

Juridical Review of Evidence of Land Eigendom Verponding in The Implementation of Land Acquisition in Indonesia (Judicial Analysis Of The Cassation Decision Number: 211/Pdt.G/2019/PN Amb)

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Juridical Review of Evidence of Land Eigendom Verponding in The Implementation of Land Acquisition in Indonesia (Judicial Analysis Of The Cassation Decision Number: 211/Pdt.G/2019/PN Amb)

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ABSTRACT. *The land system is called eigendom land. However, the land system that uses western law is still considered to be out of sync with human rights and is also detrimental to society, so during Indonesia's independence, new regulations were issued that regulate the national land system. However, in reality, transmitting western law to national law is not easy, so several land disputes have arisen, one of which is the ex eigendom verponding land dispute which was tried at the Ambon City District Court with Supreme Court decision number: 211/Pdt.G/2019/PN Amb . Based on the description in this thesis, the issues that will be discussed are 1) How to regulate land law ex eigendom verponding. 2) How is the implementation related to land ex eigendom verponding. 10 What are the constraint factors and solutions related to ex eigendom verponding land. This research aims to analyze the position of the case, the suitability of the considerations of the Supreme Court judges as well as the 10 strengths and weaknesses of the judges in deciding the verdict in this ex eigendom verponding land dispute case. This research applies normative legal research methods. The results of the discussion produced in this research found that the judge's reasons for rejecting the case application submitted by Lutfi Atamimi as a representative of PT. Maluku Building is in accordance with the facts and applicable law, but there are also several weaknesses in the judge's consideration of the land data evidence attached by the plaintiff, so that at the end of the decision it was concluded that the ex-eigendom Verponding land number 987 was not successfully reclaimed by the plaintiff due to the lack of the validity of the evidence and facts presented before the trial.*

Keywords: *Eigendom; Disputes; Decisions of the Supreme Court*

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1. INTRODUCTION

Indonesia is one of the most extensive archipelagic countries with an area of 1,905 million km² and there are more than 17 thousand islands from Sabang to Merauke, so that Indonesia is not only known for having a large area, but also known as an agricultural country¹. Land in Indonesia not only has an important role in the agricultural sector but also in human life because land can be used as proof of the existence and continuity of legal interrelations and behavior, both from an individual perspective and the impact on other parties. with this very large area of land, of course, regulations are needed that regulate the rights of control over the surface of the earth or land in order to avoid conflict or disputes. (Lendrawati L dan Hastari H, 2018). Agrarian law in Indonesia is currently enacted in the Basic Agrarian Law (UUPA), but before the UUPA was ratified on September 24, 1960, the agrarian legal system in Indonesia was still colonial in nature, meaning that before Indonesia's independence, agrarian law was largely structured according to the goals and wishes of individuals from the colonial government, namely the Dutch government system, so that this colonial agrarian legal system was categorized as very detrimental to the interests of the Indonesian nation (Sapto, S. N et al, 2017).

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Theoretically, they have the right to control, use, and sell the products of the earth in accordance with applicable law. There are 2 types of private land, namely: business land and joint land. Business land is land that is not directly held by the landowner, where there are community business rights on the land, while joint land is land that is directly held by the landowner, and the land does not contain elements of community rights. Of course, the policy of private land did not apply forever in Indonesia, because after Indonesia's independence, the position of the private land system began to be gradually eliminated, this elimination occurred because the policy of the landlord was considered contrary to Human Rights (HAM), and also because the lands considered as private land had a very large area and were also very strategically located, but only a few groups had the power to control the land, which greatly hampered post-independence development, so that in 1958, Law Number 1 of 1958 concerning the Abolition of Private Land was issued.

Based on the background description above, the author raises several problems that will be discussed further. The problems are as follows:

- a. How is the legal regulation of ex eigendom verponding land?
- b. How is the implementation related to ex eigendom verponding land?
- c. What are the constraints and solutions related to ex eigendom verponding land?

Based on the formulation of the problem stated above, it can be seen that the objectives of this research are:

- a. To find out the legal regulations of ex eigendom verponding land.
- b. To find out the implementation related to ex eigendom verponding land.
- c. find out the constraints and solutions related to ex eigendom verponding land.

2. LITERATURE REVIEW

From this published book, Austin is recognized as a legal expert who introduced a new legal system, namely the Positivism Legal System, John Austin defines law as "regulations used to provide guidance to rational beings by beings in power" Law is an order from those who hold the highest power or from the holder of sovereignty. Austin considers law as a logical, fixed and closed system. According to him, the actual law contains four elements, namely; Commands, Sanctions, Obligations, and Sovereignty.

In short, law according to John Austin¹⁸: 13, namely: first, Law is a command of the ruler (law is a command of the lawgiver), law is seen as an order from the holder of the highest power; second, Law is a logical system that is fixed and closed; and third, Positive law must fulfill several elements of command, sanctions, obligations, and sovereignty, outside of that it is not law but positive morals.

⁵ Analysis is an activity of summarizing a large amount of raw data and then grouping or separating relevant components and parts to then link the collected data to answer the problem. Analysis is an effort to describe patterns consistently in data so that the results of the analysis can be studied and translated and have meaning. According to Hans Kelsen, justice is a certain social order under whose protection the effort to seek the truth can flourish in society. because justice is social happiness (common good). ⁴ Justice is one of the goals of law besides the certainty of the law itself and also the benefits of the law. While the meaning of justice itself is still being debated. However, justice is related to the even distribution of rights and obligations. Thus, the central and dominant position and role of the value of justice for law. Gustav Radbruch argues in his book that the goals of law are justice, certainty and benefits. Law is always in motion, meaning that the process of positing legal rules into legal regulations continues to occur repeatedly (Peter Mahmud Marzuki, 2008).

¹² In land law, the term "land" is used in a legal sense, as an understanding that has been given official limitations by Law No. 5 of 1960. The general definition of land is interpreted as something that is given rights based on applicable laws and regulations. Meanwhile, according to Budi Harsono, he has limited the definition of land based on ²⁵ Article 4 of Law No. 5 of 1960, that the word land in a legal sense as an understanding has been formally limited by the Basic Agrarian Law as in Article 4 that the right to control from ¹⁹ the state determines the existence of various rights to the surface of the earth called land (Boedi Harsono, 1999). Land disputes ⁸ according to the National Land Agency of the Republic of Indonesia (BPN RI), the typology of land cases is a type of dispute, conflict and/or land case that is submitted or reported and handled by the National Land Agency. ¹ The Judge's Decision is the final action of the Judge in the trial, determining whether or not the perpetrator is punished, so the Judge's Decision is a statement from a judge in deciding a case in the trial and has permanent legal force. Based on the theoretical vision and practice of justice, the Judge's Decision is: "A decision pronounced by a judge because of his position in a criminal trial that is open to the public after going through the process and procedures of criminal procedure law generally contains a sentence or acquittal or release from all legal charges made in written form with the aim of resolving the case (Lilik Mulyadi, 2007).

3. RESEARCH METHOD ²⁰

This research method is a Juridical legal research which is supported by Normative research, which means that the normative legal method is a library research study. It is interpreted as library research because the research only focuses on written regulations so that in this study secondary data is needed from documents, both studies of norms and principles related to the actions taken by the Judge in deciding the ex-eigendom verponding land dispute case in decision number: 211/Pdt.G/2019/PN Amb.

The type of research here examines normative law which will compare the regulation of ideal norms (das Sollen) of the law with the reality that occurs in society (das Sein) regarding the settlement of land rights disputes after the construction of office buildings on ex eigendom verponding land. ¹⁵ The research method is basically a scientific way to obtain data with certain goals and uses.

This type of research is included in the combined research category between normative legal research (library research) and observational research. Normative-empirical legal research focuses on research on the application of positive law as part of legal science whose target discussion is to study the manifestation (realization) of positive legal provisions into the reality of life in society. The analysis in this study uses a deductive thought process.

The population in this study is the Ex-Eigendom Verponding Land Dispute (cassation decision Number: 211/Pdt.G/2019/PN Amb). The sample used by the researcher was a random technique consisting of the Ex-Eigendom Verponding Land Dispute (cassation decision Number: 211/Pdt.G/2019/PN Amb).

¹¹ Based on the nature of this research which uses a descriptive analytical research method, the data analysis used is a qualitative approach to primary data and secondary data. So in this study ¹² the data analysis method used is by processing data from the author's interviews with informants, then comparing it with the laws and regulations that are the legal basis for this study and the theories contained in the secondary legal materials in this study.

4. RESULTS AND DISCUSSION

Legal Regulation of Land Ex Eigendom Verponding

Indonesia is one of the most extensive archipelagic countries with an area of 1,905 million km² and there are more than 17 thousand islands from Sabang to Merauke, so that Indonesia is not only known for having a large area, but also known as an agricultural country. Land in Indonesia not only has an important role in the agricultural sector but also in human life because land can be used as proof of ¹⁸ the existence and continuity of legal

interrelations and behavior, both from an individual perspective and the impact on other parties. with this very large amount of land, of course, regulations are needed that regulate the rights of control over the surface of the earth or land in order to avoid conflict or disputes.

Agrarian law in Indonesia is currently enacted in the Basic Agrarian Law (UUPA), but before the UUPA was ratified on September 24, 1960, the agrarian legal system in Indonesia was still colonial in nature, meaning that before Indonesia's independence, agrarian law was largely structured according to the goals and wishes of individuals from the colonial government, namely the Dutch government system, so that this colonial agrarian legal system was categorized as very detrimental to the interests of the Indonesian nation (Sapto, S. N et al, 2017).

There are 2 types of private land, namely: business land and joint land. Business land is land that is not directly held by the landowner, where there are community business rights on the land, while joint land is land that is directly held by the landowner, and the land does not contain elements of community rights (Aufima Z, 2020).

However, there are several facts that have been ignored by the Supreme Court judges in considering the verdict, namely the fact that the plaintiff has strengthened his arguments by attaching all evidence of land ownership, namely: 1. Decree (In Naam Der Koningin) of the Resident of Van Amboina where the land Eigendom Verponding Numbers 986, 987 and 988 are registered in the name of Njimas Entjeh Siti Aminah alias Osa dated May 16, 1931; 2. Measurement letter (Meetbrief) of land Eigendom Verponding Numbers 986, 987 and 988 dated July 24, 1928 made by De Gouvernement Landmeeter and a copy of which was submitted by the Resident of van Amboina dated March 24, 1936 in the name of Njimas Entjeh Siti Amniah alias Osa; 3. Acta Van Eigendom Verponding Number 986, 987 and 988 dated 25 October 1938, dated 4 October 1938 and dated 26 October 1938 respectively in the name of Njimas Entjeh Siti Aminah alias Osa; 4. Copy of bank statement regarding the payment balance stored in the bank for the three versions of ex Eigendom Verponding Number 986, 987 and 988 dated 4 February, and bank statement of payment for January 1942 and March 1943 dated 22 November 1946 in the name of Njimas Entjeh Siti Amniah alias Osa; 5. Periodic Tax Verponding Determination Letter to Zainal Asikin for the three versions of land ex Eigendom Verponding Numbers 986, 987 and 988 in Ambon-Maluku owned by a person named Njimas Entjeh Siti Aminah alias Osa dated December 31, 1951; 6. S.K (Besluiten) De Gouvernements Landmeeter Ambon dated October 29, 1931 Number 383 concerning Recognition of Land Rights to Eigendom Verponding Numbers 986, 987 and 988 located in Ambon Kampung Batu Merah in the name of Njimas Entjeh Siti Maninah alias

Osa dated March 10, 1962; 7. Certificate of Payment of Agricultural Tax on plants on the version of land Eigendom Verponding 987 dated April 30, 1921; 8. Application Letter for Conversion Payment to Ownership Rights by Zainal Asikin to the Head of the Agrarian Sub-Directorate Office in Ambon in accordance with the Agrarian Population Law No. 5/1960 in conjunction with the Minister of Agrarian Regulation No. 2/1962 for the three versions of ex-Eigendom Verponding land Numbers 986, 987 and 988 in the name of Njimas Entjeh Siti Aminah alias Osa located in Batu Merah Village dated September 6, 1962; 9. Statement from the Acting Head of the Land Registration and Supervision Office No. 23/1962 dated December 5, 1962 that the Eigendom Verponding land Numbers 986, 987 and 988 are located in Ambon Batu Merah Village written in the name of Njimas Entjeh Siti Aminah alias Osa; 10. Letter from the Head of the Land Registration and Supervision Office No. 30/1963 dated 21 February 1963 regarding land Eigendom Verponding Numbers 986, 987 and 988 according to the Land Rights letter recorded at the office dated 26 October 1938, it was registered in the name of Njimas Entjeh Siti Aminah alias Osa, a copy of which was submitted to the Soya State government and the Head of Batu Merah village dated 27 February 1963; 11.

The author in providing this argument is based on the background of the emergence of the Private Land Abolition Law, where in 1958 all land data including area, ownership in Indonesia was still very dependent on manual administrative data and the existing data did not prove accurate conformity with the conditions in the field, resulting in Decrees and Tax Letters issued by the land agency or minister being different from the actual data due to invalid land administration data.

Implications of Victim Protection in Handling Criminal Acts of Sexual Intercourse and Molestation of Minors

Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, provides a strong legal basis to protect children from various forms of violence and exploitation. Articles 81 and 82 of the Child Protection Law regulate the criminal threat for perpetrators of sexual intercourse and molestation of children, with severe penalties to provide a deterrent effect. In addition, Article 88 in conjunction with Article 76i regulates the prohibition of economic and sexual exploitation of children, demonstrating the state's commitment to protecting children from this crime.

Despite a strong legal framework, challenges remain in protecting children from violence and exploitation. Cases often go unreported for a variety of reasons, including fear, stigma, and lack of awareness of children's rights. Therefore, ongoing efforts are needed to raise public awareness of the importance of reporting cases of violence against children and providing the necessary support to victims. In addition, there is a need to increase the capacity of law enforcement officers and service providers to handle cases of violence against children sensitively and effectively. This includes specific training for police officers, medical personnel, and social workers to handle cases of violence against children using a child rights-based approach and trauma-informed care. In this way, it is hoped that legal protection for child victims of violence can be improved and they can obtain justice and proper reparation.

One aspect that is not yet optimal is psychological support for victims. Based on the data, many cases continue to the investigation stage and some reach the court stage, but there is no detailed explanation regarding the psychological support given to victims during this process. In fact, psychological support is very important to help victims overcome the trauma they experience due to sexual violence. Adequate psychological support can help victims recover mentally and emotionally, and give them the strength to participate in the judicial process without fear or stress.

Protection of victims in handling criminal acts of sexual intercourse and molestation of minors has broad and profound implications when analyzed through the theory of the legal system, the theory of criminal responsibility, and the theory of legal certainty. All of these theories emphasize the importance of good coordination between elements of the legal system, fair and appropriate law enforcement, and clarity and consistency in the application of the law. Effective implementation of these three theories will ensure that victims of sexual violence against children receive optimal protection, justice is upheld, and public trust in the legal system increases.

Implementation Regarding Ex Eigendom Verponding Land

Implementation related to ex eigendom verponding land refers to the process of converting land ownership rights from the Dutch legal system to the Indonesian agrarian legal system. The following are the implementation steps:

- a. re-measuring the land to ensure that its boundaries are in accordance with the coordinate system and maps currently in effect in Indonesia.

- b. New Registration: After the measurement is complete and all documents are verified, the BPN will register the land as new ownership rights in the land registration system applicable in Indonesia, namely a certificate of ownership (SHM) or a certificate of building use rights (SHGB) according to the type of rights owned.
- c. Public Announcement: Usually, after registration is complete, an announcement is made to the public to inform that the land has been successfully converted and has been properly recorded at the BPN.
- d. Payment of Fees: This conversion process usually involves administrative fees and measurement fees that must be borne by the applicant or landowner.

This implementation is carried out to integrate land ownership previously recognized in the Dutch legal system to comply with Indonesian agrarian law, which regulates certification and legal protection of land.

Constraints and Solutions Related to Ex Eigendom Verponding Land

In the process of converting ex eigendom verponding land, there are several constraints that may be faced, along with solutions that can be taken to overcome these constraints. The following are several constraints

- a. Incomplete Verponding Documents: Verponding documents or other documents documenting land ownership status may be incomplete or may not comply with the requirements required by the BPN.
- b. Different Land Owners: Sometimes, one ex eigendom verponding land can have more than one owner or there is uncertainty about who actually owns the rights.
- c. Complicated Bureaucratic Process: The process of converting land from the Dutch legal system to the Indonesian agrarian legal system involves bureaucratic procedures that are sometimes complex and take quite a long time.
- d. Uncertainty of Land Boundaries: Land boundaries recorded in the verponding can be uncertain or inaccurate, especially if they have not been re-measured for a long time.
- e. Differences in Legal Interpretation: Sometimes there are differences in interpretation or understanding of the applicable rules and regulations between land owners, the BPN, and other related parties.

5. CONCLUSION AND SUGGESTION

14 Conclusion

Based on the discussion in the previous chapter, the following conclusions can be drawn:

- a. Land Status Verification: First, it is necessary to verify the status of the land to be converted. Former Eigendom Verponding land is land whose ownership status is recognized based on the Dutch legal system (eigendom) and is recorded in the verponding registration.
- b. Document Examination: Furthermore, related documents such as verponding certificates or other documents stating ownership of the land need to be verified for their validity and conformity with existing records.
- c. Conversion Application: Landowners or interested parties must submit a conversion application to the local National Land Agency (BPN). In this application, documents that have been verified are usually included.
- d. Re-Measurement: BPN will re-measure the land to ensure that its boundaries are in accordance with the coordinate system and maps currently in effect in Indonesia.
- e. New Registration: After the measurement is complete and all documents are verified, BPN will register the land as new property rights in the land registration system applicable in Indonesia, namely a 16 certificate of ownership (SHM) or a certificate of building use rights (SHGB) according to the type of rights owned.
- f. Public Announcement: Usually, after registration is complete, an announcement is made to the public to inform that the land has been successfully converted and has been properly recorded at the BPN.
- g. Payment of Fees: This conversion process usually involves administrative fees and measurement fees that must be borne by the applicant or landowner.

Suggestion

From this conclusion, the author can provide several suggestions, namely:

- a. Legal Clarification: The government needs to issue a clear and comprehensive policy regarding the process of converting ex eigendom verponding land into the Indonesian agrarian law system. This policy must include concrete steps that must be taken by landowners and related parties to facilitate smooth land conversion.
- b. Document Verification Regulation: Establish strict rules regarding the verification of verponding documents or other documents that serve as evidence of land ownership.

This is important to ensure the validity and accuracy of the documents used in the conversion process.

- c. Re-Measurement and Mapping: Encourage systematic land re-measurement and accurate mapping by the National Land Agency (BPN). This re-measurement needs to be carried out using the latest technology and methodology to ensure clear and accurate land boundaries.
- d. Protection of Third Party Rights: Regulate protection mechanisms for third parties who may have interests or claims to land being converted. This is important to avoid land ownership conflicts in the future.
- e. Transparency and Publication: Provide easy access and transparency to information regarding the process of converting ex eigendom verponding land. This will help avoid any corrupt practices or fraud in the land administration process.
- f. Counseling and Education: Provide counseling and education to the community regarding their rights related to land ownership and the procedure for converting ex eigendom verponding land. This is important to increase public understanding of the Indonesian agrarian law process and their rights as land owners.
- g. Dispute Resolution: Establish an effective mechanism for resolving disputes related to land conversion, both through administrative processes at the BPN and through existing legal channels. A good and comprehensive legal arrangement will provide a strong basis for effective implementation in converting ex eigendom verponding land into the Indonesian agrarian law system. It will also support legal and economic stability at the local level.

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