

## Position of Eigendom Verponding after the Birth of the Basic Agrarian Law (Case Study of Dago Elos Supreme Court Decision Number 109PK/PDT/2022)

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**Abstract.** *Eigendom verponding is a product of land law from the Dutch East Indies era which is no longer valid after the birth of the national land law in 1960. Eigendom owners are required to carry out the conversion no later than September 24, 1980. However, the Supreme Court created its own law which is contrary to the spirit of agrarian reform. This type of research is a normative research that is prescriptive in nature. The data source in this study is secondary data obtained through literature studies. The results of the study show that the position of eigendom verponding is recognized as one of the land rights born from Dutch East Indies law and must be converted no later than September 24, 1980. Then the Government Regulation of 1997 and amended in 2021, conversion can still be carried out as long as it has been proven that there is physical control over the land by the former holder of the western land rights. The problem of converting eigendom verponding into ownership rights can be seen in the case of Heri Hermawan Muller et al. and PT. Dago Intigraha vs. Didi E. Koswara et al., and the Head of the Bandung City Land Office. The eigendom verponding land was not physically controlled by the former land rights holder, even though houses, post offices, and bus terminals had been built on the land. However, the Supreme Court decided that the land rights were still given to the holders of the western land rights.*

**Keywords:** *Eigendom; Judge's; Legal; Verponding.*

### 1. Introduction

Land is one of the most important and primary factors in human life, because in reality humans cannot be separated from land at all. Humans live on land (reside) and obtain food by empowering the land, more than that land has an emotional relationship with humans. Everyone certainly needs land, not only in their lives, even when they die humans still need land as a resting place. Therefore, it is fitting that we manage and maintain the land as well as possible for its use which

can provide people's welfare as mandated in Article 33 paragraph (3) of the 1945 Constitution.<sup>1</sup>

Legal control is based on rights, which are protected by law and generally give the rights holder the authority to physically control the land that is being claimed. However, there is also legal control which, although it gives the authority to physically control the land that is being claimed, in reality the physical control is carried out by another party. For example, if the land owned is rented to another party and the tenant physically controls it. Or the land is physically controlled by another party without rights. In this case, the land owner, based on his legal control rights, has the right to demand that the land in question be physically returned to him.<sup>2</sup>

*Property ownership* is a term used to refer to land with ownership status (eigendom) that has been measured and recorded in the land book (verponding) by the Dutch colonial government during the Dutch East Indies. Historically, eigendom verponding land was owned by Europeans, Chinese, or natives who had received permission from the Dutch government. After Indonesian independence, eigendom verponding land became problematic because its legal status was unclear.<sup>3</sup>

To maintain its validity, eigendom verponding must be converted into a type of land rights such as a Certificate of Ownership (SHM), Certificate of Building Use Rights (SHGB), Certificate of Business Land Rights (SHGU), or Certificate of Use Rights (SHP). The time limit for this conversion was given for 20 (twenty) years until 1980. If the conversion was not carried out, the land would become land with other rights that could not be proven, if referring to the principle of domein verklaring, it would become state land.<sup>4</sup>

In 2014, Heri Hermawan Muller, Dodi Rustendi Muller, and Pipin Supendi Muller claimed 6.3 hectares (ha) of land located in Kampung Cirapuhan and Dago Elos on the basis of ownership based on 3 (three) eigendom verponding. Hermawan Muller, Dodi Rustendi Muller, and Pipin Supendi Muller argued that they were relatives of Queen Wilhelmina of the Netherlands who was assigned to Indonesia based on the Determination of Heirs of the Cimahi Religious Court Number 687/Pdt.P/2013. On this basis, they then jointly sued 335 (three hundred and thirty-five) people who lived on the land.

Through a search of the Supreme Court Decision Directory, decisions on this case were found. At the first level, the Panel of Judges of the Bandung District Court in Decision Number 454/Pdt.G/2016/PN Bdg granted the lawsuit of Heri Hermawan

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<sup>1</sup>Arie S. Hutagalung. 2005, Spread of Thoughts on Land Law Issues, Indonesian Legal Empowerment Institute. Jakarta. p. 19

<sup>2</sup>I Made Suwitra. "Land Rights Control and Its Problems", Journal of Law and Justice. Vol II, No 6 (2014), p. 446

<sup>3</sup>Pedro Susanto. "Legal Consequences for Holders of Former Eigendom Verponding Rights in Land Ownership Disputes", Journal of Legal Dialectics. Vol 4, No 2 (2022), p. 93

<sup>4</sup>Dian Aries Mujiburohman. "Legalization of Former Lands with Eigendom Rights", Jurnal Judicial. Vol 14, No 1 (2021), pp. 117-118

Muller, Dodi Rustendi Muller, and Pipin Supendi Muller and declared valid eigendom verponding numbers 3740, 3741, and 3742 as the basis for land ownership rights. This decision was then upheld on appeal by the Panel of Judges of the Bandung High Court as stated in Decision Number 570/PDT/2017/PT BDG. Then at the cassation level, the Panel of Supreme Court Justices through Decision Number 934K/Pdt/2019 annulled these two decisions on the basis of errors in the application of the law and argued that the eigendom verponding owned by the three of them was converted late so that it could no longer be used as the basis for ownership rights to the land.

Everything changed in 2022, the Panel of Judges at the Review Level in Decision Number 109PK/Pdt/2022 won all three. The four decisions on this case show differences in attitudes between judges in the general court environment which contributed to the creation of legal uncertainty. Seeing that there are 335 (three hundred and thirty-five) residents occupying the land, of course this latest decision has caused the loss of homes for most of the community. The 335 (three hundred and thirty-five) residents claim to occupy the land because none of the heirs have ever managed and neglected the land. As a result, all 335 (three hundred and thirty-five) residents have occupied it continuously until they pass it on to the next generation.

## **2. Research methods**

The type of research used in this study is doctrinal research, where the research conducted is research related to the analysis of the norms behind the text of statutory regulations, both legally and philosophically.<sup>5</sup> This type of research is used with the aim of analyzing and finding solutions to certain legal problems. The sources used in this research come from literature studies. These materials are a collection of literature which is then analyzed in depth to answer the problems set in this research.

The analysis process carried out in this study is descriptive and is used to understand the conditions and situations involved. This analysis is also part of an effort to solve the problems faced and determine the relationship between the problems that have been identified in order to find a way to solve them.

## **3. Results and Discussion**

### **3.1. The Position of Verponding Eigendom After the Birth of the Basic Agrarian Law**

Before 1960, Indonesia recognized two types of land rights, namely land rights that obeyed Dutch Colonial Law or commonly known as Dutch land and also land rights that obeyed customary rights and were known as legal dualism. In addition to customary law which was civil law for the indigenous/native population, for the Dutch colonial population and similar groups (Europe) Dutch civil law (Burgerlijke wet boek/Civil Code) applied.

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<sup>5</sup>Depri Liber Sonata. "Normative and Empirical Legal Research Methods: Distinctive Characteristics of Legal Research Methods", *Fiat Justisia Journal of Legal Studies*. Vol 8, No 1 (2014), p. 28

One of the land rights that is a legal product for European land is eigendom. The term eigendom in the Civil Code is generally translated into Indonesian as "ownership rights". The eigendom right applies to various goods, namely movable and immovable goods, tangible and intangible goods. Furthermore, the administrative land law of the Dutch East Indies government was formed with the aim of implementing the colonial land policy at that time which was outlined in a legal order called the Agrarische Wet 1870.<sup>6</sup> With the establishment of the Agrarian Wet, large foreign capital owners, both Dutch and other Europeans, were given ample opportunity to do business on Indonesian plantations.

After the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations, or better known as the Basic Agrarian Law (UUPA), all West rights that have not been revoked according to the provisions as mentioned above, and are still in force are not immediately removed and continue to be recognized, but in order to become land rights in accordance with the system regulated by the UUPA, they must first be converted according to and in accordance with the provisions of the conversion and its implementing regulations.

With the enactment of UUPA, starting from September 24, 1960 there were no more western rights lands and customary land rights. Starting in 1961 there was no more land that according to its provisions could be subject to Verponding. The tax certificates that existed and were held by the people at that time and were not reported for replacement of new rights based on UUPA, of course were still in the form of Eigendom Verponding but in reality the land rights holders who after September 24, 1980 still had proof of ownership of land rights in the form of western rights and customary rights that had not been converted, which of course would cause legal problems if not regulated in legislation.

In 1980, the rights to (former) western land that had been converted and which did not meet the requirements were abolished, and the land was controlled by the State as "State land".<sup>7</sup> For those former land rights holders are given the opportunity to apply for land rights to their former rights as long as it is not used for public interest or if it is not occupied by the community in general. If these requirements are met, the authorized administrative official in this case the Head of the Land Registration Office (KKPT) at that time (currently the local BPN) will record/register the confirmation of the conversion of the eigendom rights in the land book and issue a certificate of ownership in the name of the former eigendom rights holder. The procedure for the mechanism for recording the confirmation of the conversion of this registration is regulated in more detail in PP (Government Regulation) No. 10 of 1961 which was later amended and replaced by PP No. 24 of 1997, while the implementing regulations are regulated

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<sup>6</sup>Nola Polwanti. "Legal Analysis of Eigendom Rights as the Basis for a Lawsuit for Unlawful Acts to Cancel the Building Use Rights Certificate Thereon (Decision Number 3042/K/PDT/2021)", Jurnal Law of Deli Sumatera. Vol II, No 1 (2022), pp. 2-3

<sup>7</sup>Made Suartini, Dewa Gede Budiarta, and Putu Andhika Kusuma Yadnya. "Legal Power of Land Rights Registration for Former Eigendom Rights", Untab Scientific Magazine. Vol 17, No 1 (2028), pp. 64-65

in PMNA (Regulation of the Minister of State for Agrarian Affairs) / KBPN (Head of the National Land Agency) No. 3 of 1997.

However, on the other hand, if these requirements are not met, then the eigendom rights are legally changed (converted) into building use rights that last for 20 years. Furthermore, these rights are revoked, while the land changes its legal status to land that is directly controlled by the State or commonly referred to as State land (Presidential Decree No. 32 of 1979). In such a position, the legal relationship between the owner and the land is severed. However, the former rights holder still has a civil relationship with other objects on it, for example plants, buildings standing on the land.

The provisions for proving old rights have been changed with the presence of PP No. 18 of 2021. Article 95 paragraph (1) of PP No. 18 of 2021 stipulates that written evidence of former western land rights is declared invalid and its status becomes land directly controlled by the State. Based on Article 95 paragraph (2) of PP No. 18 of 2021, registration of former western land rights is based on a statement of physical control witnessed by 2 witnesses and is responsible for civil and criminal matters. Based on the principle of *lex posterior derogate legi priori*, which means that the new regulation overrides the old regulation, the provisions for converting land originating from western rights currently follow the provisions of PP No. 18 of 2021, where even though the conversion period has passed, as long as it is still controlled continuously, the land is still recognized as having ownership status based on eigendom (western ownership).

### **3.2. Problems of Converting Eigendom Verponding Land into Land Ownership Rights**

On January 23, 2014, Heri Hermawan Muller, Dodi Rustendi Muller, Pipin Sandepi Muller filed an application for Determination of Heirs (PAW) at the Cimahi Class IA Religious Court. Based on Determination Number 687/Pdt.P/2013, the three were declared as the legal heirs of a person named Edi Eduard Muller who was the heir of George Hendrik Muller. George Hendrik Muller was an Indo-Dutch born who married Mrs. Roesmah and died on May 15, 1966 in the village of Opdebeek Number 20, Voorendaal Village, Netherlands.

When he died, George Hendrik Muller owned 3 (three) plots of land based on the Acte Van Prijgwing Van Eigendom Verpondings Number 3740, 3741, and 3742 of George Hendrik Muller. The Eigendom Verponding was owned due to the transfer of land ownership that previously belonged to the cement tile factory company "Simoengan". The 3 (three) plots of land are located in the Dago area, West Java Province. Eigendom Verponding Number 3740 has a land area of 5000m<sup>2</sup> (five thousand square meters), Eigendom Verponding Number 3741 has a land area of 23,115m<sup>2</sup> (twenty three thousand one hundred and fifteen square meters), and Eigendom Verponding Number 3742 has a land area of 5,316m<sup>2</sup> (five thousand three hundred and sixteen square meters). In 1999, Dodi Rustendi Muller submitted a request for an explanation regarding the procedures for settling the land that was formerly Eigendom Verponding in the name of George Hendrik Muller above to the Ministry of Justice of the Republic of Indonesia, which was

responded to on May 3, 1999 based on Letter Number W7.ca.ht.04-05.301/UM/1999.

In reality, the land claimed by Heri Hermawan Muller, Dodi Rustendi Muller, Pipin Sandepi Muller has been occupied by the surrounding community. Some even have Certificates of Ownership (SHM), there are public service buildings in the form of Dago Station, and there has been an inheritance process in the community that has occupied the land for more than 30 years, even up to 50 years without any objection from Heri Hermawan Muller, Dodi Rustendi Muller, Pipin Sandepi Muller. However, in 2016, Heri Hermawan Muller, Dodi Rustendi Muller, Pipin Sandepi Muller, and PT. Dago Intigraha filed a lawsuit for Unlawful Acts against all heads of families occupying the land, namely 126 (one hundred and twenty-six) heads of families, as well as the Bandung City Land Office as Co-Defendant.

At the first level, the Panel of Judges of the Bandung District Court on behalf of H. Wasdi Permana, Jonlar Purba, and Pranoto issued Decision Number 454/Pdt.G/2016/PN Bdg by considering that Heri Hermawan Muller, Dodi Rustendi Muller, Pipin Sandepi Muller had succeeded in proving the origin of their land ownership based only on 3 (three) eigendoms in the name of George Hendrik Muller. Oddly enough, the Regulation of the Minister of Home Affairs Number 3 of 1979 concerning Provisions Concerning Applications and Granting of New Rights to Land of Origin of Conversion of Western Rights is considered unable to be opposing evidence to paralyze the 3 (three) eigendoms.

The decision was then appealed to the Bandung High Court. On February 1, 2018, the Panel of Appellate Judges on behalf of Arwan Bryin, Achmad Sobari, and Ridwan Ramli issued Decision Number 570/PDT/2017/PT.BDG which basically contained very brief, concise considerations, and clearly did not want to look back at the main points of the Bandung memorandum or the counter-appeal memorandum submitted by the parties. The Panel of Appellate Judges took over the entire considerations of the First Level Judge as described above so that the level of error was the same.

Again dissatisfied with the contents of the verdict, the Dago Elos community filed a cassation appeal to the Supreme Court. The Panel of Supreme Court Justices on behalf of Dr. Yakup Ginting, SH, CN., M.Kn., Dr. Ibrahim, SH, MH, LL.M., and Dr. Drs. Muh. Yunus Wahab, SH, MH issued Decision Number 934K/Pdt/2019 dated October 10, 2019. Different from the verdicts at the first level and appeal level, the Panel of Supreme Court Justices at the cassation level stated that they rejected the lawsuit of Heri Hermawan Muller, Dodi Rustendi Muller, Pipin Sandepi Muller, and PT. Dago Intigraha and stated that the entire Dago Elos community (Defendants) had the right to the land. The Cassation Panel has truly considered the position of eigendom verponding. The 3 (three) eigendoms have never been converted and the conversion requirement, namely permanent control for 20 (twenty) years, has also not been met. As a result, of course, the eigendom land becomes state land. This state land is different from the domein verklaring of the Dutch East Indies era. The social function of land plays a role in

the form of state-owned land control, namely for the full benefit of the community.

Furthermore, the consideration of the Cassation Judge regarding the "granting of priority rights to apply for land rights" for the Defendants, namely Dago Elos residents who have controlled the land for a long time continuously also provides a breath of fresh air for agrarian reform. Where the goal of agrarian reform is restructuring the structure of control, ownership, use and utilization of land in a more equitable manner through asset management and access management for the prosperity of the people (contents) Presidential Regulation Number 86 of 2018 concerning Agrarian Reform). Through the granting of land title certificates, the community has a place to live to continue their lives. This has long-term implications for the prosperity of the people and also mitigates the phenomenon of the birth of "urban poverty" due to unequal land ownership. Likewise, the fate of the Post Office and Dago Terminal will be fully operational for the benefit of the general public which has implications for the economy of the people and the state.

Not accepting the decision, Heri Hermawan Muller, Dodi Rustendi Muller, Pipin Sandepi Muller, and PT. Dago Intigraha filed an extraordinary legal remedy, namely a Judicial Review, to the Supreme Court. The Panel of Supreme Court Justices at the Judicial Review Level on behalf of Dr. Nurul Elmiyah, SH, MH, Maria Anna Samiyati, SH, MH, and Dr. Pri Pambudi Teguh, SH then issued Decision Number 109PK/Pdt/2022 dated March 29, 2022. The Panel of Judicial Review Judges considered the construction of the fact that land ownership was based on photocopy evidence alone so that it was not valid to be used as valid evidence of cultivation of the disputed land. Although Heri Hermawan Muller, Dodi Rustendi Muller, Pipin Sandepi Muller have not renewed the eigendom rights to the disputed object, as former holders of rights to the former state land and can prove the origin of their ownership, they have more rights to register the disputed land.

This decision is also still not quite right because it uses the registration regime in 1997. Meanwhile, Government Regulation Number 18 of 2021 has been issued, which states that land registration must be carried out with physical control in good faith and openly and is not disputed by other parties. The facts revealed in court show that the land was never controlled or occupied by Heri Hermawan Muller, Dodi Rustendi Muller, Pipin Sandepi Muller, while the Defendants have occupied it for approximately 50 (fifty) years and there have never been any claims, disputes or lawsuits from any party before.

#### **4. Conclusion**

The position of eigendom verponding after the enactment of the Basic Agrarian Law was recognized as one of the land rights born from the legal regime of the Dutch East Indies. However, eigendom verponding must be converted no later than September 24, 1980. However, with the enactment of the 1997 Government Regulation and amended in 2021, conversion can still be carried out as long as it

has been proven that there is physical control over the land by the former holder of the western land rights (eigendom verponding). This regulation denies the spirit of nationalization in the arrangement of land law, namely eliminating land rights from the colonial era that were born from the womb of class segregation.

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