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Law of agrarian conflict and resolution effort: A claim dispute *of Eigendom verponding* Land

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Abstract
This Agrarian law study analyzes the dispute of 'Eigendom Verponding' land taken over by the State. Agrarian Legal is principally different in every region and State. Agrarian Law describes the land rights, both right of communal property, rights of individual property, or even King's property or property of the state. Indonesia has adopted individual and communal right as well as self-government property right. Land disputes are analyzed through conflict theory; and since related public policy and ownership, then another approach is through the public policy and ownership theory.

Keywords: verponding eigendom land, ownership theory, public policy theory

1. Introduction

The agrarian term is derived from the word *akker* (Netherland), *agros* (Greek) means farmland, *agger* (Latin) means land or a plot of land, *agrarius* (Latin) means cultivation, rice field, agriculture, *agrarian* (English) means agriculture land. In Black's Law Dictionary mentioned that the meaning of agrarian is *related to land, or to a division or distribution of land; as an agraria laws.*[1] The broader meaning of 'agrarian' involves land, water, rather than simply the meaning of 'land affair'

Definition of 'land' in our lives can be used for many purposes. In the law of land, the word 'land' is used in juridical sense, as a definition which formally given the limitations of statutes that *on basis of right to control the State ... is determined the existence of various rights upon the surface land of the earth, which is called of the land, which can be given to and belongs to the people* .... Thus it is clear, that the 'land' in a juridical sense is 'surface of the earth' (paragraph) [1, 2]. In this regard, the land can be seen as an integral part of economic valued property asset, and therefore most vulnerable to conflict.

Definition of *Eigendom* is the most perfect rights on an object. A person who has *Eigendom* right can treat any things to his own objects provided that not contrary to law or others rights. How to acquire Eigendom rights are as follows[3]:

a) Taking (opening land);
b) *Natrekking* (object increase due to natural changes);
c) Passage of time /*Verjaring*;
d) Submission (*overdracht*/Levering)

According to Netherland Indies legislation [4], '*Eigendom right is the right to get a free pleasure of an object and to control it completely provided that not used in contrary to Act or general rules established by authorized power to shape it and when it does not interfere other rights, except to rights revocation for the public interest with restitution'*. *Eigendom* right upon the land divided into two, that are [5]:

a) *Eigendom* according to BW without rights of the Ruler: Under the Netherland Indies Acts the *Eigendom* right over this land is only given to: the necessity to expand towns and villages including also peocuring the grave; to set up the craft buildings as well as to expand the existing ones. Granting the land with *Eigendom* rights should not exceed ten *bouw* (*Bouw* = 7000-7400m [2]). The *Eigendom* rights over these lands can be given to each person, as well as to Indonesia nation.
b) *Eigendom* with businessman rights: This type of *Eigendom* rights is *Eigendom* right in the private lands. In the regulations applicable at the time of Netherland Indies colonial government there is no provision regarding the so-called private land. It's just that people refer to it as 'particuliere landerijen' that is the big or small land in which there is generally population that has been since the days of VOC and then under Daendels and Raffles have been sold to individuals as such the buyer gets the 'seigniorial right'. This phenomena becomes the background of *Verponding Eigendom* land dispute in the present, with basic of problem the land tenure and became a dispute object in future. The Agrarian law at least can be seen from European Agrarian Law, Customary Law and National Law. In principle, European law before French Revolution, the King is God representative on earth, so at the time the Kings in Europe has great power to regulate his country, even the king was regarded has power over all things, the King is the State ruler and the King was ruling the lands on their country. In France applies the watchword *Le'etat c'es Moi* or 'state is me', theory reflected a great power over the land. The King is regarded as deputy of the State and State landowners. This theory is also applicable in United Kingdom and Netherlands. Indonesia as colonial of

[1] Urip Santoso, 2012, *Agrarian Law – A Comprehensive Study*, Jakarta: Kencana Prenadamedia, page 1.
[2] Boedi Harsono, Boedi Harsono (2007) *Indonesia Agraria Law – History of Formation of Agrarian Principal Act, Contents and Implementation*, National Land Law, Volume 1, Jakarta: Penerbit Djambatan, page 18
[3] Sirini Ahlan Sjarif, (1984) *Essence of Object Law According to Menurut Burgerlijk Wetboek*, Jakarta: Ghalia Indonesia, page 14.
[4] Sudikno Mertokusumo (1988) *Indonesia Agrarian Rules*, Edition 2, Yogyakarta: Liberty page 35-36.
[5] *Ibid.*

Netherland enacted this theory in Indonesia, which means that all the land in Indonesia are the King property and because the King subject to colonial administration, then all land in the colonial country being converted to the Netherlands King [6].

If we trace to identification the conflict occurs because of their authorization/utilization gaps due to policies/discriminative laws to regulate the authorization relation. Then this identification is most relevant when we associate to the cause of the uproar of various agrarian conflicts are frequently occurs in Indonesia. According to Usep Setiawan, an activist, the rise of land social conflict, more due to mismanagement in the policy implementation, and imbalance due to imbalance in land ownership. In essence, the agrarian conflict reflects the state of non-fulfillment justice for communities who relies his life from the land and natural resources, such as the farmers, fishermen and communities. This injustice appears as a result of applying the wrong concept of the state's mastery right over natural resources [7].

In another side, the concept application of the concept of the state's mastery right over natural resources devoted largerly to people welfare, in practice more used to legitimize the state in terms of providing opportunities as much as possible for the big capital owners to open businesses of land management with an excuse to carry out an economic development. As consequence of these objectives then issued various government policies, which often from the policy eliminating the existence of society, including indigenous peoples from the land being their livelihood during this time. On the other hand against them/people who have been expelled from their land, did not accept injustice as consequence of the policy and then push them to take the fight, so the conflict occurs. The conflicts occur between communities/farmers who defend their rights of all forms of arbitrary domination by corporations that own capital which cloaked behind the state protection/concession [8]

Agrarian conflicts can also be seen from the agrarian law itself that has many source of law. Looking at the Legal Pluralism Theory, Agaria conflict can be seen as the result of more contradictive law adopted by differrent parties, particularly the customary law and state law. The pluralism theory more emphasizes that agariaan conflict due to the imposition of two legal opposition, the state law on the one side and customary law on the other side. For example in certain cases the land conflicts involving indigenous peoples and the state, where the state in the capacity as a holder and manufacturer of verious policy/law. This opinion is also reinforced by policy theory. This theory is also often to be reference to identification the causes of agrarian conflict. According to this theory, the agrarian conflict is the result of specific policies of the state, such as; development policy. With the development policies, then automatically all the potential/existing resources, including agriculture, and nature become an object at stake. In order to earn the money as much as possible as the development capital. These conditions caused the emergence of new forms of capitalism, which is undermining the domain of people livelihood. And sometimes make them/ people as victims who expelled from their land cause of the concessions policies for large capital owner/investor in the land tenure [9]

In the dormant of *Eigendom Verponding* land cases whether government can hide behind the limitations? However the land conflict phenomenon of *Eigendom Verponding* besides related to conflict theory also have impact to the government services are not optimal in the land sector, so this legal phenomenon can be studied also in the Public Service Theory.

A.P. Parlindungan (1991) states the land registration budget was most expensive, so it depends on available budget, employee affair and infrastructure required so that to be prioritized certain areas mainly those having high trading traffic one another according to consideration of the concerned minister and the existing urgency [10] In condition of the existing legal pluralism, taking over of the land by State, and not well implementated of government program, then the *Eigendom Verponding* land conflict occurs. The protracted conflict must be related to many aspects, such as public policy in relation to the service.

If the case of *Eigendom Verponding* land studied in Dogmatic Law perspective, according to agrarian law, this case could be traced on what should be known about: a) what violations happened? b) who was the offenders? c) when the violation was done? d) where the law gaps and weaknesses on agrarian regulation in terms of protecting the community property rights? e) why agrarian legislation rule was not effective in preventing the occurrence of the alleged violation of agrarian law on the *eigendom verponding land*? f) how the renewal solution of laws and regulations with philosophical foundation, formal and material in order to prevent taking over of the rights illegally on the *eigendom verponding* land owned by other party?

2. Method

2.1 Research type

This research is normative juridical research [11], which put in norms, rules and regulation, verdict of court, agreement as well as doctrine as its prime study [12] and prioritizing secondary data as the main data. However, the research has also committed field research to obtain primary data as endorser of secondary data.

2.2 Research data

Data used in this research is secondary data in form of primary legal materials, secondary law and tertiary legal materials. Secondary law material are used consist of principles, doctrines, opinions of the experts who can be seen from law books and other laws writings that may provide

[6] Agussalam Nasution, 2012, *Theory of Agrarian Law have appliedin Indonesia,* Medan, Law Magistrate Program, Post Graduate Program, Muhammadiyah University, North Sumatera.

[7] *Ibid.*

[8] *Ibid.*

[9] *Ibid.*

[10] A.P. Parlindungan, 1991, *Coment on the Agrarian Principal Law,* Mandar Maju, Bandung,hlm.115.

[11] Soerjono Soekanto (2010) *Introduction to Legal Studies,* Jakarta, page. 12 mentions secondary data include the official documents, books, results of study in form of the reports and diaries. From ists type point, secondary data, secondary data can be distinguished between private and public secondary data. A private secondary data is personal documents such as letters, diaries and other personal data stored at institution where the concerned ever worked or are working. While public secondary data in form of archived data that is data that can be used for scientific purposes by scientists; an official data at government agencies are sometimes difficult to obtain, and therefore may be confidential; and differ that is published for example the Supreme Court jurisprudence

[12] Mukti Fadjar ND dan Yulianto Ahmad (2010) *Research Dualism of Normative and Empiricism Law*, Yogyakarta: Pustaka Pelajar, page 34.

explanation of primary legal materials. The tertiary legal materials are used in form of dictionary and encyclopedia of law that can provide guideline and explanations toward primary and secondary legal materials [13]. Primary data as supporting data in this study is data obtained from research subject by means of field research from different sources.

2.3 Location and subject of research

This research was conducted in Jakarta particularly on the research object of *Eigendom Verponding* land located at Jl. Rasuna Said, Kuningan, Jakarta) on behalf of the heirs. The subjects of research were informant from parties who know the object of research, the parties within government who have access and authority to the *eigendom verponding* land. In this case were the officials of National Land Agency (BPN) Jakarta, and the officials of Licensing (BP2T).

2.4 Data collection technique

The secondary data were obtained from document related to object of research and literature study concerning theory, previous research, studies, and news related to object of research. The main secondary data in form of legislation, general reference of legal study, and tertiary data in form of empirical information or other legal materials. The primary data obtained through informant by in-depth interviews using the interview guideline.

2.5 Data analysis

Data were analyzed qualitatively by using the ownership analytic theory, public policy, and conflict theory used to study synchronization between *das-sollen* and *das-sein* are related to the agrarian disputes resolution of *eigendom verponding* land. In the first section will be descriptively discussed first concerning the alleged of agrarian law violations related to the empirical case. The theory analysis was performed using the ownership and conflict theories with the juridical-normative study primarily related to the ownership theory of the *exercising a right*, an activity connected between subject (owner of right) with object (what is claimed as a right) related to activities the shift of land controlling from the *eigendom verponding* landowner to the state, or from the state to the building owners who construct buildings on the *eigendom verponding* land No. 5822. The use of conflict theory related to socio-juridical problem, since it involves the type and level of conflict, whether indications of abuses, including in dissensus context or conflict.

The stages of data analysis begins with data reduction, simplification and presentation of data, verification of research results, and the last conclusion[14] The conclusions made based on deductive rather than inductive methods. The deductive method is selected since the researcher starts from the highest legal norm constitute of *das sollen* toward specific thing, namely to practice level in the field *(das sein).*

3. Result

3.1 History of agrarian in Indonesia

The European/Netherlands Agrarian Law is contrary to custom where land ownership based on customary laws is communal property or partnership (*beschikkingsrecht*). In this case each partnership member can works the land by clearing the land first and if they cultivate the land continuously, the land could be the right of individually property [15].

At the time of Indonesia under British colonial government, Raffles started to investigate the stand of land, especially in the Java island. On 13 January 1812, Raffles established a committee in charge of studying the stand of land and anything is deemed necessary to expedite the government wheels [16]. On 14 June 1813, he expressed a memory to the committee:

The power and authority of the Indonesia leader is limited The state of lands will be leased to the village heads, who should be responsible about its exploitation to the Government. The lands were should be leased back to farmers with the light requirement [17].

Raffles based 'landrente-stelsel' on view that since the time immemorial has been a tradition that the King was regarded as the land owner, (although) in fact this is a view imported from India [18] and therefore it is rightly the farmers as the land users to pay rent to the government which replace the Kings position. This Raffles view cannot be wondered because in the Sultanate [19] regions in Central Java, at that time often occurs the heads of fellowship replaced by the king servants, sometimes the King give rights to his employees or his families members to collect taxes from the partnership. Thus the king took over the law partnership lands into his own hands, so the customary rights are held by the King, and therefore vome into being the notion, that land is belong to the King [20].

Therefore the customary rights is lost, right to enjoy, rights to precedence, right to graze the cattle, while the right of land ownership changed in the form and generated into 'right to work or right to cultivate that very wobbly. This erroneous Raffles's view influences the agraria politic of Netherland Indies in the 19th century [21].

When Indonesia returned by Britain to Netherlands in 1816, then on 1 May1827 the Netherland Indies colonial government issued a treatise containing that Javanese incompetents seeking the crops that could be sold in European markets, because of 'primitief-conservatief' soul as well as their lower education level so that they are not possible accept something new about how to cultivate the land [22].

Van den Bosch, a high officer in Netherland Indies, applying a forced cultivation. All land are belongs to the King, so every

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[13] Soerjono Soekanto & Sri Mamuji, (1995) *Normative Legal Research,* Jakarta: Grafindo Persada

[14] Nasution (1992) *Naturalistic-Qualitative Research Method,* Bandung: Tarsito, page 127-130.

[15] Syafruddin Kalo, *Different Perception on Land Authorization and its Consequence to Farmer Community in East Sumatra in the Colonial Period that continues to the Independent Period, New Order, and Reformation,* Study Program of Criminal Law, Faculty of Law North Sumatera University .

[16] Supomo, Djokosoetomo, 1951, *History of Customary Law Politics,* Volume I (1609 – 1848, Edition two, Djambatan, Jakarta, page 74 in A. Teluki (1966) *Comparison of Property Right upon the Land and Recht van Eigendom.* Bandung: PT Eresco, page 6.

[17] A. Teluki (1966) *Comparison of Property Right on the Land and Recht van Eigendom,* PT Eresco, Bandung, page 6 with adjustment on written spelling .

[18] Ph Kleintjes, 1929, *Staatsintellingen van Nederlandsch Indie,* J.H. De Bussy, Amsterdam, hlm. 380. (See also Van Vollenhoven, 1933, *Het Adatrecht van Nederlands Indie,* Derde Deei, 2de stuk,E.J.Brill, Leiden, hlm.536) in A. Teluki, *Ibid,* page 6

[19] Soekanto, *Op Cit.* page 127 dalam A. Teluki, *Ibid.* page7

[20] A. Teluki, *Op Cit.* page .7

[21] *Ibid.*

[22] F.W. Stapel, 1940, *Geschiedenis van Nederlandsch Indie,* Deel V. Joost van den Vondel, Amsterdam, hlm. 116-117 dalam A. Teluki, *Ibid.* hlm.7.

farmer has to pay rent by giving up some of their crops. Van den Bosch system is known as 'Cultuurstelsel' or 'forced cultivation.' In addition there are also agricultural land cultivated by European private entrepreneurs who obtained the land from the Government by rent, but this policy of leasing out the land to private stopped by Netherland Indies government in 1839 [23].

3.2 Private land

The existence of private land is political will of Netherland Indies colonial government that poured into its legislation. The purpose of selling the land on a large scale to those private was primarily for financial gain or to fill the cash of Netherland Government and Netherland Indies colonial government, and opening the grove that cannot be done by Netherland Indies colonial government considering the shortage of funds and personnel.

Thus, the private lands owned by private persons, either they are Netherland or Europeans who have Netherland nationality. The consequence of the existing private lands is the emergence of 'big landlords' with 'seignorial rights' *(landheerlijke rechten)* that are privileges granted to them by Netherland Indies colonial government, so this private lands almost like a 'Small country in the State' *(Staatjes binnen de Staat)* [24].

The gentlemen (owner) of private land consisted of Europeans and Orientals. It is almost rarely we can find an Indonesian as the owner of private land. Who can have private land is not only their personnel, but legal entities such as limited companies and municipalities, such as Jakarta and Surabaya [25].

3.3 Land system of Republik of Indonesia

a) Property right on the land

In essence, the right of Indonesia people on the land has comunalistic nature that means all land in the territory of Republic of Indonesia is common land of Indonesia people. In addition it has also religious characteristic that means all land in the territory of Republic of Indonesia is believed as a gift of God Almighty. The common land is declared as national wealth that shows the civil elements, namely the possession relationship between Indonesia Nation with the common law. However, the right of Indonesia nation is not means the right of private property that does not allow for the individual rights [26].

Definition of 'control' and 'master' can be used in physical sense and juridical meaning; it also has civil and public aspects. Juridical control is wased the rights protected by law and commonly provide authority the right holder to master physically the land that has personal right. Another type of judicial control viz., even gave authority to control the land that have personal right physically, in fact the physical mastery is carried out by others. For example, if the authorized land is leased to another party, the land is physically controlled by other party in the lease rights. In this case the land owner by its juridical control, are entitled to claim to submit back the concerned land physically to him [27].

In the law of land is also known juridical control that did not give authority to control the land in question physically. Creditors of the rights holders of security on the land have jurisdiction control over the land made as collateral, but juridical control on the land as collateral remains in the land the owner. The control right on the land when have been connected to the specified person land (legal entity), then what is means by the control right over the land is the control right based on a right or power which in fact gives the authority to take legal actions as how appropriate one who has the right [28].

The land owner started with occupied an area by an indigenous people who later called as the communal lands (common land). In rural areas outside of Java, the land is recognized by customary law not written either based on descent or region relationship. Along with the changes of socio-economic patterns in any society, the common land of indigenous peoples are gradually controlled by society members through alternating cultivation. Individual ownership system is then began to know in the communal ownership system [29].

In the national law of land there are various control rights on the land, namely:

a) The right of Indonesia nation as the highest right of controlling the land has civil and public aspects.
b) The right of control from the state is solely has public aspect.
c) The land right of indigenous people has civil and public aspect.
d) Individual right, have civil aspect consist of the right on land as individual rights are directly or indirectly have rooted in the rights of nation.Various rights on land in Article 16 determine that: The right on the land that can be owned by that individuals include:
    1) Ownership right
    2) Cultivation right
    3) Building use right
    4) Usage right
    5) Rent right
    6) Land opening right
    7) Rights of picking forest products
    8) Other right including the rights above shall be established by law and a temporary right.

Because of Indonesia people right have communalistic character, there is a provision of the Right Controlling of State on the land (HMN). HMN not be interpreted to control physical absolutely, but solely as the task of managing all the common land that does not allow undertaken themselves by entire of Indonesia nation, so that in its implementation, the Indonesian people as the rights holders and bearers of the mandate, at the highest levels was delegated to the Indonesia State as power organization of the people [30]. In practice, HMN often ignore individual right upon the land as happened on *Verponding Eigendom* case for taking over without proper compensation as set out in the agrarian law.

[23] A. Teluki, *Op Cit.* hlm.8
[24] Bachsan Mustafa, 1988, *Agrarian Law in Perspective*, Bandung: CV Remadja Karya, page 32.
[25] *Ibid.*
[26] Urip Santoso (2012) *Agrarian Law–A Comprehensive Study*, Jakarta: Kencana Prenadamedia Group, page 78; Boedi Harsono (2002) *Toward Improvement of National Land Law in Relation with TAP MPR RI IX/MPR/2001*, Jakarta: Universitas Trisakti, page 43.
[27] http://e-journal.uajy.ac.id/361/3/2MIH01442.pdf
[28] Boedi Harsono (2002) *Toward Improvement of National Land Law in Relation with TAP MPR RI IX/MPR/2001*, Jakarta: Universitas Trisakti, page 23
[29] http://e-journal.uajy.ac.id/361/3/2MIH01442.pdf
[30] Urip Santoso, *Ibid*, hlm. 79.

The state does not have authority to sell or mortgage the land. The problem of agrarian arises when HMN authority confronted with individual property right and communal rights (common land). People who had been there before the State existed, inherent in them living right, economic rights, political rights, social and cultural rights, and ecological rights. All human rights are recognized in our constitutions UUD 1945 [31].

According to legislation: Under basis of the rights to control from the State, determined the existence variety of rights on the earth's surface, called the land, which can be provided to and owned by people either alone or jointly with others, as well as law entity. The words '*either alone or jointly with other persons and law entities,'* shows that in conception of National Land Law, those lands can be controlled and used individually and no necessity to control and use it collectively [32].

The private nature of individual right refer to the authority of the right holder to use the relevant land for benefit and in fulfilling private needs and his family. The provisions of law states that every Indonesia citizen both men and women have equal opportunities to obtain the rights over the land as well as to obtain benefits and the results both for themselves and their families. The words '*for benefit and the results both to themselves and their families'* shows personal nature of the rights on the land in the conception of National Land Law [33].

b) Conversion of *eigendom verponding* land to be property right

Eigendom verponding land status applied at the time of Netherland Indiess' Agrarian Law after the enactment of agrarian legislation must be converted into property right through land registration is the duty of government and landowners.

The provisions concerning the rights on the land under Netherland legislation called *Eigendom,* no longer valid since the enactment of national agrarian legislation. In order to provide legal certainty and clarity to the *Eigendom* right holder, it was made the provisions of conversion. With the provision of the conversion, the *Eigendom* rights as individual or group property rights on the land converted into property right with almost similar ownership power. The provisions of conversion is that the *Eigendom* rights on the existing land at beginning into force of the Laws of the Republic of Indonesia, that since at the time become property right, unless who has the right is not eligible [34].

The word 'conversion' is derived from Latin *convertera* means reverse or change name with giving new name or new properties so that have new content and meaning [35]. What is meant by conversion of land rights is change in old land rights into new land rights according to agrarian legislation [36]. Long time before the agrarian legislation of Republic of Indonesia has already known the term of land rights conversion, as in the case of indigenous property rights into the right subject to west civil law (BW) called *agrarische Eigendom* and authorization right becomes the use rights of managing right [37]. 'Right conversion on the land' is differet to 'right transition on the land'. Right conversion on the land related to right types of the land that exist before and after the applicable of agrarian legislation of Republic of Indonesia. While the right transition on the land talking about process or procedure the transfer rights on the land from one party to other party [38].

Property rights *(Eigendom)* is the highest rights belongs fully to a citizen forever and can be handed down to the descendants thereafter, one of the causes of this right is the highest rights is permanent in character and certainly without the limit of time set it out, in beginning of the emergence of this right the position of state itself becomes marginalized as the ruler of people's livelihood. While for other rights according to agrarian legislation of Republic of Indonesia has limit of time, and their land is controlled by State, the 'State land'. For those former holders of land rights are given opportunity to be able to apply for rights on the land of their former right as long as not used for public interest or if it is not occupied by community at large [39].

Broadly speaking, rights conversion of on the land are divided into three types, namely:

a) Rights conversion on the land derived from the western lands
b) Rights conversion on the land derived from the former land of Indonesian rights;
c) Rights conversion on the land derived from the former land of self-government [40].

c) Right to control of the state (HMN)

Right to control of the state, as set out in legislation that earth, water, and space, including natural resources contained in it at the highest level is controlled by the state, as organization of all people; Rights to control of the state in agrarian laws governed give its authority as follows, that is for [41]:

a) Arranging and conducting allocation, use, supply and maintenance of earth, water, and outer space;
b) Determining and regulating legal relations between people with earth, water, and outer space.
c) Determining and regulating legal relations between people and legal acts concerning with earth, water, and outer space;

The state authority are sourced in the rights to control of the state according to provisions of law should be used to attain the greatest welfare of people, in sense of nationality, prosperity, and freedom in society and an independent Indonesia laws state, sovereignnity, just and prosperous. It is determined also that the rights to control of the state above its implementation can be delegated to autonomous regions and customary law societies, merely required and does not contrary to national interest, according to the existing provisions.

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[31] Bernard Limbong (2014) *Opinion of Agrarian Policy*, Jakarta: Pustaka Margaretha, First Printing, June 2014 page 90.
[32] Boedi Harsono, *Op Cit,* hlm. 223- 224.
[33] *Ibid.*
[34] Jun Junaedyng, *OpCit.*
[35] Pankga Hasibuan (2012) *Right on The Land (Conversion in Agrarian),*18 Mei 2012, http://pankga.blogspot.com/2012/05/hak-atas-tanah-konversi-dalam-agraria.html
[36] H. Ali Achmad Chomzah, *Agrarian Law (Indonesia Land Affairs)* Volume 1, Jakarta: Prestasi Pusataka, 2004, page.80 in Wibowo Tunardy, *Ibid.*
[37] Pankga Hasibuan, *O Cit,*
[38] Wibowo Tunardy, *Op Cit.*
[39] Agung Ibrahim Hasibuan, Asisten Urusan Hukum dan Agraria, Bagian Umum BUMN, *Sejarah dan Terbitnya Hak Milik Atas Tanah,* Sub Portal BUMN,25 September 2014, http://www.bumn.go.id/ptpn1/berita/477/Sejarah.dan.Terbitnya.Hak.Milik.Atas.Tanah
[40] Agung Ibrahim Hasibuan, *Op Cit,* hlm. 1.
[41] Boedi Harsono (2007) *Indonesia Agrarian Law – History on Formation of Agrarian Principal Law, Contenti and Its Implementtion,* Volume 1, National Land Law, Penerbit Djambatan,hlm.267-268.

The right to control of the State (HMN) is term given by national agrarian law to legal institution and concrete relationship of law between the State and the Indonesia land. The state authority in the land affair sector is the task delegation of nation [42]. In explanation of law is stated that:

Law Number 5, 1960 on Basic Regulation of Agrarian Principals is based on the establishment that in order to achieve what is specified in Article 33 paragraph (3) the Constitution is unnecessary and out of place, that Indonesia nation or the State acting as the land owner. Is more appropriate if the state, as the organization of power from the entire people (nation) acted as the ruling body.

The foundation of state to control and regulate the utilization of land and natural resources which referred to as the right to control of the state (HMN) was guaranteed by constitution. The estuary is the greatest welfare of people. In concept of the integralistic state proposed by R. Supomo in session of BPUPKI on 31 May 1945, economic development (including the land) uses 'state socialism' system, ie the welfare for all Indonesian people. HMN orientation is: 'Earth, water, and natural resources contained therein shall be controlled by the State and used for the greater prosperity of people.' Therefore the purpose of HMN is 'the greatest prosperity of people of Republic of Indonesia".

In its implementation, HMN should have spririt of basic values of Pancasila. In implementing HMN Government should rellied on the command of Constitution 1945 that is about independence, justice, fairness, equality, and prosperity. In the state context, HMN should trully take note of the two things simultaneously in qualified balance i.e.' between development interests and basic rights of people (both individual and communal) On the one hand the central amd local government have authority to give permission to investor for national interest, including for the people prosperity through the taxation mechanism, but at the same time Government is obliged upholding the rights of people in social, economic, and cultural (customary) sectors [43].

d) Revocation of right on land

Take over of *Verponding eigendom* land by the government in relation to the provisions on revocation of land. The state accordance to the law has right in revocation of right on the land[44] as follows: that for *public interests, including the nation and State interests as well as common interests of people, the rights on the land may be revoked, by providing adequate compensation and in the ways set by law*.

Thus, the elements of right revocation on the land is as follows: The nation/state interest, common interests of people, as part of general interest, therefore, if revoked the rights on the land; must be compensated; worthy; and must already regulated by a law [45].

In system of national agrarian law we do not recognize the existence of land confiscation of person for construction, except (confiscation) as a crime. Likewise the confiscation due (difference) a person's political views, but all must be with an indemnity, and it is worthy either by government or parties who affected by the right revocation of the land rights. Similarly, the right revocation that occurred one-sided from government, it should be sought as there has been a common will as happens in ordinary purchase [46]. Schenk states that any directly losses and as result of right revocation of the right should be granted reparation. In many cases the resolution of *Eigendom Verponding* dispute by the government or even private often ignore compensation to landowner and this is what makes the occurrence of conflict [47].

3.4 Agrariaan law in case of *Eigendom Verponding* land

The case of *Eigendom Verponding* land X is the law conflict case of agrarian field, particularly in land, and in general as part of problem or the agrarian conflict. The agrarian conflict is multidimensional so cannot be seen only as agrarian problem or legal aspects alone, but also related to non-legal variables [48]. The foundation of national agrarian law is the state basis of Pancasila, constitution1945, and MPR decrees, as well as the provisions of national agrarian land. There are some sectoral laws related to agrarian, ie legislation on *forestry*; *Water Resources*; *Fishery; Management of Coastal Areas and Small Islands; Capital Investment; and Land Procurement for Development for Public Interest.*

The national agrarian law is regarded as umbrella act of all laws and regulations that governing the agrarian and land affair. But *de facto* there has been the lack synchronous between content material of national agrarian legislation and sectoral laws that arises conflicts of law. The law conflicts of legislation such as the lack synchronous of contents material of law does not only appen between sectoral legislation itself and national agrarian law, but also between sectoral laws itself.[49] The law conflict of this lack synchronous legislation is one of main factors the occurrence of disputes and conflicts on the agrarian during the time [50].

The lack synchronous of vertical in terms of legislation its guidline is restored to the existing legislation, which applies principles of legislation with lower hierarchy was not applicable when contrary with legislation of higher hierarchy (*Lex superior derogat legi inferiori*). In principle of Legal Studies, the lack harmony between special laws with other laws, the other laws that should be excluded accordance to legal maxim *lex specialis derogat legi generali*. Besides the legislation enacted was newer than the similar other laws, then old statute by itself is not valid anymore (*Lex posterior derogat legi priori* or*lex posterior derogat legi anteriori*).

The legal force of legislation in accordance to hierarchy as mentioned in its explanation that *in this provision what meant by 'hierarchy' is leveling any kind of legislation based on the principle that lesser legislation must not conflict with higher legislation.*

If in the case of *Eigendom Verponding* land X has been the actions of the parties bases its legal foundation in the provisions of an article or clause in legislation, that in fact not in synchronous with legislation on agrarian then it is returned to the higher legislation basic (*Lex superior derogat legi*

[42] *Ibid*, 271.
[43] Bernard Limbong (2014) *Opinion of Agrarian Policy*, Jakarta: Pustaka Margaretha, First Printing, June 2014
[44] A.P. Parlindungan, 1993, *Revocation and Right Exemption on the Land – A Comparison Study*, CV Mandar Maju, Bandung, page.4.
[45] *Ibid*, page 5
[46] *Ibid.*
[47] Schenk, 1975, *Onteigening*, Penerbit Kuwer, page 52 in A. P. Parlindungan, *Ibid*, page 4.
[48] Bernard Limbong, *Opinion of Agrgarian Policy*, Jakarta, Margaretha Library, First Printing, Juni 2014 page 3
[49] *Ibid* hal 118-119.
[50] *Ibid* hal 119.

inferiori) that is constitution 1945 and MPR . Moreover the stand of agrarian law is the law that specifically regulate the stand of agrarian as umbrella act. If there is disharmony law conflict between agrarian legislation and other legislation, the laws must be set aside (*lex specialis*). Besides the national agrarian legislation enacted in 1960, the law of agrarian or land laws are cannot applicable (*Lex posterior derogat legi priori* or *lex posterior derogat legi anteriori*). The claim dispute of *eigendom verponding* land that has been taken over of the state, in terms of Agrarian Law, Ownership Theory, and Public Service Theory of has been very clear problem that is the interest and passion dispute for having land as a high economic value wealth.

The property rights of *Eigendom Verponding* land in agrarian law version of Netherland Indies is mechanically the nasional agrarian legislation still recognized as long conducted conversion of *Eigendom Verponding* land into ownership right status through the land registration process. This mechanism if implemented properly will be fulfilled the Property Rights aspects, Public Policy Rights, and could avoidance of conflict.

3.5 Solution alternative of apptoach resolution with theories

a) Ownership theory in agrarian law perspective

The property right becomes principle that must be considered in resolving the disputes or conflicts of *Eigendom Verponding* land who has taken over by the State. Of course the right to possess by the State (HMN) for development and public interests be another principle in the analysis approach and of disputes resolution of *Eigendom Verponding* land or private land of Netherland Indies period which taken over by the State.

The rights has meaning recognition or claim on something (a thing-can be a goods/physical that are *tangible*, services or knowledge/ information that is non-tangible) that enforceable or respected by other parties [51]. Theory of the National Agrarian Law who appreciates physical or juridical ownership should be respected. Bromley (1989) defines ownership rights as the right to obtain securely the flows of income/profit for others respect to the flow of such earnings, associated with the transaction [52]

Alexandr Opoulou (nd) [53] expressed three basic elements of the rights of ownership, namely (i*) the exclusivity of rights to choose the use of a resource* (ii) *exclusivity of rights to services of a resource* and (iii) *rights to exchange the resource at mutually agreeable terms.*

While Vincent RJ [54] argued that 'right' has five major elements, namely:

a) *The subject of* right, namely the right holder. They more as individuals, but can also in form of group (family, tribe, company, nation, state, region, culture, perhaps even property global)
b) *The object of right,* what it is a right to, either positive or negative as claim on something right.
c) *The Exercicing a right,* an activity connecting between subject (the holder) with object (what is claimed as a right) (*the activity roomates connect a subject to an object*).
d) *The bearer of the correlative duty,* when the rights attached to someone means against others who do not get this right, so a struggle to 'beat' all the barriers of barrier from other party.
e) *The justification of a right,* is question concerning justification that these something is property of person/group (*the question of the justification of a right*). Therefore, the right must be based on claim toward object of that right, and it is expected no other party who objected.

Based on the ownership rights were guaranteed by universal human rights, of course it would have become philosophical value in legislations. The question is how far the law effectively running among Indonesian society.

b) Social contract theory in agrarian law perspective

The theory that suitable for the case of *Eigendom Verponding* land are taken over by the State, among others in the study tool of Social Contract Theory, that each person in a state feeling require each other that occurs the Social Contract.

Law is born from the top (officials) or community (*living law*). The laws of society will be associated with society agreement or Social Contract. Law was originally born out from value to be maintained (good value) or unwanted value (bad value). The value in this case is description of what is desirable, worthy, valuable, which affects social behavior of person who has such a value (Lawang, 1985: 13). To maintain and protect something that has that value, community members gathered to discuss how something of value can be protected and maintained. Furthermore, the society members make a deal. These agreements called the 'social contract', and it is what called the law, which is a rule or guideline in interactions among society members. In this case the agreement is taken by some members of society [55].

John Locke began by arguing that human nature is the same each other. However, different from Hobbes, Locke stated that human characteristic does not want to meet desires with power without regard to other human beings. According to Locke, human in himselves has sense that teach principles that due to being equal and independent human being no need to break and ruin the lives of other human beings. Therefore, natural conditions to Locke are very different from natural conditions according to Hobbes. According to Locke, under natural conditions, there are already setting patterns and natural law regularly because humans have a mind that can determine what is right and what is wrong in association between fellow.

Therefore, the natural conditions, caused some people who usually have power, does not ensure full security, there is the desire one-two parties to impose their will through the power they have. So just as Hobbes, Locke also describes an attempt to escape from unsafe condition full towards fully safe conditions. Humans create artificial conditions (artificial) by holding Social Contract. Each society member does not fully surrender all of his rights, but only partially. Between the holders (candidate) parties of government and society are not only contractual relationships, but also relationship of mutual trust (*fiduciary trust*).

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[51] *Property rights in Economic of Institution*. Esl.fem.ipb.ac.id/uploads/media/12. Property_rights_SDA.pdf

[52] Property rights," *ibid*.

[53] Alexandr Opoulou (nd), *Public property and property rights theory,* www.Ise.ac.uk/europeanInstitute/reserach/hellenicObservatory/pdf/4th_%20Symposium/PAPERS_PPS/LAW_CITIZENSHIP.

[54] Vincet RJ. *Human Rights and International Relations* (Cambridge: Cambridge University Press, 2001) hal. 8, .mengadatasi Gewirth, *Human Rights*, p.2

[55] *Ibid*, hlm 11.

c) Public policy theory

The public policy theory has been expressly argued the necessity any public policy conducted by the government is bedefited and has goods impact both to public or society. The protracted case of land problem is reflection the bad of of public policy by the governments in agrarian or land affair problem.

The cases land contained in database of BPN RI is old cases and new cases arise as implications of the old cases. The typology is vary although principally the resolution of disputes through non-litigation is *a win-win solution*, better known as *Alternative Dispute Resolution* (ADR) [56].

Public policy as social act of government turned into action thathas implicate to laws when public policy as the Government obligation that protected and regulated by legislation. James E. Anderson (1970) categorizes the types of public policy as follows:

a) Substantive and Procedural Policies.
b) Distributive, Redistributive, and Regulatory Policies.
c) Public Goods and Private Goods Policies

The redistributive policy is one policy regarding transfer of wealth allocation, ownership, or rights. Example: the policy on land acquisition for public purposes [57]. The public policy by the Government certainly has implications for the law, since the policy on the land is governed by legislation of agrarian/land sector.Carl J Federick as quoted Leo Agustino (2008: 7) defines policy as a series actions/activities proposed by a person, group or government in particular environment where there are obstacles (difficulties) and opportunities toward proposals implementation of these policies in order to achieve certain goals [58] Irfan Islamy as quoted Suandi (2010: 12) policies must be distinguished by wisdom. Policy is translated to different policies tantamount to wisdomyang means wisdom. Definition of discretion requires consideration of further consideration, while the policy includes the existing rules within it. James E Anderson was quoted by Islamy (2009: 17) reveals that policy is a series of actions that have a specific purpose followed and implemented by an actor or group of actors to solve particular problem [59].

The scope of public policy study is very broad because it covers various fields and sectors such as economic, political, social, cultural, legal, and so on. Besides, views from its hierarchic the public policy is national, regional maupun local such as laws, government regulations, a presidential decree, a ministerial regulation, local government regulations /province, governor decision, rules of district/city, and decision of regent/ mayor [60].

Easton gives definition of public policy as *the authoritative allocation of values for the whole society* or as value allocation by force to all community. Laswell and Kaplan also defines public policy as *a projected program of goals, values, and practice* or something attainment of program objectives, values in the practices targeted. Pressman and Widavsky as quoted Budi Winarno (2002: 17) defines public policy as hypothesis contains these initial conditions and the consequences were predictable bias. Public policy must be differentiated with another policy forms another policy for example of private policies. [61].

3.6 Review of agrariaan conflict and its resolution effort

The national agricultural law was oriented on the communal and individual ownership, so when there is a dispute of *Eigendom Verponding* land taken over by the States, this phenomenon can be approached with the conflict theory where the parties have their own interests in the conflict. Since the government involved in conflict, the government became minor viewed from the Public Policy Theory aspect where government should issue the good policy for people. Another theory, the ownership theory existed in this case can be known whether or no violation of property rights both on land owned by individual or Rights to possess of thr State (HMN). According to National Agrarian Law the State has HMN with the basic of purpose for the greater prosperity of people and respect for individual rights and customary communal (customary rights and self-government).

The resolution of disputes in the court often creates new problems. This new problem arises when there is party who do not accept the result of court verdict that won one of the parties. Other problems arise, i.e. when the same dispute object to different judicial institutions. Often found the land dispute submitted to General Courts (PU) and Administrative Court (PTUN) are different, therefore it can cause new problems in the resolution of land dispute. The resolution of disputes through non-litigation is the resolution of dispute which is being developed today. The resolution of disputes through non-litigation or known better as *Alternative Dispute Resolution* (ADR) is regulated in Law Number 9, 1999 on *Arbitration and Alternative Dispute Resolution*. The resolution mechanism of dispute in this way is classified as non-litigation resolution which directed to a single agreement as *a win-win solution* [62].

4. Closing

In many cases on disputes of *Eigendom Verponding* land are taken over by state, the legality process of land rights status become principal base the occurrence a conflict of *Eigendom Verponding* land that caused among others not completion of land registration process in Indonesia by government or by land owner itself. As exemplified by Lucas (1997), Stanley (1999), Hafid (2001) and his colleagues in which mentioned that state apparatus is often taking over forcibly the land from the hands of people so-called development projects. Although taking over was based on legislation the abolition of private lands, but there is not occur the process of providing adequate compensation as specified in the provisions of national agrarian laws. Here there is occurs a law conflict one another.

In accordance with the Legal Pluralism Theory, the status of land in Indonesia during Netherland colonial period governed by two laws, namely customary law and western law (Netherland Indies Colonial Act). Even in the internal of

[56] Denico Doly, *Penyelesaian Sengketa Tanah Melalui Alternative Dispute Resoluton (ADR)*, Info Singkat Hukum, Vol. VI. No. 01/I/P3DI/Januari/2014. http://berkas.dpr.go.id/pengkajian/files/info_singkat/Info%20Singkat-VI-1-I-P3DI-Januari-2014-39.pdf

[57] http://bookerchon.blogspot.com/2013/05/pengertian-jenis-jenis-dan-tingkat.html

[58] http://eprints.uny.ac.id/8530/3/BAB%202%20-%2007401241045.pdf

[59] *Ibid.*

[60] *Ibid.*

[61] *Ibid.*

[62] Denico Doly, *Resolution on Land Dispute Through Alternative Dispute Resoluton (ADR)*, Short Info of Law, Vol. VI. No. 01/I/P3DI/Januari/2014. http://berkas.dpr.go.id/pengkajian/ files/info _singkat/Info%20Singkat-VI-1-I-P3DI-Januari-2014-39.pdf

national agrarian law is often occurs conflict one another, both related to material side of law or disagreement in the interpretation of legislation.

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