

**THE CONNECTED OF THE SUPREME COURT DECISION NUMBER
109/PK/PDT/2022 WITH THE BASIC AGRARIAN LAW NUMBER 5 OF 1960
CONCERNING EIGENDOM VERPONDING**

**Aslan Noor¹, *Lisa Herlani², Mohammad Faridz Fathurrohman³, Melinda Lorenza⁴,
Maudy Nurwidianti⁵**

^{1,2,3,3,5}Magister Kenotariatan, Universitas Pasundan, Jl. Sumatra no. 41, Bandung, Indonesia

*lisa_herlani@yahoo.com

ABSTRACT

The aim of this research is to analyze the juridical nature of the Supreme Court's decision regarding Eigendom Verponding. Ownership rights are the strongest and most hereditary land to be enjoyed fully and to control the object freely, unless this can be proven to be reversed. This research used normative research with a statutory approach. The legal materials used were primary legal materials and secondary legal materials, with legal material collection techniques through literature studies and analysis techniques. The research results indicate that judge's considerations deviate from the stipulation outlined well as statutory regulations. The emergence of multiple land ownership rights leads to criminal acts caused by negligence on the part of the land owner or parties who commit fraud, such as parties who acknowledge the land but do not, so the BPN issues a certificate. This proves the importance of creating a new policy regarding land registration through additional evidence. Ownership, and shorten the land registration process so that land owners feel energized about the lengthy process. The importance of policies regarding the formulation of criminal acts regarding certificates issued because so far, many holders of land title certificates have suffered losses as a result of the cancellation of land title certificates, overlapping ownership, and disputes originating from errors in the process.

Penelitian ini bertujuan untuk menganalisis sifat yuridis putusan Mahkamah Agung tentang Eigendom Verponding. Hak milik adalah tanah yang paling kuat dan turun-temurun untuk dinikmati sepenuhnya dan menguasai benda itu dengan leluasa, kecuali dapat dibuktikan pembalikannya. Penelitian ini menggunakan penelitian normatif dengan pendekatan perundang-undangan. Bahan hukum yang digunakan adalah bahan hukum primer dan bahan hukum sekunder, dengan teknik pengumpulan bahan hukum melalui studi literatur dan teknik analisis. Hasil penelitian menunjukkan bahwa pertimbangan hakim menyimpang dari ketentuan yang digariskan serta peraturan perundang-undangan. Timbulnya hak kepemilikan tanah ganda menimbulkan tindak pidana yang disebabkan oleh kelalaian pemilik tanah atau pihak-pihak yang melakukan penipuan, seperti pihak yang mengakui tanahnya tetapi tidak mengakuinya sehingga BPN menerbitkan sertifikat. Hal ini membuktikan pentingnya menciptakan kebijakan baru mengenai pendaftaran tanah melalui bukti tambahan. Kepemilikan, dan mempersingkat proses pendaftaran tanah sehingga pemilik tanah merasa bersemangat dengan proses yang panjang tersebut. Pentingnya kebijakan mengenai rumusan tindak pidana terhadap sertifikat yang diterbitkan karena selama ini banyak pemegang sertifikat hak

atas tanah yang mengalami kerugian akibat pembatalan sertifikat hak atas tanah, tumpang tindih kepemilikan, dan perselisihan yang bersumber dari kesalahan proses.

Kata Kunci: *Agrarian Law, Verponding Eigendom, Land Rights.*

A. INTRODUCTION

Indonesia, having been a former Dutch colony, experienced a period during which Dutch legal norms were imposed on the region (Sulistyaningsih, 2021). This regulation or historical context provides an opportunity for foreign citizens or colonial legacies on the socio-economic landscape of contemporary Indonesia. However, after Indonesian independent, Indonesia declared Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA/Basic Agrarian Law), so that the regulations that the Dutch implemented in Indonesia can be ended (Efrianto, 2023; Hidayanti et al., 2021; Sari, 2017).

According to the western law, the terms land rights in the UPPA are no longer recognized as regulated in the Civil Code, such as *opstal* rights, *erfpacht* rights, and *eigendom* rights. The recognized forms of land rights at present are those delineated in Article 16, paragraph (1) of the UUPA, namely Ownership Rights, Cultivation Rights, Building Use Rights, Utilization Rights, Building Rental Rights, Land Clearance Rights, Collection of Forest Products Rights, among others (Clarissa & Wisnaeni, 2023). Hence, land rights governed under Western law must undergo conversion as stipulated in Article 55 paragraph (1) of the UUPA (Budiartha, 2018; López Hernández, 2022; Maisa & Husaniy, 2021). Foreign rights which according to the conversion provisions of articles I, II, III, IV and V are converted into business rights, and building use rights are only valid temporarily for the remaining period of these rights with a maximum period of 20 years. Through the explanation of the article, it is known that land rights in western law, which according to the conversion provisions, all become new rights according to the UUPA. The regulations for the conversion of Western rights are outlined in Part Two of the UUPA, subsequently reinforced by the Regulation of the Minister of Agrarian Affairs (PMA) Number 2 of 1960 concerning the Implementation of the Provisions of the Basic Agrarian Law (Mahfud, 2022; Ostrensky, 2019; Rueda, 2018).

With the implementation of the UUPA, the eigendom rights, classified as Western rights, are mandated to be converted within a time limit of 20 years, concluding on September 24, 1980. If within the conversion time limit no conversion is carried out, the land from which the eigendom rights originate becomes land controlled by the state (Danu et al., 2020; Sahati & Djajaputra, 2023; Sihombing, 2019). This is in line with the provisions in Article 1 paragraph (1) of Presidential Decree (*Keppres*) Number 32 of 1979 concerning Principles of Policy in the Context of Granting New Rights to Land

from Conversion of Western Rights, which states the following: "Land with Cultivation Rights, Building Use Rights, and Use Rights originating from the conversion of Western rights, the term will expire no later than September 24 1980, as intended in Law Number 5 of 1960, upon the relevant rights, the land classified under Western rights and not converted becomes directly controlled by the State." Subsequently, re-regulation governing the use, control, and ownership of such land are established through the granting of rights. In this case, reference can be made to the provisions in Presidential Decree No. 32 of 1979 and Minister of Home Affairs Regulation (*Permendagri*) No. 3 of 1979, which pertain to the Provisions Concerning Applications and Granting of New Rights to Land previously categorized under Western Rights (Krismantoro, 2020; Landa, 2015; Wirawan, 2022; Yanto & Nasarudin, 2021).

However, despite Indonesia's issuance of regulations regarding the conversion of land rights originating from Western rights, converted land is still often a source of land-related issues. One example that will become a topic of conversation in 2022 is the case involving Dago Elos residents and the Muller family. In summarize, Heri Hermawan Muller, Dodi Rustendi Muller, and Pipin Sandepi Muller, or known as the Muller Family, are the descendants of George Hendrik Muller, a German citizen who lived in Bandung during the Dutch colonial period. In 2016, the Muller family together with PT Dago Inti Graha, a property company in Bandung, filed a lawsuit claiming the land was owned by Eigendom Verponding Numbers 3740, 3741, and 3742. On the claimed land, there is now a Post Office, Dago Terminal, and occupied by the houses of residents of RT 01 and 02 from RW 02 Dago Elos, totaling 335 people. Eigendom Verponding is a land right originating from western rights which, according to the Basic Agrarian Law, western rights to the land must be converted into ownership rights no later than 24 December 1980, from when the UUPA came into force. Instead of carrying out their obligations by re-registering the land they own in accordance with applicable regulations, the Muller family chose to disappear and return by bringing a lawsuit against the Dago Elos residents on the basis of an unlawful act. Finally, in August 2017, the Bandung District Court judge decided that the land that was the object of the dispute legally belonged to the Muller family.

B. METHODS

This research used legal research with approach juridical normative (Soekanto, 2015). This approach constituted a legal research method conducted through the examination of library materials or secondary sources. The data collection techniques employed in this research predominantly involved literature/library studies. The data analysis technique employed a qualitative juridical method by analyzing without using statistical formulas and presenting it descriptively, which described the problem as a whole. Analyzing the data derived from literature research related to the case of Dago elos problems about eigendom verponding.

C. RESULTS AND DISCUSSION

Primary Agrarian Law Number 5 of 1960 states that soil is one element on the earth's surface. Its use is not limited to the visible surface but includes all the elements beneath it, other elements, and the spatial boundaries above the ground (Sulianto & Tanawijaya, 2020). It is not sure how deep or high it is, but land use is unrestricted as long as it is within reasonable limits. In addition, land use depends on the regulations stipulated by the party entitled to the land as per the laws in the legislation. Indonesia is a state governed by law (*Rechtstaat*). The main objective of the rule of law is to establish order, which is an order that is commonly based on the law found in the people. The rule of law upholds order in the hope that everything runs according to the law in the Indonesian context, thereby reflecting the legal state of Pancasila (Mulyadi, 2012).

Historically, land law in force in Indonesia has two bases or foundations, namely the law before the announcement of Indonesian independence and the law after, known as Basic Agrarian Law (UUPA), which includes legislation in the agricultural realm. In the implementation of the law regarding land at the time of independence, which had not yet been announced, Indonesia was still influential in law with a Western-style implementation system, namely the Agrarische Wet law, which in this law provided guarantees for private entrepreneurs. The principle of Domein Verklaring is created in it, namely *Erpacht* Rights and *Agrarische Besluit* (Kurniawan, 2020). In this principle, it is stipulated that if the owner cannot show his land ownership rights regarding his eigendom rights, it is inevitable that the land can change domain status or state property rights (Alindra, 2023). Western rights encompass the land control under designations, such as *Eigendom*, *Erfacht*, *Postal*, and others. On the other hand, Indonesian rights include categories, such as layout land, owned land, business land, gogolan land, bent land, and Agrarich Eigendom land, serving as names for various forms of land ownership rights (Abdat & Winanti, 2021).

In Law No. 72 of 1958 concerning the Verponding Tax in the previous and following years, the term Verponding refers to the imposition of a type of tax to fixed objects, one of which is land. Meanwhile, in practice, in the Supreme Court (Supreme Court) decision No. 34/K/TUN/2007 an ownership right to land can be shown and used in the term Eigendom Verponding. In accordance with the second part of the UUPA, Article I, paragraph (1), which regulates the conversion of eignedom rights into ownership rights, the conversion of property rights can refer to the arrangement of rights that existed before their implementation. Therefore, adjustments to new land rights by UUPA must be made to convert eigendom rights into complete ownership rights. A period of 20 years after the enactment of the UUPA is stipulated for this conversion process. The implementation of the conversion of land rights using the Western system, one of which was eigendom, expired on September 24, 1980, at that time. However, in

practice, there were still many lands that still needed to be converted from eigendom status (Krismantoro, 2019; Tobing & Markoni, 2022).

Eigendom represents a permanent ownership right to land, while verponding is a tax bill on land or buildings. Verponding has evolved into a Tax Notification Letter for Land and Building Tax Due (SPPT-PBB). Conversely, eigendom must be converted into a type of land right as regulated in Law No. 5 of 1960 concerning the Basic Agrarian Law (UUPA). However, conversion of rights from eigendom does not always become property rights, as the conversion must adhere to the requirements for granting a right as regulated in the UUPA. This conversion can be a Certificate of Ownership Rights (SHM), Certificate of Building Use Rights (SHGB), Certificate of Business Ownership Rights (SHGU) or Certificate of Use Rights (SHP). It is known that the conversion must be carried out after the UUPA is promulgated, or no later than twenty years after, but due to public ignorance or inability to process the conversion of eigendom rights into certificates, up to now, there are still many lands that still have rights attached in the form of Eigendom Verponding (Liadi, 2019).

Article 33 paragraph (3) of the 1945 Constitution regulates that "Earth, water, and natural wealth contained therein is controlled by the state and used as much as possible for the prosperity of the people." Based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, the exploitation of Indonesia's land, water, and natural resources entails significant element, including state control and the greatest prosperity of the people." These fundamental elements are the soul of every business of land, water, and prosperity. Any exploitation of natural resources must align with the fundamental philosophical questions based on the provisions of Article 33 paragraph (3) of the 1945 Constitution. One of the aims of enacting the UUPA is to streamline and harmonize national agrarian law. Consequently, the conversion of land rights is pursued to fulfill these objectives (Wibowo & Mariyam, 2021).

The acquisition of land rights according to the Civil Code and customary law is facilitated through the institution of conversion, as stipulated in the second dictum of the UUPA concerning Conversion Provisions. The legal unification implemented through the UUPA states the provisions governing conversion stated in the Second Article 1 of the UUPA states that eigendom rights to land existing at the time of the law's enactment shall automatically become a *hak milik* (right of ownership), unless the owner fails to meet the conditions outlined in Article 21. Eigendom rights owned by the Government of a Foreign Country, utilized for the residence of the Head of Representative and the embassy buildings, have been converted into use rights as per Article 41 paragraph (1), which will last as long as the land is used for the purposes mentioned above. Similarly, the eigendom right held by foreigner, a citizen who besides his Indonesian citizenship, and legal entities not designated by the Government as specified in Article 21, paragraph (2), have transformed into building use rights under Article 35 paragraph (1), with a period of 20 years. In cases where eignom rights are combined with *postal* rights

or *erfpacht* rights, the latter shall take effect from the law's enactment. This law designates the right to use the building referred to in Article 35 paragraph 1, imposing burdens the property rights concerned for the remaining period of the *opstal* rights or *erfpacht* rights mentioned above, but for a maximum of 20 years. If the eigendom rights mentioned in paragraph (3) of this Article are burdened with *opstal* rights or *erfpacht* rights, the relationship between the person who has the eigendom rights and the rights holder *opstal* or *erfpacht* rights are then completed according to the guidelines set by the Minister of Agrarian Affairs. *Hypotheek*, *servituu*, *vruchtengebruik*, and other rights which burden eigendom rights continue to burden property rights and building use rights mentioned in paragraphs (1) and (3) of this Article, as per the provisions of the laws."

Based on these provisions, eigendom rights undergo legal conversion into property rights if they satisfy the requirements as regulated in Article 21 of the UUPA. However, if these requirements are not met, the eigendom rights are legally converted into building use rights, valid for 20 years. Subsequently, this right is extinguished, leading to the alteration of the land's legal status to direct control by the State, commonly referred to as State land (Husni, Mandala, and Bimarasmana 2022; Wala 2023). According to Articles 24 and 25 Government Regulation (PP). No. 24 of 1997 concerning Land Registration states that proof of old rights originating from the conversion of old rights is proven by written evidence and witness statements and/or applicant statements whose truth is deemed sufficient for registration by the Adjudication Committee for systematic registration or the Head of the Land Office for sporadic registration (Liadi, 2019).

This assessment is derived from the basis of collecting and researching juridical data concerning the relevant land plot by the Adjudication Committee in systematic Land Registration or the Head of the Land Office in sporadic land registration, which relies on the basis of evidence and legalization minutes. Land rights with physical data and the juridical data are deemed complete and there are no disputes when both physical and juridical data are comprehensive and free from disputes. The land book is recorded and a land title certificate is issued. In Presidential Decree Number 32 of 1970, after the term expires, land with rights to western land conversion rights, which have expired, will be re-controlled directly into state land. There are three parties who are given priority to submit applications for land rights, namely the state in the public interest, the former rights holder, and residents/occupants of buildings on the former western state land (Konyukhov, 2020; Sihombing, 2019).

D. CONCLUSION

The emergence of multiple land ownership rights leads to criminal acts caused by negligence on the part of the land owner or parties who commit fraud, such as parties who acknowledge the land but do not, so the BPN issues a certificate. This proves the

importance of creating a new policy regarding land registration through additional evidence. Ownership, and shorten the land registration process so that land owners feel energized about the lengthy process. The importance of policies regarding the formulation of criminal acts regarding certificates issued by the National Land Agency because so far, many holders of land title certificates have suffered losses as a result of the cancellation of land title certificates, overlapping ownership, and disputes originating from errors in the process of managing land rights carried out by the National Land Agency. At the same time, the National Land Agency cannot be held criminally accountable. The policy of concerning criminal acts related to land title certificates issued by the National Land Agency in the future can be accomplished by making statutory regulations that regulate the types of criminal acts, elements of criminal acts, and criminal liability, as well as criminal sanctions for the Land Agency. National as the State Administrative Official who issues and cancels land title certificates to provide a deterrent effect.

Land Eigendom Verponding in Indonesia should no longer exist starting September 24, 1960. Beginning in 1961, UUPA converted land rights subject to Western law into one of the new rights, and there is no longer any land eligible for Verponding. However, in Indonesia, numerous parcels of Verponding Eigendom land remain unconverted into new rights as regulated in the UUPA. PP 24/1997 stipulates that land still categorized under Eigendom Verponding rights status in Indonesia can still be recycled into new rights. Implementing the conversion of land rights by PP 24/1997 is proof of old rights. The basis for the judge's consideration is not aligned with the provisions in Article 4 paragraph (1) and paragraph (2) of the Basic Agrarian Law, Article 28 H paragraph (4) and Article 33 paragraph (3) of the 1945 Constitution, as well as relevant laws and regulations.

E. REFERENCES

Abdat, A. A., & Winanti, A. (2021). Penyelesaian Sengketa Tanah Terhadap Eigendom Verponding Yang Dikuasai Pihak Lain. *Borneo Law Review*, 5(1). <https://doi.org/10.35334/bolrev.v5i1.1979>

Alindra, R. (2023). Implikasi Tindak Pidana Terhadap Terbitnya Sertipikat Hak Guna Bangunan Di Atas Tanah Bekas Hak Eigendom Verponding Yang Dikuasai Orang Lain. *Jurist-Diction*, 6(2). <https://doi.org/10.20473/jd.v6i2.45192>

Budiartha, N. P. (2018). Restriction and incentives of investment in Indonesia: Considering the provisions of basic agrarian law and capital market law. *European Research Studies Journal*, 21(2), 178–188. <https://doi.org/10.35808/ersj/993>

Clarissa, V. S., & Wisnaeni, F. (2023). Analisa Hukum Keberadaan Kuasa Mutlak Dalam Akta Perjanjian Pengikatan Jual Beli Atas Tanah. *Legal Standing : Jurnal Ilmu Hukum*, 7(2), 309–318. <https://doi.org/10.24269/ls.v7i2.7094>

Danu, C. E. M., Ketut Briliawati Permanasari, K., Wilujeng Jauharnani, W., & Ria Yunita Sari, R. (2020). The Agrarian Law Policy in the Control of Residence by Expatriates in Indonesia. *Notaire*, 3(1). <https://doi.org/10.20473/ntr.v3i1.18554>

Efrianto, G. (2023). Registration of Ownership Rights Over Customary or Customary Land based on Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles. *International Journal of Social Service and Research*, 3(7). <https://doi.org/10.46799/ijssr.v3i7.432>

Hidayanti, S., Koswara, I., & Gunawan, Y. (2021). The land legal system in Indonesia and land rights according to the basic agrarian law (UUPA). *Legal Brief*, 11(1). <https://legal.isha.or.id/index.php/legal/article/view/135>

Konyukhov, V. A. (2020). Agrarian Law 111 BC e. as a historical source. *RUDN Journal of World History*, 12(4). <https://doi.org/10.22363/2312-8127-2020-12-4-390-398>

Krismantoro, D. (2019). Penyelesaian Permasalahan Klaim Sengketa Tanah Eigendom Verponding Melalui Hukum Konflik Agraria. *AKSELERASI: Jurnal Ilmiah Nasional*, 1(3). <https://doi.org/10.54783/jin.v1i3.539>

Krismantoro, D. (2020). Rearranging Agrarian Law Politics in the Land Regulation System in Indonesia. In *ENDLESS: Journal of Futures Studies* (Vol. 3, Issue 2). <https://endless-journal.com/index.php/endless/article/view/77>

Kurniawan, I. W. (2020). Analisis Yuridis Hak Eigendom Verponding Sebagai Jaminan Kebendaan. *Syiar Hukum : Jurnal Ilmu Hukum*, 18(2). <https://doi.org/10.29313/shjih.v18i2.6985>

Landa, M. M. S. (2015). Enacting Agrarian Law: The Effects of Legal Failure in Post-revolutionary Mexico. In *Journal of Latin American Studies* (Vol. 47, Issue 4). <https://doi.org/10.1017/S0022216X15000437>

Liadi, W. S. (2019). Kedudukan Eigendom Verponding Dalam Hukum Pertanahan Di Indonesia. *Jurnal Panorama Hukum*, 4(1). <https://doi.org/10.21067/jph.v4i1.3884>

López Hernández, E. (2022). Agrarian Law Three Decades after its Entry into Force. *Revista Latinoamericana de Derecho Social*, 35, 101–125. <https://doi.org/10.22201/ijj.24487899e.2022.35.17273>

Mahfud, M. A. (2022). Progressive Agrarian Law as a Concept to Attain Social Justice. *Pandecta Research Law Journal*, 17(1). <https://doi.org/10.15294/pandecta.v17i1.34022>

Maisa, & Husaniy, H. (2021). Tha Development of Agrarian Law. *Omnibus Law Journal*, 1(2), 58–67. <https://jurnal.unismuhpalu.ac.id/index.php/OLJ/article/view/2136>

Mulyadi, D. (2012). *Kebijakan Legislasi tentang Sanksi Pidana Pemilu Legislatif Di Indonesia dalam Perspektif Indonesia*. Jakarta: Gramata Publishing.

Ostrensky, E. (2019). Machiavelli: Ambition and the dilema of the agrarian laws. *Lua Nova*, 107. <https://doi.org/10.1590/0102-055090/107>

Rueda, E. C. (2018). One hundred years of the Mexican constitution and agrarian law.

Mundo Agrario, 19(42). <https://doi.org/10.24215/15155994e101>

Sahati, & Djajaputra, G. (2023). Grondkaart Legality As Evidence Of Land Tenure Rights By PT. KAI According To Agrarian Law. *International Journal of Educational Review, Law And Social Sciences (IJERLAS)*, 3(5). <https://doi.org/10.54443/ijerlas.v3i5.998>

Sari, I. (2017). Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA). *Jurnal Mitra Manajemen*, 9(1). <https://doi.org/10.35968/jmm.v9i1.492>

Sihombing, B. F. (2019). Contemporary issues of agrarian law institutions: Critical analysis of legal structure on human capital and information technology. *Journal of Legal, Ethical and Regulatory Issues*, 22(2). <https://shorturl.at/wDEG7>

Soekanto, S. (2015). *Pengantar Penelitian Hukum*. Universitas Indonesia.

Sulianto, G., & Tanawijaya, H. (2020). Penguasaan Tanah Bekas Hak Eigendom Verponding Setelah Berlakunya Undang-Undang Pokok Agraria (Studi Kasus Putusan Mahkamah Agung Nomor: 1401 K/Pdt/2018). *Jurnal Hukum Adigama*, 3(2). <https://doi.org/10.24912/adigama.v3i2.10577>

Sulistyaningsih, R. (2021). Reforma Agraria Di Indonesia. *Perspektif*, 26(1). <https://doi.org/10.30742/perspektif.v26i1.753>

Tobing, H. D. A. L., & Markoni. (2022). Perlindungan Hukum Terhadap Pemegang Hak Eigendom Verponding Setelah Berlakunya Undang-Undang N0.5 Tahun 1960. *Jurnal Multidisiplin Indonesia*, 1(1). <https://doi.org/10.58344/jmi.v1i1.26>

Wibowo, A., & Mariyam, S. (2021). Kontekstualisasi Hukum Agraria Dibidang Pertanahan Setelah Otonomi Daerah Di Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 3(3), 396–406. <https://doi.org/10.14710/jphi.v3i3.396-406>

Wirawan, V. (2022). Alternatif Upaya Pencegahan Kejahatan Mafia Tanah Dalam Perspektif Hukum Administrasi Pertanahan. *Legal Standing : Jurnal Ilmu Hukum*, 7(1), 47–58. <https://doi.org/10.24269/ls.v7i1.6195>

Yanto, N. H. H., & Nasarudin, M. (2021). Regulation Of Land Ownership For Foreign Citizens In Indonesia From Agrarian Law Perspective. *Progressive Law Review*, 3(1). <https://doi.org/10.36448/plr.v3i01.44>