

EIGENDOM VERPONDING AS BASIS OWING LAND RIGHTS BY LEGAL ANALYSIS CONTRASTING JUDGES OF CASSATION AND JUDICIAL REVIEW IN DECIDING THE DAGO ELOS LAND DISPUTE IN BANDUNG **(Case Study Kasasi Number. 934 K/Pdt/2019 dan Putusan Peninjauan Kembali No.109 PK/Pdt/2022)**

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Abstract

The definition of agrarian is seen from the definition in the Basic Agrarian Law (UUPA), which can be seen in Article 1 paragraph (2), namely the definition of agrarian includes the earth, water and space and the natural resources contained therein. Land is one part of agrarian land, namely the surface of the earth or the face of the earth. In the Big Indonesian Dictionary, land is the surface of the earth or the layer of earth above it. The purpose of this study is to determine the ownership status of the former western eigendom verponding after being declared as land directly controlled by the state and to analyze the legal considerations of the cassation and judicial review judges who contradicted in deciding the Dago Elos land dispute in Bandung. Based on this research, it is found that the ownership status of former western eigendom verponding land after being declared as land directly controlled by the state will be given to a person or legal entity based on Priority Recipient Rights based on Presidential Decree. No. 32 of 1979. Where physical control is the main key to the registration of former western land rights that have become state land. However, the granting of state land former western rights can only be given if there is an agreement with the former right holder on the issue of compensation. If there is no agreement with the former eigendom right holder, the land administration cannot register its rights.

Keywords: eigendom verponding, land rights, judges' legal considerations, judges' decisions.

Introduction

The definition of agrarian is seen from the definition in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), which can be seen in Article 1 paragraph (2), namely the definition of agrarian has a very broad meaning covering the earth, water and space and the natural resources contained therein. Land is one of the objects of agrarian law, namely the surface of the earth or the face of the earth. The definition of land in Article 4 of the UUPA is stated as follows;

"On the basis of the right to control from the State as referred to in Article 2, various kinds of rights over the surface of the earth, called land, are determined, which can be granted to and owned by persons, either alone or jointly with other persons and legal entities."

The meaning of the earth's surface is referred to as land, which can be owned by any person or legal entity. Therefore, the rights arising on the right to the earth's surface (land rights) including buildings or objects contained thereon, both before the enactment of the UUPA and after the enactment of the UUPA, is a legal issue that often causes many legal problems or disputes.

Such is the case of the Dago Elos land dispute in Bandung. The 6.2 hectares of land occupied by 331 families was sued by the heirs of George Hendri Muller based on Eigendom Verponding (property rights) in Dutch colonial land law products. In the first and high courts, the heirs of George Hendri Muller won the lawsuit. While at the cassation level

won the residents of Dago Elos and at the level of judicial review, again won the heirs of George Hendri Muller.

It should be noted that based on the provisions of Article 1 paragraph (1) of Presidential Decree Number 32 of 1979 concerning the Principles of Policy in the Framework of Granting New Rights on Land from the Conversion of Western Rights, it states that:

“Land of Hak Guna, Hak Guna Bangunan and Hak Pakai originating from the conversion of western rights, the term will expire no later than September 24, 1980, as referred to in Law No. 5 of 1960, at the time of the expiration of the rights concerned becomes land directly controlled by the state.”

Article 33 paragraph (3) of the Constitution of the Republic of Indonesia states that the earth, water and natural resources contained therein shall be under the control of the state and shall be used to the greatest extent for the prosperity of the people. Of course, these provisions become very contradictory with several decisions from the Panel of Judges in favor of the heirs of George Hendri Muller.

A brief history of Eigendom Verponding itself is a land law product originating from the Dutch Colonial. After Indonesia's independence, factually almost all over Indonesia there is land of various kinds and styles, one of which is partisan land. Then the existing lands are almost owned by foreigners or foreign legal entities, namely: (Supriadi, 2010: 19)

1. Erpacht rights for large plantation companies covering more than 1 million hectares.

2. Concession/lease rights for large plantation companies covering more than 1 million hectares.

3. Right of eigendom, right of opstal, right of erpacht for housing on more or less than 200,000 parcels and also,

4. The agrarisch eigendom right (a right similar to the eigendom right), a right created by the Dutch as a conversion of lands subject to customary rights.

In terms of its origin, private land is land whose name was given by the Dutch under the name of eigendom, which is a right to freely use and enjoy an object to the fullest (land) and to control as widely as possible, as long as it does not conflict with general regulations stipulated by the power agency entitled to stipulate it and does not interfere with the rights of others. Thus, the definition of private land is eigendom lands on behalf of the owner before the UUPA came into force had pertuanan rights. Partial lands are as if they are a state within a state. (Supriadi, 2010: 19)

Sincerely 1958 Minister of Agrarian Affairs Soenarjo issued Law No. 1/1958 on the Abolition of Partitionary Lands, which took effect on January 24, 1958. The rights of the particleir landowners over their lands and their land rights were abolished and the lands became state lands. First, what is the ownership status of the former western eigendom verponding land after being declared as land directly controlled by the state? and Second, How is the analysis of the legal considerations of the cassation and judicial review judges that contradict each other in deciding the Dago Elos land dispute in Bandung?

Research Method

This research is a normative juridical research with a Statute Approach, Analytical Approach, Comparative Approach, Historical Approach and Case Approach. The data source used is secondary data sources with the data analysis method carried out by inventorying, analyzing, understanding and assembling the data that has been collected and then arranged systematically which will finally draw conclusions on the research. With the aim of analyzing the legal considerations of cassation and judicial review judges who contradict in deciding the Dago Elos land dispute in Bandung.

Discussion

1. Land ownership status of former western eigendom verponding rights after being declared as land directly controlled by the state.

Land is a gift given by God as a place for humans to stand, live, and carry out activities to sustain their lives. The activities in question include agriculture, plantations, trade, mining, industry and so on. So that humans are obliged to maintain, preserve and make good use of the place where they stand (land).

Land-related regulations have existed since the birth of the kingdoms in Indonesia where the kingdoms have territories and everyone who is in the territory of the kingdom must comply with the rules made by the king. Land-related regulations in the modern era, in Indonesia, cannot be separated from the history of the Indonesian Nation in living life during the Dutch colonization for 360 years. The pattern of land-related regulation, which was originally in the form of customary law characterized by unwritten but obeyed by the local population as customs, was changed by land regulation with Western Law brought by the Dutch which aimed and had colonial characteristics and had written characteristics.

After Indonesia's independence, the rules relating to land law in Indonesia that were brought by the Dutch and based on colonialism were removed and legal unification was carried out with the birth of the Basic Agrarian Law (UUPA) which was based on customary law in Indonesia. Meanwhile, the former private lands (land under western/Dutch law) were abolished and became land directly controlled by the state.

This is the mandate of our constitution Article 33 paragraph (3) of the Constitution of the Republic of Indonesia (UUDNRI) which states that the earth, water and natural resources contained therein are controlled by the state and used to the greatest extent for the prosperity of the people. Commonly referred to as the Agrarian Constitution. (Arizona, 2014: 3) The Agrarian Constitution is the foundation that connects the state and citizens to land and other natural resources, and creates agrarian justice and agrarian relations related to control, ownership, use, utilization and management of land and other natural resources in its constitutional documents. Article 2 paragraph (1) of UUPA states that on the basis of the provisions in Article 33 paragraph (3) of the Indonesian Constitution and the matters referred to in Article 1, the earth, water and airspace, including the natural resources contained therein, are at the highest level controlled by the state, as an organization of power.

We can understand the provisions of the articles above as the state in carrying out its functions is given the authority to regulate the utilization of land rights in the territory of Indonesia. The intended meaning is that the state has the authority to regulate, plan and control the control and ownership of land rights. The state's authority to control land rights is obtained because not all land issues can be resolved by the community, so that the state's power over land is a complement to land rights controlled by the community. (Kunu, 2012: 1)

State control over land means that the state can grant such land to a person or legal entity with a right according to its designation and needs, such as ownership rights, business use rights, building use rights or use rights, or grant it under management to a business entity to be used for the implementation of its respective duties. The state's power over land is also limited by the ulayat rights of the legal community units.

State control over land granted to a person or legal entity with a right is determined based on the Priority Recipient Right. The Right of Priority Recipient is regulated in Presidential Decree Number 32 of 1979 concerning Policy Principles in the Framework of Granting New Rights on Land from Conversion of Western Rights: First, it is given to former right holders who meet the requirements and cultivate or work on their own land,

Second, people who have occupied land from the conversion of western rights based on the consideration that the land is more suitable for settlement or agricultural business activities, Third, people who have occupied and made settlements on land from the conversion of western rights after fulfilling the requirements concerning the interests of former land right holders, Fourth, state-owned companies, regional companies, and state agencies are generally in the form of use rights. In essence, every Indonesian citizen has the same opportunity to obtain land rights, however, those who physically control the former land rights for a certain period of time in good faith will get priority in obtaining land rights.

In the case that the author raises related to the Dago Elos land dispute in Bandung, where the land owned by the heirs of the Muller family which is still in the form of eigendom verponding (property rights) in Dutch Colonial land law products has never been converted no later than September 24, 1980 so that in accordance with the provisions of Presidential Decree Number 32 of 1979 the land has become state land. State control over the land owned by the heirs of the Muller family according to the Right of Priority Acceptance has been used as a place of dense population settlement for generations and several others have received certificates of ownership of Dago Elos residents.

2. Analysis of the contradictory legal considerations of cassation and judicial review judges in deciding the Dago Elos land dispute in Bandung

Based on the case that the author researched, it began with the heir George Hendrik Muller, after 50 years of wanting the land belonging to his ancestors in the form of eigendom verponding land rights. So that he filed a Statement of Heirs (PAW) to the Cimahi Religious Court in 2014. The PAW stated that Edi Eduard Muller, the heir of George Hendrik Muller, who was the heir of Georgius Hendrikus Wilhelmus Muller, was a relative of Queen Wilhelmina of the Netherlands who was assigned to Indonesia.

Armed with the heir's statement letter along with eigendom verponding numbers 3740, 3741 and 3742 in the name of George Hendrik Muller. The heirs of George Hendrik Muller filed a lawsuit at the Bandung District Court in 2016 to claim their land, which was then occupied by 331 families or had become the Dago Elos village.

Based on the provisions of Article 1 paragraph (1) of Presidential Decree Number 32 of 1979 concerning the Principles of Policy in the Framework of Granting New Rights on Land from the Conversion of Western Rights, it states that:

“Land of Hak Guna, Hak Guna Bangunan and Hak Pakai originating from the conversion of western rights, the term will expire no later than September 24, 1980, as referred to in Law No. 5 of 1960, at the time of the expiration of the rights concerned becomes land directly controlled by the state.”

From this provision, the status of western land rights was required to be converted if the heirs of the Muller family did not want to lose their land rights. The obligation related to conversion was carried out no later than September 24, 1980. Failure to convert the former western title land had the consequence that the land fell to the state, becoming land controlled by the state.

However, there are new regulations related to the registration of former western land rights. Namely Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration, which states that in Article 95 paragraphs (1) and (2), namely;;

- (1) " Written evidence of former western rights Land is declared invalid and its status becomes Land under Direct Control by the State.

- (2) Land Registration of former western rights as referred to in paragraph (1) shall be based on a statement letter of physical possession known to 2 (two) witnesses and civilly and criminally liable, which describes:
- a. The Land really belongs to the person concerned and not to someone else and its status is Land under the Direct Control of the State and not Land formerly belonging to adat;
 - b. The land is physically controlled;
 - c. The possession is done in good faith and openly by the person concerned as the one entitled to the Land; and
 - d. The control is not disputed by other parties."

In this provision, holders of western rights that have not been converted still have the opportunity to register their land, but with provisions that, according to the author, are quite difficult, especially if applied in the case of the heirs of the Muller family. First, there is a statement of physical control known by two witnesses who are local customary elders and/or residents who have long resided in the village/sub-district where the land is located. Secondly, the land belongs to the person concerned and not to someone else. Third, the land is physically controlled. Fourth, the control is carried out in good faith and openly by the person concerned as the one entitled to the Land. Fifth, the control is not disputed by other parties.

In the Cassation Decision, the judge overturned the decision of the Bandung High Court which corrected the decision of the Bandung District Court and granted the appeal of I Dago Elos Residents. With the basis of consideration;

1. The argument that the Plaintiffs as heirs of their grandfather George Henrik Muller have the right to transfer the object in dispute to another party, namely Plaintiff IV, cannot be justified, because the Eigendom Verponding rights in the name of the grandfather of Plaintiff I, Plaintiff II and Plaintiff III (i.c. George Henrik Muller) have expired because they were not converted by September 24, 1980.;
2. In addition to not being converted, it appears that Plaintiff I, Plaintiff II and Plaintiff III do not control the land, nor do the Plaintiffs' parents control the land, so priority rights cannot be granted to Plaintiff I, Plaintiff II and Plaintiff III as stipulated in Presidential Decree No. 32 of 1979 on the Principles of Policy in the Framework of Granting New Rights over Land Originating from the Conversion of Western Rights and Minister of Home Affairs Regulation No. 3 of 1979 on Provisions Regarding the Application and Granting of New Rights over Land Originating from the Conversion of Western Rights.;
3. That on the contrary it has been proven that the Defendants have controlled the disputed object for a long period of time, continuously and some have been granted certificates of ownership, which control is appropriate and fair to be granted ownership rights or given priority rights to apply for land rights in accordance with Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, Article 6.

In the provisions of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Residential Units and Land Registration, Article 95 paragraphs (1) and (2) clearly states that: to be able to carry out land registration, the owner of the eigendom verponding right must control the physical object of the land. Meanwhile, the holders of eigendom verponding rights in the case that the author is researching have never physically controlled the land and the act of transferring the land

to plaintiff IV with the aim of physically controlling the land cannot be justified against land with state land status, so it can be said that the physical control was carried out in bad faith.

In the Judicial Review Decision, the judge overturned the Cassation Level Decision and granted the request for reconsideration II / heirs of the eigendom verponding owner. With the basis of consideration;

1. that the land in dispute is land directly controlled by the State, so anyone is entitled to obtain rights over the land in dispute;
2. that the Defendants claim to have cultivated the land in dispute, but this cultivation is not supported by original evidence. Only photocopies of photocopies, meaning that the cultivation carried out by the Defendants on the disputed land is not accompanied by valid formal evidence;
3. That based on the testimony of the Village Head in a letter dated October 24, 2016, it was stated that none of the Defendants/Cultivators or occupants of the disputed land object had applied for rights to the disputed object;
 - That the legal facts in the case a quo are:
 - a. The Defendants have no legal evidence of cultivation of the disputed land;
 - b. That the Plaintiffs have not renewed their eigendom rights over the disputed object;
4. That on the basis of Eigendom Verponding Nos. 3740, 3741 3742 the Plaintiffs first applied for registration of rights over the land in dispute, whereas the Defendants have never been proven to have applied for registration of rights over the land in dispute
5. That because the Plaintiff as the former holder of the right to the former western state land has been able to prove the history of the origin of ownership of the disputed object, the Plaintiff has a stronger right base than the Defendants who do not have proof of control or right base, so that the Plaintiff has been able to prove his arguments in the case a quo as the party more entitled to register the disputed object land.

In the first point of the legal reasoning of the judges of the judicial review, it is stated that the disputed land is land directly controlled by the State, so anyone is entitled to obtain rights to the disputed land. What the author considers to be inaccurate when we look at the provisions of the Right of Priority Recipients stipulated in Presidential Decree No. 32 of 1979 concerning Policy Principles in the Framework of Granting New Rights on Land from Conversion of Western Rights: namely, the former western rights land is given to the former right holder who meets the requirements and cultivates or works on his own land, while the heirs of eigendom verponding holders do not control the physical land or work on their own land. The act of transferring land to plaintiff IV with the aim of physically controlling the land is difficult to understand if the basis used is eigendom verponding which has become state land. Whereas in the provisions of the Right of Priority Recipient it is stated "In essence, every Indonesian citizen has the same opportunity to obtain land rights, however, parties who physically control the former land rights within a certain period of time in good faith, will get priority in obtaining land rights." Here, Dago Elos residents have long physically controlled the former western land rights and some have obtained certificates of ownership on behalf of Dago Elos residents.

In the second point, it is stated that the Defendants (residents of Dago Elos) claim to have cultivated the disputed land, but this cultivation is not supported by original evidence. Only photocopies of photocopies, meaning that the cultivation carried out by the Defendants on the disputed land was not accompanied by valid formal evidence. The

author also considers this to be inaccurate if we look at the provisions of Priority Recipient Rights stipulated in Presidential Decree No. 32 of 1979, namely people who have occupied land from the conversion of western rights based on the consideration that the land is more suitable for settlement or agricultural business activities, as well as people who have occupied and made settlements on land from the conversion of western rights after the fulfillment of requirements concerning the interests of former land rights holders. So we can see that the residents of Dago Elos have occupied the land of former western rights and made settlements on the land of origin of the conversion of western rights so that it does not have to be cultivated on the land of former western rights because it has been used as a place of residence of Dago Elos residents for generations and some have obtained property rights in his name (Dago Elos residents).

In the third and fourth points, it is stated that based on information from the Head of Village in a letter dated October 24, 2016, none of the Defendants / Cultivators or occupants of the disputed object land have applied for rights to the disputed object, so that the legal facts in the case a quo are; the Defendants (residents of Dago Elos) do not have legal evidence of cultivation of the disputed object land, that the plaintiffs (residents of Dago Elos) have not renewed the eigendom rights to the disputed object. In the third and fourth points, the legal considerations of the PK judges, according to the author's analysis, contradict the PK Decision which reads: "declare invalid or have no legal force certificates and all letters and all derivatives issued by the Dago Village Office, Coblong District, Bandung City Government, Bandung City Land Office which concerns or mentions lands originating from the former western rights Eigendom Vervondings Number 3740, 3741 and 3742.

In the fifth point which argues that the plaintiff as the former holder of the right to the former western state land has been able to prove the history of the origin of ownership of the disputed object, the Plaintiff has a stronger right than the Defendants who do not have proof of control or right. The fifth point, if we understand it, is actually contrary to the Right of Priority Recipients stipulated in Presidential Decree No. 32 of 1979, namely the party who physically controls the former land rights for a certain period of time in good faith, will get priority in obtaining land rights. Where Dago Elos residents have occupied the land as a place of densely populated settlements for generations and several others have obtained certificates of ownership rights over them (Dago Elos residents). So that in priority Dago Elos residents are entitled to register their land as former western rights land that has long occupied.

Conclution

Provisions related to former western land rights before the UUPA can be changed to the status of property rights (UUPA) in two ways. First, conversion of the former western land rights was carried out no later than September 24, 1980 in accordance with the provisions of Article 1 paragraph (1) of Presidential Decree Number 32 of 1979. Second, land registration of western rights is carried out with the provision that the physical land is controlled by the holder of the eigendom verponding right in accordance with the provisions of Article 95 paragraphs (1) and (2) of Government Regulation Number 18 of 2021.

Failure to convert and register the former western land rights has the legal consequence that the land becomes state land or land controlled by the state. Then these lands based on the Right of Priority Recipients regulated in Presidential Decree Number 32 of 1979, can be given to; First, it is given to former right holders who meet the requirements and cultivate or work on their own land, Second, people who have occupied lands from the conversion of western rights based on the consideration that the land is

more suitable for settlement or agricultural business activities, Third, people who have occupied and made settlements on land from the conversion of western rights after fulfilling the requirements concerning the interests of former land right holders, Fourth, state-owned companies, regional companies, and state agencies are generally in the form of usage rights. In essence, every Indonesian citizen has the same opportunity to obtain land rights, however, those who physically control the former land rights for a certain period of time in good faith will get priority in obtaining land rights.

Who is entitled to the land, both the residents of Dago Elos and the heirs of the Muller family, both in the Cassation Decision and the Judicial Review Decision. In the author's opinion, physical control is the main key to the registration of former western land rights that have become state land. However, physical control by Dago Elos residents who have long controlled the former western land rights, does not necessarily get land rights to the former western land rights, because there are obligations for Dago Elos residents based on Presidential Decree No. 32 of 1979 for the fulfillment of requirements concerning the interests of former land rights holders. Where Dago Elos residents are obliged to provide compensation to holders of eigendom verponding rights. The granting of state land can only be given if there is an agreement with the former right holder on the issue of compensation. If there is no agreement with the former eigendom right holder, the land administration cannot register the rights.

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