

Legal Power of Pipil as the Real Evidenc

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Legal Power of Pipil as the Real Evidence of Ownership of Rights to Land in Dispute (Analysis on the Decision of Selong District Court)

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Abstract

In this paper, the authors discuss cases that relate to the basis of ownership of rights and authority of land rights called *Pipil* among the people of Lombok Island. Landowners use *Pipil* as the real evidence of land rights because it is only landowners who are obliged to pay taxes. After the enactment of Law No. 5 of 1960 concerning Basic Agrarian Law (UUPA), there are fundamental changes in the field of land law and individual rights to land that apply in Indonesia. It mandates that certificate is the only real evidence of ownership of rights to land. However, even though UUPA is in force, there are still many Indonesians, especially in Lombok, who consider *Pipil* as real evidence of ownership of rights to land. In civil court practice for land cases in the Selong District Court, there are some times that court decisions win the *Pipil* holder. On the other hand, there are also some times when the *Pipil* holder is the party who loses the case. It can be found in two land cases decided by the Selong District Court. In the decision of the Selong District Court No. 73/Pdt.G/2008/PN.SEL. on June 18, 2009, the plaintiff who filed *Pipil* as real evidence was the party who won the case because the real evidence of *Pipil* was supported by two witnesses who saw that the plaintiff's controlled and worked on the dispute land. Meanwhile, the decision of the Selong District Court No. 113/Pdt.G/2015/PN.SEL. on June 2, 2016 jo. the decision of Mataram High Court No. 102/PDT/2016/PT.MTR. on October 4, 2016 jo. the decision of Supreme Court No. 399 K/Pdt/2017 on 23 May 2017, the plaintiff who filed *Pipil* as the real evidence was the party who lost the case. In this case, consideration of the court's decision prioritized the use of the dispute land in the public interest even though the plaintiff submitted three witnesses who witnessed that the plaintiff's parents/ grandfather controlled and worked on the dispute land.

Keywords: Pipil; Certificate; Law

Introduction

Commonly, land issues are related to legal certainty over land rights and none or lack of evidence of ownership. For example, rural communities who have traditionally lived in their ancestral lands have very little evidence of land ownership. In fact, some of them do not have evidence of certificate, even though the certificate is strong evidence. However, in some cases of land disputes in court, certificates can sometimes be defeated by other evidence; for instance, *Pipil* as evidence before 1960. Based on this description, there are 5 (five) reasons which are the reasons for the need to carry out this research. First,

the object of land rights which is a dispute should be based on the prevailing laws and regulations; i.e. Agrarian Basic Law No. 5 of 1960, Government Regulation No. 24 of 1997, as well as other regulations governing land rights in this country concerning the Basic Agrarian Law.

Second, Article 164 of *Herzien Inlandsch Reglement*/ Article 284 of *Reglement Buitengewesten* and Article 1866 of the Civil Code states that the real evidence in a civil case consists of: written/ letter evidence, witness evidence, allegation, confession and oath. Real written evidence or letter is everything that contains reading signs intended to devote the contents of the heart or convey the thoughts of someone who is used as evidence (Mertokusumo, 2010). First of all, this written evidence is used to prove the existence of an event or right. If the written evidence does not exist or is not sufficient, then witness evidence is used. If witness evidence is insufficient, allegation evidence is used. If the combination of written evidence, witness evidence, and allegation evidence is not enough, then it must be added with confession evidence. If the evidence is still not enough, then it needs to be added with oath evidence.

Third, Article 23 Government Regulation No. 24 of 1997 states that the need for registration of land rights arising after the enactment of the UUPA can be proven by: (a) stipulation of the granting of rights (Decree on the Granting of Rights) on state land or land management rights from authorized officials, (b) deed of giving the Right of Use or Building Rights for ownership of land from Conveyancer, (c) deed of contract agreement, (d) deed of separation of ownership of unit of flats, and (e) deed of granting rights.

Fourth, the land problems that arise not only require the handling of conflicts and disputes that are able to provide justice to victims and other parties. The very basic problem is that it requires proof of land ownership that provides legal certainty.

Fifth, the certificate of land rights is a legal product of the State Administration Official (TUN). In this case, they consist of the Head of the Regency/ City Land Office, the Adjudication Committee and Officials who are delegated authority from the Head of the Regency/ City Land Office. Therefore, the provisions of State Administrative Law will be applied to legal products issued by authorized officials. It means that TUN officials can carry out acts against the law which are caused by mistakes (*schuld*) or negligence in carrying out legal obligations. The wrong or negligent action finally produces the wrong legal product (Ismail, 2012). That includes errors in the legal subjects in the certificate and errors in the law in the certificate. This error is suspected to occur in various land registration processes.

There are many cases that indicate that a certificate can be sued. For example, in some cases of claims against certificates, *Pipil* holders can defeat legal standing of certificates; including the decision of Selong District Court No. 73/PDT.G/2008/PN.SEL.

Starting from the description of the background, the following problems are formulated:

1. How is *Pipil*'s legal standing as a real evidence of ownership of land rights after the enactment of UUPA jo. Government Regulation No. 24 of 1997 concerning Land Registration in a civil case?
2. How do judges consider *Pipil* as the basis for determining ownership of dispute land?

Method

This article is normative legal research. It is legal research that places the law as a building system of norms (Diantha, 2016). The norm system, in this case, covers principles, norms, rules of law, court decisions, agreements, and doctrines. Normative legal research is a process of finding legal rules

and legal principles to answer legal issues (Marzuki, 2017). Normative legal research is conducted to produce new arguments, theories or concepts as prescriptions for existing problems (Soemitro, 1990)."

To obtain accurate and relevant data, this research conducts library research to collect legal material. Data collection is carried out by analyzing library material which includes:

- a. "Primary legal material in the form of legal material that has binding legal power. It consists of the 1945 Constitution, related laws and regulations, official records or minutes in making legislation;"
- b. Secondary legal materials in the form of literature, scientific works, research results, workshops related to research material. In this study, secondary legal material consisted of books on land registration, Indonesian agrarian law regarding history and its development, land dispute resolution, research methodology, scientific writing and Indonesian dictionary;
- c. Tertiary legal material is intended to explain primary and secondary legal materials; for example, dictionaries, articles from newspapers and magazines.

Data collection is intended to obtain legal material for this research. The legal material collection technique that supports and is related to the presentation of this research is document study (library study). Document study is a tool for collecting legal materials carried out through written legal materials using content analysis (Ibrahim, 2006). This technique is useful for obtaining a theoretical basis by reviewing and studying books, legislation, documents, reports, archives, and other research results in printed and electronic forms related to *Pipil*'s legal power as **real evidence of ownership of land rights** in dispute.

In the **analysis of the** legal material **of** this article, after all data was collected and processed, it was then analyzed qualitatively which included an analysis of the contents of the Selong District Court decision about illegal acts in the case of land disputes. In the dispute, real evidence of *Pipil* is against the evidence of the right to use the certificate. The research wanted to analyze and criticize the judge's decision based on two layers. The first layer is the consideration of the judge and the second layer is the dictum of the judge (conclusion of the judge).

Discussion

1
Legal Standing of Pipil as a Real Evidence of Ownership of Right to Land after Enforcement of UUPA jo. Government Regulation No. 24 of 1997 concerning Land Registration in Civil Cases

This article discusses the people in Lombok Island who have civil disputes in the land sector in courts that include the district court or religious court. To support the claim argument against the land that was the object of the dispute/ case argued as its ownership, the plaintiff often submitted a written evidence form in the form of *Pipil*. Similarly, to support the answer argument/ rebuttal to the plaintiff's claim, the defendants also often submitted evidence of *Pipil* as the basis for land rights to the object of the dispute they controlled. Based on this evidence, the defendant claimed *Pipil* as evidence of ownership of the land they controlled.

"*Pipil* status, in a book by Boedi Harsono, is mentioned as land title or land tax. Furthermore, Boedi Harsono stated that the imposition of land or land tax only applies in Java and Madura (S. 1927-163 jo. 1931-168), Bali and Lombok (S. 1922-812), Sulawesi (S. 1927-179), upstream regions of Borneo (S. 1923 - 484), (S. 1925 - 193, S. 1932 - 102), Bima (1926), Dompu and Anggar (1927), and Sumbawa (1929)."

It was interesting to present *Pipil*'s legal standing itself before the enactment of Government Regulation No. 24 of 1997 which was then compared to the *Pipil*'s legal standing after the enactment of Government Regulation No. 24 of 1997. This is done to obtain a comprehensive thinking or logic about *Pipil* as real evidence in the trial later (Harsono, 2008).

Legal Standing of Pipil before Enactment of Government Regulation No. 24 of 1997

In accordance with the provisions, the expression and term of *Pipil* has been popular as a document of evidence of tax payment for the control of land plots in Bali and Lombok areas prior to the introduction of the Agrarian Law in 1960. *Pipil* does not resemble a certificate that serves as evidence of ownership of land. It only refers to a land certificate indicating land ownership for the purposes of tax registration and collection.

Pipil began with the need for the Dutch colonial government to collect land taxes whose land was controlled by the people after the independence of the Republic of Indonesia in 1945. After the enactment of the Agrarian Basic Law in 1960, it requires and states that certificates are evidence of legitimate and strong ownership of land plots. Along with the development, *Pipil* was then recognized and accepted as a document for proposing land certificate registration.

Pipil is currently transformed into SPPT (formerly tax return), formerly the PBB (Land and Building Tax), and previously it was IPEDA (Regional Development Fee). *Pipil* is not the original form of certificate if it refers to the era of land registration after the enactment of the Agrarian Basic Law. For example, in accordance with the provisions of article 19 paragraph (1), the purpose of land registration is only to provide legal certainty. Although the main purpose of land registration is to create legal certainty, the rest, land registration can also be used for other purposes such as tax collection (fiscal) as described above.

Then, for *Pipil*'s legal standing as evidence before the enactment of Government Regulation No. 24 of 1997? *Pipil*, as well as *girik*, *kekitir*, Indonesian verponding, and land tax/ landrente, are no longer issued after the enactment of UUPA. To show evidence of ownership of the land, *Pipil* should no longer be used. It should use certificates after the enactment of the UUPA. However, if the management of the certificate has not been conducted and ownership disputes have occurred, to show written evidence of ownership of land rights, *Pipil* can be submitted as written evidence to strengthen ownership of land rights. However, it must also be accompanied by a witness who knows and sees that the *Pipil* holder controls the land and the *Pipil*. Witness information or statements regarding ownership of the land serve to strengthen incomplete written evidence (not yet sufficient for the minimum limit of evidence) or as a substitute for written evidence that no longer exists.

Legal Standing of Pipil as Real Evidence in a Civil Case after the Enactment of Government Regulation No. 24 of 1997

In quality, as evidence of tax payment on land tenure during the Dutch colonial administration, *Pipil* had the same legal standing as the *Pipil* legal standing before the enactment of Government Regulation No. 24 of 1997. It was stated that *Pipil* was recognized as written evidence. However, the legal power will be perfect if it is supported by the presence of witnesses who know and see that *Pipil* is controlled by the *Pipil* holder itself. In addition, the witness must also know that the party whose name is written on *Pipil* controls the land object listed in *Pipil*. The existence of these witnesses is very important

considering the *Pipil*, as a tax certificate (evidence of tax payment), has different types or characteristics than the evidence of payment for other land taxes after the enactment of the UUPA.

Therefore, it is emphasized once again that *Pipil* is not proof of ownership of land rights but evidence of payment of taxes that indicate land ownership. *Pipil* can be submitted to be written evidence in the dispute over ownership of land rights but it must include a witness.

Why is the presence of witnesses so important in completing *Pipil* as evidence in civil cases? It is because *Pipil* is actually not evidence of ownership of land rights. The most important thing for us to remember is the evidence system in the civil procedure law itself.

The evidence system adopted by Civil Procedure Code is not negative in nature according to the law (*negatief wettelijk stelsel*) as in the process of criminal investigations that demand the search for truth. In addition to being based on legitimate evidence and reaching the minimum evidence limit, the truth sought and manifested in the criminal justice process must be believed by the judge. This principle is then called reasonable doubt. The truth that is truly embodied is based on unquestioning evidence. Thus, the truth is considered to have value as an essential truth. This evidence system is regulated in Article 183 of the Criminal Procedure Code. However, this does not apply in civil court proceedings where it is sufficient for judge to search for and realize formal truth (*formeel waarheid*). Basically, a civil court is not prohibited from seeking and finding material truth. However, if material truth cannot be found, the judge is justified by law to make decisions based on formal truth.

How Do Judges Consider Pipil as the Determination of Land Ownership in Civil Disputes?

Generally, verification in any legal case, including civil matters, holds a central position. Proof is the heart and spirit in the case before the court. Legal actions, legal events and civil law relations, as a basis for carrying out legal proceedings against a person or legal entity, must be proven before a court hearing. Similarly, rebuttal submitted by a person or legal entity as a defendant who is the target of lawsuits must also be proven before a court hearing. It means that no matter how well the legal arguments submitted by the plaintiff and the defendant are futile if it cannot be proven before a court hearing. Evidence in a legal case, including in a civil case, is very strategic. Therefore, Sudikno Mertokusumo stated that evidence is an action in providing sufficient grounds for judges who examine cases to give certainty about the truth of the events submitted.

The retrieval of a civil judge's decision, which is based on formal truth, refers to the real evidence known in Civil Procedure Code as stipulated in the provisions of Article 164 of *Herzien Inlandsch Reglement*, Article 284 of Article 164 of and 1866 of Civil Code. It consists of: 1) letter evidence (written), 2) witness evidence, 3) confession, 4) allegation, and 5) oath. The five evidences in this Civil Procedure Code have their own quality of proof. Letter evidence, in the form of authentic deed, has perfect evidence. Therefore, a real evidence of an authentic deed that is not equipped with other evidence can be used by the judge to decide the case.

Based on the real evidence revealed at the trial, delivered by the parties in litigation and based on the findings of the judge after conducting an examination of the object of the case, the judge will make legal considerations in the form of a decision on the facts submitted by the plaintiff and the defendant. According to Damang, in Civil Procedure Code, legal considerations from judges means a stage where the Panel of Judges considers the facts revealed during the trial to proceed, from claims, answers, and exceptions from the defendants connected to real evidence that meet formal and material requirements that reach the minimum limits of the evidence.

In the Selong District Court, in the civil case of land, written evidence is often used by the plaintiff to postulate that the dispute land is his/ her ownership. The written evidence is in the form of *Pipil* in addition to other written evidence such as certificates and letters of sale and purchase of land. On the other hand, the defendant, as a target of the accused party, often uses the evidence of *Pipil* as the basis for the right to control the dispute land in addition to other written evidence such as certificates and others. The description below will describe and analyze two decisions of the Selong District Court in land case/ dispute. In the two decisions of the Selong District Court, the plaintiff used *Pipil* evidence as the basis of his/ her ownership of the land that became the object of dispute and was held by the defendant.

Land Case/ Dispute between SAHMAH alias INAQ RUMENAH et al¹ is Plaintiff against East Lombok Regency Government as Defendant in Decision on Civil Case No. 73/Pdt.G/2008/PN.SEL., on June 18, 2009 Jo. Decision of Mataram High Court No. 126/PDT/2009/PT.MTR., on November 24, 2009

¹ In legal consideration of the decision of Selong District Court No. 73/Pdt.G/2008/PN.Sel., on June 18, 2009, according to the authors, in its capacity as *judex facti*, The judges of Selong District Court had been very comprehensive in considering all the scope of the land cases in the decision. Thus, the Panel of Judges did not make a mistake in assessing the facts revealed in the trial and also did not make a mistake in applying the law to the land dispute. In this case, the Judges of Selong District Court carefully and in detail related the plaintiff's claim and the defendant's answer and the real evidence submitted by the plaintiff and the defendant.

¹ Thus, based on the legal description and consideration of the decision of the Selong District Court No. 73/Pdt.G/2008/PN.Sel., on June 18, 2009, it was found in civil court practice that *Pipil* could be used as the basis for determining ownership for someone whose name was recorded in *Pipil* if he/ she was proven to control and work the dispute land. It was also based on the testimony of two or more witnesses who saw firsthand that the person whose name was recorded or listed in the letter *Pipil* controlled and worked on the dispute land. On the contrary, it was also stated that if *Pipil* was not supported by two or more witnesses who saw that the person whose name was listed in *Pipil* controls and works on the dispute land, the evidence of *Pipil* alone could not be used as a basis for determining that someone whose name was listed in *Pipil* was the owner land dispute in a civil dispute.

¹ Based on the results of the author/ editor's research, in the form of an analysis of the decision of the Selong District Court No. 73/Pdt.G/2008/PN.Sel., on June 18, 2009, it was found that legal power of evidence of a certificate as the basis of the defendant controlled the dispute land (i.e. certificate of use rights (evidence T.1) on behalf of the Regency Government of Lombok Regency Timur) defeated with evidence of *Pipil* which was supported by the statement of two or more witnesses who knew that the person whose name was listed in *Pipil* was proven to have mastered and worked on the dispute land. Legal power of evidence of certificate, in this case the certificate of use rights on behalf of the Regional Government of East Lombok Regency, had a weak legal standing because its issuance was not supported by a letter granting rights to disputed land from the authorized State Administration officials.

Land Case/ Dispute between LANI Alias H. HABIBURRAHMAN et al¹

¹ Decision of the Panel of Judges of District Court Selong No. 113/Pdt.G/2015/PN.Sel., on June 2, 2016 gives legal considerations as follows:

Since the fact found that the filing of the lawsuit was only carried out by 3 people from the heirs of the late H. Moh Nurudin. Meanwhile, the heirs of H. Moh Nurudin were 282 people as seen in P.1

evidence in the form of genealogies of the descendants of the late Haji Moh. Nurudin. Therefore, the Panel of Judges argued that all heirs of H. Moh Nurudin should be included as parties in the court a quo.

Since there were many of the heirs of the late H. Moh Nurudin who were not included as parties to the court a quo, the plaintiff's lawsuit lacked parties. Thus, the Panel of Judges must declare that the plaintiff's claim cannot be accepted.

Since legal considerations in the Selong District Court ruling stated that the plaintiff's claim was short of parties and unacceptable, *amar* (dictum) of the decision of the Selong District Court No. 113/Pdt.G/2015/PN.Sel., on June 2, 2016 stated that the plaintiff's claim was unacceptable.

According to the editors/ researchers, the consideration of the Selong District Court Judges was inappropriate because the case filed by the plaintiffs at the Selong District Court was not an inheritance case. In this case, it should not require all heirs to participate as parties. This case was illegal because in the lawsuit, the plaintiffs argued that the disputed land controlled by the defendants was a legacy from H. Moh Nurudin who was the grandfather of the plaintiffs. So, according to the Civil Procedure Code and the practice of civil justice, all heirs of H. Moh Nurudin are not required to be the plaintiffs. The involvement of all heirs of H. Moh Nurudin is needed if the case submitted by the plaintiffs is an inheritance case which is the authority of the Religious Court because H. Moh Nurudin and all of his descendants/ heirs are Muslim.

Related to the decision of the Selong District Court No. 113/Pdt.G/2015/PN.Sel., on June 2, 2016, the plaintiffs appealed to the Mataram High Court. Legal considerations in the decision of the Mataram High Court No. 102/Pdt/2016/PT.Mtr., on July 21, 2016 stated that the plaintiffs were able to prove the arguments of the lawsuit based on written evidence and information from the witnesses submitted by the plaintiffs. So, according to the authors/ writers, when viewed from the legal aspects of proof, the consideration of the Mataram High Court is appropriate and correct. It is because in the trial of the Selong District Court, the plaintiffs submitted two evidences of *Pipil* in addition to other written evidence. In this case, the two *Pipil* evidences submitted by the plaintiffs were recorded on behalf of the plaintiff's grandfather; i.e. H. Nurudin. The plaintiff's evidence of *Pipil* was supported by the testimonies of witnesses submitted by plaintiffs named Mariah alias Amaq Mahnun and Muksin Aminullah. They both explained that they saw plaintiff's grandfather worked on the dispute land.

If the decision of the Mataram High Court No. 102/Pdt/2016/PT.Mtr., on July 21, 2016 linked to the decision of the Selong District Court No. 73/Pdt.G/2008/PN.Sel., on June 18, 2009 as described above, the two court decisions have similarities. In this case, the evidence of *Pipil* submitted by the plaintiffs is supported by two or more witness statements which together explain that the witness saw the plaintiff's parents or grandfather mastered and worked on the dispute land. Thus, the claim of the plaintiffs against the object of the dispute was granted by the Mataram High Court.

Related to the decision of the Mataram High Court No. 102/Pdt/2016/PT.Mtr., on July 21, 2016 which granted the claim of the plaintiffs, then the defendants made an appeal to the Supreme Court. At the appeal level, the Supreme Court granted the appeal of the defendants and overturned the decision of the Mataram High Court No. 102/Pdt/2016/PT.Mtr., on October 4, 2016 and tried the case itself. The main *amar* on the decision of the Supreme Court No. 399 K/Pdt/2017 on May 23, 2017 is to reject the plaintiff's claim in its entirety.

Legal considerations in the Supreme Court's decision No. 399 K/Pdt/2017 on May 23, 2017 stated that:

Since 1948, the land object of the dispute has been continuously controlled by the Village in which Village Offices, Public Elementary Schools, Community Health Center, and village fields have

been established. Meanwhile, the plaintiffs never controlled the land of the object of the dispute. Moreover, the evidence from the plaintiffs was only a sign of registration. Therefore, the plaintiffs cannot be declared as land owners of the dispute object. In addition, the party that controls the land for a long time is proper and fair to be given the right to the land of the object of dispute.

Observing the legal considerations of the Supreme Court's decision No. 399 K/Pdt/2017 on May 23, 2017 as outlined above, the Supreme Court ruled out or did not judge *Pipil's* status as the basis of the plaintiffs in demanding the dispute land despite the evidence that *Pipil* submitted by the plaintiffs was supported by the testimonies of the witnesses submitted by the plaintiffs who explained that the grandfather of the plaintiffs worked on the dispute land.

Legal considerations on the decisions of the Supreme Court No. 399 K/Pdt/2017 on 23 May 2017 also do not refer to the real evidence submitted by the plaintiffs and defendants. However, the Supreme Court considered the claim of the plaintiffs in the claim number 3 as the decision of the Selong District Court No. 113/Pdt.G/2015/PN.Sel., on June 2, 2016 on page 5. In the decision, the plaintiffs explicitly acknowledged that the defendants/ government since 1948 had taken control of the land of dispute; i.e. the control of land disputes by the defendants that have lasted for approximately 69 years. Therefore, Article 1963 of the Civil Code determines that a person who controls something for 30 (thirty) years in good faith will obtain ownership without the need to show the basis of their rights. Article 1963 The Civil Code is in line with the Supreme Court jurisprudence No. 408 K/Sip/1973 on December 9, 1975 which stated that the plaintiffs had for more than 30 (thirty) years allowed the disputed lands to be controlled by the late Mrs. Ratiem and her children. So, their right as another heir of the deceased Atma was too late (rechtsverwerking) to sue the land.

In addition, the Supreme Court explicitly put forward the use/ utilization of disputed land in the public interest because the land was already established by the Village Office, Public Elementary Schools, Community Health Center, and village fields.

Thus, referring to the decision of the Supreme Court No. 399 K/Pdt/2017 on May 23, 2017, even though the plaintiffs used the evidence of *Pipil* as a basis for demanding the dispute land supported by testimonies of witnesses submitted by the plaintiffs, if the disputed land had been controlled in time long time ago by the defendant, and if the disputed land was used for public interest, the evidence of *Pipil* and the testimonies of witnesses who supported the existence of *Pipil* were ruled out or not considered as the basis for the *Pipil* holder to be the landowner of the dispute land.

Conclusions

1. *Pipil* is evidence of the imposition/ payment of taxes as in other areas known as *petuk pajak*, *girik*, *kekitir* and is not proof of ownership of land rights.
2. Before the enactment of Government Regulation No. 24 of 1997 and after the enactment of Government Regulation No. 24 of 1997, *Pipil* still has legal standing as proof of tax payment. The difference is that after the enactment of the UUPA, *Pipil* was no longer issued, which was later transformed into IPEDA, PBB, SPPT.
3. *Pipil*, in a civil case, can be considered an evidence of ownership of land rights when it is supported by the presence of witnesses.

4. *Pipil* submitted by the plaintiff and the defendant as real evidence in a civil case will not reach the minimum evidence limit if it is not supported by witness statements as outlined in the cassation decision number 399K/Pdt/2017.
5. *Pipil*, as evidence of ownership of land supported by the testimony of two or more witnesses, will be ruled out in consideration of the decision of the Supreme Court if the land of the dispute has long been held by the defendant and also if the disputed land is used for the public interest.

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