Tenure of Ex-Western Rights that Have not Been Converted and Certified (Study of PN Decision No. 94/PDT.G/2021/PN SBY)

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Abstract. Eigendom is a type of land right that was imposed in the Dutch colonial era long before the promulgation of the Basic Agrarian Law. In 1960 This type of *eigendom* land rights were property rights that must be converted no later than 20 (twenty) years since the law was promulgated. The purpose of the study was to determine the suitability of the judge's consideration in deciding the case of the District Court Decision No. 94 / Pdt.G / 2021 / PN Sby related to land law. The research method used is normative juridical, whose legal material comes from laws and regulations, analyzed qualitatively, and concludes deductively. The results of the study explained that the plaintiff was entitled to the land of Eigendom Verponding No. 1219 and No. 2865 because he was the holder of rights to the land in good faith.

Keywords: eigendom verponding, land of former western rights, conversion.

1 Introduction

Constitutionally, Article 33 paragraph (3) of the 1945 Constitution has become the basis that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This provision reflects that the use of the earth, water, space, and the wealth contained therein is aimed at the prosperity and welfare of the people. The regulation is further regulated in Article 2 paragraph (1) of Law No. 5 of 1960 concerning Basic Agrarian Regulations or more commonly known as the Basic Agrarian Law (BAL), "Earth, water, and space including natural resources in them are at the highest level controlled by the state as an organization of power for the whole people." It is intended that the state has the power to regulate land owned by a person or legal entity or free land that a person does not own or legal entity which will be directly controlled by the state [1][2]. So, the conclusion is that the state, as the body controlling the earth, water, and space as well as the wealth contained therein, is authorized to regulate with the aim of the prosperity of the Indonesian people.

Before the BAL, the Indonesian people had a long history of land tenure, especially during the Dutch colonial period. The formation of the rule of law originally came from Western law, which became the guideline when the Dutch colonized Indonesia. At that time, land regulation was dualistic [3]. Land law during the Dutch colonial administration used a legal system whose concept was individualistic. At that time, the highest land tenure rights were private property rights, which were called Eigendom rights [4][5].

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Eigendom Verponding is a land right that is one of the legal products regarding control over land created during the Dutch era for Indonesian citizens. *Eigendom* means permanent land ownership, while *Verponding* is a tax bill on land and buildings. Eigendom rights, according to Article 570 of the Criminal Code, are absolute, and owners can enjoy and use their rights as widely as possible [6, 7]. The promulgation of the BAL, the end of dualism in land law, and the creation of unification or legal unity in land law in Indonesia, thus revoking the Agrarische Wet (Stb. 1870 No. 55).

After the enactment of the BAL, former western land rights, where land rights existed in the Dutch colonial era, must be converted within 20 years after the promulgation of the BAL. Land not converted by the owner and heirs no later than September 24, 1980, is declared as land controlled directly by the state. Like the case in Surabaya, Reman sued W Dasim and Moch Tamim with the object of the dispute being Eigendom Verponding No. 1219 and No. 2865, located in Kampung Tuwowo, Surabaya.

W Dasim is the Chairperson of the Tuwowo Village Land Usalia Committee for the construction of houses on the land of Eigendom Verponding No. 1219 and No. 2865, Reman and Moch Tamim were interested in the building, then paid the loss (buy) the land of IDR 400, - (four hundred rupiah) to W Dasim, and then the land was handed over to Reman and Moch Tamim dated September 1, 1960. Moch Tamim then built a residential building on the land object that he had bought from W Dasim, Reman was interested, so he made installments on the building, which was built owned by Moch Tamim and paid off on September 6, 1974, in the amount of IDR 25, - (twenty-five rupiahs) to Moch Tamim as stated in the Receipt No: 028.

Reman has occupied the land which has been his residence for 40 (forty) years, and since the installment was paid, no one has disputed it or sued the parcel of land, then the Land & Building Tax payment on the parcel of land was also made by Reman. Reman is still occupying land in the form of Eigendom Verponding land because registration and conversion have not been carried out. Thus, he sued W Dasim and Moch Tamim at the Surabaya District Court so that the Panel of Judges could determine that RemanReman legally owned this piece of land, and it could be registered by Government Regulation of the Republic of Indonesia No. 24 of 1997 concerning Land Registration.

The Panel of Judges, with several considerations based on the facts of the trial obtained from the evidence and also the witnesses who were present at the trial to give their testimony, the Panel of Judges decided, among others:

a. To declare that defendant I and defendant II have been legally and properly summoned but are not present or have ordered their legal proxies to be present at the trial;
b. Granted the plaintiff's claim in part with Verstek;
c. To declare the plaintiff as the legal owner of a plot of land and building, which is located at Jalan Tuwowo Rejo 3 / 28, RT. 004, RW. 004, Kapasmadya Baru Village, Tambaksari District, Surabaya City with an area of 84 m2, with the following boundaries:
    - North side: Mr. Suroso's house
    - South side: Mr. Kastur's house
    - West side: Mr. M. Rizi's house
    - East side: Mr. Pi'i's house
d. Give permission to the plaintiff to administer and apply for the issuance of a certificate of ownership of a quo object at the Surabaya City National Land Agency (BPN) Office;

e. Sentencing the defendants to pay court fees of IDR 13,375,000 (thirteen million three hundred seventy-five thousand rupiahs) rejects the plaintiff's claim other than the rest.

Based on the description above, the problems that are the subject of discussion in this study are:

a. What is the judge's consideration in deciding the case filed by the plaintiff who occupied the ex-*Eigendom Verponding* land and won the plaintiff?
b. Is the judge's consideration following the regulations governing land law?

2 Research Methods

The method used to examine the problems in this research is to use a normative juridical approach, which is doctrinal legal research referring to legal norms [8]. In this study, secondary data is obtained indirectly from the object of research but through other sources, namely, those taken from library materials such as books, legislation, official documents, and so on. The legal materials used are [9].

Primary legal materials consist of legislation, official records or minutes in making legislation, and judges' decisions [10]. Primary legal materials in this research are:

a. The 1945 Constitution of the Republic of Indonesia;
b. Civil Code (*Kitab Undang-undang Hukum Perdata*/KUHPerdata)
c. Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles;
d. Presidential Decree No. 32 of 1979 concerning Policy Principles in the Framework of Granting New Rights to Land of Origin Conversion of Western Rights;
e. Government Regulation no. 24 of 1997 concerning Land Registration;
f. The decision of the District Court No. 94/Pdt.G/2021/PN Sby.

Secondary legal materials are legal materials that provide explanations of primary legal materials consisting of various kinds of literature or books as well as various results of seminars, workshops, symposiums, and scientific research papers as well as other articles related to the discussion of this research.

This study analyzes the data collected using a qualitative analysis approach and then obtains conclusions using the deductive method of concluding. Deductive thinking is a process of thinking from a general situation to a specific situation in accordance with the available evidence.

3 Results and Discussion

3.1 The judge's consideration in deciding the case submitted by the plaintiff who occupied the ex Eigendom Verponding land

A plot of land in the city of Surabaya which is located right on Jalan Tuwowo Rejo 3 / 28, Surabaya, RT. 004, RW. 004, Kapasmadya Baru, Tambaksari, Surabaya, with a land area of 84 m2, where W Dasim is the Chair of the Tuwowo Village Land Business Committee for the construction of houses on the land of Eigendom Verponding No. 1219 and Eigendom

Verponding No. 2865 which are located in Kampung Tuwowo at the same time Defendant I in this case. Then Reman was the plaintiff and interest from the land of Eigendom Verponding No. 1219 and Eigendom Verponding No. 2856, which was built and then used as a place to live.

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Reman after the handover of a piece of land by W Dasim based on the Approval Letter on the Transfer of Right to Occupy land, gave compensation for the piece of land of IDR 400 to W Dasim. Then, Moch Tamim as the contractor for the construction of the plot of land Eigendom Verponding No. 2865 and Defendant II, built a house on his plot of land, and Reman was interested in the plot of land built by Moch Tamim. He made installments to Moch Tamim for the house he built and paid it off on September 6, 1974, in the amount of IDR 25 with proof of Receipt No. 028. After that, Reman also occupied the piece of land since the installments were paid off as his place of residence.

Since the settlement and occupancy of the plot of land, Reman has used his land as a residence for 40 consecutive years until now since September 6, 1974, as evidenced by the Declaration of Physical Control of the Land Sector dated November 1, 1960, or use the land object. Moch Tamim, who formerly occupied the land, and W Dasim as Chairman of the Committee for the construction of houses on the land of Kampung Tuwowo did not demand the return of the land.

Reman intends to convert his land following the land rights according to the Basic Agrarian Law of 1960 and asks for a certificate of the land he occupies to have strong legal evidence that Reman is the owner of the land, but unfortunately, the selling parties are Moch Tamim, and W. Dasim's whereabouts are no longer known. Knowing this, Reman then filed a lawsuit to the Surabaya District Court on the advice of the Surabaya City National Land Agency Office, with a lawsuit dated December 10, 2020, which was subsequently accepted and registered with the Surabaya District Court Registrar on January 27, 2021, in Register No. 94/Pdt. G/2021/PN Sby and sued W Dasim and Moch Tamim as defendants I and II.

3.2 Judge's consideration in deciding the case filed by the plaintiff who occupied the ex Eigendom Verponding land and won the plaintiff

In their decision, the panel of judges at the Surabaya District Court stated that defendant I and defendant II had been legally and properly summoned but did not attend or order their legal proxies to attend the trial. The judge, in his consideration, explained that the defendants were not present at the trial, even though they had been summoned legally and properly several times. Thus, the judge thought that legally the defendants were declared absent and deemed to have relinquished their rights to defend their interests. In this case, therefore, the trial was held outside the presence of the defendants in accordance with the provisions of Article 125 HIR, namely Verstek.

The second judge decided to grant the lawsuit partially with Verstek, considering that the plaintiff's lawsuit, according to the law, must be declared partially granted with Verstek, while

for other than and the rest is not proven, the plaintiff for other than and the rest is rejected. Verstek's decision is a decision that is decided if the defendant is never present at the trial even though he has been properly and legally summoned [11]. The legal basis for Verstek is Article 125 HIR/149 R.Bg, which explains the provisions related to Verstek, while Article 126 HIR/150 R.Bg and Article 127 HIR/151 R.Bg are related to the implementation of the Verstek decision [12, 13].

The third decision of the Surabaya District Court was to declare the plaintiff as the legal owner of a plot of land and building located at Jalan Tuwowo Rejo 3 / 28, RT. 004, RW. 004, Kapasmadya Baru Village, Tambaksari District, Surabaya City covering an area of 84 m2, with the following boundaries:

a. North Side: Jalan Kampung Tuwowo Gang III
b. South Boundary: Mr. Kastur's house
c. West Frontier: Mr. M. Rizki's house
d. Eastern Boundary: Mr. Pi'i's house

Based on the judge's consideration in his decision, he was of the opinion that Reman intends to carry out the process of increasing the status of the land rights of Eigendom Verponding No. 1219 and Eigendom Verponding No. 2865, located in Kampung Tuwowo Surabaya to become a certificate of ownership and transfer of rights to RemanReman's name as the buyer of the *eigendom* land parcel from W Dasim and Moch Tamim, but the whereabouts of both of them are unknown, thus preventing Reman from changing the name of the land. So, by looking at the actions of the defendants, namely W Dasim and Moch Tamim, who did not complete the buying and selling process, the judge considered the act unlawful (*onrechtmatigdaad*).

The fourth ruling is to give permission to the plaintiff to manage and submit a request for the issuance of a certificate of ownership of a quo object at the Surabaya City National Land Agency (BPN) Office. In his judgment, the judge stated, "to determine and give permission to the Plaintiff to register the right to obtain a certificate on behalf of the plaintiff for land and to build with an area of 84 m2 located at Jalan Tuwowo Rejo 3/28, RT.004, RW.004, Kelurahan Kapasmadya Baru, Tambaksari District, Surabaya City at the National Land Agency (BPN) of Surabaya City," the panel of judges believe that with the plaintiff having occupied the land and the house building for more than 20 years until now, the plaintiff has the right to administer and apply for the issuance of a certificate ownership rights to a quo object.

In its fifth decision, the panel of judges sentenced the Defendants to pay court fees of IDR 13,375,000 (thirteen million three hundred seventy-five thousand rupiahs), according to the judge, because the plaintiff's claim was partially granted, according to the law, all costs arising, in this case, will be charged to the defendant. The Panel of Judges of the Surabaya District Court won the plaintiff in case No. 94/Pdt.G/2021/PN Surabaya with the consideration that Reman as the plaintiff, has had good intentions as the owner of the land and has lived for more than 20 (twenty) years.

3.3 Judges' considerations in deciding cases with Land Law Regulations.

After the enactment of the BAL, the western rights contained in the Civil Code were no longer valid. These western rights must be converted in accordance with what is meant in Article 16 of the BAL. The purpose of the conversion itself is to be clear to provide legal certainty and legal protection to the holder of the right to a plot of land or produce a Certificate of Rights as strong evidence [14]. If 20 years after the enactment of the BAL but

the owner of the *eigendom verponding* land rights did not register his land and conversion was carried out, then the land rights were nullified, and the land became land controlled by the state.

Judging from the case in Decision No.94/Pdt.G/2021/PN Sby, Reman has not converted his plot of land since he paid off the land and occupied it as a place of residence until now, based on the implementation of the conversion with a period of 20 years since the promulgation of the Basic Agrarian Law, Reman has passed the deadline for implementing the conversion of ex-western land rights. Indirectly, the land he currently occupies is land that is directly controlled by the state because there is no conversion to property rights within the stated period. The promulgation of Decree of the President of the Republic of Indonesia No. 32 of 1979 concerning Policy Principles in the Context of Granting New Rights to Land of Origin for Conversion of Western Rights (Presidential Decree or *Keputusan Presiden*/Keppres No. 32 of 1979) in order to resolve problems related to the expiration of the period of conversion of western land rights [15].

The end of the conversion does not mean that rReman cannot apply for his rights Remanas the holder of the land parcel can still apply for his land to obtain legal certainty. According to Yamin Lubis, lands with eigendom status, before the enactment of Government Regulation No. 24 of 1997 concerning Land Registration, as long as the applicant is still the holder of land rights and is accompanied by old evidence or has not transferred his rights to another person on behalf of another person, after the enactment of Government Regulation No. 24 of 1997 concerning Land Registration, the implementation of the transfer of functions is referred to as evidence of old rights.

An explanation regarding the implementation of proof of old rights for applications for registration of rights is contained in Article 24 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, where the article reads map/measurement letter at the same time, then for the bookkeeping, it is only done by giving a stamp/stamp by writing down the type of rights and the number of rights converted on the evidence [6].

> *"For the purposes of registration of rights, land rights originating from the conversion of old rights are proven by evidence regarding the existence of such rights in the form of written evidence, information with a degree of truthfulness by the Adjudication Committee in systematic land registration or by the Head of the Land Office. in sporadic land registration, it is considered sufficient to register rights, rights holders and the rights of other parties that burden them."*

Based on the description of the article above, it is clear that if you want to register rights originating from the conversion of old rights, it must be proven by written evidence, and information that is recognized as valid and correct by the Adjudication Committee in systematic land registration or the Head of the Land Office in registration soil sporadically.

According to the author, the evidence of the Letter of Approval for the Transfer of Right to Occupy Land for Residence is still incomplete for registration through proof of old rights, because according to the Elucidation of Article 24 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, the evidence in question is in the form of a grosse deed eigendom rights, proof of ownership rights based on Swapraja Regulations, certificates of property rights issued based on Ministerial Regulation No. 9 of 1959 concerning the Granting and Renewal of Several Land Rights as well as Guidelines on Work Procedures for the Officials concerned, decrees on granting property rights from the authorized official, deed of transfer of land rights made by PPAT, deed of pledge/waqf, minutes of auction made

by Auction Officer, land tax officer, girik, pipil and Indonesian Verponding prior to the enactment of Government Regulation No. 10 of 1961, and evidence- other evidence referred to in Article II, Article VI, and Article VII As described above, if the evidence is incomplete, it must be reinforced with witness statements or statements from the person concerned. However, in the trial, Reman presented 4 (four) witnesses and, according to all his testimonies, admitted that Reman had occupied the land since the handover of the land until now. So, seeing this can be considered for confirmation of conversion.

Regarding the evidence that is not completely available in the context of proving the old rights, it is also regulated explicitly in Article 24 paragraph (2) of Government Regulation No. 24 of 1997 concerning Land Registration, which reads as follows:

> *"In the event that there is no complete or no longer available means of proof as referred to in paragraph (1), proof of rights can be carried out based on the fact of physical possession of the land parcel in question for 20 (twenty) years or more in a row by the registration applicant and its predecessors on the condition that; 1) The control is carried out in good faith and openly by the person concerned as having the right to the land, and is strengthened by the testimony of a person who can be trusted; 2) The control both before and during the announcement as referred to in Article 26 is not disputed by the customary law community or the village concerned or other parties."*

Based on Article 24 paragraph (2) of Government Regulation No. 24 of 1997 concerning Land Registration above, Reman has occupied the land for approximately 40 (forty) years, whereas Reman has occupied the land for more than 20 (twenty) years, The statement is corroborated by the evidence of a Physical Statement of a Plot of Land and based on the statements of the four witnesses who were presented to the trial. Later in his trial, Reman again said that as long as he occupied the land until now, no one objected, sued, and was asked to return by the defendants. RemanReman well uses the land as a place to live to re-strengthen his control over the *eigendom verponding* land in order to apply for registration of rights; he stated that the Land and Building Tax on the object/land in dispute was in the name of Reman. Reman, from the time the plot of land was transferred to him until now, paying Land and Building Tax in his name is Reman. It is proven by proof of Photocopy of Land and Building Tax in 2019 on behalf of Reman, and the 2019 Land and Building Tax Payment Letter.

In this case, the author thinks that the panel of judges with the verdict and all the considerations in the District Court Decision No. 94/Pdt.G/2021/PN Surabaya are correct. The panel of judges determined Reman as the owner of the plot of land and gave permission for conversion, and applied for a certificate of land because the conversion period had ended, Government Regulation No. 24 of 1997 concerning Land Registration called it proof of old rights, this is stated in Article 24 in the case of applying for a certificate on a plot of land ex Eigendom Verponding which he has occupied for 40 (forty) consecutive years.

4 Conclusion

Based on the results of the research and discussion, it can be concluded that the consideration of the Surabaya District Court Judges in deciding the case of Decision No. 94/Pdt.G/2021/PN Sby and winning the plaintiff was that Reman as the plaintiff had occupied the parcel of land located on Jalan Tuwowo Rejo 3 / 28 RT. 004, RW. 004, Kapasmadya Baru Village, Tambaksari Subdistrict, Surabaya City, covering an area of 84 m2 for more than 20 (twenty) years with proof of Receipt No. 028 dated September 6, 1974, and a Statement of

Physical Ownership of Land Sector dated November 1, 1960. In addition, Reman also obeyed to pay the Land and Building Tax, proving that the tax collection was on RemanReman's behalf. Thus, the panel of judges considered that he had the right to apply for conversion and the issuance of a certificate of title to his parcel of land because he was considered a holder of land rights in good faith.

The panel of judges determined that Reman, as the plaintiff, won in this case with considerations that were in accordance with the National Land Law; among others, the plot of land occupied by Reman so far was ex Eigendom Verponding land and turned into State land if during the specified period it was not carried out conversion according to Presidential Decree No. 32/1979 concerning Policy Principles in the Context of Granting New Land Rights of Origin Conversion of Western Rights (Keppres No. 32/1979), so that the panel of judges in their consideration referred to Article 24 of Government Regulation No. 24/1997 on Registration Land especially in Article 24 paragraph (2) which relates to physical control of land parcels for more than 20 (twenty) years and such control has been carried out in good faith by the holder of land rights.

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