownership. The explanation regarding the expiration is described in Article 32 paragraph 2 of Government Regulation Number 24 of 1997, where it is emphasized that in a parcel of land that has been issued through a certificate legally in the name of a person or legal entity who acquired the land in good faith and controlled it, it does not will lose land rights, but if a person or legal entity that has received the land in good faith, but does not control it, then the land rights will be lost.

On the other hand, if there is a person or legal entity that controls and makes real use of the land but does not have legal evidence, it can obtain its rights to the land-based on a legal right base and cannot be forced to show a legal right base, if the person or entity The law has controlled and cultivated the land for thirty years. Regarding the role of expiry in the transfer of land rights, an indigenous person who has owned the eigendom land rights belonging to another person and in good faith for twenty to thirty years can become the legal owner of the land because he obtained his property rights due to the passage of time. Therefore, he can ask the court to determine the landowner he has controlled for twenty to thirty years. According to article 621 of the Civil Code, "Everyone who holds a position of power over an immovable object is allowed to ask the District Court, in which the object is located within its legal area so that it is declared as the law that it is the owner." In addition, in article 622 and article 623 of the Civil Code, it is stated that "If the decision granting such a request has obtained absolute power, then the decision by or on behalf of the interested party must be announced at the mortgage depository office, by submitting a copy and with bookkeeping. If the carrying and bookkeeping have taken place, then the position holder is considered the object's owner in all actions carried out by him on the thing with a third party.

In customary land law, there is no known institution of "acquisitive verjaring," which refers to a way to obtain material rights, such as property rights. However, in customary land law, it is known as the "rechtsverwerking" institution, which refers to the creditor's attitude,

either in the form of a statement expressly or tacitly, that he can no longer sue the debtor for anything that is his right. In other words, the passage of time is the cause of the loss of land rights if the land in question has not been cultivated by the right holder for a long time and is controlled by another party through the acquisition of rights in good faith. The lawsuit filed by the right holder against the party who controls the land by the judge will be declared unacceptable because the plaintiff has automatically kept the land for twenty to thirty years, which must be considered as eliminating his rights or *rechtsverwerking*.

#### 4 Conclusion

Efforts to resolve the issue of control without rights, especially through deliberation or peaceful means, if the reflections reach a dead end, can be done through legal remedies by filing a lawsuit against the law to the court. Inland tenure without rights due to multiple certificates, you can file an administrative effort and a case to the Administrative Court. As well as reporting to the police in the event of encroachment of land rights.

#### References

- [1] S. F. Marbun, "Peradilan Administrasi dan Upaya Administratif di Indonesia," 2002.
- [2] S. Basah, *Eksistensi dan Tolak Ukur Badan Peradilan Administrasi di Indonesia*. Alumni, 1989.
- [3] V. I. Z. Uway, "Kajian Terhadap Hak Milik Atas Tanah Yang Diduduki Secara Melawan Hukum," *Lex Adm.*, vol. V, no. 1, pp. 12–26, 2017.
- [4] E. E. Supriyanto, "Politik Kebijakan Ketahanan Pangan Indonesia Pasca Pandemi Covid-19," in *Pertanian Dalam Ketahanan Pangan Selama dan Sesudah Covid-19*, vol. 1, no. 1, Denpasar: Penerbit Yayasan Guna Widya Paramesthi, 2021, pp. 33–43.
- [5] P. G. Lempoy, "Kajian Hukum Hak Atas Tanah Tanpa Sertifikat Yang Diduduki Seseorang Menurut Pasal 1963 KUHPERDATA," *Lex Crim.*, vol. 4, no. 2, pp. 1–10, 2017, [Online]. Available: <http://linkinghub.elsevier.com/retrieve/pii/S0167273817305726%0Ahttp://dx.doi.org/10.1038/s41467-017-01772-1%0Ahttp://www.ing.unitn.it/~luttero/laboratoriomateriali/RietveldRefinements.pdf%0Ahttp://www.intechopen.com/books/spectroscopic-analyses-developments-an>.
- [6] R. Murad, *Penyelesaian Sengketa Hukum Atas Tanah*. Alumni, 1991.
- [7] Ahmad Zuhdi, "Perkembangan Metodologi Penelitian Hukum," *J. Huk. dan Perad.*, vol. 1, no. 2, pp. 189–206, 2012.
- [8] D. Lee, "Research consultations: Enhancing library research skills," *Ref. Libr.*, vol. 41, no. 85, pp. 169–180, 2004, doi: 10.1300/J120v41n85\_13.
- [9] M. Žgur, "The law and politics of inclusion. From rights to practices of disidentification," *Jurisprudence*, vol. 12, no. 2, pp. 308–315, 2021, doi: 10.1080/20403313.2021.1874728.
- [10] Subekti, *KITAB UNDANG-UNDANG HUKUM PERDATA (Burgerlijk Wetboek voor Indonesie)*.