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INDONESIAN NATIONAL ARMY OCCUPATION TOWARDS *EIGENDOM VERPONDING* LAND RIGHTS BELONG TO INDONESIAN CITIZENS

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Land law pluralism in the colonial era caused the land tenure conflict to date. *Eigendom* as western rights during the colonial era are not only applied to land owned by foreigners but are also given to the land owned by Indonesian citizen. After independence in a state of "martial law", the state requires a lot of land from housing military bases to the weapon. The demand for land is high for the need of TNI housing by occupying the Former Foreign-Owned Assets (ABMA). Conflict arises when some people who claim as descent citizen to the military to restore the land in their occupation. People claim as the rightful heir by the Freehold Title derived from the conversion *verpondingeigendom* rights. Live Case Study Approach used to discuss land tenure conflict with the law analysis based on the publications in the land registration system and the nature of the verification certificate as proof of entitlement. Freehold Title conversed from *eigendomverponding* registered no later by 24 September 1980 was the certificate of land rights issued by the District Land Office / City that meet the elements of an administrative decision therefore has legal standing as a proof of rights strong.The land equipped by Freehold Title but conversed from *eigendomverponding* overlapping as a result of occupation military assets, based on the Minister of Finance the Republic of Indonesia regulated Number 31 / PMK.06 / 2015 on Settlement of Foreign-Owned Assets Used / Chinese must be crossed out and removed from the list of ABMA then returned to the heirs.

Keywords: occupation, army, eigendom, land

I. RESEARCH BACKGROUND

Government Regulation of the Republic of Indonesia Article 3 No. 24 of 1997 on the land regulation aims to provide legal certainties and legal protection for the holders of rights on land parcels and on apartments and for the holders of other registered rights. Legal certainties and legal protection are given to the holders of rights who registered their land in form of a land-right certificate.

Article 16 Verse (1) of Act No. 5 of 1960on the basic provisions concerning the fundamentals of agrarian affairs established the rights of land as follows:

a) Right of ownership

b) Right of cultivation

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c) Right of use of structures

d) Right of use

e) Right of lease

f) Right to clear land

g) Right to collect the forest products

h) Other rights than those above mentioned rights which shall be stipulated by law and rights of provisional nature as mentioned in Article 53.

The Provisional Rights stipulated on Article 53 of Act No. 5 of 1960 are as follows:

a) Right of security

b) Right of production-sharing endeavor

c) Right of transient occupancy

d) Right of lease of agricultural land

National agrarian Lawregulated 4 waysconcerning the rights on land, i.e.:

a) The rights on land based upon the Customary Law are rights of ownership by clearing land (forest) done by indigenous peoples and also due to alluvion *(aanslibbing)*.

b) The rights on land due tothe Government enactment through the plea for the grant of rights upon the State land.

c) The right on land due to the provisions of law and regulated in conversion provisions of the Act No. 5 of 1960.

d) The rights on land due to the given rights.[1]

According to Act No. 5 of 1960, the rights on land because of conversion provisions (the changing of right status) change the former land rights to be regulated by the Act No. 5 of 1960.

Conversion is the changing of land rights according to the old law before the Act No. 5 of 1960 prevailed. The old rights were the rights under the authority of Western law (*BurgerlijkWetboek)*, customary law, and Swapraja territory. The basic regulation is regulated on Article II Paragraph (1) about the conversion provisions.

The fact is, the conversion of eigendom land rights of Indonesian citizens of foreign descent still become a polemic right up to now. The most frequent lawsuit occurred is overlapping of land ownership inherited as the result of conversion which was being occupied by Indonesian National Army. One of the lawsuits happened due to the status changing from Western rights into the rights according to the Act Number 5 of 1960 was recorded on civil case No.06/Pdt.G/2017/ PN.LMG, on January 30th, 2017. This lawsuit occurred between the owner of freehold title number 25 and number 2043 as the result of *eigendomverponding* conversion number 8738 on behalf of the right holder, named SechHoesin bin

OemarBabeheragainst the Chief Staff of Indonesian Army,Cq. Major General (*Pangdam*) V BrawijayaCq. Military Resort Commandant 082/CPYJ MojokertoCq Military District Commandant 0812 Lamongan.[2]

The claim was instituted by the holder of certificate number 25 and number 2043 published by the Land Office in Lamongan Regency towards Indonesian National Army (TNI). The plaintiff claimed that the land or area used by TNI through occupation to build their official residence in the area of Military Rayon Command (*Koramil*) Babat-Lamonganbelongs to the plaintiff according to the conversion regulation of *eigendomverponding* land rights. As opposed to the earlier claim, the Military District Command (*Kodim*) 0812 Lamongan also claimed that the land mentioned above belonged to *Kodim* based on the register of occupation of 1971.

To understand the legal standing of the land dispute in the above mentioned, the problems reviewed are:

1. The freehold title standing according to *Eigendom Verponding* conversion within the agrarian law systems in Indonesia.
2. The solution for overlapped-land rights authority by the claims over *eigendom verponding* land rights and occupation land.

RESEARCH METHOD

This research was an empirical-normative research which used live-case study approach as research method. *Live-case study* approach was a case-study approach in legal events, in which the event is either still happening or has not over yet .[3] This research referred to civil case number 06/Pdt.G/2017/PN.LMG on January 30th, 2017, which has been trialed in Lamongan District Court.

Primary data collection was done by using juridical analysis towards the facts or legal events, and interview was also included to strengthen the results of analysis. The objectives of this research were the parties who were facing lawsuit cases of occupation land. In addition, secondary data were obtained by using library research (document studies).

RESULTS AND DISCUSSIONS

1. The freehold title standing according to *Eigendom Verponding* conversion within the agrarian law systems in Indonesia

In colonial era, dualism of agrarian law was not caused by the differences of civil case of the holders of land rights, but it was due to the differences of the kawtowards the land. The lands in Indonesian law have its own status and legal standing, regardless the status of the legal subject in which the land belongs to.[4]

There are a number of lands with Western rights, such as *eigendom right* (right of ownership under the Dutch Law), *erfpacht right* (right of long-term lease under

Dutch Law), *opstal right* (right of use of structures under Dutch Law), which are called the lands of Western's or the lands of Europe. There are also a number of lands with Indonesian rights, such as the lands which were obtained by customary rights (*hakadat*), which was called customary right lands. The lands with the rights regulated by the Government of Dutch East Indies, such as *agrarischeigendom* right, *landerijenbezitrech* right were also found.[5] There are also land rights other than the rights mentioned previously, i.e. the rights on land formulated by the Government of Swapraja, such as Sultan's Grant.

Almost all the lands under Western rights registered in *Overschrijvings Ambtenaar* office according to *Overschrijvings Ordonantie* S. 1834-27 and have been mapped by Real-estate-registry Office based on Real-estate-registry's ordinances, as known in *Engelbrecht*1960 page 810 and 852, furthermore those lands with Western rights were under the authority of Western Law. Thus, the consequences of being under the Western Law demanded the obligations of the holders, the requirements of the right holders, and every single thing related to the lands owned were regulated according to the provisions of Western's agrarian Law.[6]

Dualism of the law which regulates land sectors is incompatible with the spirits of unity and oneness of the nation. Thus, this reason underlies the emergence of the Act number 5 of 1960. The politics of law of the Government in colonial era showed that dualism was not something naturally emerged but something which was created by some parties. Even some unifications were done, the fact that dualism of agrarian law still caused many unresolved problems cannot be denied.

Some problems related to the land rights are not only about its implementations but also related to the re-emergence of some old-unresolved-problems and also some new problems which were caused by the increasing of the need of lands. One of the examples of the old problems mentioned previously was the land use by way of State occupation of lands towards the citizens of foreign descent in Indonesia.

Occupation problems related to the former foreign-owned lands (ABMA) involved Indonesian National Army and the beneficiaries who have the evidence of land rights alteration from *eigendomverponding* to freehold title.

Civil case number 06/Pdt.G/2017/PN.LMG on January 30th, 2017, shows that the unification of agrarian law was still facing a number of difficulties caused by the dualism of agrarian law beforehand. The plaintiff's claims are presented as follows:

1. The land being disputed was a freehold title belonged to No. 25 which once was under *eigendomverponding* right No. 8738 on behalf of the legal right holder, named SechHoesin bin OemarBabeher, legally registered on October 25th, 1965 along with its Survey Certificate which was registered on July 29th, 1918, Number 550 with the surface area of 550 square meters (550 m^2).

2. According to the result of freehold title separation No. 25 which once was the former *eigendom* right has been purchased by plaintiff III (Moh. Anis) based on Deed of Sale and Purchase No. 724/2014 on May 20th, 2014 and been witnessed by a public notary, named DyanaWulansari through the heir himself, Sech Hoesin bin Oemar Babeher, which then became a freehold title No. 2043 belonged to Babat Subdistrict, Lamongan Regency.
3. According to the result of freehold title separation No. 25 which once was under *eigendom* right, then been purchased by plaintiff I (Danial Franky) based upon Deed of Sale and Purchase No. 28 and has been witnessed by a public notary, named Tintut through the heir himself, Sech Hoesin bin Oemar Babeher, which then became a temporary certificate of M25 (according to the Article 138 PMNA/Ka.BPN No.3/1997). This temporary certificate then became a freehold title No.25 belonged to Babat Subdistrict, Lamongan Regency.
4. The freehold title No. 25 Babat Subdistrict – Lamongan, was a joint property involving plaintiff I (Danial Franky) and plaintif II (Yuniar Tri W).
5. Plaintiff I then built a shop house on the land being a subject matter.
6. After the shop house was almost perfectly built, there was an offer to build a business place on that land. Therefore, plaintiff I and II immediately renovated the building to be occupied by the tenant.
7. On May 2016, unexpected incident happened, in which plaintiff I and plaintiff III claimed that the land which was being a subject matter was claimed by the defendant as the occupation land of Indonesian Army, according to the warrants on May 20th, 2016 and May 23rd, stated that the land was registered on Indonesian Army occupation. Therefore, renovation activities by plaintiff I and II was forcibly been stopped.
8. Due to mediation failure, the defendant party pinned stakes in both lands and also in front of the building on the land being subject matter.
9. Due to the stakes pinning by defendant party, the lessee who was going to lease the shop house on that land cancelled his intention which made plaintiff I and II experienced financial loss.

Plaintiffs' claims became the underlying reasons to propose a plea towards the Chief of District Court in Lamongan, Cq. The Chairman of the Judges Panels of this lawsuit holder to consider and determine:

1. To grant all the claims from the plaintiffs;
2. To declare that the defendant was done an act of breaking the law (On rechtmatigedaad);
3. To declare that freehold titles No. 2043 and No. 25, Babat Subdistrict, Lamongan Regency are legal by the law.

4. To sentence the defendant to return the land towards the legal owner of land rights, i.e. plaintiff I and III, and was also commanded to unpin the stakes and posters in front of the land and the building which were being subject matters, located at Babat Street No. 157 A and No. 157 B, Babat Subdistrict, Lamongan Regency;
5. To sentence the defendant to completely delete the data about Indonesian National Army occupation from the register of occupation of Indonesian National Army.
6. To sentence the defendant to pay money penalty (*Dwangsom)* towards the plaintiffs and co-defendant to pay the suit for the amounts of one million rupiah every day, if the defendant and co-defendant were negligent to comply the verdicts and was counted since the verdict of aquo lawsuit which has a permanent legal force *(in Kracht).*

The defendant party, i.e. against the Chief Staff of Indonesian Army, Cq. Major General (*Pangdam*) V Brawijaya Cq. Military Resort Commandant 082/CPYJ Mojokerto Cq Military District Commandant 0812 Lamongan showed some evidences in front of the court session to reveal some data and some juridical evidences, in forms of:

1. Evidence 1

   A certificate from Babat village, Babat Subdistrict – Lamongan, Number 474/ 16/413.409.2017, about B 1 map of 1962 which depicted the State's land according to the block map in District Office of Babat which was launched in 1999, stated that the lands being subject matter belonged to Indonesian National Army with NOP 35.24.090.014.002-0170.0 on behalf of Sukarno/ Official residence and NOP 35.24.090.014.002-0168.0. on behalf of Lilik/ Official residence.

2. Evidence 2

   A copy of Block Map/ location Number 168 on behalf of Lilik/ official residence and also Block Map Number 170 on behalf of Sukarno/ Official residence.

3. Evidence 3

   SPPT PBB NOP 35.24.090.014.002-170.0, on behalf of Sukarno/ Official residence.

4. Evidence 4

   SPPT PBB NOP 35.24.090.014.002-168.0, on behalf of Lilik/ official residence.

5. Evidence 5

   A certify copy of *Persil* Map Number 7: D I of 0,130 Acre width, in which the *ad interim* of the village has already shown and proved that the location of the subject matter land is legally the State's land.

6. Evidence 6

   A certify copy according to the inventory book of immovable assets in form of land/building of Indonesian Army in *Kodam*VIII/Brawijaya based upon the decree of Ministry of Finance No. 225/MKA//4/1971, on April 13th, 1971 which clearly showed that the land was occupation land which belongs to Indonesian National Army which can be used to build a dormitory or residence.

According to that, both parties have already shown the evidences which proved that they are the legal holders of the land rights. The plaintiffs claimed their freehold titles was legal and was a conversion of *eigendom verponding* right into freehold title. Thus, the defendant also claimed and proved that they were also the holder of right according to the registration of occupation.

The term *verponding* in the Act number 72 of 1958 was about tax *verponding*, and for the year of 1957 and so on, this term was used to mention one of the taxes of immovable assets (e.g. land). In fact, as done by Supreme Court of Justice in the decree No. 34K/TUN/2007, the term *eigendomverponding* was used to indicate a right of ownership towards a land or area. The regulation of *eigendom* is written in the Article No. 570 Book 2 of Civil Law Code (BW) and has been revoked by the Act No. 5 of 1960. Furthermore, Article I paragraph (1) second sections of the Act No. 5 of 1960 regulated the conversions of *eigendom* land rights to be a freehold title.

Conversions can be interpreted as an adjustment towards the rights on land under the authority of the old law, i.e. the land rights based on BW and the lands under the authority of customary law as regulated on the Act No. 5 of 1960.[7]

According to the Act No. 5 of 1960, the basic authority of the land is derivative, derived from the provision of the law and the rights beforehand, such as customary rights and Western rights by adjusting some new provisions in agrarian law.

Legal standing of freehold title as the result of conversion on the lawsuit above can be judged from its applicable juridical basic. Since the Act No. 5 of 1960 enforced, the holders of *eigendom* rights have the obligation to convert and register their right changing. This obligation is based on the Article I of Act No. 5 of 1960 about the provisions of conversion.*Eigendom* rights can be converted to be freehold right if it fulfills some requirements according to the Article 21 of the Act No. 5 of 1960. All kinds of Western rights were revoked 20 years after 1960, precisely on September 24th, 1980.

The conditions which are required to be fulfilled by the holders of *eigendom* rights to convert their assets into freehold title, are as follows:

1. Citizen of Indonesia and has the ownership proofin form of the authentic Deed (minuut) or the copy of *egindom*(grosse) according to the ordinances of the Ministry of Agraria No. 2 of 1960.

2. The large of the area according to the Act No. 56 of 1960 cannot exceed the maximum limitations and is not an absantee land (guntai).
3. If the conditions are fulfilled, the authorized administrative officer, in this case, KKPT, or National Land Affairs Agency will register the conversion of *eigendom* rights and officially published a certificate on behalf of the holders of *eigendom* rights which have been converted.

The mechanisms of the conversion registry are specifically regulated on Government Regulation No. 10 of 1997, meanwhile the procedures of its implementation are regulated on the regulation of the Ministry of Agrarian (PMNA), the Chairman of National Land Affairs Agency (KBPN) No. 3 of 1997.

Based on the juridical basis mentioned previously, thus, the plaintiffs of the lawsuit No. 06/Pdt.G/2017/PN.LMG were believed obtaining their freehold titles No. 25 and No. 2043 through the legal way by means of conversion over *eigendomverponding* rights NO. 8738 on behalf of the holder of the right, named Sech Hoesin bin Oemar Babeher, legally registered on October 25th, 1965 along with its Survey Certificate which was registered on July 29th, 1918, Number 550 with the surface area of 550 square meters (550 m^2).

According to torrens system, this system is used to find out the first holder of the land rights and also the authorized officers which were being involved and signed the authorization. This way would make a legal new holder of land rights be found easily. Based on torrens system in proving the legal owner of the land being object of the dispute, the legal holder of the land rights can proven by strong evidences.

Freehold title of the plaintiffs as the result of *eigendomverponding* rights conversion was a legal evidence due to the fact that it is officially published by the authorized officers and the conversion was done before the deadline of right changing registration by the first-hand owner. The heirs of the origin owner the children of SechHoesin bin OemarBabeher who have rights to posses and move the land rights. Eventhough Indonesia embraced a positive-negative publication systems, it would not automatically change the holder of land rights due to some evidenced emerged.

On negative publication system, the published certificate is a legal and strong evidence of the land right ownership. Meaning that every single thing written on the certificate has a legal standing and must be achieve by the judge as long as it is not been proven wrong by other evidences.[8] This system is regulated on Article 32 Paragraph 2 of Government Regulation No. 24 of 1997.

The principle of publicity can be interpreted that the land registry depicts the transparency for other parties who want to raise an objection towards the registered holder of land rights. Positive element on the principle of publicity creates the opportunities to other parties who wanted to claim for the land rights even if the owner of the land right has been registered in the National Land Affairs Agency.

The defendant of this lawsuit showed some evidence in forms of the register of occupation and the proof of tax payments which were perceived as weak evidences. Thus, the evidenced provided by the defendant have a weak legal standing compared to the legal certificate of the land rights provided by the plaintiffs.The fact the conversion of *eigendom verponding* right was done in 1965 while the occupation registry was published in 1971 made it clear that the plaintiffs were the legal holder of land right of the land which was being the subject matter of this lawsuit. Residents of the official residences who had tax payments proofs did not make them the owner of the land rights. The ownerships of the residents of official residences were physical ownerships, meanwhile the ownership by the plaintiffs were juridical ownerships as they hold the legal certificate.

2. The solution for overlapped-land rights authority by the claims over *eigendomverponding* land rights and occupation land

Legal standing of the freehold title certificate owned by the plaintiffs as the result of *eigendomverponding* right conversion was legal and can be perfect evidence. Certificate publishing by National Land Affairs Agency was regulated in: (1) Government Regulation No. 24 of 1997 about Lands registration, (2) its technical provisions are regulated in the regulation of the Ministry of Agrarian/ the Chairman of National Land Affairs Agency No. 3 of 1997 about the provisions of implementation of Government Regulation No. 24 of 1997, (3) the instruction from the Ministry of Agrarian/ the Chairman of National Land Affairs Agency No. 3 of 1998, (4) the regulations of the Ministry of Agrarian/ the Chairman of National Land Affairs Agency No. 4 of 1999 about the provisions of implementation of Government Regulation No. 37 of 1999 about the regulation of Land Deed Officers.

The point of the laws above clearly clarify that the legal evident of the land rights ownership was the land rights certificate which is published by the National Land Affairs Agency through registration process. The land rights certificate consists of the copies of immovable assets in form of land book and survey certificate on behalf of the holder of the land rights.

Directorate General of State Assets Management (DJKN) of the Ministry of Finance has the authorities, jobs, and functions in the State assets sector, including the other State Assets (KNL). One of State Assets is ABMA-T, in which it is the State asset derived from foreigners/Chinese (*Tionghoa*), and other assets from forbidden racial exclusive organizations, either in forms of building or even land, including some assets of Chinese ethnic which became the victims of the chaos in 1965/1966 related to RRC's involvement in G-30S/PKI rebellion.[9]

A number of ABMA/T spread over almost in every area in Indonesia, either it is in Capital city, Provinces, Regencies, or even Cities. Those ABMA/T have already been owned either by the individuals or certain institutions. According to the provision of the Ministry of Finance (PMK) Number 188/PMK.06/2008 which

stated about the solution for Foreign/Chinese Assets as has been changed through *PMK* No. 154/PMK.06/2011 and had been revoked by the provision of the Ministry of Finance (PMK) No. 31/PMK.06/2015 which stated about the solution of ABMA/T towards the assets that its legal status must be strengthened to obtain legal certainty.[10]

Legal certainty aims to protect the rights of the subject of law from the interference of other law subjects.[11] H.L.A. Hart Doctrine opposed the idea of a whole conception by means of transparency of legal textures. He stated, "*always there are previous rules for every case*", meaning that it must be a prior rule for every single case faced. It is the function of the court to find out the regulations by relying on the existing legal regulations.[12]

The defendant of the lawsuit No. 06/Pdt.G/2017/PN.LMG which has occupied the land of the subject matter all this time, according to PMK Number 31/PMK.06/2015: they must exclude the disputed land from the list of ABMA/T owned by Indonesian National Army. The plaintiffs of this lawsuit is the legal holder of the land rights.

II. CONCLUSION

The status of legal conversion or the right changing from *eigendom verponding* which has already fulfilled the condition according to the Article 21 of the Act No. 5 of 1960 is legitimate. Therefore, the freehold title is able to be published. Overlapped-land rights status between freehold title and register occupation must refer to the provisions of land registration. When the certificate is published in a legitimate way, then the mentioned object (land) must be excluded from the lists of Foreign/Chinese (*Tionghoa*) assets.

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