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## LEGAL PROTECTION OF FORMER EIGENDOM LANDHOLDERS WHO HAVE EXPIRED THEIR CONVERSION PERIOD

Widiya Wulansari\*, Suhartono Slamet, Prasetyawati Endang

Universitas 17 Agustus 1945 Surabaya, Indonesia

\*E-mail: [notariswulansari@yahoo.co.id](mailto:notariswulansari@yahoo.co.id)

### ABSTRACT

During the Dutch colonial era, most of the land in Indonesia was controlled by the Dutch government with western rights and western law applied. The management of lands controlled by the Dutch government with western rights is subject to the Burgerlijke Wetboek (B.W.), where the term Civil Code is subsequently used. Western rights to land contained in the Civil Code include eigendom rights, erfacht rights, opstal rights, gebruik rights, and so on. The regulation of eigendom rights over land is implicitly contained in Book II Chapter III, specifically in Article 570 of the Civil Code, which states that: "property rights are the right to enjoy an item more freely and to act with that item, completely freely, as long as it doesn't conflict with the law or general regulations stipulated by the competent authority and as long as it doesn't interfere with the rights of other people, all of which does not reduce the possibility of revoking rights in the public interest and appropriate compensation for losses, based on the provisions legislation.

### KEY WORDS

Land, legal protection, public service, property rights.

After Indonesia's independence, western land rights, especially eigendom rights or also commonly referred to as eigendom verponding, with the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA), had to be converted into land rights based on UUPA. The conversion implementation had to end on September 24 1980. However, until now the conversion implementation still has problems, namely that there are still western rights lands, especially eigendom lands that have not been converted by their owners or those who control them. This means that since September 24 1980, these eigendom rights should have been converted into land rights according to Article 20 paragraph (1) of the UUPA, so that at this time these eigendom rights should no longer exist.

In fact, there are still many facts that until now eigendom land rights are under community control, which is a manifestation of inconsistency the government as an institution that has the authority to control and regulate the use, allocation and use of land in Indonesia. Apart from that, the discovery of many eigendom lands also does not reflect the existence of legal certainty as one of the reasons for enacting the UUPA. Because until now the government seems to have ignored or not taken any legal action against holders of eigendom land rights who have not yet carried out conversions. In addition, failure to convert lands often results in ownership conflicts whose resolution requires a long and tortuous process. Another problem related to eigendom land is that many eigendom lands have been transferred to other parties, in illegal ways. Meanwhile, the old eigendom land owner still holds valid evidence of eigendom land ownership. Legal protection for eigendom land holders who do not convert until the end of validity period by conversion provisions specified in Article II paragraph (1) Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

### METHODS OF RESEARCH

This research is normative legal research (Utami, 2020).



## RESULTS AND DISCUSSION

According to Article 33 paragraph (3) the 1945 Constitution Republic of Indonesia, the Earth, including land, water and the natural resources contained therein, is controlled by state. Legal norms that give rise to different meanings according to the perspective of each person who gives that meaning are called "vague norms" (Rizaldi et al., 2023).

According to Slamet Suhartono, of the two different methods, the relevant one is using legal interpretation. This opinion is based on the premise that in vague norms, the norm already exists but its meaning is still unclear, therefore it must be interpreted using an interpretation method according to its needs. Meanwhile, *rechtsvinding* or legal discovery relies on empty norms or no norms yet (Rizaldi et al., 2022). Interpretation of law is always related to its content. Every law has two aspects, namely, express and implied, or the sound of law and the spirit law. In this case language becomes important, subtlety intelligence (accuracy of understanding) and subtlety *explicandi* (accuracy of explanation) are very relevant for law (Prasetyawati et al., 2023).

Based on the theoretical explanation above, interpretatively the status of eigendom land which was not converted until the end of conversion period on 24 September 1980, which according to UUPA became state land, means that the land fell into state control. With its status as state land, the land can be distributed to people who need it in accordance with applicable laws and regulations. Argumentatively, eigendom land owners who do not register their land by the end the conversion deadline, and whose land falls under state control, of course still have the opportunity to register the land rights as long as they fulfill the requirements specified in the statutory regulations.

One of the basic capitals for the welfare of the people is land and its contents, which the state creators authorized to the state. This can be seen in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which is formulated: "The earth, water, and natural resources contained therein are controlled by the state, and used for the greatest prosperity of the people." During Dutch colonial rule, some lands in Indonesia were controlled by the Dutch using western legal means, which of course was not in accordance with the character and culture of Indonesian society. The land law or agrarian law that is currently in force before independence is western agrarian law, which should be one of the important tools for building a just and prosperous society, but it turns out to be opposite, in many ways it is an obstacle to achieving the ideals of the founding fathers of the country.

Precisely on September 24 1960, the UUPA was promulgated as a national agrarian law, and determined that lands that were former western rights must be converted into new rights in accordance with the conversion provisions regulated in the UUPA and its implementing regulations. The conversion of western land rights must be carried out no later than September 24 1980. If the conversion is not carried out by the deadline, then the land becomes state land. However, eigendom land owners who do not register their land are still given the opportunity to register their former eigendom rights with the National Land Agency. The opportunity to register is a form of legal protection for former eigendom rights holders to continue to have rights to their former eigendom land.

Legal protection by UUPA for former eigendom rights holders is in line with the opinion of Sudikno Mertokusumo, who stated that "the law functions as a protection for human interests". In order for human interests to be protected, the law must be implemented in a normal, peaceful manner, but this can also occur because violations of the law." Violations of law occur when certain legal subjects do not carry out the obligations they are supposed to carry out or because they violate the rights in other legal subjects. In a legal state, legal subjects do not carry out their obligations, and those whose rights are violated must still receive legal protection. The function of law is as a regulatory instrument and instrument of protection, in addition to a function directed at the goal of creating an atmosphere of legal relations between legal subjects in a harmonious, balanced, peaceful and fair manner (Sriasih Wesna & Susila Putra, 2023).

The purpose of law is to regulate society peacefully. The law requires that peace between humans be maintained by law by protecting certain human interests (both material



and formal), honor, independence, life, property and so on against those who harm them. These legal objectives will be achieved if each legal subject obtains their rights fairly and carries out their obligations in accordance with the applicable legal rules. Legal protection for the people is a universal concept, meaning it is adopted and implemented by every country that prioritizes itself as a legal state, but as stated by Paulus E. Lotulung, "each country has its own methods and mechanisms on how to realize this legal protection, and also to what extent is legal protection provided" (Darmawati & Budiantara, 2023).

If these conditions are not met, the eigendom land will be converted into building use rights for a period of 20 years. The provisions for conversion of land with eigendom rights only apply until September 24 1980, meaning that the right owner is given 20 years to process the conversion. If the land is not converted, the eigendom land becomes land that is again controlled by state (Valayvi, 2016).

At the time of the enactment of Government Regulation Number 24 of 1997 concerning Land Registration, the transfer of land rights from former eigendom land to land rights according to UUPA, must be carried out through the land registration process as is done in land registration in general. Apart from these two regulations, the conversion of land rights to eigendom rights status is also based on Presidential Decree Number 32 of 1979 concerning Policy Principles in the Context of Granting New Rights to Land from Conversion of Western Rights.

Individual ownership of western land rights, if they can show proof of single Indonesian citizenship, will be given ownership rights to the land. Former eigendom land that is not converted within a period of 20 years, the eigendom rights will expire. In Article 4 of the Regulation of the Minister of Agrarian Affairs number 2 of 1960, it is stipulated that "Eigendom rights whose owners do not come to the Head of the Land Registration Office after the 6 month period mentioned in Article 2 or whose owners cannot prove ownership, and proof of single Indonesian citizenship, then the Head of the Land Registration Office will record it in the original deed as being converted into a building use right, with a period of 20 years." Technically, the registration of land with former eigendom rights is based on the provisions of Article 2 of the Minister of Agrarian Regulation Number 2 of 1960 concerning the Implementation of the Provisions of the Basic Agrarian Law, which essentially regulates the technical conversion of western rights which has been in force since 1960 and ends on September 24 1980 no conversion had been carried out.

Until now, the former western land rights that have not been converted are still often a source of disputes, which end up in court. Based on applicable provisions, the party filing a lawsuit must include proof of eigendom land ownership. In general, the evidence submitted by the plaintiff is in the form of a photocopy of proof of ownership of the *recht van eigendom verponding*. The photocopy of proof of ownership shows that the eigendom land owned by the plaintiff has not/has never been converted.

The enactment of Government Regulation Number 18 of 2021 does not completely revoke the enactment of Government Regulation Number 24 of 1997 concerning Land Registration. This is stated in Article 102 point b of Government Regulation Number 18 of 2021, which states: "Government Regulation Number 24 of 1997 concerning Land Registration (State Gazette of the Republic of Indonesia of 1997 Number 59 Supplement to State Gazette of the Republic of Indonesia Number 3696) is declared to remain in effect as long as does not conflict with the provisions of this Government Regulation." The provisions that are revoked are Article 103 point c, which is formulated: "Provisions regarding the period for systematic Land Registration announcements and sporadic Land Registration announcement periods in Article 26 paragraph (1) and the provisions of Article 45 paragraph (1) letter e Government Regulation Number 24 of 1997 concerning Land Registration (State Gazette of the Republic of Indonesia of 1997 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 3696), is revoked and declared invalid.

If you pay attention to the provisions of Article 95 paragraph (1), then the enactment of Government Regulation Number 18 of 2021 concerning Rights to Management of Land Rights, Flats and Land Registration, shows that there is repressive legal protection for holders of rights to ex-eigendom land that are not registered until end of the conversion



period, and the status of the eigendom land immediately becomes state land. If the owner of eigendom land wants to register his former eigendom land, he must comply with the provisions of Article 95 paragraph (2) Government Regulation Number 18 of 2021 concerning Management Rights for Land Rights, Flats and Land Registration.

## CONCLUSION

The enactment of the UUPA requires changes in the status of land with western rights, especially land rights. The enactment of the UUPA requires changes in the status of land with western rights, in particular eigendom rights to become land rights according to the UUPA by conversion, which ends on September 24 1980. For eigendom land which is not converted until the end of the conversion time limit, the eigendom land falls under state control and can be distributed to people in need. Owners of rights to former eigendom land who have not converted are still given the opportunity to register their former eigendom land, as long as they meet the requirements specified in statutory regulations. The opportunity to register ex-eigendom land is proof of legal protection by the state for holders of rights to ex-eigendom land which is not converted by the end of the conversion deadline. eigendom land that is not converted until the end of the conversion time limit, then the eigendom land falls under state control and can be distributed to people in need. Owners of rights to former eigendom land who have not converted are still given the opportunity to register their former eigendom land, as long as they meet the requirements specified in statutory regulations. The opportunity to register ex-eigendom land is proof of legal protection by the state for holders of rights to ex-eigendom land that is not converted until the conversion deadline expires.

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