

Physical Possession of Land as Evidence of Ownership: Even with Weak Data, It Can Serve as a Basis for Ownership Claims

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Abstract: Life inevitably involves problems, and disputes over land cannot be denied. With the increasing growth of the human population worldwide, more people require land for their needs. Many individuals seek to strengthen their rights over land to prevent interference from others and to establish a clear claim that a particular piece of land has an owner. Article 1, Paragraph 4 of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, and Land Registration explains that: "Land Rights are rights obtained from legal relationships between the rights holder and the land, including the space above and below the land, to control, possess, use, benefit from, and maintain the land, as well as the space above and below the land." The concept of physical possession of land is often used as evidence to demonstrate claims of land ownership in civil court. Uninterrupted, valid, open, and continuous physical possession over a certain period can be considered strong evidence supporting claims of land ownership. Issues related to land ownership rights often raise questions about when someone legally becomes the owner of land from another party. To overcome this difficulty, the government provides certainty of land ownership rights through land registration in the Republic of Indonesia to obtain a certificate. This study uses normative juridical research methods. The results show: First, physical possession of land has evidentiary power for individuals or groups over the benefits of that land. In disputes related to physical possession, land conflicts may arise to recognize and protect the rights of legitimate landowners. It must be ensured that physical possession of land is carried out legally and in accordance with applicable laws. Second, the time limit for physical possession of land does not apply in all situations. There are types of land that cannot be acquired through physical possession. The time limit of physical possession does not automatically confer ownership rights.

Keywords: Possession; Evidentiary Power; Land.

INTRODUCTION

Land is created by God and benefits all living beings on this earth. Humans use land as a place to live, for agriculture, and for other purposes. Humans and land have an interconnected relationship that lasts until the end of life. Every human being has their own personality, from thoughts to will. In life, some people obey and respect the rights of others, while others prioritize their own interests to gain advantages rather than respecting the rights of others (Sabila, F. N. At. al., 2023).

Life inevitably involves problems, and disputes over land cannot be denied. As the human population grows worldwide, the demand for land for various needs also increases. Many people seek to strengthen their rights over land to prevent interference from others and to establish clear ownership of a particular piece of land. Article 1 Paragraph 4 of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, and Land Registration explains: "Land Rights are rights obtained from the legal relationship between the

rights holder and the land, including the space above and below the land, to control, possess, use, benefit from, and maintain the land, as well as the space above and below the land.”

Individuals involved in land disputes will undergo legal proceedings based on Civil Procedure Law. Legal certainty and certainty of land rights are necessary. Therefore, it is important to register owned land to obtain a certificate of land ownership as strong evidence. Certificates of land rights serve as strong evidence, as emphasized in Article 19 Paragraph (2) Letter C of the Basic Agrarian Law and Article 32 Paragraph (1) of Government Regulation No. 10 of 1961 concerning Land Registration, which has now been repealed and reaffirmed in Government Regulation No. 24 of 1997. This regulation states that the system of publication in land registration in Indonesia is a negative publication system. This means that although the regulation provides clarity regarding the evidentiary strength of certificates as mandated by the Agrarian Law, if it has not been previously proven, then the physical and juridical data contained in the land ownership certificate must be accepted as accurate data, both in everyday legal actions and in court disputes. Ultimately, this statement creates some ambiguity regarding the provisions on the evidentiary strength of certificates as strong proof (Rosadi, A. K., at. al. 2025).

Proof of land ownership rights comes from the conversion of old rights with supporting evidence related to the existence of such rights in the form of written evidence, witness testimony, or statements from related parties. Article 24 Paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration explains: “For the purposes of land rights registration, land rights originating from the conversion of old rights are proven with evidence regarding the existence of such rights in the form of written evidence, statements whose truthfulness is assessed by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic registration, and is considered sufficient to register the rights, rights holders, and other parties’ rights that encumber them.”

In proving ownership, written evidence alone is not always sufficiently strong to establish land ownership in court. A person may claim that the land rights are controlled by another individual who does not possess a land ownership certificate. However, if that individual has physically controlled the land for around 20 (twenty) years, as explained in Article 24 Paragraph 2 of Government Regulation No. 24 of 1997 concerning Land Registration, it is affirmed that a person who has physically controlled land continuously for a period of 20 (twenty) years may register themselves as the rights holder of that land (Harshini, A., 2023).

Physical control of land can serve as proof of ownership, especially when there is no written proof of ownership such as a certificate. Physical control means the actual use and management of the land by an individual over a certain period. If physical control is exercised continuously for 20 years, it can form the basis for submitting an application for land rights.

Physical control means that someone is visibly using and managing the land, for example by building a house, farming, or conducting other activities that demonstrate the land is controlled and utilized by that person. Physical control of land holds evidentiary power in civil cases related to ownership or rights over land, because it shows a strong claim to the land. Continuous physical control for 20 years can be the legal basis (basis of rights) to apply for land rights, such as a certificate of ownership.

In the absence of written proof of ownership, physical control can be evidenced by a written statement of physical control witnessed by witnesses and acknowledged by the village head or sub-district head.

Besides a certificate of land ownership, a land certificate letter (Surat Keterangan Tanah, SKT) can also be used as proof of ownership or control of land, as explained by the

Public Information and Documentation Service (PPID) of Kutai Kartanegara. It should be noted that the Property Tax Notification Letter (Surat Pemberitahuan Pajak Terutang Pajak Bumi dan Bangunan, SPPT PBB) is not a valid proof of land ownership.

Physical control of land refers to actions of physically using and managing the land, such as planting crops, building structures, or using it for other activities consistent with ownership or usage rights. This is actual control, distinct from juridical control which relates to legal rights over the land. Physical control involves tangible actions like cultivating the land, constructing houses, or using the land for business purposes. This constitutes clear evidence that a person is actively using the land. Juridical control emphasizes the legal rights held, such as ownership or usage rights, whereas physical control is how those rights are realized in practice.

Physical control can be used as evidence in land disputes to prove that someone has lawfully and continuously controlled the land. In some cases, physical control may serve as a basis for applying for land rights, for example through a Physical Control Statement Letter (Surat Pernyataan Penguasaan Fisik, SPPF). Physical control is often used in the contexts of agriculture, construction, and other land-utilizing enterprises.

Article 24 of Government Regulation No. 24 of 1997 specifies that physical control for 20 consecutive years with good faith (itikad baik), as explained earlier, is a requirement. Regarding the good faith requirement, it means that the person exercising control is considered the rightful owner of the land, not holding land that belongs to someone else.

Valid Land Ownership Evidence Recognized Under Indonesian Law

The only valid and legally recognized proof of land ownership under Indonesian law is a certificate. The Basic Agrarian Law (Undang-Undang Pokok Agraria) No. 5 of 1960, Article 16, serves as the legal basis for establishing valid evidence of land ownership in Indonesia.

It states that land rights include ownership rights (hak milik), rights to cultivate (hak guna usaha), rights to build (hak guna bangunan), usage rights (hak pakai), leasing rights (hak sewa), rights to open land (hak membuka tanah), and rights to collect forest products (hak memungut hasil hutan).

Authentic evidence of these rights is documented in official certificates, namely:

1. Certificate of Ownership Rights (Sertifikat Hak Milik, SHM)
2. Certificate of Building Use Rights (Sertifikat Hak Guna Bangunan, SHGB)
3. Certificate of Ownership Rights on Condominium Units (Sertifikat Hak Milik atas Satuan Rumah Susun, SHMSRS)

Among these three types, the Certificate of Ownership Rights (SHM) holds the highest legal status. Its legitimacy is enshrined in Article 20, Paragraph 1 of the Basic Agrarian Law (UUPA), which states that ownership rights are hereditary, the strongest, and the fullest rights a person can have over land.

However, there are several other documents recognized by communities as evidence of land ownership besides certificates, though legally their status is not as strong as SHM or SHGB. These other types of land ownership evidence include:

1. Girik

Girik is a land document used primarily for taxation purposes. Many community members consider this document as proof of land ownership. Land with such a document is commonly referred to as "girik land" or land without an official certificate. Girik land is typically acquired through inheritance but may also result from buying and selling transactions. Despite its status as a land document for tax purposes, the owner is still obliged to pay Land and Building Tax (Pajak Bumi dan Bangunan, PBB).

2. Letter C

Letter C is a traditional land document dating back to the Dutch colonial era. It serves as a tax record and identity information for the land. Letter C documents are issued by the local village or sub-district administration. Its status is similar to that of girik land, meaning it is an old land document. Therefore, if asked whether Letter C is proof of land ownership, the answer is no. As stated above, the only valid proof of land or building ownership under Indonesian law is a certificate. However, this document may still be used as evidence of land ownership in buying and selling transactions. Besides its weak legal status, Letter C also has the drawback of incomplete and inaccurate data due to often careless inspections. The original Letter C document is not directly given to the public but is stored in the village or sub-district office. Instead, landowners receive an excerpt from Letter C in the form of a girik letter. The process of converting Letter C land to SHM (certificate of ownership) can be carried out at the local Ministry of Agrarian Affairs/National Land Agency (ATR/BPN) office. Before applying, some documents must be completed, including: Certificate of land not in dispute, certificate of land history, certificate of sporadic land control. Once these requirements are fulfilled, you can visit the ATR/BPN office to proceed with land registration.

3. Petok D

This land ownership certificate is usually issued by the local village head and subdistrict head. In the past, specifically before the Basic Agrarian Law (UUPA) was enacted, Petok D served as evidence of land ownership equivalent to a certificate. Therefore, its status is also considered an old land document. However, after the issuance of the UUPA, the function of this traditional land document changed to evidence of land tax payment. Furthermore, Article 3 of the Minister of Agriculture and Agrarian Regulation No. 2/1962 states: "Petok D is preliminary evidence to obtain proof of land rights legally, namely a Certificate of Ownership Rights (SHM)." At a glance, Petok D resembles the Letter C document, but in terms of status and function, the two documents are essentially different. The most apparent difference between Letter C and Petok D can be seen in their status. Letter C is a land register book, whereas Petok D is a document indicating the legal basis of land rights.

4. Surat Hijau

Most Indonesians may be unfamiliar with the term "Surat Hijau" or "Surat Ijo." Surat Ijo refers to Land Management Rights (Hak Pengelolaan Lahan, HPL) granted to individuals who lease land owned by the city government. The reason this document is known as "surat ijo" is because the blank form of the document is green in color. The green letter can be renewed as long as the leased land is not used by the Surabaya City Government (Pemkot Surabaya).

5. Pipil Tanah

Besides girik and Petok D, there is also the pipil document known as one of the traditional legal land documents apart from certificates. Essentially, pipil tanah is a Land Tax Payment Receipt before 1960, or before the enactment of the UUPA. Pipil tanah is quite popular in Bali, as the document is considered proof of ownership of customary land rights by the local community. However, like girik and Petok D, the status of pipil has now changed to an informal traditional land document that must be converted into SHM or SHGB.

6. Rincik

Another traditional document regarded as proof of land ownership is rincik. Rincik is essentially a Temporary Land Registration Certificate for Indonesian-owned land before

1960. This old land document is quite popular in certain regions, including Makassar. The document is considered proof of control and use of customary land.

7. Eigendom Verponding

During the Dutch colonial period, land ownership rights were known as eigendom. These rights were divided into two types: ordinary eigendom and eigendom verponding. Ordinary eigendom was land ownership granted to Europeans and Foreign Easterners. For indigenous people, land ownership rights were in the form of agrarische eigendom. Eigendom verponding was land ownership that could be proven by a tax invoice document. Verponding was a land and/or building tax invoice in the Dutch East Indies era. Verponding is essentially still used today, but its name has changed to Land and Building Tax Notification Letter (SPPT-PBB). Besides eigendom, there were other land ownership rights during the Dutch era such as grondkaart, erfpacht, opstaal, and vruchtgebruik. Although these are old products, there are still some land sale and purchase agreements using eigendom as proof of ownership. However, referring to Government Regulation (PP) No. 24 of 1997 on Land Registration, land with eigendom status can be converted into SHM. This can be done as long as the applicant is still recorded as the holder of land rights in the old documents.

8. Tupi Tanah

Some may be unfamiliar with the term tupi tanah. However, tupi tanah is essentially owned by all land or building owners. Tupi tanah is a Javanese term for the Land and Building Tax Notification Letter (SPPT PBB). Many people consider tupi tanah as proof of land ownership. This is because they are taxed on land ownership through this document. However, as previously mentioned, according to the UUPA, tupi tanah is also not classified as valid proof of property ownership.

RESEARCH METHODS

This research uses a normative juridical legal research method. Normative research analyzes legal issues based on laws and regulations related to the subject matter discussed, using a doctrinal research type. It provides an explanation of legal rules with regard to legal materials related to the Basic Agrarian Law No. 5 concerning the Basic Regulations on Agrarian Principles. The nature of the research is descriptive-analytical, providing answers based on the data studied and the evidentiary strength of physical land proof and physical land possession through the author's research.

The types of legal materials used by the author for this thesis research include:

1. Primary Legal Materials, which are legal materials related to legislation, as follows:
 - a. The Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPer), also known as the *Burgerlijk Wetboek* (BW).
 - b. The Indonesian Civil Procedure Code (*Kitab Undang-Undang Hukum Acara Perdata* or KUHAPerdata), including *Herziene Indonesisch Reglement* (HIR), *Reglement voor de Buitengewesten* (Rbg).
 - c. Basic Agrarian Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles.
 - d. Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 1 of 2021.
 - e. Regulation of the Republic of Indonesia Number 48 of 2020 concerning the Land Agency.
 - f. Government Regulation Number 18 of 2021 concerning Land Management Rights, Land Rights, and Land Registration.
 - g. Government Regulation Number 24 of 1997 concerning Land Registration.

- h. Regulation Number 21 of 2020 concerning Handling and Settlement of Land Cases.
2. Secondary Legal Materials, consisting of books, legal journals both online and offline, jurisprudence, expert opinions, and scientific works related to this research, including:
- a. Jurisprudence of the Supreme Court of the Republic of Indonesia No. 295K/Sip/1973 dated December 9, 1975.
 - b. Jurisprudence of the Supreme Court of the Republic of Indonesia No. 329K/Sip/1957 dated September 24, 1958.
 - c. Jurisprudence of the Supreme Court of the Republic of Indonesia No. 783K/Sip/1973 dated January 29, 1976.
3. Tertiary Legal Materials, which provide explanations for primary and secondary legal materials, such as legal dictionaries, the *Kamus Besar Bahasa Indonesia* (Great Dictionary of the Indonesian Language), Wikipedia, encyclopedias, articles, and so on.

Legal Material Collection Techniques collected through research include:

a. Legislation

Legislation is collected and analyzed in relation to the evidentiary strength of physical land proof and physical land possession in civil cases.

b. Library Data

Collection of materials and data from literature closely related to the issues addressed in this research.

The processing and analysis of legal materials are derived from laws and regulations that discuss the evidentiary strength of physical land and physical land possession in civil cases. In the next stage, the author classifies, compares, analyzes, and summarizes all the legal materials and expert opinions related to the issues in this thesis research. Subsequently, the author begins the discussion to reach or produce answers to the research problems.

RESULTS AND DISCUSSION

The concept of physical land possession is often used as evidence to support claims of land ownership rights in civil court proceedings. Undisturbed, valid, open, and continuous physical possession over a certain period of time can be considered strong evidence in supporting claims to land ownership. Addressing issues of land ownership rights often raises questions, especially after someone legally becomes the landowner of land previously owned by someone else. To overcome this difficulty, legal certainty of land ownership by the government requires the implementation of land registration in the Republic of Indonesia to obtain a certificate. The existence of a land rights certificate means that the ownership rights have been registered over the land concerned in accordance with the provisions of the established laws and regulations. The provisions of Article 19 of the Basic Agrarian Law (UUPA), particularly paragraphs (1) and (2), stipulate that in carrying out land registration, proof of ownership is provided, commonly referred to as a land rights certificate, which serves as strong evidence of ownership of the land in question.

Physical land possession and certificates are two different aspects in the context of land ownership, although both play a role in proving land rights. A certificate is an official document issued by the National Land Agency (BPN) that proves legal ownership of land, whereas physical possession of land is the factual situation in which someone actually controls and utilizes the land.

A land certificate is a valid and strong proof of legal land ownership. It is issued by the National Land Agency (BPN) after the land registration process. It guarantees the certificate holder's rights to the land in question, including the rights to control, use, and transfer the land. Physical land possession refers to the actual condition in

which someone controls and utilizes the land, such as by cultivating, building on, or using the land. Long-term and continuous physical possession (at least 20 years) can serve as the basis for someone to apply for land rights and obtain a certificate. Physical possession can also serve as evidence in land disputes, even in the absence of a certificate, if supported by witness testimony or other forms of evidence.

The main difference is that a certificate is a formal and legal written proof issued by the government, while physical possession is the actual control occurring in the field. A certificate provides legal guarantees of land ownership, whereas physical possession can form the basis for claiming land rights but does not always guarantee legal ownership without a certificate. Certificates can be used as primary evidence in various land-related transactions, such as buying and selling, mortgaging, or development, while physical possession can serve as supporting evidence in land disputes.

A certificate of land ownership primarily functions in the field of legal proof. Ownership of land rights can be proven with a land rights certificate, which contains:

- a. The person or legal entity described is the rightful holder of the rights outlined therein.
- b. The boundaries of the land that are the subject of the rights are explained in the measurement letter and are legally recognized boundaries.

In some jurisdictions, there is a legal principle known as “adverse possession” or “acquisitive prescription,” which allows a person to acquire ownership rights to land if they have continuously possessed the land physically for a specified period, without objection from the lawful owner. Such qualified physical possession can serve as a basis to claim ownership of the land in a civil case. It should be noted that physical possession of land is not always sufficient to prove absolute ownership. Factors such as the validity of ownership documents, the existence of third-party rights, and other relevant legal provisions must also be considered by the court in determining land ownership claims.

In civil cases, the judge will assess all available evidence, including physical possession of the land, along with other evidence presented by the concerned parties to reach a fair decision in accordance with the laws applicable in that jurisdiction. The strength of evidence from physical possession of the land can be an important factor in determining the trial outcome.

The Civil Code stipulates in Articles 1865 and 1866 about general rules of evidence, which state: everyone who claims to have a certain right, or to confirm their own right or support the right of another, by pointing to an event, is required to prove the existence of the right or event with means of evidence, which consist of: written evidence, witness testimony, presumptions, confessions, oaths, and everything in accordance with the rules set forth.

If one day a claim is brought to court regarding ownership or possession of the land, all information contained in the land title certificate will have strong evidentiary power and therefore must be accepted by the judge as true information, insofar as there is no other evidence refuting or proving otherwise.

For parties whose land rights have been registered in accordance with applicable laws and regulations, it is clear that they will present a land certificate as proof of their rights. Meanwhile, parties whose land rights have not yet been registered will present evidence related to their ownership and possession of the land. Other evidence used to prove ownership and possession of land will be considered by the judge based on its evidentiary strength. Such evidence can become perfect or complete proof if it is supported by witness testimony or other supporting evidence.

The time limit for physical possession of land as evidence can vary depending on the applicable legal jurisdiction. Here is some general information regarding the time limits for land possession in several common legal systems:

1. Common Law

The concept of adverse possession grants land ownership rights to a person who has openly, continuously, uninterruptedly, and exclusively possessed land for a certain period. The time limit for physical possession of land to claim adverse possession may vary, ranging from 10 to 30 years depending on the jurisdiction.

2. Civil Law

In civil law systems, the concept of prescription allows a person to acquire rights to land by possessing it continuously and without interruption for a certain period. The time limit for claiming a prescription may vary, ranging from 10 to 30 years, depending on the country and applicable regulations.

3. Customary Law

The time limit for physical possession of land under customary law can vary depending on the traditions and practices of the local community.

The legal standards for land possession become particularly important to ensure that the rights holder intends to manage and utilize their land responsibly. A right holder who abandons or fails to utilize their land for years may, by law, be considered to have relinquished their rights. This is affirmed in a ruling by the Supreme Court of the Republic of Indonesia, namely: Supreme Court Jurisprudence No. 295 K/Sip/1973 dated December 9, 1975, which states: "...they had allowed it to pass for no less than 20 (twenty) years during the lifetime of Daeng Patappu, a period long enough for them to be deemed to have abandoned any rights they might have had over the disputed rice field, while the Appellant Defendant can be considered to have acquired ownership rights over the disputed rice field." The legal principle from this jurisprudence affirms the legal position of physical possession over many years by concluding that a rights holder who fails to possess the land physically for years is deemed to have abandoned ownership rights to the land.

Many plots of land are occupied by other parties without any formal documents backing the land. This legal principle can serve as a basis for the state to grant new rights to parties who honestly possess the land. As land becomes increasingly scarce, the law views good-faith land occupation as something that must be protected.

Therefore, holders of land ownership rights must register their land to obtain strong legal rights, especially when registering old converted rights that require proving former rights using written evidence, witness testimony, and others, although such evidence may no longer exist or be incomplete. Referring to the legal basis for the conversion of land rights, which can be found in the Basic Agrarian Law (UUPA), the conditions for conversion can be broadly categorized into three types:

- a. Conversion of land rights originating from Western land rights.
- b. Conversion of land rights originating from former Indonesian rights.
- c. Conversion of land rights originating from former autonomous kingdoms (swapraja).

In conclusion, the time limit for physical land possession as evidence can vary depending on the applicable legal jurisdiction. In some common law and civil law systems, the concepts of adverse possession or prescription are used to grant ownership rights to individuals who openly and continuously possess land for a specific period. This time limit may range from 10 to 30 years, depending on the specific country or jurisdiction.

CONCLUSION

The proof of physical possession of land holds evidentiary strength in civil cases related to ownership or rights over land. Physical possession of land can be considered strong evidence to support a claim of ownership or associated rights over the land. It may be used as one means of proving that someone has possessed or used the land continuously without interference from other parties. In many cases, uninterrupted physical possession over a specified period may give rise to the assumption that the legal owner has relinquished ownership or associated rights in favor of the actual physical possessor.

Although physical possession of land may carry evidentiary weight, additional evidence may still be required in civil cases to reinforce a claim of ownership or land rights. The time limits for land possession vary across jurisdictions or countries. Property law and related rules of evidence may differ depending on the legal system in place in each country.

A commonly used concept in proving land possession is "prescription" or "acquisition through uninterrupted use" (adverse possession). Prescription allows someone to acquire rights over land by continuously, openly, and without permission from the lawful owner, occupying the land for a certain period. The time period required to meet the criteria for prescription varies by jurisdiction. Generally, the requirements include uninterrupted use of the land for a set time frame, such as 10 to 30 years.

It is important to note that prescription or physical land possession is not the desired or recommended method for acquiring land ownership. Typically, land possession rights through such means are only recognized as a last resort when an individual has occupied the land for a sufficient period and no other legal actions have been taken by the rightful owner.

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