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Recht van Eigendom and Inlandsch Eigendom: A Study of Landownership in Colonial Indonesia

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Abstract

This article aims to elucidate the existence of two distinct forms of land property rights within the colonial civil law system in Indonesia. By doing so, it seeks to identify the historical origins of issues encountered in contemporary civil law cases. These issues, which are deeply rooted in colonial legal practices, can be better understood by tracing the development of two parallel regimes of property rights: Western civil property rights and indigenous property rights. To examine the origins of these problems, this study employs the historical method, which consists of four stages, namely heuristics, source criticism, interpretation, and historical reconstruction. The sources used are primarily historical documents, with particular emphasis on their authenticity and reliability. The findings indicate that the colonial civil law system was characterized by a dualism of land property rights, each governed by distinct limitations and regulatory frameworks. This dualism emerged as a result of ambiguities and inconsistencies in colonial policies concerning indigenous land ownership.

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Introduction

This paper seeks to address the existence of land property rights that emerged after the end of the Cultuurstelsel era and continued to exist as a form of dualism in land property rights until the era of Indonesian independence. By explaining this dualism, it is possible to explain what forms the property rights are, their differences and consequences, thus providing an explanation for a number of civil issues that are still often encountered in the judicial institutions in Indonesia today.

In 1870 the Dutch colonial government issued Basic Agrarian Regulations (Agrarische Wet and Agrarisch Besluit). In these regulations, the colonial government established her orientation that to that time showed a doubtful attitude in agrarian policy, namely the Domein Verklaring. This principle stated that the state becomes the ruler and/or owner of the land, especially when the land cannot be textually proven to be owned by anyone (Staatsblad van Nederlandsche Indie 1870, no. 55).

Starting from the mid-19th century, especially when the colonial government applied the principle of concordance within her legal system in the Dutch East Indies, signified by the publication of the Regeeringsreglement as the first law in the colony in 1854 (Staatsblad van Nederlandsche Indie 1855, no. 2), the definition and limits of individual rights to land were clarified and standardised. The government herself at that time had de facto established the existence of the highest authority in terms of land tenure. Even the Governor-General of the Dutch East Indies as the highest authority in the colony was subject to the prohibitions on the release of rights to land whether through sale, transfer, grant or other means, especially to foreigners.

Through the implementation of this law, the Dutch East Indies government entered a period of transition from a system of sole exploitation by the state based on the Cultuurstelsel since 1830 to a system of partnership exploitation that increasingly led to the liberalisation of the colonial economy, especially since the 1850s. When the pressure to end the state's dominance in the economic control of the colonial lands, especially Java, grew stronger in the Dutch parliament, the government felt the need to take preparatory steps, especially in securing her assets and preventing upheaval among the indigenous people from occurring Since 1848, The Ducth Parliament began to discuss about the exploitative policy under the Cultivation System in Jawa, and it reached her climax in 1860s as majority in the Dutch Parliament agreed that the system had to be abolished. "Cultuurstelsel" (Koopmans 2016, 85).

These two policies became top priorities for the transitional governments in the Netherlands and Dutch East Indies since 1848, when a new Constitution (Grondwet) was issued in the Netherlands which was also used as a legal orientation for making policies towards the colonies (Winckel 1863, 50). The emergence of these two basic laws, the Grondwet and the Regeeringsreglement, marked a change in government policy. especially towards the agrarian sector in the Dutch East Indies colony, which led to the two principles above.

The first principle, protecting government assets, required eight years from 1855. The main focus of this policy was on objects that officially became government assets, namely government property rights over land (gouvernementseigendom). Right van ownership (recht van eigendom) in the Netherland was a highest of the ownership, because it provided a full of control to the owner over his land. It was a heritage of European feudal system since the turning of Millenium. In East India, the Dutch adapted the system to local or traditional law for minimizing the probability of conflict against the natives (Mauliana, Handoyo, Zahra, Erowati, dan Pudyastiwi 2025, 146). Up until that moment the government had controlled and used a lot of land, partly as inheritance from the VOC and partly through annexation or clearance or acquisition of rights (onteigening) for reasons of public interest (Genootschap 1866, 329). All assets were physically controlled by the government and built as infrastructure, but in a formal juridical context all these infrastructure objects were still not supported by clear and firm textual rights.

Eight years later, after the issuance of the above regulation, the government issued a regulation that confirmed the land status of all these infrastructure. On 12 August 1863, the regulation was promulgated and reads as follows.

> *Te bepalen dat gouvernements-gronden, begeerd voor den aanbouw van woonhuizen en inrigtingen van nijverheid of voor andere bebouwingen, voor zoo ver die gelegen zijn binnen den omtrek der hoofdplaatsen van de residentien en afdeelingen of tot uitbreiding van die hoofdplaatsen moeten dienen, voortaan niet anders dan in eigendom tegen den taxatie-prijs zullen worden afgestaan, behoudens die bijzondere gevallen, waarin zich*

> *hiertegen overwegende bedenkingen bij de regering mogten voordoen* (*Staatsblad van Nederlandsche Indie* 1863, no. 90). [Stipulates that government lands which are desirable for the construction of dwellings and industrial infrastructures or for other buildings as far as it lies within the neighbourhood of the capital of the residency and afdeeling or is to be used for the expansion of the capital, can primarily only be disposed of in freehold at the assessed price, except in special cases where the objections of the government under consideration are raised against it].

In the above provision, it is evident that the term government ground (*gouvernements-grond*) appears, in the sense of land owned or possessed by the government (*door het gouvernement toegeinen*), and makes the government the absolute owner of the land (*eigenaar van grond*) (Juwono 2023, 69). This status was then institutionalized as a land that owned and used entirely by the government. In order to acquire it, the government could not purchase it from the old owner but had to release or revoke the right of the former owner and transfer the right to the government with payment of compensation (*schadevergoeding*) (Boissevain 1853, 13-14).

As a consequence, the government then issued a decree that the government had the right to acquire land deemed necessary or required for the public interest (*onteigening ten algemeenen nut*) (Andel 1857, 28). Because the principle is acquisition and revocation of rights, the government does not make offers or transactions but can make unilateral decisions and by utilizing her authority, pay compensation from the state treasury to those who are considered to have rights to the land that is the object. As a result, those who received the compensation, in addition to not having the right to bid against the government's unilaterally interpreted replacement value, also did not provide any evidence of the receipt of the compensation payment. Since then, the government has formally established this process in law (*Staatsblad van Nederlandsch Indie* 1864, no. 6).

As the demand for the end of the *Cultuurstelsel* intensified in the Netherlands, the Government considered it necessary that the position and assets of the government in the colony, which had been acquired through the process of acquiring the above rights, be guaranteed and secured for her future interests. It seems that the main cause of gouvernment's policy was the more pressure made by the liberals in the Dutch parliament throughout 1860s., as liberals dominated the parliament. So, The Dutch East India rezime prepared to protect itself in controlling all Gouverment's properties before she opened the door of colony for the liberal investors (Iswahyudi 2020, 466). The end of government domination with the *Cultuurstelsel* policy would certainly open the colony to private business investment, which would replace the government as the holder of economic hegemony (Day 1904, 334). This gave rise to new demands for land tenure that would impact the clarity of rights as the basis for the relationship between investment and the land it controls and exploits.

Starting from this view, two years later, 1866, the government issued a new regulation to follow up and refine the regulation of 1863 above. The regulation, promulgated on 3 April 1866, reads as follows.

> *Ten vervolge op het bepaalde bij het besluit van 7 Augustus 1863 no. 24 (Staatsblad no. 90), te verklaren dat geen afstand in eigendom van daartoe aangevraagden grond zal plaats vinden, tenzij bij proceseverbaal van eene plaatselijke kommissie zij gekonstateerd, dat tegen dien afstand geen bezwaar bestaat, en bij meetbrief door den gezworen landmeter zij*

> *omschreven de oppervlakte, ligging en belendingen van het aangevraagde perceel* (*Staatsblad van Nederlandsch Indie* 1866, no. 25). [Following the provision of the decree of 7 August 1863 no. 24 (Staatsblad no. 90), it is stated that no relinquishment of the title to the land requested can be made except by the minutes of a local commission which finds that there is no objection to the relinquishment, and by a measurement by a land surveyor under oath recording the area, location and boundaries of the parcel requested].

There are two important points to be noted from the above provision. First, land owned by the government could be bought, sold, or otherwise transferred, provided that certain requirements were fulfilled, particularly when no objections or adverse consequences for the government or the state were identified. Second, the process of disposition was conducted in essentially the same manner as the disposal and sale of land whose ownership rights were held by parties other than the government.

Through this provision, the government could assume the role of an investor or partner for private enterprises that required capital and administrative support. Such cooperation was made possible when the government granted its business entities (state-owned enterprises) or private partners concession rights or monopoly privileges to operate or manage activities in specific sectors (Kemper 1866, 17). Based on these concession rights, private companies were permitted to use government land and exploit it for their commercial interests.

As evidence of control over government land used to support business operations, the previously issued administrative documents were withdrawn and replaced by special cadastral maps, such as the *grondkaart*. These maps functioned as official proof that the holder exercised control over, or had been granted the right to use, government land for specified purposes (*Bijblad op het Staatsblad van Nederlandsch-Indië*, n.d., no. 4099).

In this article a number of writings that have been made by several experts in their field will be reviewed. Priority is given not solely to their relevance but also to their contribution in providing input and direction for this article, with the consideration that they will become evidentiary references in resolving the issues that are commonly found today.

The first is C. van Vollenhoven's work, *De Indonesier en Zijn Gronden*. As the father of customary law in Indonesia, van Vollenhoven was well aware of the system of land tenure and ownership among Indonesian people during the colonial era. Despite forming his own school of thought that differed from the others (in this case with Roufffaer in *Vorstenlanden*), van Vollenhoven outlined how indigenous people's rights to land derived from its clearing (*ontginningsrecht*), its control within the scope of communal groups (*groepgemeenschap*) and then the relation of this ownership with the institutionalised system of power in the form of government.

Besides C. van Vollenhoven, a renowned work regarding land property rights in Indonesia, J.B. Sens's work, *Eigendom van Zaken, voor den Openbaren Dienst Bestemde*, can be seen (Sens 1934). This dissertation from the Faculty of Law at the Catholic University of Nijmegen explores the concept of property rights in the context of *gemeen recht* (common rights or communal rights) and their allocation to the public interest (*openbare dienst bestemde zaken*). By departing from the relationship between public law with private law, Sens attempted to solve the issues that arose in relation to the use of communal rights in public functions embodied in the security of property rights (*eigendom*).

The third work directly related to land property rights in Java during the colonial era comes from I.W.C. van den Berg, *Het Eigendomsrecht van den Staat op den Grond op Java en*

Madoera (Berg 1891, 1-26). As an observer and writer on Javanese social life. Professor van den Berg tried to explore how property rights emerged after the Agrarian Law was issued in 1870. However, in contrast to most writers, who focus on property rights held by individuals or business entities as a delegation from the government, van den Berg stresses that state property rights were formed after the law was issued. In this case, van den Berg places the context on the previous land system, which was based on land clearing rights (*ontginningsrecht*) either by individuals, groups or legal entities. Although there is no mention of state interests in this paper, the work of van den Berg can provide an illustration on how the changes that paved the way for the establishments of property rights to land occurred after 1870.

Method

This research employs the historical method to trace and explain the emergence of the dualism of land ownership rights within the colonial agrarian legal system of the Netherlands Indies, particularly between *recht van eigendom* and *inlandsche eigendom*. The historical method is adopted because the land law issues examined in this study are products of past colonial policies; therefore, their proper understanding requires a chronological investigation of the origins of regulations, legal concepts, and agrarian practices that developed from the mid-nineteenth century to the end of the colonial period (Gottschalk 1986; Kuntowijoyo 2013). The application of the historical method in this study follows the stages of heuristics, source criticism, interpretation, and historical reconstruction (Sjamsuddin 2016). The heuristic stage involves the collection of relevant written sources, including colonial legislation such as *Staatsblad van Nederlandsch-Indië*, *Bijblad Staatsblad*, the *Regeeringsreglement* of 1855, and the *Agrarische Wet* of 1870, as well as official colonial government reports such as the *Koloniaal Verslag*, and archival materials related to agrarian policy and expropriation (*onteigening*) (Buffart 1932; Veer 1919).

Source criticism is conducted to assess the authenticity and credibility of the materials by taking into account the colonial political-legal context and the normative biases inherent in official government documents (Day 1904). The interpretative stage is directed at analyzing historical data to understand the causal relationship between changes in colonial agrarian policy, particularly the implementation of the *Domein Verklaring*, the termination of the *Cultuurstelsel*, and the enactment of the *Agrarische Wet* of 1870—and the formation of two distinct regimes of land ownership rights for indigenous and non-indigenous populations (Vollenhoven 1925; Berg 1891). The final stage of historical reconstruction presents an analytical narrative that outlines the chronological and structural development of land ownership rights while highlighting their long-term implications for agrarian legal practices and land disputes in post-independence Indonesia (Heslinga 1928; Harto Juwono 2023). Secondary sources employed in this research include both classical and modern works in the fields of agrarian law and colonial history, notably writings by C. van Vollenhoven, J.B. Sens, L.W.C. van den Berg, J. de Louter, and other relevant historiographical studies on colonial agrarian systems (Sens 1934; Louter 1895).

Recht van Eigendom

After guaranteeing and securing her own assets as absolute property rights, the government took further steps in the agrarian field by issuing the *Agrarische Wet* in 1870. In addition to the status of property rights over government land, through this law the government also controls ground or land that is not proven to be owned by another party. With this land control, the government has the authority to release it just as government land. The difference lies in the form of rights granted. If on government land, the sale of land ends in a property right (*eigendom*), on land controlled (*beschikkingsrecht*) the land is not always in the form of property right, but can also be a right to build (*recht van opstal*), a right to business (*recht van erfpacht*), or even right of use (*gebruikrecht*) (Buffart 1932, 3).

The issuance of this Agrarian Law received a positive response, especially from the business world, which gained legal certainty over the assets that they will control and need to facilitate their business operations in various sectors. Through the provisions of this law, private investors not only have the opportunity to acquire land directly from the government but can also make direct contact with the people, both communal (*gemeenschap*) or individuals to acquire the land needed for their investment (*Staatsblad van Nederlandsch Indie* 1871, no. 163).

Despite the guaranteed freedom to obtain land, the government in this case still imposed restrictions on such actions. There are at least two obstacles to absolute control of land by private investors, especially against the people. Firstly, the rights on which this control is based on all originate from the government wherever the private entrepreneur acquires land, whether in government areas (*gouvernementlanden*), or self-government areas (*zelfbestuurlanden*) and in traditional group areas (*Bijblad op het Staatsblad* 1860, no. 778). As a consequence, when the time of use has elapsed, the government can take the land back and restore its status as government-owned land or to the original owner such as the self-government (*swapraja*) ruler (Algemeen Secretarie Gadjah Mada 1863).

Secondly, what is acquired as tenure rights by private investors does not become absolute property rights. Due to the nature of the business, it is only possible to acquire large tracts of land from the indigenous population through lease contacts, rather than through acquisition of rights such as government land or direct purchase. Thus, private entrepreneurs can only acquire large tracts of land under the *erfpacht* right if it is directly related to land exploitation for cultivation, or the concession right (*concessie recht*) for exploitation outside of cultivation such as mining, transportation, lighting, and forestry (Riesz 1884, 76; Veer 1919, 24).

The granting of the status of property rights (*eigendom*) itself was started by the VOC in the early 17 Century, when a number of VOC officials bought lands around the Batavia in areas outside of it. For example, Cornelis Casteleyn as director-general of the VOC bought the lands of Srengseng, Tugu, and Depok which were subsequently turned into his property. In his will, Casteleyn made these lands his inheritance, both to his direct descendants and to his slaves who were later set free. In the 19th century, these lands were listed as Depok estate "ownership". It means that the Depok land was owned collectively by the Chasteleyn's owner slaves. It based on a verdich by the Supureme Court of the Netherlands Indies in 1850 (Peters 2021, 141).

A similar process was followed by other VOC officials including the Governor-General. In 1745 Baron van Imhoff bought the land of Kampung Baru in Bogor (*Buitenzorg*) which he registered as his private property. He even made the land into a semi-land for the incumbent governor-general's office, with the right to sell it to his successor. In subsequent developments the land was made the property of the Dutch East Indies government after the system left by

van Imhoff was abolished.

However, although Kampung Baru was made into government land, other lands purchased by VOC officials around Batavia were later recognised as private property. By the end of the 18th century, it was recognised as private land with the rights of the owner (Hageman 1860, 364-365). All of these lands with private status were granted absolute property rights by the Dutch East Indies government and had a special position within the colonial agrarian system (*Staatsblad van Nederlandsch Indie* 1836, no. 119).

The development of this property status still did not have a strong basis in general because there was no agrarian regulation that applied as a whole. The colonial government herself only made specific and separate regulations according to the cases that arose. Only in 1855 with the publication of the *Regeeringsreglement* the opportunity to make general provisions on land policy in the colonial lands opened up, and eventually led to the Agrarische Wet of 1870.

In addition to the *Domein Verklaring* principle of government control of land (Neilson 1834, 377), this regulation also opened up opportunities for absolute property rights which were possible to be acquired by individuals in relation to their interests as investors. The legal basis used to regulate it was made in 1834. In article 11 of this regulation it is recorded as follows.

> *Bij de aangifte tot overgang van den eigendom van landerijen, huizen, tuinen or erven, niet door openbaren verkoop maar op eenige andere wijze van eigenaar veranderd, zal door den landmeter, na inzage der benoodigde documenten, waaruit de bevoegdheid tot het doen van zoodanige overschrijving blijkt, ten zijnen kantore, behoorlijke aanteekening daarvan op de registers, worden gehouden met bekendstelling in geval van verkoop van den overeengekomen prijs, en door wien de ongelden de overschrijving vallende zullen betaald worden* (*Bijblad op het Staatsblad* 1834, no. 377). [In the transfer of title to land, houses, gardens or yards whose owners have not changed through public sale except by other means, by the land surveyor after seeing the necessary documents evidencing his authority to carry out the registration of the change of title, an entry shall be made on the register with notice of the price agreed upon in the case of sale, and shall be paid by whoever is responsible for the registration].

In this regulation, there are two important things to note. Firstly, there is the process of transferring ownership of property that is recorded in a legal administrative manner. Through this transfer process, it can be seen that there are property rights that bind individuals to the objects he releases or sells. Secondly, there is the term owner (*eigenaar*) which is absolute in nature. When the recorded material mentions land, houses, gardens, and yards there is a legal status of absolute property rights to these objects (*recht van eigendom*) The term of *eigendom* is split into two : *eigen* means itself, and *dom* from *dominium,* namely to get a control. So both refers to property right of land by someone as the owner (Pratama and Jayaputra 2024, 284).

With this provision, not only were individual property rights guaranteed, but also the disposal and transfer was considered legal according to the implemented regulation. Therefore, by 1870, the Minister of Colonics noted in his report as follows.

> *Geen afstand in eigendom van daartoe aangevraagde grond zal plaats vinden, tenzij bij process verbaal van eene plaatselijke commissie zijn geconstateerd, dat tegen dien afstand geen bezwaar bestaat en bij meetbrief door een gezworen landmeter zijn omschreven de*

> *oppervlakte, ligging en belendingen van het aangevraagde perceel* (*Koloniaal Verslag over het Jaar 1868*, page 348). [No relinquishment in title to the land applied for can be made, unless a local committee is satisfied that no objection has been raised to the relinquishment and by means of a measurement made by a sworn surveyor the area, location and boundaries of the parcel applied for are recorded].

According to the minister's report to the Dutch Parliament in 1868, it can be seen that the administrative process for release or sale of land with property right was more complete. This involved a government apparatus (surveyor), which signified that the issue of property rights and their disposal or sale was a legal matter, in this case in the civil sphere. As a consequence, the status of absolute property rights (*recht van eigendom*) was confirmed as a legal right for its holder, whether an institution or an individual.

Based on the Domein Verklaring, the government has the authority to control land and then made it into state domain (*staatsdomein*). When this status is then legalized and recorded administratively, the state is recognized as the owner and can sell it or grant it to parties who apply to own it under certain requirements. This granting then made it possible to acquire absolute property rights (*recht van eigendom*) status to anyone, especially non-indigenous people. This is confirmed in the following regulation.

> *Het aangevraagd stuk grond wordt op magtiging van de Regeering (indien deze tot den afstand in eigendom genegen is en onder voorwaarden, door Haar voor elk afzonderlijk geval te stellen, in het openbaar bij opbod verkocht, tenzij wegens bijzondere omstandigheden, onderhandsche afstand verkieslijk wordt geacht* (*Staatsblad van Nederlandsch Indie* 1876, no. 177). [Parcels of land applied for under the authority of the government (where the government allows their disposal in fee simple) and with conditions set by the government for each specific case, are sold through open surveillance unless due to special circumstances, direct disposal is considered preferable].

The above provision allows for the birth of absolute property rights, because before this right is granted the status of the land is still state domain or even considered free state domain (*vrije staatsdomein*) which only gives the state the authority to control and not to own. Therefore, in order to prevent a lawsuit by a party claiming to be its previous owner from occurring, the government released the land in an open sale by auction.

This opportunity appears to have been utilized by many people, especially non-indigenous, to obtain absolute property rights of the land that guaranteed their lives and businesses. Although initially the land area was limited to a maximum of 10 bahus, in reality, this restriction was often violated or not strictly enforced. Particularly for applications to acquire property rights submitted by business entities, the land required to support their business operations often exceeds this limit, while also containing business impact consequences.

As a follow-up to this, on May 1890, a circular letter was issued to all residents in Java by the Director of the Interior Government, which contained the following provision, among other things.

> *In verband daarmede wenscht Zijne Excellentie, bij de beoordeeling van aanvragen om grond in eigendom, zich voortaan uitsluitend te laten leiden door de overweging of de betrekkelijke agrarische bepalingen de uitgifte der begeerde perceelen toelaten* (*Algemeen*

Secretarie 1890, no. 1134). [In connection with this, His Excellency (the Governor-General) wishes that in assessing applications for property rights over plots of land in particular can only be guided through consideration of whether the relevant agrarian provisions permit the release of the desired plots].

With the above circular letter, it can be seen that the government is emphasing and tightening the ownership of land with absolute property rights status, especially within the limits of area and risk, particularly when established for industrial purposes by business entities. The seriousness of the above issue was then shown by the government through a letter from the Secretary of State to the Director of Government a few months after the above circular letter was issued. Within this letter, it was noted as follows.

Ook thans nog ligt het in de bedoeling der Regeering dat de aan eenig in eigendom aangevraagd perceel te geven bestemming opgegeven en daarmede rekening worde gehouden om te kunnen beoordeelen of het perceel in de termen valt van die, bedoeld in het 2 lid van artikel 62 van het Regeeringsreglement (*Algeemen Secretarie* 1890, no. 2375). [It is also now the intention of the government to indicate the purpose given to the requested parcel as freehold and that is taken in account to assess whether this parcel falls within the boundaries referred to in paragraph 2 of article 62 of the Government Regulations (ie. the disposal of land in freehold only for the expansion of towns and villages and the establishment of industrial infrastructure)].

The message contained within this letter confirms the government's intention that in principle the government has no objection against the disposal of land in absolute property right including the sale of the government's own land, as long as it is in accordance with the implemented regulations as stated by the Minister of Colonies as follows.

Bij de behandeling van aanvragen om tot het vestige van inrichtingen van nijverheid (of van woonhuizen) kleine stukken gouvernementsgrond in eigendom te Erlangen, was soms de vraag gerezen of al lieten de agrarische bepalingen de inwilliging toe, de uitgifte wellicht zou moeten achterwege blijven wanneer de terrein in verband met bijzondere verordeningen of voorschriften geacht werden voor het opgegeven doel niet te kunnen dienen. Ten dien opzichte is nu eens vooral beslist dat bij de beoordeeling van aanvragen om afstand van grond in eigendom het niet op den weg der Regeering ligt die verzoeken aan andere voorschriften dan aan de agrarische bepalingen te toetsen (*Koloniaal Verslag over het jaar 1891*, page 94). [In discussing applications to acquire property rights in small plots of government land for the construction of industrial infrastructure (or residential houses), the question sometimes arises whether (despite the agrarian regulations allowing it) the release might have to be postponed when this land is deemed by special regulations to be unusable for that purpose. In this connection it is now primarily decided that in assessing applications for the release of land with proprietary status the government's aim is not to confront these applications with any other rules than the agrarian regulations].

Based on the quote above, it can be seen that only the agrarian regulations provided the basis for the granting of property rights to non-indigenous people and business entities, which were fully subject to Western law. Through the granting of such status, the right holder was

subject to the obligation to pay land tax (*grondbelasting*) as evidence of the government's recognition of his right.

To calculate the amount of land tax on the sale value of the land subject to the property right, the government issued a standard called *verponding*. *Verponding* itself was first levied in 1823 as a form of payment obligation to the government for those who were recognized as owning land or real estate (*Staatsblad van Nederlandsch Indie* 1823, no. 5). In its development, *verponding* became a way to calculate the basic sales value of real estate, the results of which were used to calculate the amount of land tax (*grondbelasting*) (Helder 1925, 35). The sale value of these properties was determined at the beginning of the year by considering the condition of the real estate. In that year, the percentage of sale value of the land in that condition is calculated and the result became the *verponding* that will be levied as land tax. Until the application of new agrarian system by Indonesian government in 1960, the term of *verponding* refers to a tax that collected on immovable property (*onroerende goederen*) namely land (Rabbani, Laturette, and Radjawane 2024, 22). Thus, absolute property rights were considered legal within the colonial agrarian system.

Inlandsche Eigendom

In In addition to the property right (*recht van eigendom*) that applies to non-indigenous people, the Agrarian Law of 1870 also opens up opportunities for indigenous people to acquire land property rights. Although in principle it is the same as the property rights held by non-indigenous people, there are slight differences in its application and implementation, in accordance with the purpose of granting the right. The difference lies in the fact that Western's idea shows that the native did not use their land properly fot the sake of their economic progress and development (Cameron, Graben, and Napoleon 2020, 16).

This difference cannot be separated from the origin of indigenous property rights (inlandsche eigendom) that prevailed as their agrarian system. Whereas foreigners who came to the Indies acquired land in property rights through their purchase of land from the central government or though the government of indigenous person (whether a self-government ruler, a native ruler, or an indigenous person), the indigenous people acquired their property rights by descent and history, hence it is often referred to as agrarische eigendom. As stated by C. van Vollenhoven, the indigenous population controls the land of their ancestors, known as the first landowner (ontginningsrecht) (van Vollenhoven 1925, 4). From there, communal ownership emerged, which was dominated by kinship ties such as family, clan, community, and so on. Through this communal ownership, individuals who are part of the social group formed through the ties of kinship do not have property rights, but only the right of using the land that belongs together. This right of use is individual and hereditary in nature (erfelijk individueel gebruiksrecht), but only lasts for a certain period and after the time limit has passed, the land will then be exchanged for land controlled by other kinship members. Thus, the individual only has the right to harvest and cultivate the land by depositing a portion of the produce to the communal bond as a form of obligation as member of the group (van Heukelom 1871, 173; van Vollenhoven 1925, 4).

After some time and in line with the development of this form of group into a simple and low-level government unit (*kampong* and *desa*) the form of land tenure the individual hereditary right of use also experienced changes. Periodic exchanges ceased to be the norm and a fixed form of individual hereditary tenure emerged. Due to its fixed nature, this form is more similar to ownership (*bezit*), hence it is more commonly referred to as hereditary individual ownership rights (*erfelijk individueel bezitrecht*) (Ossenbruggen 1909, 2).

Through this ownership right, the inheritance of land to descendants as long as they still reside and live in the ties of community is guaranteed. Likewise, their right to exploit the land and reap the harvest is honored by the social group (*desa*). Their only obligation is to provide a small portion of their land produce and their labor when the village requires it, either regularly or incidentally. However, the authority over the land still remains with the communal ownership right (*communal bezitsrecht*), which at any time can revoke it and return its status (Heslinga 1928, 20).

These obligations were perceived by the holders of these ownership rights as an obstacle to assert their free and absolute rights over the land. Whatever happened they felt that the village remained the owner of the land and that this issue had to change if they were to realize their hopes of becoming the absolute owners of the land. This opportunity arose when on 9 September 1870 the government issued the Agrarian Decree, which contained the following provision, among other things.

> *De regten der Inlandsche bevolking op grond, volgens hare godsdienstige wetten, instellingen en gebruiken, worden voor zoover noodig, bij algemene verordening omschreven* (*Staatsblad van Nederlandsch Indie* 1870, no. 118). [The rights of the indigenous people to land according to their religious laws, traditions and customs shall to the extent necessary be recorded in general regulations].

The regulation was the first step in formalizing the rules that applied to the indigenous people in relation to their land rights. From there the opportunity beeame opened to reinforce their legal status. With the existence of written law, regulation adjustments (concordance) could be made, especially from customary law to Western positive law. With this concordance process, the opportunity to change the status of land ownership as held by the indigenous people until then (*erfelijk individueel gebruik en bezitrecht*) could be replaced with a stronger legal status, namely *eigendom* (absolute property rights). This is evident from the following provision within the above regulation.

> *De Inlanders die tot verzekering van hun erfelijk individueel gebruiksregt op grond een schriftelijken titel verlangen, worden door den Gouverneur Generaal, zoodra doenlijk, in de gelegenheid gesteld dien te verkrijgen. De algemeene verordening, regelende de vervanging van inlandsch erfelijk individueel bezit, door eigendom krachtens de vierde bepaling der voormelde Wet, wordt door Ons vastgesteld.* [Indigenous persons who wish to obtain written evidence to confirm their hereditary individual right of use to land can on this occasion be granted by the Governor-General as soon as possible. The general regulations governing the replacement of hereditary indigenous individual ownership with property rights are prescribed by us under the fourth provision of the Act].

This opportunity became wide open through the enactment of legal rules for indigenous people to obtain absolute property rights. The aforementioned right was intended to guarantee the indigenous people of their absolute ownership and were no longer tied to communal group (*desa*), also to ensure their future prosperity.

However, the Dutch East Indies government that issued the regulation also was involved. This concern arose in relation to the potential that indigenous people who acquired absolute property rights would have the opportunity to relinquish them either through sale or

pledge in order to obtain loans of credit. If this happened, it was firmly suspected that indigenous people would lose the property rights that had been granted, because the process of selling off could easily be carried out and legally recognized according to the rules of civil law. It can be happened as the village traditional system is destroyed by crushing its landholding pattern, as done by colonial and her ally native elite. It starts with land tenure or landholding tnat dominated the village picture (Niel 2022, 187). For this reason, in the implementing regulation of the Agrarian Law of 1870, article I contained the following provision.

> *Gronden door inlanders het krachtens de vierde bepaling der Wet 9 April 1870, Indisch Staatsblad no. 55, in eigendom verkregen, hetzij in erfelijk individueel gebruik of tijdelijk als dessagenooten in de gemeente-gronden bezeten, kunnen aan niet-inlanders worden verhuurd volgens de bij deze veordening gestelde regels* (Anonim 1872, 61). [Lands acquired by indigenous people either under the fourth provision of Law 9 April 1870, Government Gazette number 55, or in hereditary individual use or held temporarily in communal land as village members, can be leased to non-indigenous people according to the rules set out in this regulation].

Under the above provision, indigenous people holding this property right (*agrarische eigendom*) could only rent out their land and not sell it, which was also regulated by provisions in placed to protect it. This stimulus to obtain the proceeds from the above rentals was the main motivation for residents to apply to the government to change the status of their land ownership rights into absolute property rights, although different from property rights for non-indigenous people. The advantage of this change in status was certainly the freedom to enjoy the proceeds without being burdened by the obligation to share with the communal group, namely the village (*desa*). In addition to that, after a few years, many people wanted to acquire this absolute property right for fear that they would one day return the land to the village as a communal bond, when the village required (*Koloniaal Verslag over het jaar 1891*, page. 93). The issue that arose and was debated among Dutch officials regarding these indigenous property rights was whether they were subject to Western civil law or still related to the traditional system of land ownership. J. de Louter stated as follows.

> *De Aldus verworven eigendom is geenszins gelijk aan dien van het Burgerlijke Wetboek en wordt daarom agrarische eigendom genoemd. De inlander blijft ten aanzien zijner grondrechten in hetzelfde maatschappelijk verband als waarin hij tot dusver leefde* (Louter 1895, 592). [The property rights acquired are not at all the same as property rights under the Civil Code and are therefore called agrarian property rights. Indigenous people in relation to their land rights continue to have the same social relations as they have had up until now].

According to de Louter, indigenous people can only hold property rights as far as they relate to the recognition by the state of their land, and unlike the property rights held by non-indigenous people in relation to their investment and business operations. The above view of de Louter was also indirectly supported by the Minister of Colonial affairs, Franssen van de Putte when he blamed the Council of the Dutch East Indies in this view of indigenous property rights.

> *De Raad (in advise 19 Juli 1872 no. XIV) acht nu dat het Inlandsche eigendomsrecht geheel is onttrokken aan het Europeesch burgerlijk recht. Hier moet Ik denken aan een misverstand. Toch art 4 zegt dat de Inlander die zijn erfelijk individueel bezitrecht op grond door eigendomsrecht heeft doen vervangen, het vrije genoet van en de vrije beschikking over den grond heeft, behoudens eenige beperkingen* (Landsdrukkerij 1896, 11). [The Council (in its advice of 19 July 1872 no. XIV) now considers indigenous property rights to be entirely derived from European civil law. Here I am reminded of a misunderstanding. But Article 4 says that an indigenous person who replaces his hereditary individual ownership rights with a right of property is free to enjoy and control his land, besides being subjected to certain restrictions].

In his commentary, Franssen van de Putte considered that indigenous property rights (*inlandsche agrarische eigendom*) are in fact the right to control and enjoy land products freely and separately from communal or village ties, which are also evidenced by the payment of *verponding* as well as absolute property rights. However, in other respects, the holder of an indigenous property right did not obtain the freedom and facilities as the holder of absolute property right (*recht van eigendom*) (Asnanda and Cos 2024, 522).

For the indigenous people themselves who obtained this right and paid its taxes, they felt that their rights were the same as the absolute property rights held by non-indigenous people. This was according to them proven administratively, by showing proof of their tax payments which are different from the *verponding* file on absolute property rights, as shown below.

> *Het eenige officieele stuk dat door den kleinen man dikwijls met de grootste zorg en waakzaamheid wordt bewaard, de petok of pipil of het aanslagbiljet in de landrente dan wel Inlandsche Verponding, wordt bijne overal in de jurisprudentie niet beschouwd als een bewijs van den eigendom (het bezit) van den grond, hoogstens is het dikwijls beduimelde en verkreukelde papiertje belastingplichtigheid van den houder een bewijs.* [The only official file kept by the common people was often with great care and caution, the *petok* or *pipil* or land tax bill sheet other than the indigenous verponding, almost everywhere in jurisprudence could not be considered proof of land ownership, at least often the torn and shabby paper was proof of the holder's tax compliance].

Some researchers found that this phenomenon is caused by a fact that "*Eigendom verponding* actually refers to the concept of property rights related to land and property remains, without any relation to tax as *verponding*" (Asnanda and Cos 2024, 522). In the above quote the term *landrente* is being used (which literally means land rent) rather than land tax (*grondbelasting*). This shows that the ties between the individual and his land and social group still apply. It is also clear from the writing that a tenant considered the payment of land tax as the legitimacy of his ownership of the land.

In addition to the misconception above, these indigenous property right holders were also not simply assured of their land ownership. The information below proves this emphatically.

> *De memorie van toelichting geeft daarvoor uitsluitend op de vrees dat de inlander immers zoo lang de werking der wet niet in leder opzigt geregeld en verzekerd is, bij de herinnering aan willekeurige beschikking over grond en arbeid, het ligt als zeer verstandig zoude*

> *rekenen voor een zeker voordeel een nieuw regt prijs te geven, dat het gouvernement heden wel schenkt, maar om de miscchien morgen terug te nemen. Moest het argument dienen als betoog dat de inlander meer gevaar loop door het gouvernement te worden benadeeld dan door Europesche of Chineesche particulieren, zoo zouden wij ons er volkomen mede kunnen vereenigen* (Gennep 1866, 18). [The explanatory memorandum above only points to the fear that indigenous people have for so long not been governed and secured by the enactment of laws with arbitrary control of land and labour in mind. It seems perfectly reasonable to grant new rights for certain benefits, which the government grants today, but may take back tomorrow. If this argument asserts that indigenous people feel more in danger of being harmed by the government than by Europeans or Chinese, then we seem to agree].

In the public perception above, it appears that the government was not fully assertive in guaranteeing the indigenous property rights in changing their land ownership status. The government's hesitation arose from the fear that indigenous people would lose their land if given the freedom. In order to prevent this, an indigenous figure, Dwidjosewojo, commented at the general meeting of his organisation on 3 September 1924 as follows.

> *Het Inlandsch grondbezit moet beschermd worden tegen elke poging van niet-inlanders tot grond-occupatie. Om dit te bereiken, de volgende middelen gaarne toegepast; verzekering van de rechten der Inlandsche landbouwers op den grond. De Regeering regelt het individueel bezitsrecht. Het verbod om grondbezit aan niet-inlanders over te dragen blijve gehandhaafd. Gronden waarvan de eigenaar niet kan worden vastgesteld, moeten vrij staatsdomein worden* ("De Javanen en de actie van het IEV" in *De Sumatra Post*, 18 September 1924, 5th sheet). [Indigenous land ownership must be protected against any attempt by non-indigenous parties to occupy land. To achieve this, the following means are applied: guaranteeing indigenous farmers' rights to land. The government regulates individual property rights. The prohibition on transferring land ownership to non-natives is maintained. Lands with unclear owners are to become free state lands].

The above assertive view of Dwidjosewojo contains a claim that the government is the only party responsible for guaranteeing and protecting the property rights of indigenous people to land, although the article does not explicitly state what rights are referred to. In response to such condition, the Dutch East Indies government in her last regulation on indigenous land property rights stipulated in 1937 the following provision.

> *Het hoofd van gewestelijk bestuur is bevoegd op het bepaalde bij de le alinea uitzonderingen toe te staan voor stukken grond, besteed en gevorderd voor inrichtingen van nijverheid of landbouw van gene grotere uitgestrektheid dan tien bouws, voor uitbreiding van bestaande samenwoningen van Europeanen or vreemde Oosterlingen of voor andere gewichtige doeleinden* (*Staatsblad van Nederlandsch Indie* 1937 no. 373). [The head of the regional government is authorised with the exceptions referred to in paragraph 1 to authorise devoted and requisitioned plots of land for industrial or agricultural infrastructure which do not exceed 10 odours in area, for the expansion of European and foreign Easterner settlements or for other important purposes].

With the existence of this regulation, regardless of the autonomy of a local government the head of the regional government represented the government to authorise the sale of lands including indigenous property to non-indigenous people if in his opinion it was necessary. This ended the restrictions for indigenous property rights in terms of disposal and transfer of rights to non-indigenous people, which had been in place since 1870.

Conclusion

The description above attempts to highlight the existence of two kinds of land property rights that once existed in the history of the development of the agrarian system in Indonesia, and which still leave legal issues in the present. A number of civil cases that have been brought before the courts and have not been adequately resolved utilising a number of evidence files such as those presented in the above paper. This means that the main source of problem lies in the system that prevailed in the past, especially in terms of land ownership.

In the analyses above, it is evident that within Indonesian agrarian historiography two kinds of land property rights have been found, apart from ownership right and other right of tenure. The first right arose from the Western legal system that had been in force in Europe since the 17th century and was later applied in the Dutch East Indies by the VOC during her rule. The second right only emerged after the changes in the agrarian system that occurred as a consequence of the issuance of the Agrarian Law in 1870. The change in perception and system triggered the emergence of a new form of land property right, although it only applied to indigenous people.

Whereas the former land property right is based on the principles of civil rule, the latter ownership right is based on Indonesia's indigenous land tenure system as cited by Professor van Vollenhoven in his work. In her policy, the Dutch government attempted to distinguish between the two, both for her own interests or the interest of the indigenous people themselves. However, towards the end of her rule, the similarities between the two were unavoidable and this brought consequences when both entered the Indonesian national land system enacted since 1945.

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