

## Juridical review of the transfer of property property that has not been converted into property rights

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### Abstract

Land according to UUPA is the surface of the earth that can be given and owned by individuals or legal entities with state control over the land, water, and space for the welfare of the people. The UUPA requires property owners to convert rights within 20 years. Non-compliance with the conversion causes the land to become state property based on Permendagri Number 3 of 1979 and Government Regulation Number 18 of 2021. Normative juridical methods with legal and conceptual approaches as well as secondary data were used to analyze the legal consequences of the transfer of property rights that have not been converted. The results of the study show that the transfer of rights to *eigendom verponding* land that has not been converted into property rights is null and void because the object of the agreement is state land in accordance with Article 95 paragraph (1) of Government Regulation Number 18 of 2021 and does not receive legal protection due to the inconsistency between Government Regulation Number 24 of 1997 and Government Regulation Number 18 of 2021 which results in legal uncertainty for holders of *eigendom verponding* land rights who have not yet converting into property. The consequence is the loss of personal rights and material losses so that the public is advised to verify the status of the land before the transaction.

**Keyword:** Eigendom Verponding, UUPA, Transfer of rights, Void by Law.

### A. Introduction

According to the UUPA, land is a part of the earth that can be owned and given to individuals or legal entities individually or together. In Article 2 of the UUPA it is explained that everything contained in the land of the state has the right to control it for the welfare of the people.<sup>1</sup> Land has economic value for the community because land can be a place of residence and business for the community so that land can cause disputes in the community. The legal certainty guaranteed by the Indonesian government regarding land is the issuance of a Certificate. Land certificates are a valid and strong proof of ownership

<sup>1</sup> Indonesia, Law (UU) Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Statute Book of the Republic of Indonesia of 1960 Number 104, Supplement to Statute Book Number 2043, State Secretariat, Jakarta.

to be the basis of rights that have been registered and recorded by the state based on the provisions of Article 19 of the UUPA.

Before the UUPA was officially enacted, Indonesia adhered to a dualism system of land law, namely for the Dutch people it would be subject to Dutch colonial law regulated in the Western Civil Law called European Land and Western Land, while for the natives/bumiputera it would be subject to customary land law.<sup>2</sup> In the land dualism system, there is the right *eigendom verponding* which is a land right derived from the rights to the west that have been granted to Indonesian citizens issued during the Dutch colonial period. In the sense of *eigendom* is a permanent right to land ownership, while *verponding* is a tax bill document for the land and buildings.<sup>3</sup> The enactment of the UUPA made Indonesia officially abandon the Dutch colonial heritage land regulations that were detrimental to the Indonesian people.<sup>4</sup> The UUPA explains that all land former western rights such as *eigendom* rights, *opstal* rights, *erfpacht* rights, and *gebruik* rights must be converted in accordance with the rules listed in the UUPA.

The conversion of western rights in the UUPA was given a deadline of 20 years from the enactment of the UUPA, which was on September 24, 1980. If *the eigendom verponding land* is not converted into Property Rights within 20 years, then the land has become state property based on Article 1 of Permendagri Number 3 of 1979 and Government Regulation Number 18 of 2021. However, Article 24 of Government Regulation Number 24 of 1997 explains that *eigendom verponding* land can be converted into Property Rights even though it has passed the period of 20 years by showing proof of physical control of the land for 20 years.<sup>5</sup> With the existence of Government Regulation Number 24 of 1997 and Government Regulation Number 18 of 2021 which have a higher hierarchy compared to Permendagri Number 3 of 1979 which is based on Hans Kelsen's Theory of General Theory of Law and the State, it is explained that norms have levels and layers in the hierarchy structure.

There is a level of Laws and Regulations, so *lex superior derogat legi inferiori* applies, which means that higher regulations override lower regulations. This shows that Government Regulation Number 18 of 2021, and Government Regulation Number 24 of 1997 complement the UUPA. However, there is a clash of regulations in Government Regulation Number 18 of 2021 and Government Regulation Number 24 of 1997 which causes uncertainty regarding the legal legality for *eigendom verponding* land that has not been converted after the given period of time whether the land belongs to the state or has

<sup>2</sup> Pedro Sutanto, *Legal Consequences for Holders of Former Eigendom Verponding Rights in Land Ownership Disputes*, Journal of Legal Dialectics, Vol. 4 No.2, 2022,

<https://doi.org/10.36859/jdh.v4i2.776>

<sup>3</sup> Muhammad Agung Purnama, Nia Kurniati, and Betty Rubiati, *Cancellation of Land Rights Certificates based on Evidence of Eigendom Verponding in Review from the Perspective of Land Law in Indonesia*, JIHHP: Journal of Law, Humanities and Politics, Vol. 5, No. 4, 2025, <https://doi.org/10.38035/jihhp.v5i4>

<sup>4</sup> Feby Tania, *Settlement of Land Disputes Used Recht van Eigendom Verponding Number: 295 with Land Right to Use in the City of Surakarta (Case Study of Supreme Court Decision Number: 3249 K/Pdt/2012)*, University of Muhammadiyah Surakarta, Solo, 2020, p. 2.

<sup>5</sup> Amelia Akef Abdat and Atik Winanti, *Settlement of Land Disputes Against Eigendom Verponding Controlled By Another Party*, National Conference For Law Studies: Legal Development Towards the Era of Digital Society, Vol. 2 No. 1, 2020.



a *verponding* letter. This shows that there is a discrepancy between one regulation and one so that there is no legal certainty about eigendom *verponding land*.

In *Das Sein*, there are still many Indonesians who have not converted *eigendom land* into property rights because they think that *the verponding* letter is a valid and strong right basis that can be used as evidence in ownership so that the community feels safe.<sup>6</sup> The statement shows that the implementation of the land registration system in Indonesia is not optimal so that there are still many people who control *eigendom verponding land* that have not converted it into property rights and resulting in disputes in the future and are very vulnerable to being controlled by other parties, as well as double certificates.

A transfer of rights is a person's property transfer to another in a way that is permitted by law. A transfer of rights according to the Civil Law system is any agreement that has the purpose of transferring rights, for example through a sale and purchase or exchange agreement, and the transfer or transfer of rights themselves. In the case of buying and selling immovable objects, such as land, houses, buildings, and so on, what is important is at the time of name switching.<sup>7</sup> In Article 26 of the UUPA, it is stated that land transfer can be carried out through sale and purchase, grants, and inheritance. An object that has been transferred, then the ownership has been transferred to someone else, so to ensure the ownership a person must register the land and have a certificate of ownership as valid and strong evidence in controlling the land. If a person does not own an object whose ownership rights are not clear, then it is very vulnerable to conflict. If it is associated with a person who owns eigendom *verponding land* that has not been converted into ownership, the person does not have valid and strong evidence in controlling the land and the transfer cannot be made, either through sale and purchase, grant, or inheritance because the conversion period in the UUPA has passed, namely on September 24, 1980.

Based on the above descriptions, the researcher is interested in studying more deeply and conducting research on the juridical review of the transfer of *eigendom verponding land* that has not been converted into property rights to find out the legal consequences of the transfer of *eigendom verponding land* that has not been converted into property rights and understand the legal protection of the ownership of *eigendom verponding land* in Indonesia that has not been converted into property.

## B. Research Methods

The research method used in this study is normative juridical research that lays down law as a norm building related to norms, rules, and legal principles derived from laws and regulations, agreements, and legal doctrines.<sup>8</sup> The problem approach in this study uses the *Statute Approach* and the *Conceptual Approach*. The researcher will see the consistency or harmony between a regulation and another or between the law and the regulation and

<sup>6</sup> Irvan Adi Putranto and Bambang Eko Turisno, *Legal Protection of Indonesian Verponding That Has Not Been Converted and Certified by Other Parties (Case Study of Decision No. 420/Pdt.G/2012 Pn.Jkt.Tim)*, Journal of Indonesian Legal Development, Vol. 3 No. 2, 2021, <https://doi.org/10.14710/jphi.v3i2.252-266>

<sup>7</sup> Subekti, *Principles of Civil Law*, Jakarta: Intermasa, 2001, p.72.

<sup>8</sup> Bambang Sunggono, *Legal Research Methodology*, Jakarta: Raja Grafindo Persada, 2016, p. 93.



examine legal views as a reference by looking at legal problems from various perspectives of legal concepts, doctrines, and principles related to this research. In this study, the data sources used are literature studies or secondary data obtained from books, laws and regulations, scientific articles, records, print media, and online media. The method of data collection in this study uses a literature study (*Library Research*) with qualitative analysis techniques, namely by studying literature materials and laws and regulations which are then outlined in descriptive form, and drawing conclusions by deductive method.

## C. Results and Discussion

### a. Legal consequences of the transfer of property property that has not been converted into property rights

Property rights based on Article 20 of the UUPA are the strongest, hereditary, and fullest rights that a person can have over land because all rights to land have a social function that can be transferred and transferred to others. Switching to land is very common because land is a stationary object that has economic or valuable value. The mechanism of transfer of land has been clearly regulated in the UUPA and Government Regulation No. 24 of 1997 stating that land transfer can be carried out through sale and purchase, inheritance, grants, exchanges, and other legal acts of transfer, there must be a deed made by the Land Deed Making Officer (PPAT) if you are going to register the land with the land office. This is important to note because land that is not registered or does not have a certificate automatically does not have the legality of rights. Land that does not have a certificate will affect the transfer of land carried out in the future because the certificate is a strong proof of ownership that the land belongs to a person and the transfer made can result in nullity and void because it cannot meet the administrative requirements and proof of ownership.

Since the enactment of the UUPA, the dualism system of land law in Indonesia has been abolished and requires the holders of land rights to former western land, namely eigendom rights, to convert no later than September 24, 1980. In Permendagri Number 3 of 1979, it is further explained about the legal consequences of western extinct land, including eigendom verponding that is not converted into property rights, will become state property. The existence of Permendagri Number 3 of 1979 as a technical implementation and more detailed rules related to the process of granting new land rights derived from the conversion of western rights, such as *eigendom verponding* into the land rights system based on the UUPA. *Eigendom Verponding* is no longer used as a basis for land rights in Indonesia because the colonial land system is inversely proportional to Indonesia's ideals, namely national unity.<sup>9</sup>

The arrangement of land used to be western rights including eigendom verponding for conversion has been strictly regulated. However, in reality, many people

<sup>9</sup> Mellyana Putri Ahlanissa and Zil Aidi, *Legal Consequences for Holders of Former Eigendom Verponding Rights in Land Ownership Disputes*, Al-Manhaj: Journal of Islamic Law and Social Institutions, Vol. 5, No. 2, 2023, p. 2084, <https://doi.org/10.37680/almanhaj.v5i2.3489>

have not converted because they think that *verponding*, which is a tax bill in the colonial period, is a strong basis for rights. Land has a large economic value for the community so it is very common to transfer rights, both through buying and selling, inheritance, and grants as described in the Civil Code. Therefore, in any transfer of land rights, it is very important to have an agreement that clearly regulates the rights and obligations of the parties involved in order to ensure legal certainty and avoid disputes in the future. Article 1320 of the Civil Code regulates the legal requirements of agreements which are divided into subjective and objective conditions. Subjective terms consist of the agreement and competence of the parties, so the agreement is the result of the agreement and conformity of the parties bound to the agreement, while the objective terms of the agreement include a certain thing and a cause. The valid conditions of this agreement must be met because if one of the conditions is not met, it can result in the cancellation of the agreement. If the subjective conditions are not met by the parties, then the agreement can be canceled, while if the objective conditions are not met, the legal consequences that occur are null and void agreements.<sup>10</sup> In principle, there are differences in the consequences of agreements that can be canceled, null and void, and *non-existent*, which are as follows:<sup>11</sup>

1. The resulting agreement can be canceled because the subjective conditions of the agreement are not met. However, the legal action taken remains valid and binding as long as no party has filed for the cancellation and there has been no court decision declaring the cancellation. Therefore, the legal consequences of the agreement have only become invalid and have lost binding force since the issuance of the annulment judgment by the courts.
2. An agreement that has the effect of being null and void because the objective conditions of the agreement regarding the object are not fulfilled either formally or materially. This is invalid and non-binding since the agreement was made. A court ruling is not required to declare an agreement void. However, in practice, court decisions that have legal force are still used to confirm the status of the agreement.
3. Non-existent refers to the condition that the essential conditions (Essential elements) in the agreement are not fulfilled so that the legal act carried out is considered to never exist. However, in the event of a dispute, a court decision is required that has similar implications to null and void status.

In the context of the transfer of rights to eigendom *verponding* land that has not been converted in accordance with the provisions of the UUPA, the actions of the rights holders who do not convert give rise to significant legal consequences that can be in the form of a change, disappearance, and the birth of, a legal state. In particular, the non-conversion of eigendom *verponding* land results in the loss of the ownership rights of the right holder so

<sup>10</sup> Subekti, *Covenant Law*, Jakarta: PT. Intermasa, 1996.

<sup>11</sup> Mulyoto, *Agreement (Techniques, Ways of Making, and Covenant Law that Must Be Mastered)*. Yogyakarta: Cakrawala Media, 2012.

that it no longer has the legal force of the land rights.<sup>12</sup> Article 95 paragraph (1) of Government Regulation Number 18 of 2021 explains that written evidence of former western rights, including verponding, is declared invalid and the land is directly controlled by the state. The concept of controlling land by the state based on the UUPA is to regulate and organize, designate, use, supply and maintenance of the earth, water, and space so that in the context of controlling in article 95 paragraph (1) of Government Regulation Number 18 of 2021, the state does not own, but controls to manage in the agrarian sector for the welfare of the people. It is clear that the state has duties and responsibilities in the management of land and land in Indonesian territory. The state is obliged to manage the land optimally in order to avoid abandoned land and be well maintained. Therefore, the state is obliged to conduct an accurate assessment in the arrangement of granting land rights to Indonesian citizens who submit applications. The government needs to evaluate whether the applicant's legal subject has the capability to manage and maintain the land sustainably from time to time, as well as maintain it for the sake of the greatest prosperity of the people.<sup>13</sup> In this case, the role of the state is to be the holder of the right to control, namely as an instrument to implement social justice and community welfare. In this context, the state is not the owner of land rights in Indonesia, but the party who is given the right to control and be responsible for regulating land use in accordance with national goals in every policy taken.<sup>14</sup>

The transfer of rights made to eigendom verponding land that has not been converted is included in the category of null and void agreements because the object of the agreement is state land based on Article 95 paragraph (1) of Government Regulation Number 18 of 2021 because in the agreement the objective conditions of the agreement that have been stipulated in Article 1320 of the Civil Code are not met.<sup>15</sup> The process of canceling the agreement for parties who want to cancel the agreement, can submit to the court to decide on the cancellation of the agreement made by the judge.<sup>16</sup> The judge is authorized to give a ruling on whether the agreement can be canceled for violating certain provisions by looking at the evidence or statements of the parties to the agreement. An agreement whose object is state land is one of the agreements that violates the objective terms of the agreement because state land cannot be transferred through sale and purchase, inheritance, and grants. The transfer of rights to state land can be carried out through the state by granting new rights to individuals or legal entities, such as Business Use Rights (HGU), Building Use Rights (HGB), and Use Rights. The transfer of the eigendom

<sup>12</sup> Salvataro Djibrin Edwiarka, *Legal Position of Eigendom Verponding Land Rights in the Indonesian Land System*, Sultan Agung Islamic University (Unissula) Semarang, 2024.

<sup>13</sup> Wenardi Wirawan, *Transfer of Land Assets of the Surabaya City Government with the Transfer of Land Assets of the Surabaya City Government Using a Deed of Surrender Based on a Court Decision Using a Deed of Surrender Based on the Decision of the Supreme Court of the Republic of Indonesia Number 1567 K/Pdt/2018*, Indonesia Notary, Vol. 2, No. 32, 2020.

<sup>14</sup> *Ibid.*

<sup>15</sup> Nathania Febriani and Endang Pandamadi, *Legal Consequences of Land Sale and Purchase Agreements with Unconverted Eigendom Rights (Study of the Supreme Court's Decision Number 756 K/PDT/2019)*, Adigama Law Journal, Vol. 3, No. 1, 2020.

<sup>16</sup> *Ibid.*



verponding land that has not been converted is considered null and void and the land will be directly controlled by the state. Eigendom verponding land that has not been converted cannot be used as a transitional object because the land has become state land that can only be applied for its rights. Therefore, the community is obliged to pay attention to the status of the land when they want to transfer rights because the status of the land that is transferred is very important to the validity of the agreement or transfer to avoid both material and immaterial losses.

Government Regulation Number 24 of 1997 regulates in detail the obligation of land registration. In article 9 of Government Regulation Number 24 of 1997, it is explained that the object of land registration includes land plots owned with property rights, business use rights (HGU), building use rights (HGB), use rights, land with management rights, waqf land, ownership rights over flats, dependent rights, and state land.<sup>17</sup> In this regard, state land refers to land that is legally under the full control of the state and is not a property right that is granted in full to a legal entity or individual. State land includes land that has not been given to other parties that is used for the public interest and the implementation of state functions. Thus, the holder of land rights has the obligation to carry out the land registration process to ensure legal certainty. The UUPA and its implementing regulations serve as a legal basis that provides protection and guarantee of legal certainty to land rights holders throughout Indonesia. The process of registering land rights is an important system in providing legal certainty for land ownership.<sup>18</sup>

## **b. Legal Protection of Ownership of Eigendom Verponding Land in Indonesia That Has Not Been Converted to Property Rights**

The UUPA was prepared as a form of the Indonesian government in providing legal certainty in the field of land in Indonesian territory. In article 19 paragraph (1) of the UUPA, it is explained that the government holds a land registration, where the results of the process will produce a certificate that is used as a sign of ownership rights and the state provides legal certainty guarantees, as well as obtaining legal protection for the holders of the land certificate. This also applies to land that was formerly a western right including *eigendom verponding*. The *eigendom verponding setting* for conversion has been strictly regulated. Permendagri Number 3 of 1979 and Presidential Decree Number 32 of 1979 regulate the provisions for the conversion of land used to western rights, including eigendom verponding and the deadline for conversion. Conversion is a change in the status of land rights in the dualistic land system to rights that have been regulated based on the UUPA.<sup>19</sup> If the rights holders do not carry out the conversion as regulated, then *the eigendom verponding* land will be controlled by the state. The right of control by the state can be given to government agencies by converting it into use rights used for the public interest.

<sup>17</sup>Indonesia, Government Regulation on Land Registration, Government Regulation No. 24 of 1997, LN No. 59 of 1997, TLN No. 3696, Ps. 9.

<sup>18</sup> Nathania Febriani and Endang Pandamdari, *Loc. Cit.*

<sup>19</sup> Huntal Donok Asi Lumban Tobing and Markoni, *Legal Protection of Property Holders After the Enactment of Law No.5 of 1960*, Indonesian Multidisciplinary Journal, Vol. 1, No. 1, 2022.

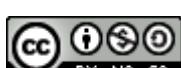
In reality, many people have not converted because they think that *verponding*, which is a tax bill in the colonial period, is a strong basis for rights and when the land is in dispute, the *verponding* holder does not have strong evidence so that they suffer material losses, and result in many cases of overlapping ownership. Based on Government Regulation Number 18 of 2021, the legal status of *verponding* in Indonesia cannot be used as proof of ownership, but *verponding* can be used as an initial guide in carrying out the land registration process. The government in overcoming land registration and land disputes through a negative publication system. The negative publication system adheres to the principle of *nemo plus juris*, which is that a person has a prohibition from giving something beyond what one has because the state cannot provide guarantees for the actual data.<sup>20</sup> In other words, a person who has registered his land can still receive a lawsuit from another person who claims to be the actual owner of the land rights, then the court will assess who is the holder of the rights of the land through proof. This aims to protect the party who gets something, namely the land in a good way.<sup>21</sup>

The legal protection provided by the state to the holders of *eigendom verponding* land rights is by issuing Government Regulation Number 24 of 1997 which allows the conversion of *eigendom verponding* land into Property Rights even though the period has passed by showing proof of physical possession of the land for at least 20 years. If we look at the principle of *lex superior derogate legi inferiori*, then Government Regulation Number 24 of 1997 overrides Permendagri Number 3 of 1979 because the Government Regulation is higher than the Ministerial Regulation. However, in 2021 the Government of Indonesia issued Government Regulation Number 18 of 2021. In article 95 paragraph (1) of Government Regulation Number 18 of 2021, it is stated that written evidence of land excused by western rights, including *verponding*, is declared invalid and the status of the land is directly controlled by the state, while in article 24 paragraph (1) of Government Regulation Number 24 of 1997 it is explained that the registration of land used for western rights must be proven by written documents and the statement is justified by the adjudication committee or the Head of the Land Office.

Government Regulation Number 24 of 1997 recognizes that written documents of former western rights, including *verponding*, are evidence of written ownership and if the rights are transferred, then the evidence of the transfer of rights decreases to the right holder at the time of the registration of rights. The inconsistency between Government Regulation Number 24 of 1997 and Government Regulation Number 18 of 2021 has consequences, namely legal uncertainty for *holders of eigendom verponding* land rights who have not converted into property rights. If there are regulations that are contrary and have the same hierarchy, then the principle of *lex posteriori derogat legi priori* can be used which means that the new law or regulation overrides the old law or regulation that regulates the same material. A problem that has been regulated in the regulation is then

<sup>20</sup> Rocky Samuel Palantung, Diana R. Pangemanan, and Jeany Anita Kermite, *Procedures for Issuing Land Title Certificates through Sale and Purchase According to Government Regulation Number 24 of 1997*, Lex Privatum, Vol. IX, No. 6, 2021.

<sup>21</sup> *Ibid.*



reregulated with a new regulation even though the old regulation is not revoked or eliminated by itself, the old regulation does not apply. By looking at this principle, after Government Regulation Number 18 of 2021 applies, legal problems related to the legal position of the holder of the right to *eigendom land* that has not been converted into property rights by making the verponding letter as written evidence is invalid and the land is directly controlled by the state.

#### D. Conclusions and Recommendations

The UUPA stipulates property rights as the most powerful, comprehensive, and hereditary form of land ownership. The mechanism of land transfer through sale and purchase, grants, and inheritance requires a deed made by the Land Deed Making Officer (PPAT) and land registration in accordance with Government Regulation Number 24 of 1997 to ensure legal certainty. The UUPA requires the conversion of former western rights, including eigendom land before September 24, 1980. If this is not done, then based on Article 95 paragraph (1) of Government Regulation Number 18 of 2021, the land will become the property of the state. The transfer of eigendom verponding land that has not been converted into property rights violates the objective requirements in Article 1320 of the Civil Code so that the transfer is null and void because the object is state land that cannot be transferred to the law. Therefore, the community must immediately register and convert land rights eigendom verponding and verify the status of the land before the sale and purchase transactions, grants, and inheritances to avoid disputes in the future that cause the transfer to be null and void.

The conversion of former western rights, including eigendom verponding, is expressly regulated by the UUPA, Permendagri Number 3 of 1979, Government Regulation Number 24 of 1997, and Government Regulation Number 18 of 2021. Government Regulation Number 24 of 1997 allows people who have not converted into property rights after September 24, 1980 with proof of physical possession for 20 years and information justified by the adjudication committee. However, Permendagri Number 3 of 1979 and Government Regulation Number 18 of 2021 explain that eigendom verponding land that has not been converted into property rights will be directly controlled by the state and documents of former western rights cannot be used as evidence. This creates a mismatch between one regulation and another resulting in legal uncertainty for a person who owns the eigendom verponding land. Therefore, the government must harmonize and reform regulations that bridge Government Regulation Number 24 of 1997 and Government Regulation Number 18 of 2021 to overcome regulatory inalignments.

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