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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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RECONSTRUCTION OF LAND USED RIGHT EIGENDOM VALUES BASED ON JUSTICE AND LEGAL CERTAINTY

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ABSTRACT

Eigendom rights is a right over the land west of Indonesia, including the rights of the fallen or been converted, by UUPA. UUPA determines that a conversion limit is per 24 September 1980. This means that the owner of the rights given 20 years to take care of the conversion. If the land is not converted, land rights eigendom. back into the land controlled by the state. Many people tried to obtain recognition of the former land eigendom rights.

Based on the formulation of the problem and research objectives, that the problem of this research included one land law policy in formulating the right to land former eigendom rights. Normative juridical approach used to determine the extent of legal principle, synchronization vertical / horizontal, and systemic law is applied, which is based on secondary data, namely primary legal materials, secondary, and tertiary.

The results of the research that the conception of legal land ownership in Indonesia includes a system of feudal land law, land law west by Burgerlijk Wetboek (KUHPdt), customary land laws. Land administration system in Indonesia consists of land administration in the reign of the Netherlands, in the aftermath of independence before the entry into force of the UUPA, and according to the UUPA. Legal certainty of land rights through the conversion of the former eigendom apply for rights under the UUPA. Reconstruction of the right to land the former right eigendom based on values of justice and the rule of law, namely, Article 24 of Government Regulation No. 24 of 1997 reconstructed by adding the provisions of paragraph (3), which reads: That the provisions referred to in paragraph (2) give the right priority to the filing acquire rights on the ground as the provisions of the Basic Agrarian Law. Thereby granting the priority right to apply for rights to land former eigendom rights to public tenants or people who control the land which has been controlled by the state, and because PT. Agra Citra Kharisma has provided compensation to the rights holders of priority, then the PT. Agra Citra Kharisma acquire a priority right to apply for rights eigendom vervording No. 33.

That the need of holding a confirmation of the rules governing the rights eigendom lands is to avoid confusion which would certainly harm to all parties, especially the rights-holders on the ground eigendom.

Keyword : Land, Justice, Legal Certainly

A. Background

Soil is a very important factor in people's lives, especially for the Indonesian people who depend agrarian life of the soil. In addition, the ground has a very important role in the life of the nation of Indonesia or in the implementation of national development which was held as a continuing effort to realize a just and prosperous society based on Pancasila and the Constitution of 1945.

The Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution, which recognizes the right of private property and the right of association. In connection with these two legal certainty about the rights that you have to be very important, but so is the legal certainty of existing rights in the land sector.

The Constitution of 1945 is the juridical basis, the constitutional basis and foundation of idealism in developing the national economy. It is mandated by the provisions of Article 33 of the Constitution 1945 Constitution in the form of the fourth amendment constitutional changes 1945 has brought a fairly fundamental change in the national economic system. In the concept of socio-economic state, the state is obliged to realize prosperity for all people, both social and economic welfare. State aims for the welfare of his people and demanded to provide the best service and the broadest to the people.

In the fourth paragraph of the Preamble of the 1945 Constitution explicitly stated purpose of the state, namely: Protecting the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare, educating the nation and participate in the establishment of world order based on freedom, lasting peace and social justice. Therefore, the provisions of the law of national land requires that the entire territory of Indonesia is the unity of the homeland and the entire people of Indonesia are united as a nation of Indonesia and all over the earth, water and space, including the natural resources contained within the territory of the Republic of Indonesia, as a gift of God Almighty is the earth, water and air space of Indonesia and is the national wealth.

In order to achieve the welfare of the people as the duties and responsibilities delegated to the state in the administration of public welfare (*bestuurzorg*), including in this case the area of land which include among others the setting (the regulations), exercising the authority up until the enforcement of land laws. Therefore, for further regulation of 1945 concerning land law in Indonesia, on September 24, 1960 was enacted Law No. 5 of 1960 on the Basic Regulation of Agrarian.

Further regulation of the land contained in Article 2 (1) Law No. 5 of 1960 stating: earth, water, and space including the natural resources in it at the highest level as an organization controlled by the state power of the people. Under this provision, the state as the ruling body of the earth, water, and space and natural riches contained therein is authorized to regulate in order to achieve as much as possible for the prosperity of the people of Indonesia.

TAP MPR No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management confirms the urgency of land reform, which includes a continuous process relating to reorganize control, research, usage, and utilization of agrarian resources to achieve certainty and the protection of law and justice and prosperity for all Indonesian people.

Eigendom rights is a right over the land west of Indonesia, including the rights fall or converted via the Law No. 5 of 1960. Law No. 5 of 1960 determines that a conversion limit is per 24 September 1980. This means that the owner of the rights given 20 years to take care of the conversion. If the land is not converted, land rights eigendom. back into the land controlled by the state.

Eigendom rights is the right to land the Dutch East Indies creation. Article 1 (2) Law No. 5 of 1960 affirms the principle of the nationalist, right eigendom can not be converted into property or a right to build, but the right eigendom can be converted into the right to use the extent to comply with the provisions of Article 41 paragraph (1) Law No. 5 of 1960. To the foreign representatives, rights of use may be granted for an indefinite time and as long as such representation duties as a residence/Foreign Representative Office. Conditions conversion reaffirmed Presidential Decree No. 32 of 1979 on the Principles of Policy in Order Granting of New Land Origin Conversion Rights of the West, in order to solve the problem because of expiry of the right to the homeland of the conversion rights of the west at no later than September 24 1980.

Land ownership disputes cropped up eigendom conversion rights, especially those that had been abandoned or neglected. Many people trying to get recognition for the land or seize former eigendom rights, among other tenants. Here will be used the two terms: (1) pure tenants or those who earnestly work, control, and manage the land, and (2) tilling land speculators speculators or pretend to be tenants.

The tenants usually take care of the right to work on the local village head in order to perform tax payments. However, the local headman sometimes do not understand

the status of work on the ground. Likewise map property boundaries eigendom. Headman or local district often do not know for sure. Moreover, the rapid changes in urban development so that the position or location of the map eigendom that there are no longer relevant. Often it happens filing land rights are overlapping, either do tenants or owner / holder of the former right of land rights. eigendom. From here arises a land dispute. This land dispute could be purely occur because of the seizure of land ownership between parties who feel they have aqua land (the disputed land).

B. Reconstruction Law on Land Ownership Rights Eigendom Used Against Non Converted Land Registration

Prior to 1960, in Indonesia applicable legal dualism land. On one side of the applicable laws of the Dutch colonial land rights, land that is subject to and governed western civil law is often called the land of western or European soil eigendom such as land rights, rights Opstal, erfpacht rights and others. Land ownership by indigenous peoples' rights or Earth son who is subject to the customary law that has no written proof, that belongs to the local population is often called the land of indigenous customary rights such as land, land owned by indigenous, yasan land, soil and other gogolan.

September 24, 1960, which is a historic day because on that date have been enacted and declared the enactment of Law No. 5 of 1960 for the whole of Indonesia. With the enactment of the Law No. 5 of 1960 fundamental changes in agrarian law in Indonesia, especially in the land sector. So ended the legal dualism namely the unification of land and the implementation of any entity in the field of land law in Indonesia. This provision as well revoke agrarian laws that apply to the colonial era, among others, Agrarische Wet (Staatblaad 1870 No. 55), Agrarische Besluit and KUHPdt especially Book II of material, one of which is silent on the matter of land rights.

With the national land law is expected to create legal certainty in Indonesia. For that purpose by the government followed up with the provision of the law written in the form of other regulations in the field of national land laws that favor legal certainty and further through the existing regulations implemented in the form of law enforcement effective implementation of land registration.

According to Article 9 of Government Regulation No. 24 of 1997, which could be the object of land registration are:

1. The areas of land that belongs to property, the right to cultivate, building rights and

- rights of use;
- 2. Soil management rights;
- 3. Soil endowments;
- 4. The ownership of the apartment units;
- 5. The right of dependents;
- 6. Soil countries;

In fact it turns out in the community there is still a right eigendom, right Opstal, right erfpacht as well as the rights of indigenous peoples or Earth son who is subject to the customary law that has no written proof, that belongs to the local population is often called the land of indigenous eg soil customary rights, land belonging to indigenous , yasan land, soil and other gogolan.

Under the provisions of Article 9 of the above, it is clear from the lands west of the rights can not be enlisted. If these lands can not be registered specify will be detrimental to the owner of the land, because they would lose their rights. Therefore we need a way for the land to be registered, then the way to do is to do the conversion to soil originating from the western right. With the conversion of land west of the rights of the people expected nothing harmed his rights because after the conversion rights will be registered.

Converting the former rights to land is one of the instruments to meet the principle of unification of law through the Law No. 5 of 1960. Regulation of the Minister of Land and Agrarian No. 2 of 1962 to regulate provisions concerning conversion and registration confirmation former Indonesian rights to land normative. The conversion regulation is the implementation of the transitional provisions of the Law No. 5 of 1960.

After the entry into force of the Law No. 5 of 1960, then all rights of the west that has not been canceled in accordance with the provisions mentioned above, and still valid does not necessarily remove and is still recognized, but to be able to be the title for the land in accordance with a system administered by the Law No. 5 of 1960, must first convert in accordance with the provisions of conversions and rules of procedure. In the implementation of the conversion there are several principles, namely:

1. Principle of Nationalities

In Article 9 Law No. 5 of 1960, clearly states that only citizens of Indonesia who may have ties completely with the earth, water and space. Legal entities Indonesia also have rights over the land, but to have owned only legal entities designated by the

Government Regulation No. 38 of 1963 on Designation of Legal Entities that may have a right-Owned Land, among others: Bank which was established by the state-bank, Society-agricultural cooperative societies established under Law No. 79 of 1963, religious bodies appointed by the Ministry of Agriculture/agricultural after hearing the opinion of the Minister of Religious and social bodies appointed by the Minister of Agriculture or hear the Minister of Social Affairs.

2. Recognition of the Rights of previous land

Conditions conversion in Indonesia take a stand on human rights issues on the ground before the entry into force of the Law No. 5 of 1960, namely the rights ever legally subject to both western and traditional law, all of which will go through the conversion of the institution into the system from the Law No. 5 of 1960.

3. Adjustments to the Conversion provisions

In accordance with Article 2 of the Terms of Conversion and the Decree of the Ministry of Agricultural and circular-circular published, the rights over the land once subservient to western legal and customary law must be adapted to the rights governed by Law No. 5 of 1960

4. Status Quo Land Rights History

With the enactment of the Law No. 5 of 1960, it is not possible anymore issued new rights to the lands that will be subject to the laws of the west. After being selected in accordance with the provisions of Law No. 5 of 1960 conversion and implementation of the Regulation on the rights to land former western rights can be:

- a. State land because of a provision of the principle of nationality or because it is not converted into the right according to the Law No. 5 of 1960.
- b. Converted into a right enshrined by Law No. 5 of 1960 such as property rights, the right to cultivate, building rights and rights of use.

As described in the previous chapter the kinds of rights over land rights is a western:

1. Right eigendom (recht van eigendom)

In Article 570 KUHPdt, states that rights eigendom is the right to enjoy a material freely, and to act independently of the material with full sovereignty, insofar as not contrary to law, your invitation to know the general rules established by a rule which reserves the right to assign, and not interfere with the rights of others, all of which it does not diminish over kebenda rights will repeal it in the public interest based on the

provisions of law and the payment of compensation.

2. Right erfpacht (recht van erfpacht)

Erfacht rights, pursuant to Article 720 KUHPdt is a material right to enjoy fully the usefulness of a real property owned by someone else, with the liabilities will be paid an annual tribute to the owner as a recognition of the ownership, in cash or in other incomes

3. Right Opstal (recht van Opstal)

Opstal rights is a right material (zakelijk recht) for having the houses, buildings and plants on land owned by others. Opstal rights under Article 711 is the right of passengers KUHPdt coral material that is a right to have the buildings, buildings and plantings on the grounds of others. For rights holders Opstal, has the obligation, among others:

- a. Paying canon (money that must be paid for the rights holder Opstal annually to the state);
- b. Opstal preserve land as well as possible;
- c. Opstaller can overload his rights to mortgages;
- d. Opstaller can overload the soil with the loading yard during Opstal rights it runs;
- e. Opstaller can alienate Opstal rights to others.

4. Right Van Gebruik

According to Article 756 KUHPdt, recht van gebruik is a right material, by which a person may attract all the result of something material owned by others, so as if he himself the owner of the material, and the obligation to maintain it..

Special conversion of land rights derived from the land rights of the west, there are 3 (three) were converted into the right to Law No. 5 of 1960, namely: the right eigendom, erfpacht rights, rights Opstal. If observed what a conversion is over, that there is a transition or change of land rights specific to the land rights of others, the change old rights which legally is right before their Law No. 5 of 1960 become new rights over land referred to in the formulation of the Law No. 5 of 1960, particularly as stipulated in Article 16 paragraph (1) include property rights, the right to cultivate, right to build, and use rights.

The following will diuraikan legal basis conversion over land rights derived from the western land rights, as outlined in the conversion provisions Law No. 5 of 1960 such as:

Article I:

1. Right eigendom on the ground that the entry into force of this law since it became the property, unless who have it do not qualify as mentioned in Article 21.
2. Right eigendom belongs to foreign governments that are used for the purposes of the residence of the Chief Representative and the embassy building, since the entry into force of this law are entitled to use the Article 41 paragraph (1), which will take place during the land used for the purposes mentioned above.
3. The right eigendom belonged to a stranger, a citizen who in addition to their Indonesian citizenship have foreign citizenship and legal entities, which are not designated by the government as referred to in Article 21 paragraph (2) since the entry into force of this law into rights-of-use the building in Article 35 paragraph (1) with a term of 20 years.
4. If eigendom rights referred to in paragraph (1) of this article or burdened with the right Opstal erfpacht rights, the privileges and rights Opstal erfpacht the entry into force of this law into building rights mentioned in Article 35 paragraph (1), which encumber property rights are concerned for the remaining time or the right erfacht Opstal rights mentioned above, but for ever 20 years.
5. If eigendom rights referred to in paragraph (3) of this section burdened with rights or rights erfpacht Opstal, the relationship between those who have eigendom rights and the rights holder or rights erfpacht Opstal further resolved in accordance with the guidelines established by the Agrarian Ministry.
6. Rights hypotheek, servituut, vruchtgebruik and other rights that encumber the rights eigendom still weigh on property rights and the right to build in paragraph (1) and paragraph (3) of this section, being these rights into a right under this law.

Article III:

1. Right erfpacht to large plantation companies, which exist on the entry into force of this law, since it becomes the right to cultivate it in Article 28 paragraph (1) which will take place during the remainder of the erfpacht right time, but forever 20 Years
2. Right erfpacht for small farms that of the entry into force of this law, since that time to remove and then resolved according to the provisions held by the Agrarian Ministry.

Article V: Rights erfpacht Opstal and the right to housing, which is on the entry into force of this law, since that time become the building rights in Article 35 paragraph (1), which lasted for the rest of time Opstal and erfpacht the right, but forever ever.

Article VIII:

1. Against the right-of-use of the building in the first paragraph of Article (3) and (4), Article II, paragraph (2) and Article V apply the provisions of Article 36 paragraph (2).
2. Against the business-use rights Article II paragraph (2), Article III of paragraph (1) and (2), and Article IV paragraph (1) shall apply the provisions of Article 30 paragraph (2).

Based on the above it can be concluded concerning the classification of conversion of land rights derived from the right to the west as follows:

1. The rights were converted into property rights include: the right to land eigendom (Article I paragraph (1)).
2. The rights were converted into the right to cultivate include:
 - a. Erfpacht rights for the company's large gardens (Article III paragraph (1)).
 - b. Holders Concessie and leases to companies large gardens (Article IV paragraph (1))
3. The rights were converted into building rights include:
 - a. Eigendom rights belong to the person / foreign legal entities (Article I paragraph (3)).
 - b. Opstal rights or the right erfpacht burdensome eigendom rights (Article I paragraph (4)).
 - c. Erfpacht Opstal rights and the right to housing (Article V).
4. The rights were converted into the right to use include: eigendom rights belonging to foreign governments that are used for the purposes of the residence of the chief representative and embassies (Article I (2)).
5. The rights after converted to remove include: the right erfpacht for small farms (Article III (2)).

Law No. 5 of 1960 Article 19 instructs that to ensure legal certainty, the government must implement a land registration throughout the territory of Indonesia, this is done by considering the state of the state and society as well as traffic purposes socioeconomic community. Formal legal registration of land is the basis for status / ownership of land to individuals or legal entities as holders of legitimate rights.

In connection with the conversion, particularly from western rights as stipulated in the Law No. 5 of 1960, land registration is the basis for the implementation of conversions, since no transfer of rights automatically, but must be applied for and registered with the Chief of the Land Registration Office.

If seen conversion provisions, it is clear that the principle of rights to land along the right holder at the time of conversion applicable provisions are Indonesian citizens single it right it will be converted into the property according to the Law No. 5 of 1960. A

consequence of the conversion conditions (Law No. 5 of 1960) requires all proof of ownership before the entry into force of the Law No. 5 of 1960 should be changed the status of land rights under the terms of the conversion set forth in the Law No. 5 of 1960. How to change the status of the land rights is by registering the land to be given proof of the new ownership, the land title certificates, on condition that it is done before a set time period ie until 24 September 1980, when an application or registration of land rights was not done then the land rights will be directly controlled by the state.

How to do a land registry to change the status of land rights can be divided into two (2) ways:

1. If the applicant had evidence of land rights recognized under Article 23 and 24 of Government Regulation No. 24 of 1997, it can be reached directly, namely the conversion process by filing an application and submit proof of ownership rights to the land to the Land Office.
2. If the applicant does not have or lose the proof of ownership rights to land, then carra taken is through conversion confirmation or through the recognition of rights.

There are three (3) written evidence that can be submitted by the owner of the land, namely:

1. Proof of full written.P
2. Proof written mostly no longer exist.
3. Proof written all no more.

Under conditions of full written proof, then no longer require any additional evidence, if evidence is partly it must be reinforced by the testimony or statement concerned. Meanwhile, if the written proof of all nothing else it must be replaced witness testimony or statements concerned.

Affirmation of the conversion is done if there is a written statement of the applicant's land ownership and corroborated by witness testimony about the ownership of the land, but also on the amount of physical possession of the land by the applicant.

Recognition of rights quite dependent on the duration of physical mastery, ie for 20 years as mentioned in Article 24 paragraph (2) of Government Regulation No. 24 of 1997. Terms of the recognition of these rights can be detailed as follows:

1. That the applicant had taken control of the land for 20 years or more in a row or from other parties who have mastered
2. Mastery of it has been done in good faith.

3. Land ownership was never inviolable and recognized and justified by the public at the village or place objects such rights.
4. That the land is now not in dispute.
5. That if the statement contains things that do not correspond to reality, the applicant may be prosecuted in criminal or civil court upfront for giving false information.

Assertions conversion, recognition of rights and entitlements provided for in Article 56 Regulation of the State Minister of Agrarian / Head of National Land Agency Number 3, 1997, is as follows:

1. Based on the minutes of physical data validation juridical data referred to in Article 64 paragraph (1) carried out the following activities:
 - b. The right to a piece of land which evidence written complete as referred to in Article 60 paragraph (2) and that the evidence written not lengkap but no witness statements or statements concerned within the meaning of Article 60 paragraph (3) by the Committee Chairman of the Adjudication affirmed its conversion rights on behalf of rights holders belonging to the latter.
 - c. The right to land ownership evidence does not exist but have demonstrated mastery of physical reality for 20 years as stipulated in Article 61 by the Chief Adjudication recognized as property rights.
2. Untuk For the recognition of the rights referred to in paragraph (1) letter b, is not required the issuance of a decree vesting

While the implementation of the conversion can be done in two (2) conditions and is equipped with the following documents:

- A. For direct conversion, the documents required are:
 - a. A letter of request to the Head of the Land Office.
 - b. Proof of ownership / control of land; such evidence in the form of a letter, girik / letter c, sparrows, verponding Indonesia (if owned). Such evidence should also be done with other evidence:
 - 1) Letters of original purchase, exchange, gift or inheritance deed.
 - 2) A statement of the applicant on the land ownership, the land was not in dispute.
 - c. Photocopy of valid ID card applicants.
 - d. Family card.
 - e. Certificate of proof of payment of SPPT (Property Tax) last
 - f. Letter of the Republic of Indonesia citizen and rename or waiver (if diaspora).

- g. Letter gauge / picture of the situation (if already there and can still be used)..
- B. For the conversion affirmation / recognition of rights, the documents needed are:
 - a. A letter of request to the Head Office of the amplifier proof of ownership of land tenure;
 - 1) A statement and petition.
 - 2) Description of the village and a description of at least two (2) witnesses or more reliable and has been the local population and has no family relationship and kinship with the applicant.
 - b. Photocopy of ID card applicants
 - c. Family card.
 - d. Proof of payment of the last UN.
 - e. The power of attorney (if mastered).
 - f. Letter of citizenship of the Republic of Indonesia (SKBRI) and a statement rename (if diaspora).
 - g. Letter gauge / picture of the situation (if already there and can still be used).

Type of land rights can be made to:

1. Soil-free state; has never been attached to something right on it.
2. Land of the country of origin is still attached to something right and the period is not yet over, but the requested extension.
3. Soil their home country once attached to something right and the time period has expired to request updated information, including the rights of western lands, as defined in the Decree of the President of the Republic of Indonesia Number 32 of 1979 on Principles of Policy in the Context of the New Land Granting of Origin Conversion Rights west, Article 1 (1): the right to cultivate land, building rights and rights to use the right conversion western origin, the time period will end no later than on 24 September 1980 as mentioned in the Law No. 5 of 1960 upon expiry date, concerned into land controlled directly by the state or lands that have been registered according to the Law No. 5 of 1960

Further associated with the registration certificate granting the right to obtain evidence of the necessary rights of the following documents:

1. A letter of application for registration.
2. The cover letter.
3. Certificate of entitlement for registration purposes.

4. Proof of income or repayment of money BPHTB if required.
5. The identity of the applicant.

Property rights can be given to; Indonesian citizens, legal entities established by the government, such as state-owned banks, Religious Bodies and social agency appointed by the government.

This right is hereditary, strongest, and most complete to possess people on the ground, keeping in mind the social function of land, the period of validity of proprietary rights dalah for an unspecified time. Against this right can also be removed, if; (1) Due to revocation of rights, (2) Due to surrender voluntarily by their owners, (3) Due to neglect, (4) Switching to a stranger, (5) The land is destroyed..

While ittu against the rights of exploitation, right to build, and use rights can be described as follows:

1. Indonesian citizen, a legal entity established under Indonesian law and domiciled in Indonesia can obtain the right to cultivate. Right to cultivate is the right to cultivate land that is directly controlled by the state to companies in agriculture, fisheries or farms. The validity period of the rights lease is 5 years and can be extended a maximum of 25 years, and when that time has expired, the rights holders may be granted renewal of rights to cultivate in the same soil.
2. The right to use the building was given to an Indonesian citizen, a legal entity established by law and domiciled in Indonesia. Building rights is the right to establish and have buildings on land that is not his own. The period is 30 years and renewable for 20 years, after ending the former holder of the rights to be granted the renewal rights to build on the same soil.
3. The right of use can be granted to Indonesian citizens, foreigners domiciled in Indonesia, government agencies, statutory bodies established under Indonesian law, foreign legal entities which have representatives in Indonesia. Use rights is the right to use and / or collect the produce of the land that is directly controlled by the state or owned by someone else, the validity period is 25 years and was extended for 20 years or for a period that is not determined by the requirement for land used for certain purposes, after a period of renewal rights and an end, rights holders may be granted renewal of land use rights over the same.
4. Rights granted to management; government agencies including local governments, state-owned enterprises, region-owned enterprises, PT Persero, authoritative agency, other

government statutory body appointed by the government. The period is not specified but depend for land used for certain purposes.

5. The ownership of the apartment units; This property is given over the ownership of flats. Flats are story buildings built in an environment that is divided into sections structured functionally in a horizontal or vertical direction and the units that each can be owned and built separately, especially for a residential or not residential, equipped with parts together and ground together.

Based on the above conversion is the regulation of land rights that existed prior to the enactment of the Law No. 5 of 1960 for entry into the system of Law No. 5 of 1960, or in other words the transition, the change (omzetting) from a rights hello to some other rights. As for the legal basis for the conversion of land rights is the second part of the provisions Law No. 5 of 1960 conversion consists of 9 (nine) articles regulating the conversion of three types, namely; conversion of land rights derived from the rights of Indonesia, the conversion of the former self-government rights to land and conversion of land rights derived from the rights of the west. Especially with regard to land rights derived from western rights such as the right eigendom, right Opstal, erfpacht rights, with the stipulation conversion will change or transition. In the conversion provisions, referred to in the second part of the Law No. 5 of 1960 states that all rights existing prior to the enactment of Law No. 5 of 1960 switch into property rights, rights of exploitation, right to build, and use rights. With the implementation of the provisions of this conversion means recognition and affirmation of the rights of the old, as well as the intention of simplifying the law and attempts to create legal certainty.

Based on Presidential Decree No. 32 of 1979, the provisions of the conversion for the rights of the west has been expired since 24 September 1980, means it has been granted a period of relatively old to 20 years since the enactment of the provisions of the conversion as set forth in the Law No. 5 of 1960, which is intended to end the remnants west over land rights in Indonesia with whatever are not in accordance with NRI Pancasila and the Constitution of 1945. thus any right to the land west can only be converted according to a predetermined time period, when passing that period, the rights to the land is under the rule country. Further evidence of land rights that arise after that period, the rights holders are required to submit an application directly to the Head of the Land Office, by completing the requirements as stipulated in Government Regulation No. 24 of 1997. For the next will be in the process as the holder of legal title to land , Enforcement of the provisions of the conversion of the rights over the land from the west right includes two conditions namely; (1)

rights that can be converted directly, (2) recognition of the right / confirmation conversion, so any rights over the land needs to be done legalization of ownership of either physical or juridical, through the mechanism prescribed in the legislation applicable to the creation of security of rights and legal certainty.

In the framework of the rule of law with justice against former land tenure rights eigendom, the regulations on evidentiary old rights as stipulated in Article 24 of Government Regulation No. 24 of 1997 reconstructed by adding the provisions of paragraph (3), that reads:

- (1) For the purposes of registration of rights, land rights derived from the conversion of old rights evidenced by the evidence of the existence of those rights in the form of written evidence, witness statements or statements concerned that the levels of accuracy by the Committee Adjudication in land registration systematically or by the Head of the land Office in sporadic land registration, are considered sufficient to register rights, rights holders and the rights of others burdens.
- (2) If not or are no longer available in full tools of evidence referred to in paragraph (1), bookkeeping rights can be done based on the fact physical custody of the plot in question for 20 (twenty) years or more in a row by the registrant and its predecessors, provided that:
 - a. Mastery is done in good faith and openly by the person concerned as entitled to the land, and is reinforced by the testimony of people who can be trusted;
 - b. The mastery of both before and during the announcement as referred to in Article 26 is not disputed by customary law communities or villages / wards concerned, or the other party.
- (3) That the provisions referred to in paragraph (2) give the right priority to the filing obtain land rights as stipulated in the Basic Agrarian Law

The existence of ex- eigendom vervording No. 33 which expired on September 24, 1981, can be known by a letter from the Land Office Medan No. 500.52 dated January 14, 2004 regarding the status of soils located in the Village Gang Buntu, District East Medan Medan, and last recorded on behalf of the Gouvernement Van Net Indie as the rights holder.

Whereas the former land rights eigendom vervording No. 33 that have ended their rights, under Article 1 of Law No. 86 of 1958 and also the conversion provisions in the Law No. 5 of 1960, subject to nationalization, and handed over to the mastery of PT. Kereta Api Indonesia (KAI) d.h PNKA / PJKA / PERUMKA which according to its purpose given the

right to cultivate.

Pursuant to Government Regulation No. 10 of 1961, the deadline for the right to cultivate is 24 September 1980, and the holder is given the opportunity to apply for new rights, yet if until the deadline of 24 September 1980 was not filed new rights, then in accordance with Presidential Decree No. 32 In 1979 the land into a land directly controlled by the state.

Over land rights Files eigendom rights vervording No. 33, was PT. Kereta Api Indonesia has never filed a new permohonanhak after expiration of the lease of the right eigendom vervording No. 33, so that the land becomes land directly controlled by the state.

After the land was not applied for new rights by PT. Kereta Api Indonesia and turned into soil which are directly controlled by the state, then raised some documents dating right by PT. Kereta Api Indonesia to the land, and provide an opportunity for local governments / Medan City government to acquire the land rights, and management can be outsourced to a third party, and the documents published after 1982, and until now the former land rights eigendom has not published anything any rights.

Therefore, since the expiration of the time limit the right to cultivate 24 September 1980, it was PT. Kereta Api Indonesia has never applied for new rights to the former land rights eigendom, so that the land becomes land directly controlled by the state, while the Medan City Government by chance as the local government to obtain management rights, is also yet to get the land rights. Therefore after eigendom rights bekar land into land directly controlled by the state so that PT. Kereta Api Indonesia can not perform any transactions on real estate related, because their rights to the land has been depleted since 24 September 1980, as well as the Government of Medan City that never got above land rights, also has not been able to do anything related to land the.

If the PT. Kereta Api Indonesia to apply for rights, the right to file a lawsuit has expired, for allowing former land eigendom rights for 30 years ruled by hereditary tenants community. This is in accordance with the provisions of Article 1967 KUHPdt, which states: Any lawsuits, both stock and they are individual, remove as expired by lapse of thirty years, while anyone who showed that there expired it does not have to demonstrate a right base, moreover it can not be promoted parry against something that is based on bad faith.

Meanwhile PT. Arga Citra Kharisma which has provided compensation to the community tenants or people who have mastered the land which has been controlled by the state, where the public tenants or people who have mastered the land has the priority right to

apply for rights to the land, and because PT. Arga Citra Kharisma has provided compensation to the community or society that controls the tiller of the soil who had been directly controlled by the state, and because the compensation is given to tenants, occupants or people who have mastered the land directly controlled by the state, then the action of PT. Arga Kharisma Citra is valid and legally binding, and PT. Arga Citra Kharisma is the most entitled to apply for the right to land the former eigendom rights, because it has a priority right.

C. Conclusion

The conception of legal land ownership in Indonesia includes a system of feudal land law, land law west by Burgerlijk Wetboek (KUHPdt), customary land laws. The system consists of the administration of land in land administration in the reign of the Netherlands, the period after independence before the entry into force of the Law No. 5 of 1960, and land administration by Law No. 5 of 1960. Reconstruction of land rights eigendom former rights-based values of justice and the rule of law, namely, Article 24 of Government Regulation No. 24 of 1997 reconstructed by adding the provisions of paragraph (3), which reads: That the provisions referred to in paragraph (2) give the right priority to the filing obtain land rights as stipulated in the Basic Agrarian Law. Thereby granting priority rights to apply for the right to land former eigendom rights to the community of cultivators or who controls the land which has been controlled by the state, and because PT. Agra Citra Kharisma has provided compensation to the rights holders of priority, then the PT. Agra Citra Kharisma acquire a priority right to apply for rights eigendom vervording No. 33.

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