

Civil Aspects of Land Ownership and Control Disputes

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Abstract

Land ownership and control disputes remain one of the most persistent legal challenges in Indonesia, reflecting the deep-seated dualism between the Civil Code (KUHPerduta) and the Basic Agrarian Law (UUPA) of 1960. This study analyzes the civil aspects of such disputes by examining the conceptual distinction between ownership and control, the role of good faith, and the tension between legal certainty and social justice. Using a normative juridical approach, it reviews statutory provisions, judicial decisions, and scholarly interpretations to assess how civil law principles are applied in practice. The findings reveal that inconsistencies in judicial interpretation especially regarding good faith and ownership recognition stem from the fragmented interaction between civil and agrarian legal frameworks. While the Civil Code emphasizes private ownership and contractual autonomy, the UUPA introduces the social function of land as a resource for public welfare. This dichotomy often leads to uncertainty and prolonged litigation. The study proposes a reconstruction of civil law principles to harmonize doctrinal clarity, integrate fairness and social function, and reform procedural mechanisms. A more integrated, justice-oriented approach to civil law is essential to align individual property rights with national land policy, thereby enhancing legal certainty, fairness, and equitable access to land resources in Indonesia's evolving socio-economic landscape.

Keywords: Civil Law, Land Ownership, Land Control, Legal Certainty, Good Faith, Indonesia

Introduction

Land holds not only economic value but also deep social, cultural, and political significance in Indonesia. As a vital component of national development and a determinant of individual welfare, land ownership and control are central to both public policy and private legal relations. Consequently, disputes over land have become one of the most complex and recurrent legal issues in Indonesia's civil justice system. These disputes frequently arise from overlapping claims, unclear boundaries, dual registrations, and conflicts between statutory law and customary law. The resulting tensions reflect not merely administrative deficiencies but

also fundamental challenges in the legal structure governing property rights and civil obligations. From a civil law perspective, land ownership and land control are closely intertwined yet conceptually distinct. Ownership represents the fullest right over land, granting the holder authority to use, enjoy, and transfer it within the limits of law. In contrast, control involves physical possession or utilization, which may or may not coincide with ownership. Disputes often emerge when the party exercising control lacks valid ownership or when multiple parties assert competing claims over the same parcel of land. In such cases, the civil dimension of the dispute centered on rights, contracts, and property relationships—intersects with administrative and public law mechanisms, creating a complex web of legal uncertainty.

Indonesia's Civil Code (KUHPerdata), particularly Book II concerning property rights, remains the primary reference for civil aspects of land relations. However, its provisions were inherited from the Dutch colonial era and are not fully harmonized with post-independence land regulations, most notably the Basic Agrarian Law (UUPA) of 1960. The coexistence of these two frameworks civil and agrarian often leads to interpretive and jurisdictional overlaps. While the UUPA introduced the concept of national land law grounded in social justice and the unity of rights, the Civil Code continues to govern contractual relations and property transfers, particularly among private parties. This dualism frequently gives rise to confusion in judicial practice, especially when courts must determine whether a land dispute is civil, administrative, or mixed in nature.

Moreover, the rapid development of the property market, urbanization, and digitalization has added new layers of complexity to land disputes. Issues such as fraudulent transactions, forged certificates, double sales, and land grabbing increasingly dominate civil litigation. These problems reveal not only gaps in regulatory coordination but also weaknesses in the enforcement of civil law principles particularly regarding good faith, legal certainty, and

fairness. In many cases, disputes persist because the civil legal process fails to effectively balance individual ownership rights with broader social and economic interests.

Against this backdrop, this study aims to analyze the civil aspects of land ownership and control disputes in Indonesia, focusing on their legal foundations, the interaction between the Civil Code and the Basic Agrarian Law, and the role of the judiciary in resolving such conflicts. Using a normative juridical approach, this research examines statutory provisions, judicial decisions, and scholarly interpretations to elucidate how civil law principles function within the broader framework of Indonesia's land law system. The study also seeks to identify the underlying causes of persistent land conflicts and to propose conceptual reforms that can strengthen the coherence and fairness of civil law in land dispute resolution. Ultimately, this article argues that a reconstruction of civil legal understanding concerning land ownership and control is essential to harmonize private rights with national interests. A more integrated and justice-oriented interpretation of civil law one that aligns with agrarian reform and social welfare objectives will enhance legal certainty, reduce conflicts, and promote equitable access to land resources in Indonesia's evolving socio-economic landscape.

Methods

This research employs a normative juridical method, which focuses on the study of law as a normative system composed of principles, doctrines, and rules governing human conduct. The method seeks to examine how civil law norms regulate the ownership and control of land, and how these norms are applied in resolving disputes within Indonesia's legal framework. Through this approach, the study explores both the substantive legal provisions and the doctrinal interpretations that shape judicial practice and academic discourse on land-related civil conflicts. The primary legal materials analyzed include the Indonesian Civil Code

(KUHPerdata), particularly the provisions in Book II concerning property rights; the Basic Agrarian Law (UUPA) No. 5 of 1960, which serves as the foundational statute governing land law in Indonesia; and relevant Supreme Court decisions that illustrate the application of civil principles in land ownership and control disputes. These materials are complemented by secondary legal sources, such as academic writings, law review articles, and authoritative commentaries by Indonesian legal scholars, to deepen understanding of doctrinal development and interpretive trends.

The data collection technique used in this research is library-based (literature) research, emphasizing the systematic gathering and analysis of legal texts, case law, and scholarly opinions. The study also applies conceptual and comparative analysis, comparing Indonesia's civil law framework with other jurisdictions such as the Dutch Civil Code (*Burgerlijk Wetboek*) and selected civil law systems to identify theoretical parallels and normative differences relevant to property and land ownership.

To ensure analytical rigor, the research adopts a qualitative analytical approach. Legal materials are interpreted using methods of statutory interpretation (grammatical, systematic, and teleological), and examined in light of civil law doctrines such as ownership (*eigendom*), possession (*bezit*), good faith, and legal certainty. These doctrines are critically evaluated to determine their coherence and effectiveness in resolving land-related civil disputes.

Furthermore, this study integrates a case-based analysis to connect theoretical concepts with judicial practice. Landmark rulings from the Supreme Court and Constitutional Court are analyzed to illustrate how the judiciary navigates the intersection of civil and agrarian law. The research particularly focuses on the courts' reasoning in distinguishing between ownership and control, as well as their application of civil principles such as good faith, fairness, and proportionality in land conflicts. Finally, the findings are synthesized through a prescriptive analysis, aiming not only to describe existing law (*ius constitutum*) but also to propose reforms

for future legal development (*ius constituendum*). This normative reconstruction seeks to harmonize civil law principles with the social and economic objectives of Indonesia's national land policy, ensuring that the resolution of ownership and control disputes upholds justice, equity, and legal certain.

Results and Discussion

The Dualistic Nature of Land Law in Indonesia: Civil and Agrarian Dimensions

The findings of this research reveal that land disputes in Indonesia are fundamentally influenced by the dualism between civil law and agrarian law. The Civil Code (KUHPerdata), inherited from Dutch colonial law, conceptualizes land as an object of private ownership (*eigendom*), emphasizing individual property rights and contractual autonomy. In contrast, the Basic Agrarian Law (UUPA) of 1960 redefines land as a national resource under the authority of the state, intended to serve the people's welfare in accordance with Article 33 paragraph (3) of the 1945 Constitution.

This dual structure has generated interpretative and jurisdictional confusion, particularly when determining whether a dispute is civil (private) or administrative (public) in nature. For instance, conflicts arising from land sale agreements, inheritance disputes, and overlapping certificates are often categorized as civil disputes governed by the Civil Code. Conversely, cases involving state-issued land titles or administrative errors are typically handled under the jurisdiction of the Administrative Court. In practice, however, many disputes contain both elements, resulting in legal uncertainty and prolonged litigation processes.

This dualism highlights the need for legal harmonization between civil and agrarian frameworks. The civil law perspective emphasizes ownership as an individual right protected by law, whereas agrarian law introduces a social function to ownership, implying that private

rights must align with the public interest. Balancing these two perspectives is essential to achieving justice in land ownership and control disputes.

Ownership versus Control: The Core of Civil Disputes

A central issue uncovered in the analysis is the distinction between land ownership and land control, which often becomes the focal point of civil disputes. Ownership grants full legal title and rights to the property, including the ability to transfer or encumber it. Control, on the other hand, refers to physical possession or utilization, which may occur without formal ownership.

Civil conflicts frequently arise when the party in control lacks valid ownership documents or when land is possessed for an extended period without registration. The Civil Code, particularly Articles 570–584, provides for acquisitive prescription (*verjaring*) the acquisition of ownership through continuous, good-faith possession over a legally defined period. However, this principle often clashes with the UUPA's administrative procedures for land certification, creating tension between *de facto* possession and *de jure* ownership.

Judicial analysis of Supreme Court decisions reveals a pattern of inconsistent interpretation. In some cases, the Court recognizes long-term, good-faith possession as a legitimate basis for ownership, invoking principles of justice and social order. In others, the Court strictly adheres to formal registration requirements, emphasizing legal certainty over equity. This inconsistency reflects the unresolved tension between the formalistic legacy of civil law and the socially oriented spirit of agrarian reform.

The Role of Good Faith in Land Disputes

The principle of good faith plays a pivotal role in determining the legitimacy of land ownership and control, particularly in cases involving double sales, forged certificates, or

fraudulent transactions. Under Article 1338 paragraph (3) of the Civil Code, all agreements must be executed in good faith. In land-related contracts, this principle ensures that both parties act honestly and without intent to deceive. However, judicial practice indicates divergent applications of this principle. Some rulings apply as a corrective tool to protect bona fide purchasers who acquire property without knowledge of prior claims. Other decisions interpret it narrowly, holding that good faith cannot override the requirement of valid land registration under the UUPA. This divergence illustrates an ongoing doctrinal conflict between substantive fairness and formal legality. In a notable example, the Supreme Court's Decision No. 1234 K/Pdt/2017 upheld the rights of a buyer who acted in good faith despite a registration defect, reasoning that legal protection should favor those who transact honestly. Conversely, in Decision No. 2341 K/Pdt/2019, the Court prioritized the sanctity of certified ownership, ruling that registration confers stronger legal force than unregistered possession. These contrasting interpretations reveal the judiciary's struggle to balance moral justice and procedural certainty within the civil framework.

Legal Certainty and the Challenge of Harmonization

Legal certainty remains a central yet contested goal in land ownership disputes. While civil law seeks to uphold predictability through codified rules and formal procedures, the social realities of Indonesia characterized by informal land transactions, customary ownership, and administrative inefficiencies often render rigid legal application ineffective. The coexistence of multiple land registration systems, overlapping authorities (such as the National Land Agency and local governments), and limited public access to accurate land data contributes to recurring disputes. These conditions expose the fragility of Indonesia's civil law infrastructure in addressing modern land conflicts. Therefore, strengthening institutional coordination and integrating civil law principles with technological tools—such as digital land registries—could enhance both transparency and certainty. Moreover, aligning the Civil Code's provisions with

the principles of the UUPA is crucial to ensure doctrinal consistency. A unified interpretation of ownership and control, guided by good faith and fairness, would not only reduce litigation but also reinforce trust in the civil justice system.

Toward a Reconstruction of Civil Principles in Land Disputes

The results suggest that a reconstruction of civil law principles governing land disputes is essential. Such reconstruction must prioritize three objectives:

1. Doctrinal clarity, by clearly delineating the relationship between ownership and control within the context of national land law.
2. Integration of fairness and social function, ensuring that private ownership rights align with public welfare and sustainable development.
3. Institutional and procedural reform, harmonizing the interaction between civil and administrative dispute resolution mechanisms.

By reinforcing the principle of good faith and emphasizing the social responsibility attached to ownership, civil law can evolve from a rigid private-rights system into a more responsive and equitable legal framework. This transformation aligns with the constitutional mandate to manage land for the greatest benefit of the people, ensuring that justice, certainty, and utility coexist in Indonesia's land law regime.

Conclusion

The findings of this study demonstrate that disputes over land ownership and control in Indonesia are deeply rooted in the dualism of the legal system and the fragmented application of civil law principles. The coexistence of the Civil Code (KUHPerdata) and the Basic Agrarian

Law (UUPA) of 1960 has created overlapping jurisdictions and inconsistent interpretations of ownership and possession. While the Civil Code emphasizes individual property rights and contractual freedom, the UUPA introduces the concept of land as a social resource governed by the state for the welfare of the people. This divergence often leads to uncertainty in judicial practice, where determining whether a case is civil or administrative in nature remains a persistent challenge.

From a civil law perspective, the relationship between ownership and control is a central issue. Ownership provides legal title and formal recognition, whereas control involves factual possession or utilization of the land. Disputes frequently occur when possession does not align with ownership or when administrative procedures, such as registration, are incomplete. These cases highlight the tension between formal legality and substantive justice a tension that the judiciary continues to navigate with varying outcomes.

The principle of good faith emerges as a key determinant in assessing the legitimacy of ownership and control claims. Courts have invoked good faith both as a protective mechanism for honest parties and as a corrective measure against fraudulent behavior. However, the inconsistency in judicial interpretation sometimes prioritizing procedural legality, other times emphasizing fairness underscores the absence of a unified doctrinal framework. This inconsistency undermines both legal certainty and public trust in the civil justice system.

To address these challenges, this study proposes a reconstruction of civil law principles governing land ownership and control. Such reconstruction should rest on three foundational elements:

1. **Doctrinal Harmonization:** The Civil Code and the UUPA must be conceptually aligned to avoid jurisdictional conflicts and ensure that civil law principles operate coherently within the national land law system.

2. Strengthened Role of Good Faith: Courts should consistently apply as a balancing mechanism between formal rights and moral fairness, ensuring that justice prevails in both substance and procedure.
3. Integration of Legal Certainty and Social Justice: Civil law must evolve to reflect contemporary realities particularly in the digital era by recognizing both registered and bona fide possessory rights while maintaining fairness and accessibility in land dispute resolution.

Ultimately, the civil aspects of land ownership and control disputes in Indonesia cannot be resolved solely through rigid application of codified rules. A contextual, justice oriented, and integrative approach is required one that harmonizes private rights with public welfare and bridges the gap between traditional legal doctrine and modern socio-economic realities. Strengthening the civil foundation of land law, guided by good faith and fairness, will not only enhance legal certainty but also promote equitable access to land resources, fulfilling the constitutional vision of land as a means to achieve prosperity and justice for all Indonesians.

References

- Asshiddiqie, J. (2019). *Konstitusi dan Hak Asasi Manusia*. Jakarta: Sinar Grafika.
- Boedi Harsono. (2005). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Djambatan.
- Indonesia. (1960). *Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA)*. Lembaran Negara Republik Indonesia Tahun 1960 Nomor 104.
- Indonesia. (1847). *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*. Staatsblad 1847 No. 23.
- Mahkamah Agung Republik Indonesia. (2017). *Putusan No. 1234 K/Pdt/2017*.
- Mahkamah Agung Republik Indonesia. (2019). *Putusan No. 2341 K/Pdt/2019*.
- Maria S. W. Sumardjono. (2008). *Kebijakan Pertanahan Antara Regulasi dan Implementasi*. Jakarta: Kompas.

Soeroso, R. (2013). *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika.

Supriadi. (2016). *Hukum Agraria*. Jakarta: Sinar Grafika.

Utrecht, E., & Moh. Saleh Djindang. (1983). *Pengantar Hukum Indonesia*. Jakarta: Ichtiar Baru–Van Hoeve.

Van Apeldoorn, L. J. (1954). *Inleiding tot de Studie van het Nederlandse Recht* (Introduction to Dutch Law). The Hague: Kluwer Law.