

Protecting Landowner Rights: Enforcement of Criminal Law Against Land Encroachment in Indonesia

Aida Ardini¹, Muhammad Ibrahim Hasibuan², Dinda Ummairah^{3*}, Edselin Queen Anugerah Putri⁴

^{1,2,3,4}Universitas Prima Indonesia Sumatera Utara, Indonesia

*Corresponding Author: dindaummairoh@gmail.com

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Abstract

This study comprehensively explores the application of Indonesian positive law in addressing cases of unauthorized land encroachment, specifically focusing on the legal actions taken against individuals who unlawfully occupy land without the owner's consent. The primary objective of this research is to analyze the legal framework governing land encroachment in Indonesia, as well as to understand the penalties and legal consequences imposed on individuals found guilty of such acts. Employing a normative legal research method, this study conducts an extensive literature review of relevant legal articles, focusing on Law No. 5/1960 and the Indonesian Criminal Code. Three central research questions guide this investigation: first, the legal definition and classification of land encroachment as outlined in Indonesian positive law; second, the scope and nature of criminal sanctions applicable to those found guilty of unauthorized occupation or trespass on another person's property; and third, the specific mechanisms and processes for law enforcement, including administrative and judicial procedures, used to address and mitigate instances of land encroachment in Indonesia. Through this study, we aim to provide a clearer understanding of how existing legal provisions are enforced to protect landowners' rights and maintain public order in relation to land ownership and use. This research also seeks to contribute to the broader discourse on land rights and legal protections in Indonesia, shedding light on potential areas for policy enhancement to ensure effective legal recourse for land encroachment cases.

1. Introduction

Agrarian resources, particularly land, play a vital role in national development in Indonesia. However, land also gives rise to many cross-sectoral issues, including those related to the economy, socio-cultural dynamics, politics, land management, security, and law.¹ Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasizes that land, water, and the natural resources contained therein are state-owned and must be utilized to the greatest extent possible for the welfare of the people. The Basic Agrarian Law was implemented to establish key policies regarding land use in order to promote societal well-being.

Law Number 5 of 1960 concerning Basic Agrarian Principles (Law No. 5/1960) plays a crucial role in the legal structure of Indonesia as it embodies widely accepted values and mandates efforts to promote a just and equitable life for all citizens. Several key points within the Law No. 5/1960 include:²

¹ Herman et al., "Analisis Hukum Terhadap Sertifikat Atas Kesalahan Pengukuran Tanah," *Jurnal Darma Agung* 30, no. 2 (2022): 165, <https://doi.org/10.46930/ojsuda.v30i2.1623>.

² Irfan, Emir Syarif, and Fatahillah Pakpahan, "Tinjauan Yuridis Jual Beli Tanah Dengan Bukti Kuitansi (Studi Kasus Putusan Nomor 412 / Pdt .," *Rectum* 6, no. 2 (2024): 266-75, <https://doi.org/10.46930/jurnalrectum.v6i2.4139>.

1. Land control by the state for the prosperity of the people.
2. Prohibition of excessive land ownership.
3. Land trading should not be driven purely by profit-seeking.
4. Obligation of landowners to manage and preserve land in accordance with environmental sustainability principles.
5. Recognition of customary law over land with specific conditions.

During the New Order era, policies were deemed unjust as they tended to favor investors over the interests of landowners, particularly those from economically disadvantaged backgrounds. Secure land rights are crucial for protecting society from the pressures exerted by economically powerful entities and can serve as a primary asset for individuals in their economic activities. It is essential to implement policies that align with the principles of Law No. 5/1960 to address various issues involving land-related sectors. This includes strengthening people's land rights to protect them from strong economic pressures and ensuring that land is used for the prosperity of all the people of Indonesia.

The fair and humane implementation of policies is crucial for the success of national development and the economic empowerment of the people. As Indonesian citizens, we hold various rights to land as formulated in Law No. 5/1960. These rights include the right of ownership, the right to develop business, the right to build, the right to use, the right to lease buildings, the right to cultivate land, and the right to collect forest products. Ownership rights are recognized as the strongest and most comprehensive rights, with proof of ownership established through land certificates, which serve as strong evidence of such ownership.³

Land ownership rights under Law No. 5/1960 are considered the most dominant and comprehensive rights, with ownership evidence identified through land certificates. Land registration provides legal certainty regarding land ownership, although it does not guarantee that the land is free from disputes or encroachment attempts. Violations of land ownership rights, as stipulated in Article 385 Paragraph (4) of the Indonesian Criminal Code (KUHP), carry a maximum prison sentence of four years for anyone who deliberately uses or leases land without a certificate, knowing that the land belongs to another party. Law Number 51 PRP of 1960 also allows for penalties of up to three months of imprisonment or a fine of up to IDR 5,000 for those who utilize land without valid permits. Land encroachment is one of the agrarian issues that often leads to prolonged conflicts in Indonesia. Despite the government's efforts in enacting various regulations and laws to address this problem, the reality on the ground indicates that law enforcement against land encroachers still faces numerous obstacles. The implementation of criminal law against perpetrators of land encroachment without the landowner's knowledge has become a major concern in this context. Land encroachment cases frequently occur in various regions across Indonesia, both intentionally and unintentionally. This act involves the illegal control, occupation, or possession of someone else's land. Although land registration aims to provide legal certainty, it often proves insufficient to prevent disputes or acts of land encroachment in practice. In addition to land encroachment

³ Yanti Agustina Blessinta Joice Sinaga, Sani Chablitta Siregar, "Tinjauan Yuridis Terhadap Hapusnya Hak Milik Atas Tanah Akibat Penelantaran Ditinjau Dari Pasal 27 Undang-Undang Pokok Agraria," *Syntax Literate: Jurnal Ilmiah Indonesia* 7 (5), no. 1 (2022): 6330-37, <https://doi.org/10.36418/syntax-literate.v7i5.7156>.

cases, land-related crimes also include property damage regulated under Articles 170, 406, and 412 of the Criminal Code, as well as the forgery of documents concerning land ownership following Articles 263, 264, and 266 of the KUHP.⁴

Although regulations regarding land rights in Indonesia are stipulated in the Basic Agrarian Law No. 5/1960 and reinforced through land registration and ownership certificates, land encroachment continues to occur frequently. The existing legal framework, including the KUHP and related laws, provides sanctions for these violations; however, the implementation and enforcement of the law remain significant challenges in protecting land rights. There is a need for improvement in the land registration system and law enforcement to reduce cases of encroachment and land disputes.⁵ The numerous regulations governing land encroachment in Indonesia have not proven effective in easily resolving such cases in court. Although there have been court decisions regarding criminal cases of land encroachment, the enforcement of disputed land often still requires a civil process. This is because criminal decisions tend to focus more on punishing the perpetrators rather than resolving the rights to land ownership.

In the past five years, some studies have highlighted the challenges faced in protecting land rights in Indonesia, encompassing aspects of law enforcement and mechanisms for resolving land disputes. Luvianti and Rasji emphasize the complexity of overlapping land ownership and the slow pace of law enforcement, which has resulted in numerous unresolved dispute cases despite the implementation of basic agrarian regulations.⁶ On the other hand, research by Sukmawati underlines weaknesses in agrarian law enforcement in Indonesia, creating opportunities for individuals to exploit these shortcomings, while the limited amount of land has led to a steady increase in disputes.⁷ She also highlights the importance of dispute resolution mechanisms through mediation as an effort to prevent case accumulation in the courts. Furthermore, other studies Katimin indicate that despite various government efforts to expedite the land registration process, bureaucratic hurdles and lack of transparency remain significant challenges in achieving legal certainty for landowners.⁸ The enforcement of criminal law against land encroachment faces challenges due to the low level of legal awareness in society. Many individuals do not fully understand their rights and obligations concerning land ownership, as well as the legal procedures to follow in the event of a dispute. Ineffective legal education and socialization further exacerbate this situation, leading to many cases of land encroachment going unreported or being resolved informally without following

⁴ Margie Gladies Sopacua, "Penyerobotan Tanah Secara Tidak Sah Dalam Perspektif Pidana," *Jurnal Belo* 4, no. 2 (2019): 204–17, <https://doi.org/10.30598/belovol4issue2page204-217>.

⁵ Muhammad Arif Prasetyo, "Urgensi PPAT Dalam Proses Jual Beli Tanah Dan Bangunan Dalam Tinjauan Yuridis," *Maliyah: Jurnal Hukum Bisnis Islam* 13, no. 2 (2023): 266–84, <https://doi.org/10.15642/maliyah.2023.13.2.266-284>.

⁶ And Rasji Rasji Teressyavira Luvianti, "Perlindungan Hukum Bagi Pemilik Tanah Yang Tumpang Tindih (Overlapping) Kepemilikan (Studi Putusan Mahkamah Agung Nomor 221 PK/PDT/2014)," *UNNES LAW REVIEW* 6 (2) (2023): 5076–83, <https://doi.org/10.3193/unesrev.v6i2.1336>.

⁷ Putu Diva Sukmawati, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia," *Jurnal Ilmu Hukum Sui Generis* 2, no. 2 (2022): 89–95, <https://ejournal2.undiksha.ac.id/index.php/JIH/article/view/1015>.

⁸ Rosiana and Junaidi, "Analisis Yuridis Penyelesaian Sengketa Tanah Melalui Mediasi," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 4, no. 2 (2022): 32–40, <https://doi.org/10.52005/rechten.v4i2.101>.

the appropriate legal channels.⁹ In Indonesia's positive law, efforts to strengthen law enforcement against land encroachment require a comprehensive approach. This includes improving the land administration system, enhancing the capacity of law enforcement officers, and providing broader legal education to the public. Consequently, it is expected that land encroachment can be minimized and the rights of legitimate landowners can be better protected. The implementation of strict and fair criminal law will serve as a deterrent for offenders while ensuring legal certainty and justice for the entire community.¹⁰

2. Methods

This study employs normative legal research using a library research method to analyze written legal norms, focusing on the application of criminal law in cases of land encroachment under Indonesian law. It examines statutory provisions, court decisions, and expert interpretations to address three key questions: the legal review of perpetrators, preventive measures for landowners, and legal consequences for encroachment.¹¹¹² Primary legal materials include the KUHP, Law No. 5/1960, and court rulings, while secondary and tertiary sources encompass literature, expert opinions, and reference materials.¹³ Legal materials are identified, collected,¹⁴ and analyzed through a qualitative approach, involving inventory, classification, normative analysis, and synthesis to evaluate the implementation and impact of relevant laws on land encroachment cases.¹⁵

3. Results and Discussion

3.1. Legal Review of Perpetrators of Land Encroachment Based on Indonesia's Positive Law

According to Article 1, Number 1 of Law No. 51 PRP of 1960 concerning the Prohibition of Land Use Without Valid Permission, land is defined as:¹⁶

1. Land directly controlled by the state,
2. Land owned by individuals or legal entities with specific rights.

As outlined in Article 4, Paragraph (1) of Law No. 5/1960, further defines land ownership as encompassing rights over specific areas of the earth's surface, whether held by individuals or legal entities. The Indonesian Dictionary (Kamus Besar Bahasa Indonesia) adds

⁹ Widodo Ramadhana et al., "Protection Against Heirs Who Make Transactions of Sale of Inheritance Land Without The Consent of Other Heirs According Tolaw(Studi Putusan 70/PDT.6/2006/PN. MDN)," *Journal Equity of Law and Governance* 4, no. 1 (2022): 147-54, <https://doi.org/10.55637/elg.4.1.9640.147-154>.

¹⁰ Tania Novebriani Lase Said Rizal, Bobby Chayadi, Lineus Frederico, "Tinjauan Yuridis Atas Sengketa Kepemilikan Tanah Di Desa Pematang Johar, Kecamatan Labuan Deli Kabupaten Deli Serdang (Studi Kasus Putusan PN NO.112/PDT.G/2017/PN.LBP)," *UNNES Law Riview* 4 No. 3 (2022), <https://doi.org/10.31933/unesrev.v4i3.263>.

¹¹ Sunggono dan Bambang, *Metodologi Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2007).

¹² Ronny dan Hanitijo, *Metode Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1988).

¹³ Hanitijo.

¹⁴ Hanitijo.

¹⁵ Hanitijo.

¹⁶ Safitri, *Analisis Yuridis Putusan Tindak Pidana Penyerobotan Tanah (Stellionaat) Ditinjau Dari Hukum Positif Dan Hukum Pidana Islam* (Medan: Universitas Islam Negeri Sumatera Utara, 2022).

that "land" can refer to the earth's surface, a specific area, or material for certain purposes.¹⁷ "Land encroachment, defined as the unlawful occupation of land belonging to another party, is classified as a criminal offense under Article 385, Paragraph (4) of the KUHP and Article 6 of Law No. 51 PRP of 1960.¹⁸ The latter imposes sanctions of up to three months of imprisonment or a fine of IDR 5,000 for using land without authorization. However, these sanctions appear outdated and lack proportionality when viewed in light of current legal developments and inflationary changes. A critical evaluation reveals that the penalties may no longer serve as an effective deterrent or adequately address the harm caused to legitimate landowners.¹⁹

Criminal provisions related to land encroachment are further regulated by the KUHP, which addresses offenses such as fraud (Article 363), embezzlement (Article 365), unlawful entry (Articles 167 and 389), destruction of property (Articles 170, 406, and 412), and forgery of documents (Articles 263, 264, and 266). These offenses highlight the complexity of legal violations associated with land encroachment, encompassing both criminal acts and procedural irregularities in land acquisition and transfer.²⁰

The unlawful occupation of land or property without proper authorization disrupts public order, inflicts material and psychological harm on rightful owners, and undermines justice in society.²¹ The analysis underscores the importance of updating and harmonizing legal sanctions with contemporary realities to ensure justice and deterrence. Cases of land encroachment demand robust law enforcement not only to restore the rights of rightful owners but also to uphold legal order, fairness, and societal stability. By addressing the inadequacies of existing sanctions, policymakers can enhance the effectiveness of legal protections and ensure alignment with modern legal principles.²²

3.2. Legal Measures by Landowners to Prevent Land Encroachment

Several factors contribute to land encroachment, with one of the primary causes being the ambiguity surrounding the ownership or legal status of land. This uncertainty creates opportunities for unauthorized individuals to claim or seize land. Furthermore, a lack of public understanding or awareness of the legal consequences of land encroachment can lead to such actions being carried out without consideration of the associated risks.²³ To address

¹⁷ Taufik Siregar, Anwar Sadat Harap, and Ikhsan Lubis, "Mediation in Customary Law as an Alternative Method of Dispute Resolution," *Kanun Jurnal Ilmu Hukum* 24, no. 2 (2022): 196–214, <https://doi.org/10.24815/kanun.v24i2.26532>.

¹⁸ Nurlaila Kadarwati Papuluwa Suwarti, Faisal, Puji Rahayu Subandi, "Analisis Hukum Penyerobotan Tanah Yang Berimplikasi Terhadap Perbuatan Melawan Hukum Ditinjau Dalam Perspektif Hukum Perdata," *Syntax Literate: Jurnal Ilmiah Indonesia* 8 No. 11 (2023): 6425–38, <https://doi.org/10.36418/syntax-literate.v8i11.13917>.

¹⁹ Rodiatun Adawiyah, Muhammad Arif Prasetyo, and Hanuring Ayu, "Analisis Yuridis Tentang Pembuktian Kebenaran Dasar Terhadap Penguasaan Tanah Berdasarkan Putusan Nomor: 813K/Pdt/2022," *Jurnal Dharma Agung* 31 No. 3, no. June (2023): 103–11, <https://doi.org/10.46930/ojsuda.v31i3.3349>.

²⁰ R Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Binacipta, 2019).

²¹ Lamintang, *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan* (Jakarta: Sinar Grafika, 2019).

²² Tommy Leonard and Niko Demus Simarmata, "Legal Dynamics Of Land Digitalization In The Electronic Land Registration System," *Jurnal Hukum Unissula* 39, no. 1 (2023): 65–77, <https://doi.org/10.26532/jh.v39i1.30576>.

²³ Leonard and Simarmata.

this, landowners in Indonesia can adopt several legal strategies to protect their property rights under applicable regulations:²⁴

a. Land Registration and Land Rights

Landowners are encouraged to register their land and obtain legal certificates in accordance with Law No. 5/1960. The issuance of a land certificate provides legitimate written proof of ownership, safeguarding against potential encroachment. This legal protection is foundational, yet the effectiveness of land registration depends on ensuring the accuracy of land data and minimizing administrative disputes.

b. Reporting and Law Enforcement

Landowners can report encroachment cases to law enforcement agencies, invoking provisions such as Article 385 of the KUHP or Law No. 51 PRP of 1960. However, it is crucial to evaluate the practical effectiveness of these regulations in addressing land encroachment. Challenges, such as legal loopholes exploited by offenders or delays in law enforcement actions, often weaken the deterrent effect. Strengthening law enforcement mechanisms and addressing regulatory gaps are necessary to ensure the effective handling of encroachment cases.

c. Peaceful Settlement of Disputes

Alternative dispute resolution methods, such as mediation or negotiation, can be a practical approach to resolving land disputes amicably. However, the absence of a normative analysis weakens the argument for these methods. Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in Court provides a legal basis for mediation. Integrating this regulation into the discussion would strengthen the argument by highlighting how structured mediation processes can lead to equitable resolutions while avoiding costly litigation.

d. Legal Recourse Through the Courts

If other efforts fail, landowners may pursue legal recourse by filing a lawsuit based on Article 1365 of the KUHP concerning unlawful acts. However, it is essential to analyze how this norm applies to land disputes. A successful claim under Article 1365 requires proving the elements of an unlawful act: the violation of rights, resulting damages, and causation. Providing examples of how these elements are established in land disputes would enhance the legal argument and demonstrate the relevance of this provision in protecting land rights.

By incorporating these measures and addressing the outlined challenges, landowners can better safeguard their property rights.²⁵ Raising legal awareness, conducting regular land monitoring, and utilizing existing legal mechanisms are critical to preventing land encroachment. Strengthening the regulatory framework and ensuring effective implementation will further enhance landowners' ability to protect their rights and maintain legal order in Indonesia.

²⁴ Willy Tanjaya et al., "Tinjauan Yuridis Perbuatan Melawan Hukum Atas Suatu Perjanjian Kredit Dengan Jaminan Suatu Kepemilikan Tanah Yang Belum Terpisah Dari Sertifikat Induk Tanah (Studi Putusan Nomor 388 Pk/Pdt/2020)," *JPPi (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 2 (2023): 1048, <https://doi.org/10.29210/020231937>.

²⁵ Mhd. Ridwan Lubis, "Tindak Pidana Penyerobotan Tanah Dalam Perspektif Hukum Pidana," *Jurnal Hukum Kaidah Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 20 No. 2 (2021): 242–60.

3.3. Legal Consequences for Perpetrators of Land Encroachment

Land encroachment refers to the unlawful act of an individual or group seizing or occupying land owned by another party without permission or valid legal rights. This violation undermines property rights and can have significant legal and social repercussions. In Indonesia, land encroachment is governed by Law No. 51 PRP of 1960 and the KUHP. Article 2 of Law No. 51 PRP/1960 prohibits unauthorized land use, but its scope is limited to encroachments involving land directly controlled by the state or held under specific rights. On the other hand, Article 385 of the KUHP criminalizes the unauthorized sale or exchange of land belonging to another, making it more relevant to fraud in land transactions than to direct encroachment cases. The distinction between these norms highlights the importance of understanding their specific applications to different forms of land disputes.²⁶

When an individual commits land encroachment, the legal process involves investigation by the police, who serve as both investigators and preliminary prosecutors, with the trial overseen by a Single Judge. Evidence of activities such as planting crops, cultivating the land, or constructing buildings on illegally occupied land is used to establish the offense. Offenders may face imprisonment for up to three months under Article 2 of Law No. 51 PRP of 1960 or up to four years under Article 385 of the KUHP if the case involves fraudulent transactions. However, the effectiveness of these sanctions as deterrents remains debatable. The three-month penalty may be perceived as too lenient, potentially failing to discourage repeat offenses, while the four-year imprisonment is primarily applicable to more severe violations like fraud. A critical review of the proportionality and enforcement of these penalties is necessary to assess their deterrent effect on encroachers.²⁷

Beyond criminal sanctions, perpetrators may be required to return the land to its rightful owner or compensate for damages. This obligation is grounded in Article 1365 of the KUHP on unlawful acts, which mandates restitution for losses caused by violations of another's rights. The absence of a detailed explanation of this legal basis weakens the understanding of civil mechanisms in addressing land encroachment. Elaborating on the elements of an unlawful act such as the violation of rights, causation, and incurred damages would strengthen the analysis and provide clarity on how compensation is determined and enforced.

Addressing land encroachment involves collaboration between landowners, law enforcement, prosecutors, and the judiciary to ensure effective enforcement of regulations.²⁸ Landowners can protect their rights by registering land following Law No. 5/1960, reporting encroachment cases, and actively participating in the legal process. Community involvement in reporting cases is also essential for upholding the law and preventing further conflicts. With its robust legal framework, Indonesia possesses sufficient provisions to address land encroachment cases through both criminal and civil avenues. However, refining the enforcement of sanctions, addressing gaps in the existing regulations, and raising public awareness is vital to ensuring justice for legitimate landowners. The effective implementation

²⁶ Azharuddin, "Pemberian Bank Garansi Terhadap Pengadaan Barang Dan Jasa Dikaji Dari Asas Keseimbangan Berkontrak," *Jurnal Ilmu Hukum Prima* 8 No. 2 (2016): 28–47.

²⁷ Z R Aritonang, "Notary Criminal Liability against Authentic Deals Indicated to Criminal Actions (Case Study of Field High Court Decision Number: 82/PID/2010/PTMDN)," *Legal Brief* 11, no. 3 (2022): 1896–1903, <https://doi.org/10.35335/legal.xx.xx>.

²⁸ Aritonang.

of these measures is critical for maintaining social stability and protecting property rights in Indonesia.

4. Conclusions

From the review of land encroachment law based on Indonesia's positive law, it can be concluded that this act constitutes a serious violation that may lead to severe legal consequences for the perpetrator. According to agrarian law, land is defined as a right acquired by an individual or legal entity over the surface of the earth under specific provisions, and the use of land without valid permission is considered a violation of Law Number 51 PRP of 1960. Article 385 Paragraph (4) states that land encroachment can result in imprisonment for up to four years for the offender. Furthermore, relevant articles in the KUHP also regulate crimes related to the acquisition and transfer of land rights, such as fraud, embezzlement, and forgery of documents, as well as entering and occupying land without valid permission. Law enforcement in these cases is not only important for restoring disrupted rights but also for maintaining legal order and justice within society. In the legal protection against land encroachment in Indonesia, landowners have several effective strategies to prevent and address this issue. The first step is to register land and land rights following Law No. 5/1960, which results in a land certificate as legitimate proof of ownership. Peaceful dispute resolution is also an option through mediation or negotiation, which can avoid formal legal proceedings while still requiring careful consideration for long-term interests. In the framework of criminal law, Law No. 51 PRP of 1960 and KUHP regulate prohibitions and sanctions against perpetrators of land encroachment.

The legal process begins with an investigation by the police and prosecution by the public prosecutor, which is then adjudicated by the court. Possible sanctions include imprisonment for up to four years under the KUHP, as well as the obligation to return the land or pay compensation to the legitimate owner. With the cooperation of various parties, including landowners, law enforcement, and the judiciary, the enforcement of laws against land encroachment in Indonesia aims to restore rights and prevent further conflicts. Thus, a robust legal framework such as Law No. 5/1960 and the KUHP is crucial in maintaining social stability and protecting property rights in Indonesia.

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