

**UNAUTHORIZED CONTROL OF LAND AND BUILDINGS BY STATE
SENIOR HIGH SCHOOL 5 PEMATANG SIANTAR BASED ON CIVIL
LAW PERSPECTIVE**

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ABSTRACT

Unlawful possession of land and buildings is a civil law issue that frequently gives rise to disputes, including when carried out by state institutions. This phenomenon indicates a potential conflict between public interests and the protection of individual civil rights. This study examines the unlawful possession of land and buildings used by Pematang Siantar State Senior High School 5. This study focuses on the legal regulation of land and building possession under civil law and the legal status of unlawful possession from the perspective of unlawful acts.

The results of the study indicate that the control of land and buildings by SMA Negeri 5 Pematang Siantar continues even though there has never been a legal transfer of ownership rights from the owner to the government. This control is only based on a temporary loan agreement and does not transfer ownership rights to the land and buildings in question. This condition causes land control to be carried out without a strong legal basis, especially when the owner or heirs have expressed objections and requested a clear legal settlement. From a civil law perspective, this action fulfills the elements of an unlawful act as regulated in Article 1365 of the Civil Code because it causes harm to the legitimate rights owner. The court decision emphasized that the public interest in the field of education cannot be used as a justification for ignoring the property rights of others. Therefore, this study emphasizes the importance of legal certainty, protection of property rights, and government responsibility in managing educational assets to prevent civil harm to the community.

Keywords: Land Ownership, Unlawful Acts, Property Rights, Public Schools, Civil Law.

A. Introduction

Land and buildings are basic human needs that provide significant social, economic, and legal value. Land is not only viewed as a place to live or a source of livelihood, but also holds profound philosophical and spiritual dimensions. From a social perspective, land is the foundation of community life, while from a legal perspective, land functions as a legal object that needs to be protected for security and justice. With population growth and ongoing development, demand for land increases, while its availability remains limited. This situation often triggers conflicts and disputes related to land.

The relationship between humans and land is very strong. From a sociological perspective, this attachment is ingrained in community life. B. Ter Haar BZN distinguishes between the interaction of society with land into two aspects, namely external and internal relationships, and the relationship of individuals with land. Externally, society as a whole has authority over its land, including the right to reject the presence of outsiders. Internally, there is a relationship between individuals and the land they manage or own. In the Islamic perspective, the earth truly belongs to Allah SWT, while humans are given the mandate to manage and utilize it. This is emphasized in QS. Al-A'raf (7): 128 and QS. Maryam (19): 40, which show that the right of ownership of the earth belongs entirely to Allah SWT, while humans only play a role as responsible managers. Within the national legal framework, provisions regarding land rights are regulated by Law No. 5 of 1960 concerning Basic Agrarian Law (UUPA). The UUPA aims to provide legal certainty and protect land rights through a land registration system, as regulated in Article 19 of the UUPA and Government Regulation No. 24 of 1997. This legal certainty includes protection of legal subjects, legal objects, and land status and boundaries. With legal certainty, it is hoped that land disputes will be reduced.

In practice, land disputes are still common, involving individuals, legal entities, and governments. A common form of dispute is illegal land acquisition, where a party uses or occupies land without legal basis. In civil law, this action can be classified as an unlawful act (PMH) under Article 1365 of the Indonesian Civil Code (KUHP Perdata), which states that anyone who causes harm to another party through their own fault is obliged to compensate for that loss.

This problem is evident in the case between Henny Lee as the heir of the late Hermawanto Lee against the North Sumatra provincial government, the head of the North Sumatra provincial education office, the Pematang Siantar city government, and SMA Negeri 5 Pematang Siantar. The object of the dispute is a plot of land measuring $\pm 11,239 \text{ m}^2$ along with

a school building used for SMA Negeri 5 Pematang Siantar. Initially, in 2006, an exchange agreement had been planned between the Pematang Siantar city government and PT. Detis Sari Indah, but the plan was not implemented. As a temporary measure, a loan agreement for educational purposes was signed in 2008.

Over time, and with the shift in responsibility for managing the high school from the city to the provincial government, land ownership remained unclear. Despite an appraisal and a budget allocated for the purchase, no payment was made until 2023. The land and building are still being used for educational purposes without any clarity regarding the civil rights of the rightful owners. This situation left the heirs feeling disadvantaged, and they filed a lawsuit with the Pematang Siantar District Court. In its decision, the court found the defendants to have committed illegal acts and ordered them to pay 40.7 billion rupiah in compensation as joint debtors.

This case is interesting because it illustrates the conflict between public interest and private rights claims. On the one hand, the state has a constitutional responsibility to provide access to education, as stipulated in Article 31 of the 1945 Constitution. On the other hand, land rights are legally recognized rights and cannot be ignored without valid reasons. Land ownership without clear legal regulations can conflict with the principles of legal certainty, justice, and protection of ownership rights. With this background, this study aims to analyze legal regulations regarding land and building ownership according to civil law, examine the types of land ownership by SMA Negeri 5 Pematang Siantar, and review the legal status of land and building ownership without rights from a civil law perspective.

B. Research Methods

A study cannot be called research if it does not have a research method.¹ Research methods are one of the factors of a problem that will be discussed. The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.²

¹ Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. *Jurnal IUS Kajian Hukum dan Keadilan*, 14(1).

² Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(1), 3554-3462.

C. Discussion

1. Legal Regulations on Land and Building Ownership According to Civil Law

Power over land and buildings in civil law is a real condition that receives legal recognition and protection as long as it is based on legal legitimacy. Civil law not only emphasizes the aspect of ownership, but also on control (*bezt*) as a real relationship between the legal subject and its object. Protection of control aims to ensure legal certainty and order and prevent the emergence of unreal justice in society. From a conceptual perspective, property rights can be viewed from three perspectives: legal, civil, and public. The legal aspect refers to legally protected property rights; the civil aspect refers to property rights arising from civil relationships such as contracts; while the public aspect refers to state power, in accordance with Article 33 paragraph (3) of the 1945 Constitution and Article 2 of the Basic Agrarian Law, where land, water, and natural resources are managed by the state for the welfare of the people. The concept of "state control" does not cancel private property rights, but rather includes regulation, administration, and supervision for the benefit of the community.

Looking from the perspective of Islamic law, ownership of objects, including land, must not conflict with the law. Surah An-Nisa' Verse 29 prohibits controlling other people's property without a valid legal basis, while Surah Al-Baqarah Verse 194 emphasizes the principles of justice and balance in punishment for law violators. The principle of "*la dharar wa la dhirar*" (not causing loss and not accepting loss) emphasizes the obligation to be responsible for all damage resulting from unlawful actions. Therefore, in both Islamic law and civil law, control without a valid legal basis violates the principles of justice.

Land and buildings are classified as fixed assets under the Indonesian Criminal Code (KUHP) under Article 506. Therefore, mere physical transfer is not sufficient to transfer ownership; the requirements for the existence of a legal claim (ownership rights) and legal transfer in accordance with regulations must also be met. This indicates that the law provides stricter protection for fixed assets due to their economic value and significant social role.

Article 529 of the Criminal Code states that ownership is the status of a person who has control over an object as if they were the owner. Ownership consists of two elements: *corpus* (physical control) and *animus* (intent to control). Both elements must be present simultaneously for a power to be officially recognized. Furthermore, Article 531 of the Criminal Code regulates the principle of good faith, which establishes the assumption that every power is exercised in good faith, unless there is evidence to the contrary.

Since the implementation of Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA), land management has been regulated by national agrarian law which emphasizes the social aspects of land. Article 20 paragraph (1) of the UUPA emphasizes that ownership rights are inheritable, inviolable, and comprehensive rights to land. Meanwhile, Article 570 of the Criminal Code states that ownership rights give the owner the right to freely enjoy and use their assets, provided they do not violate the law. Therefore, control of land and buildings according to civil law must be based on a valid legal basis and carried out in good faith. Any control without a clear legal basis can be considered an unlawful act, because it violates the principles of asset protection, legal certainty, and justice, according to the provisions of the Criminal Code and UUPA.

2. Land and Building Control by SMA Negeri 5 from a Civil Law Perspective

The definition of power in civil law can be seen from two aspects, namely physical and legal, and includes private and public aspects. Legal power consists of rights that are protected by law, and generally gives the rights holder the power to control and utilize the land fully. In the national land law framework, the public side of power refers to the provisions of Article 33 paragraph (3) of the 1945 Constitution and Article 2 of the UUPA, which states that the state has the responsibility to regulate land, water, and natural resources for the welfare of the community. In contrast, the private aspect relates to legal interactions between individuals or entities regarding an asset, whether material or regarding obligations.

The mere fact that a person uses and controls a property or building does not automatically make them the legal owner. The legal status of the control must be examined based on the underlying legal basis. Control can arise from real rights, such as ownership, or from obligations arising from contracts, such as loans. These different legal bases then determine the limits and scope of the controlling party's power.

The land and building that now serves as SMA Negeri 5 Pematang Siantar are legally owned by Hermawanto Lee, who serves as the director of PT Detis Sari Indah, according to the land ownership certificates (SHM) No. 64 and No. 809 totaling approximately 11,239 m². In 2006, there was a plan for an exchange between the Pematang Siantar City Government and PT Detis Sari Indah, but this did not materialize. In the context of civil law, the cancellation of the ruislag resulted in the incompleteness of the contract validity requirements according to Article 1320 of the Criminal Code, and the failure to transfer ownership rights according to the provisions of Article 584 of the Criminal Code. Thus, the ownership rights of the land and

building remained with the legal owner. Furthermore, for educational purposes, a loan agreement was made on June 20, 2008 between PT Detis Sari Indah and the Pematang Siantar City Government. According to Article 1740 of the Indonesian Criminal Code, a loan agreement is an agreement in which one party lends an item to another party for free use with the obligation to return it after use or within an agreed period. In this agreement, the owner retains ownership rights (Article 1741 of the Indonesian Criminal Code), while the borrower is only granted limited use rights according to the agreed purpose.

The agreement expressly limits the borrower's authority, including the obligation to maintain the object, prohibiting transfer or change of use without written consent, and stipulating that the agreement can be terminated in the event of a breach or failure of the borrower to repay. Therefore, SMA Negeri 5's control is not based on ownership rights, but on applicable legal obligations.

The transfer of administrative authority for high schools from the city government to the province of North Sumatra resulted from the ratification of Law Number 23 of 2014 concerning Regional Administration. This transfer is normative in nature, implementing legal provisions, and therefore cannot easily be viewed as illegal or a violation of the principal agreement as long as the land and buildings are still used for their agreed-upon purpose, namely, educational activities.

Under Article 1365 of the Indonesian Criminal Code, an act deemed unlawful must involve an illegal act, a mistake, a loss, and a causal relationship between the act and the loss. As long as SMA Negeri 5 utilizes the land and buildings based on a valid and irrevocable loan agreement, the element of "illegality" is not present. The problem that arises is more related to the legal aspect of the contract (breach of contract) if there is a violation of the provisions agreed upon in the contract.

From a legal perspective, the use of land and buildings by SMA Negeri 5 in Pematang Siantar is legitimate because it is based on a loan agreement. This use is limited, temporary, and does not confer ownership rights. As long as the contract is valid and not terminated through formal legal mechanisms, such use cannot be considered an unlawful act or an unlawful act.

3. Legal Status of Unauthorized Possession of Land and Buildings by SMA Negeri 5 According to Civil Law

Legal standing refers to the position of a legal entity within the context of certain legal norms or relationships, including the right to defend or claim rights before a court. In the realm of civil law, legal standing is closely related to the existence or absence of a legal interest (legitimate interest) affected by an action. A person is considered to have a legal right if they directly suffer a loss, have a relevant relationship to the issue in question, or are legally authorized to act. Regarding land and building ownership, legal status must be assessed based on the existence of a valid legal claim. Ownership (*bezt*) is recognized and protected by civil law, provided it is carried out in good faith, as stated in Article 531 of the Indonesian Criminal Code. However, protection of ownership is different from protection of property rights. Property rights, as real rights, are absolute, giving the owner full rights to use, enjoy, and reclaim the property from anyone who does not have rights to it.

The use of the land and buildings by SMA Negeri 5 was initially based on a loan agreement made on June 20, 2008. Therefore, this use does not constitute ownership, but rather a personal right (a required right). As long as the agreement remains valid and has not been legally terminated, this use is permitted. However, if the legal relationship ends due to the owner's revocation of the permit, a request for eviction, or the absence of a new agreement, then the use remains without legal basis.

Since the legal owner filed an objection and requested eviction, the continued use by SMA Negeri 5 was no longer tenable in good faith. Under civil law doctrine, good faith requires a sincere belief that the use is based on a legitimate right. If the user knows or should have known that their legal basis no longer exists, the use is therefore unlawful. Consequently, legal protection for this use ceases.

Unlawful land ownership can be categorized as an unlawful act according to Article 1365 of the Criminal Code. The elements of an unlawful act include: (1) the existence of an act; (2) the act is invalid; (3) the existence of an error; (4) the existence of a loss; and (5) the existence of a causal relationship between the act and the loss. In this case, continued possession and use of land without a legitimate claim is an active act that violates the subjective rights of the owner. This error can be an intentional act or at least negligence, especially if possession continues after a request for return or a lawsuit for recovery has been filed.

The losses incurred are not only material, such as lost economic potential and impaired use of property, but can also lead to non-material losses, such as a lack of security and comfort for the owner. If the loss is a direct result of continued land ownership, a causal relationship

has been established. If all these elements are met, civil liability will arise for the party who unlawfully takes ownership of the property.

The legal consequence of unauthorized possession is the obligation to return the item to the rightful owner and provide compensation for any losses incurred. This principle is in line with the purpose of civil liability, namely to restore the original state (*restitutio in integrum*), so that the injured party will be in the same position as if the unauthorized act had never occurred. The legal status of SMA Negeri 5 regarding land and building rights, which are no longer supported by a valid legal basis, cannot be defended before the law. From a legal perspective, this ownership can be considered as unauthorized ownership. legitimate and can have legal consequences in the form of unlawful acts.

D. Conclusion

Ownership of land and buildings under civil law is regulated in the Criminal Code as real estate. Ownership (*bezt*) is recognized as long as it is based on legal ownership rights and is carried out in good faith. Unlawful ownership that causes damage can be classified as an unlawful act under Article 1365 of the Criminal Code. The ownership rights of SMA Negeri 5 Pematang Siantar were initially based on a loan agreement that did not involve a transfer of ownership. However, if the ownership rights continue to exist after the legal basis expires, they are no longer valid. Continued ownership rights without legal basis may constitute an unlawful act and give rise to civil liability even if carried out in the public interest.

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