

## SETTLEMENT OF LAND OWNERSHIP DISPUTES BETWEEN MM LACHINSKY AND NY CAECILIA

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### Abstract

The most fundamental thing about the modus operandi of violations in the implementation of Agrarian Law is the error in understanding, recognizing and applying the conversion of land rights from before and after the enactment of UUPA No. 5 of 1960. Apart from that, the worst thing is that there have been actions, among others, legalizing the mutation of documents with legal defects, the wrong application of the relevant law, changing the measuring papers to pictures of the situation and the mistakes of law enforcers and law enforcement. The results of this study indicate that the Basic Agrarian Law has never regulated that since the enactment of the Law, lands owned by citizens and foreigners have become land controlled by the State. Conversely, when the law is enacted, the old land rights must first apply the conversion provisions that are relevant to the position of the case, in this case are Article 1 paragraph (3), (4), (5) Provisions Conversion of UUPA and Article 12. These regulations are actually looser for foreign citizens who are being burdened with former rightsground lease. This concession and protection are explicitly or implicitly stated in these regulations, namely when there are obstacles for foreign nationals to obtain land conversion e.l do become property rights based on Article 1 paragraph (1) of the UUPA Conversion Provisions No. 5 of 1960, then article 1 paragraph (3) protects foreign ownership through conversion to building use rights referred to in article 35 paragraph (1) UUPA No. 5 of 1960. Whereas according to Article 36 paragraph (1) point a. Building use rights are for citizen Indonesian only.

**Keywords:** Right to Build, Erfpacht Right, Conversion

## INTRODUCTION

Agrarian comes from the wordfield (Dutch), fields (Greek) means agricultural land. Agger(Latin) means earth, land or piece of land,agraria (English) means agricultural land. In the Black's Law Dictionary it states that the meaning of agrarian is related to land, or the distribution or distribution of land; as agrarian law. According to the 1960 Basic Agrarian Law, Agrarian has a deep meaning in a broad sense, namely to regulate the Earth, Water and Space and the wealth contained therein. Meanwhile, in a narrow sense, it regulates land issues and land rights in Indonesia.

Before and after Law no. 1 of 1958, in the area Property Particles are present enclave indigenous business lands ornative whose legal status is referred to as the property of indigenous Indonesians and is guaranteed/protected by 4 positive laws and regulations, namely:

1. Article 2 of the KB Decree(Royal Decision) No. 45 of 1915 announced with Stbl(Official Gazette) No. 702 of 1913. Article 2 states that when private lands become state land,'Government van Netherlandsch India', then the business lands that are in the hands of indigenous people become land owned in the name of the Cultivation Right Holder.
2. Article 1C and Article 5 of Law No. 1 of 1958 on the Elimination of Private Lands and PP No. 18 of 1958 Implementation of the Law on the Elimination of Private Lands (UU No. 1 of 1958, National Gazette No. 2 of 1958). Implementation of the Law on the Elimination of Private Lands Article 2 paragraph 1:  
"Particle Lands are confirmed one by one by the Minister of Agrarian Affairs with a Decree explaining their name, location, area and wherever possible other cadastral information as well as the name and address of the owner."
3. Article 2 Provisions for the Conversion of Law no. 5 of 1960 concerning Basic Agrarian Regulations (UUPA)
4. Article 24 paragraph 1 PP RI No. 24 of 1997 regarding Land Registration Article 60 paragraph 2 PMNA/KBPN No. 3 of 1997 regarding Provisions for the Implementation of PP RI No. 24 of 1997.

The principle that applies to the ownership of land and houses on the right el do regulated in the Civil Code(Civil Code) article 571, namely that the house is not separated from ownership the land. "The right to own a piece of land includes the right to own everything that is on it and in that land.

And after the enactment of the UUPA, the principle that is known in the books of sources of law appliesbasic separation-horizontal who considers that the house is separate from the land.Basic This comes from Indonesian customary law, so owning land is not the same as owning a houseon, vice versa. DIn practice in Indonesia after the UUPA was enacted, the problems that arise are land dispute cases coming from the private land itself, and there are many cases of boundary disputes, land grabbing or land grabbing, land registration, overlapping on the same land or even being controlled by the government. and under state control. So to avoid this most basic error, shortcuts are often taken which are actually misleading, namely the excuse that when the BAL came into effect in 1960, landowners who did not re-register, the land automatically became state property (Articles I - IX Provisions Conversion of UUPA 1960). The formal owner does not even receive any compensation, even though his land is forced to become the property of another party who does not have any legal relationship with him or with himobject the land.

Land dispute events existing from antiquityThis happen Because public start feel deficiency land consequence explosion population and as a result ofcolonial government occupation. Growth population Which very fast, Good through birth nor through migration and urbanization makes land as commodity Which very valuable though extensive the land still, so that each its land maintained dying. In addition, policies issued in ancient times were very, very detrimental to the people's rights to land, such as the policy of forced cultivation (cultuurstelsel), land tax policy (rent), and private land policies. In cases of land disputes, this can take up to 40 years or more.

In Law No. 5 of 1960 or the UUPA itself also contains articles that are not always clear. The law is still too low to answer the many land dispute issues that have occurred in Indonesia. For example, with regard to land ownership by foreigners, so that there is a lot of overlap or land grabbing that starts from this, even though he has biological descendants who are Indonesian citizens not foreigners, the UUPA does not provide sufficient articles to address these legal issues. Scholten said, that is an illusion for people to believe thatlaw has completed everything and that legal regulations are by nature incomplete and cannot be complete.

According to Ir. Hermina Sujono Hadi as Chair of the Indonesian Consumer Development Foundation specializing in the land or agrarian sector, stated that there were 44 (forty four) modus operandi in Indonesia which concluded that there had been deliberate engineering of wrong conversion of land rights and deliberate engineering of wrong transfer of land rights that took place since this country became independent give birth great-grandson until now. Of the 44 (forty four) modus operandi, among others, splitting certificates to remove previous negative data, issuing certificates on expired

Decision Letters, issuing Land Registration Certificates (SKPT) which turned into execution rather than administration, making various Act or fake letters, changing the measurement letter to a picture of the situation to eliminate data on the subject of rights that are always attached to the measurement letter, Governor's Decree and Mayor's Decree that violate Law no. 20 of 1961 (State Gazette of 1961 Number 288) concerning Revocation of Rights to Land and Objects on it, and others. Therefore, the causes and consequences of agrarian disputes that occur in Indonesia are due to misunderstanding and/or mismanagement and or deviation and/or denial of application, especially in the implementation of conversion provisions.

At the same time, it is very unfortunate that experience in the Executive and Judiciary apparatus shows how practitioners are unable to digest articles that contain mechanisms for solving problems such as in chapter 23 paragraph (1), article 37 paragraph (b), article 41, article 43 paragraph (2), article 44, as well as all of article I regarding the terms of conversion, but on the contrary insist on maintaining the status quo mistake with the reason "already misguided since the beginning". Because every law made by the government must have a purpose and what it wants to achieve. The intent and purpose behind each of these laws can be said to be the legal policy. The occurrence of land cases that have occurred shows that administrative management and legal certainty in Indonesia are very weak. This shows that the state cannot guarantee or increase the welfare of its people. Therefore, the role of the State in managing land administration is very important, so that it can bring real prosperity to the Indonesian people.

One of the cases that occurred was in East Jakarta, on Eigendom land that was formerly owned by the West Verponding No 19114, Meetbrief or Measurement Letter No. 291/1939, from Persil No. 6520 remains, covering 1441 m<sup>2</sup> which was disputed and sued and terminated and has permanent legal force (Supreme Court Cassation Decision No. 935 K/Pdt/2001) belonging to Ir. Hermina Sujono Hadi through a grant from Max Rudolf Lachinsky bin Michael Maximilian Lachinsky which is occupied by Mrs. Caecilia Maria Wahyu Kartini.

It started with Michael Maximilian Lachinsky who leased his land to Jan Willem Stigter and Cornelis Jan Rijnveld (WM H. Muller & Co. NV) based on the results of an official translation of a letter of grantground lease (hereditary land lease) No. 107 of August 24, 1949 part of the estate belonged to Michael Maximilian Lachinsky by titleproperty an area of 1,441 m<sup>2</sup> formerly known as Nassau Plein No.9 is deciphered in the measuring letter dated June 30, 1939 No.291/1939. The duration of the land lease rights in the agreement is 75 years starting in 1949 and ending in 2024.

Then WM. H. Muller & Co. NV. This Rotterdam-based office opened a branch in Jakarta which was eventually discontinued in 1952, after which the lease was transferred to another party without WM's knowledge. H. Muller & Co. NV which is in Rotterdam. According to stories and existing evidence, a business entity in Indonesia named PT. International Shipping and Transport Agencies NV which changed its name to PT. ISTA INDONESIA has occupied from 1958 to 1978. By PT. ISTA INDONESIA land with rightsground lease was transferred to Mrs. Caecilia Maria Wahyu Kartini as Defendant I by making a purchase before Notary Muhani Salim SH, which is contained in deed No. 32 in March 1987 where Mrs. Caecilia Maria Wahyu Kartini is the buyer.

Then in September 1987 Mrs. Caecilia Maria Wahyu Kartini asked the Governor of the Special Capital Region of Jakarta to obtain a Building Use Right in the name of Mrs. Caecilia Maria Wahyu Kartini for the land located at Jalan Taman Cornel Simanjuntak No. 9 Jakarta. It was only in February 1988 that the Governor of the Special Capital Region of Jakarta issued a Decree of the Governor of DKI Jakarta/Head of the Agrarian Directorate No.1.711.2/642/60/HGB/T/1988 and granted Building Use Rights from the East Jakarta Land Registration Section in September 1987 No.1909/1987.

Based on the Decree of the Governor of the Special Capital Region of Jakarta No.1.711.2/642/60/HGB/T/1988 Certificate No.740 Cipinang Cempedak was issued in the name of Mrs. Caecilia Maria Wahyu Kartini with an area of 1,291 m<sup>2</sup> described in the situation drawing No. 1909/1987 dated 8 August 1987 which has ended right on April 25, 2008.

Ir. Hermina Sujono Hadi as the Plaintiff strongly objects because there are persons who have issued HGB Certificate No. 740 area of 1291 m<sup>2</sup> on April 26, 1988 on behalf of Mrs. Caecilia Maria Wahyu Kartini, and it was stated that the land was the land of the former State of Eig. No 19114. In addition, since the issuance of the said HGB letter, he has obtained ownership rights to object grounded dispute Act Sale and Purchase of Houses and Transfer of Rights dated March 6, 1987 No.32, Mrs. Caecilia Maria Wahyu Kartini has controlled the land belonging to Ir. Hermina Sujono Hadi without any hindrance from anyone, including from Max Rudolf Lachinsky as Michael Maximilian Lachinsky's heir for decades and never transfer to anyone.

Therefore, Ir. Hermina Sujono Hadi asked the Court to order Mrs. Caecilia Maria Wahyu Kartini to hand over the disputed land in a vacant, well-maintained condition without any burden and subject to forced money of Rp. 5,000,000 (five million rupiah) every day in cash and all at once and finally the

case was won by Ir. Hermina Sujono Hadi through the Supreme Court's Cassation Decision No. 935 K/Pdt/2001.

## RESEARCH METHODS

In this study using the type of normative juridical research with a statutory approach (statute approach) which relates to the central theme of the research, namely sharp research methods based on doctrine and norms through analysis of the primary and secondary materials by researching existing library materials to seek scientific truth based on jurisprudential logic from a normative side to produce legal analysis. This is intended to obtain information from various aspects regarding the legal issues being discussed. In this study the authors analyze all laws and regulations related to agrarian affairs. The specifications in this study are descriptive analysis namely research that describes and analyzes existing problems systematically regarding all matters relating to what is the problematic of land rights disputes ex property No. 19114, and how to resolve disputes over land ownership rights in Cipinang Cempedak, East Jakarta, to a court decision that has permanent legal force.

## RESULTS AND DISCUSSION

### Origins of Land Ownership Ex Property Verponding No. 19114

Michael Maximilian Lachinsky married Jeanne Marie Paulus, producing an only child named Max Rudolf Lachinsky who was born in December 1934 at Meester Cornelis, Jatinegara Batavia. This was known when Max Rudolf Lachinsky received 3 (three) Certificates, which he did not previously know that he was the only child of Michael Maximilian Lachinsky and Jeanne Marie Paulus. These letters include:

- a) Certificate from the Embassy of the People's Republic of Poland dated 30 January 1976 in Jakarta stating that Michael Maximilian Lachinsky was born in January 1893 in Ostrogorsky, died in Tilburg in December 1967, a Polish national. And Jeanne Marie Paulus had died during World War II. This couple has a son named Max Rudolf Lachinsky who was born in December 1934 at Meester Cornelis, Jatinegara, East Jakarta.
- b) A certificate from the Embassy of the Republic of Poland dated March 10, 1976 stated that Max Rudolf Lachinsky was the son of Mr. Michael Maximilian Lachinsky. Based on documents from Warsaw-Srodmiescie-State Official Affairs No. WSW-11-83-786/765/75 and according to Polish law, he is the legal heir of his father's property.
- c) Certificate from the Centraal Bureau voor Genealogie (Research Center for family history in the Netherlands). The results of the DNA test certificate explained that Max Rudolf Lachinsky was the child of Michael Maximilian Lachinsky's marriage to Jeanne Marie Paulus.

Max Rudolf just found out that he is the son of Michael Maximilian Lachinsky in 1972 when the Alm. H. Adam Malik (Minister of Foreign Affairs in Development Cabinet I (1968 – 1973) looked for him and met him who at that time Max Rudolf was working as Assistant Public Relations Photographer Secretariat Republic of Indonesia and still named Max Rudolf Wenas. As told by Max Rudolf when Ir. Hermina Sujono Hadi investigated her identity in 1995.

At first he knew Andries Franciscus Wenas and Augusta Victoria Irma Gubbels were his parents. Then he married Wong Chuan Chiaw while still based on Roman Catholic marriage certificate (marriage certificate) issued by the Church of St. Anthony Medan, North Sumatra. Then after that in 1984, he and his first wife were no longer together, then Max Rudolf converted to Islam and converted to Islam in December 1987 with a Statement of Entering Islam at the Office of Religious Affairs in Cisarua Bogor District. After that he married an unregistered Muslim woman in 1997 and finally married a second time officially registered at the KUA in 1999. Until the end of his life in 2004 Max Rudolf Lachinsky was in a Muslim condition due to illness and was buried according to Islam at his second wife's residence in Megamendung, Bogor and left a daughter. PA Cibadak Decision Number 16/Pdt.P/1994/PA.Cbd states that Max Rudolf has been legally a Muslim since 1987 and he is the only heir of his father Michael Maximilian Lachinsky and Jeanne Marie Paulus.

Because Max Rudolf Lachinsky was unable to process legally and financially to continue managing his rights, so on his own initiative with compensation from Ir. Needless to mention Hermina Sujono Hadi, Max Rudolf Lachinsky signed a letter of agreement between Max Rudolf Lachinsky and Ir. Hermina Sujono Hadi in July 1996 with No. 09/MRL/SPJ/VII/96 and also donated kavling based on the decision letter of the Cibadak Religious Court Number 13/Pdt.P/1996/PA.Cbd which at that time was controlled by an occupant named Ny. Caecilia Maria Wahyu Kartini since 1988. Therefore, Ir. Hermina Sujono Hadi is given full rights or powers to administer, manage, sell or grant to other parties whenever deemed necessary.

### Several modes to eliminate Max Rudolf's origins

Max Rudolf Lachinsky had told Ir. Hermina Sujono Hadi that actually Andries Fransiscus Wenas and Augusta Victoria Irma Gubbels were trusted employees of Michael Maximilian Lachinsky. It is reasonable to suspect that Augusta Victoria Irma Gubbels is a "Jipro" typist (children miss) had engineered the identity of Max Rudolf Lachinsky. Starting from the Japanese era, Michael Maximilian Lachinsky was arrested by Japanese soldiers and then Max Rudolf Lachinsky and his nanny by Michael Maximilian Lachinsky were entrusted to the Wenas family by moving the Wenas family from Gg.Solitude to one of Michael Maximilian Lachinsky's houses, namely Insulindelaan 22 which is now Jalan Cipinang Cempedak II. Then when Michael Maximilian Lachinsky returned to pick up his son, the Wenas family said that Max Rudolf Lachinsky had died.

It was proven by the results of a DNA test issued by the Centraal Bureau voor Genealogie which stated that Max Rudolf Lachinsky was the son of Michael Maximilian Lachinsky and Jeane Marie Paulus, according to Polish law, he was the legal heir of all the property inherited from his parents. Certificate of Marriage (marriage certificate) between Max Rudolf and Wong Chuan Chiaw issued in accordance with the original by the Church of St. Antonius Medan, North Sumatra, in September 2014 was the first marriage between him and Wong Chuan Chiaw while still a Roman Catholic. Not denied by Max Rudolf Lachinsky because he still thinks that Andries Fransiscus Wenas and Augusta Victoria Irma Gubbels are his biological parents because at that time Max Rudolf Lachinsky did not know his true identity.

### Case Description According to Mrs. Caecilia Maria Wahyu Kartini

With the enactment of Law No. 5 of 1960 concerning Basic Agrarian Regulations, based on the provisions of the conversion of Article 1 paragraph 3, the former land Property Verponding No. 19114 the remainder has been converted into Building Use Rights with a term of twenty (20) years. According to Mrs. Caecilia Maria Wahyu Kartini, holder of Building Use Rights on former land Property Verponding No. 19114 remaining with a term of twenty (20) years is Michael Maximilian Lachinsky. Based on these laws and regulations, on September 24, 1980, the building use rights in the name of Michael Maximilian Lachinsky had expired.

Until the deadline according to Presidential Decree No. 32 of 1979 and Article 3 of 1979 concerning provisions regarding Applications and Granting of New Rights on land conversion of western rights, any person or legal entity that has Cultivation Rights, Building Use Rights, and The right to use the land from the conversion of the West Right and still need land that ends no later than September 24, 1980, according to Mrs. Caecilia Maria Wahyu Kartini, Michael Maximilian Lachinsky or their heirs have never applied for new rights, so the former land should Property Verponding No. 19114 is land controlled by the State.

Based on Presidential Decree No. 32 of 1979, the former land use rights and usage rights from the conversion of Western rights which have become settlements or are occupied by the people, will be given priority to the people who occupy them to obtain new rights. Based on these provisions, the controlling party at that time was PT. ISTA INDONESIA which has the first priority regarding the land rights.

Based on the Deed of Granting Long-Term Lease Rights in 1949 No.107 drawn up in Dutch before Notary Sie Khwan Djioe, a lease has taken place between Michael Maximilian Lachinsky and WM.H. Muller & Co.NV for a period of seventy five (75) years over a portion of the Eigendom Verponding No.19114. Based on the building permit in 1957 No. 1948/RB to PT. ISTA INDONESIA was granted a permit to add and change rooms in a residential house on former land Property Verponding No.19114. After that PT. ISTA INDONESIA issued statement letter No.065/MD/V/99 on behalf of Sri Isnaeny as Managing Director of PT. ISTA INDONESIA which stated that from 1957 to 1987 PT. ISTA INDONESIA has occupied an agency house located at Jalan Taman Cornel Simanjuntak No. 9 Cipinang Cempedak Village, East Jakarta.

In 1987 then Mrs. Caecilia Maria Wahyu Kartini bought the house from PT. ISTA INDONESIA drawn up before Notary Muhani Salim, S.H. where Mrs. Caecilia Maria Wahyu Kartini is the buyer. Then in September 1987 Mrs. Caecilia Maria Wahyu Kartini asked the Governor of the Special Capital Region of Jakarta to obtain a Building Use Right in the name of Mrs. Caecilia Maria Wahyu Kartini for the land located at Jalan Taman Cornel Simanjuntak No. 9 Jakarta. It was only in February 1988 that the Governor of the Special Capital Region of Jakarta issued a Decree of the Governor of DKI Jakarta/Head of the Agrarian Directorate No.1.711.2/642/60/HGB/T/1988 and granted Building Use Rights from the East Jakarta Land Registration Section in September 1987 No.1909/1987.

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name of Mrs. Caecilia Maria Wahyu Kartini with an area of 1,291 m<sup>2</sup> described in the situation drawing No. 1909/1987 dated 8 August 1987 which has ended right on April 25, 2008.

Mrs. Caecilia Maria Wahyu Kartini also believed that Max Rudolf Lachinsky was the son of Andries Fransiscus Wenas and Augusta Victoria Irma Gubbels. And Michael Maximilian Lachinsky and Jeane Marie Paulus were not the biological father and biological mother of Max Rudolf. He got this statement from the Baptismal Letter (Extract from the Baptismal Register) and Max Rudolf Lachinsky's marriage certificate to his first wife while still a Roman Catholic.

#### **Case Description According to Ir. Hermina Sujono Hadi**

Based on the results of the official translation of the Deed of Property No.1285/1949 in August 1949 as a substitute for the lost treatise or minutes regarding the Deed of Ownership No.616 dated May 5, 1931 and No. 1887 dated December 1, 1931 (deed of improvement) from Miss Louise Drossaers and Jacobus Bartholomeus Drossaers Senior acting as attorney for and on behalf of NV. Bouw-en Industrie Maatschappij, explained that the shareholders had sold to Michael Maximilian Lachinsky based on the Deed dated 07-01-1921 sub No. 8 of land located in West Java Province, Batavia Residency, Meester-Cornelis Regency, Meester Cornelis district, Bidara Chinese Village.

Whereas based on the Certificate of Land Registration (SKPT) No. 2572 dated 17-06-1975, it is stated that in essence the former land right Property Verponding No.19114 Measurement Letter No.169 dated 31-03-1937 covering an area of approximately 12,306 m<sup>2</sup> is in the name of Michael Maximilian Lackinsky located at Jl. Cipinang Cempedak, Cipinang Cempedak Village, Jatinegara District, East Jakarta Region.

Based on the results of the official translation of the award letter Ground lease (Lease for generations) No. 107 dated 24 August 1949, between M.M Lachinsky as land owner and Jan William Stigter and Cornelis Jan Rijnveld, entered into a lease agreement (the duration of the land lease is 75 years from August 1949 and will end in August 2024 ) essentially states:

- The one party appearer is the owner of a plot of land located in the Municipality of Batavia, the area of Bidara Cina, locally known as Nassau Plein No.9, described in the Measurement Letter dated 30-06-1939 No.291/1939, namely parcels of ownership no.19114 partly covering 1,441m<sup>2</sup>.
- Whereas the appearer on one side granted the erfpacht right hereby to the limited liability company WM H. Muller & Co. NV on part of the land from the owner with eigendom rights covering an area of 1,441 m<sup>2</sup>.

Through attorney from Ir. Hermina Sujono Hadi, Prof. Mr. Dr. Sudargo Gautama said that officials had mistaken deed No. 107 in 1949 as an act of handing over land ("ground extradition" or "ground alienation" or "ground release") whereas what happened was the encumbrance of land rights by another right through a contract Ground lease.

Elements of lies and falsehood are clearly reflected in stating that WM. H Muller & Co. NV domiciled in Rotterdam according to deed of establishment No. 350 in 1949 has opened a business entity in Indonesia named PT. International Shipping and Transport Agencies NV domiciled in Jakarta. Even though in a letter from M.E.J. Salomons as Corporate Secretary of Internatio Muller N.V to Ir. Hermina Sujono Hadi May 27 1999 said that the company WM. H Muller & Co. NV does not change to PT. ISTA INDONESIA or ISTA("... has not been changed to ISTA").

This also shows that in August 1949, the company WM. H Muller & Co. NV has never opened another business entity anywhere. Because in August 1949 it was actually making an agreement Ground lease with the rights owner Property Verponding No.19114 namely Michael Maximilian Lachinsky. In addition, the contents of the letter from M.E.J. Salomons also pointed out that the WM. H Muller & Co. NV Jakarta was discontinued on March 13, 1952("the branch of WM.H Muller & Co. NV in Jakarta has been discontinued on 31 March 1952").

Therefore, with the building permit No. 1948 to PT. ISTA INDONESIA to add and change rooms to residential houses on Eigendom land No.19114 is impossible and unfounded because it is clear and certain that the parties to the agreement deed No.107 of August 1949 had the original building to be added and changed. Not as Mrs. Caecilia Maria Wahyu Kartini that PT. ISTA INDONESIA issued statement letter No.065/MD/V/99 on behalf of Sri Isnaeny as Managing Director of PT. ISTA INDONESIA which stated that from 1957 to 1987 PT. ISTA INDONESIA has occupied the agency's home because it is so baseless.

House on Jalan Taman Cornel Simanjuntak No. 9 (formerly named Nassau Plein 9) determined to be the home of the PT. ISTA INDONESIA even though there is no legal relationship between PT. ISTA INDONESIA with the land or with the parties, namely Michael Maximilian Lachinsky and WM. H Muller & Co. NV which since August 1949 entered into an Erfpacht agreement on land Eigendom No.19114. Thus the determination of the house on the ground Property 19114 being the home of the PT. ISTA INDONESIA agency is an act of the authorities that is against the law("unlawful government

act"). Because land assets and houses left by their owners should be taken care of by the Office of the Relics Property Office or orphanage and not by warlords.

30 years later, in 1987 there was a sale and purchase of buildings and land Property No. 19114 from PT. ISTA INDONESIA to Mrs. Caecilia Maria Wahyu Kartini with notarial deed Muhani Salim, S.H. No. 32. This deed is called the Deed of Sale and Purchase of Houses and Transfer of Rights. This deed was intentionally not in the form of a PPAT (Land Deed Making Official) deed, even though at that time PP No. 10 of 1961 concerning Land Registration has been in force for 26 years. Engineering not to use PPAT is certain to cover up the fact that neither the seller nor the buyer has the rights registered in their name to carry out the act of buying and selling. After 6 months, Mrs. Caecilia Maria Wahyu Kartini requested an SKPT from the Agrarian Agency which contained an affirmation that this land would be land directly controlled by the State. The issuance of the SKPT was clearly intended to control land without rights through a *modus operandi* (According to KBBI, a *modus operandi* is a *modus operandi*. That is a behavior of a person or group of criminals in carrying out their criminal plans. This *modus operandi* is the language commonly used for the land mafia).

Further legal defects on object buying and selling is about the land. Which stated that after being bought and sold mainly the rights to the plot of land where the house was built on it had an area of 1.230 m<sup>2</sup>. Even though the land on which the building is located is land verponding No. 19114 which incidentally belongs to Michael Maximilian Lachinsky who is burdened with a loan contract Ground lease No. 107 in August 1949. So this is highly improbable and surprising because the evidence is materially contradictory. This act also justifies material defects. Regarding the area of land being traded, there are also differences in scale. Initially, it was traded with an area of 1.230 m<sup>2</sup> only, but in the evidence from the Decree of the Governor of the Special Capital Region of Jakarta, Building Use Rights No. 740 in the name of Mrs. Caecilia Maria Wahyu Kartini, the land that was determined to become HGB was wider, namely an area of 1,291 m<sup>2</sup>, the difference in scale of 61 m<sup>2</sup> it actually points to the very high possibility of corruption, kickbacks, kickbacks, and manipulation of authority in the granting of the HGB. This very concrete and obvious difference in land area was also not realized by the appellate court level when the case No. 281/Pdt/G/1998/PN.Jkt.Tim which had been annulled became Number 935 K/Pdt/2001 which has permanent legal force. .

Furthermore, to cover up and deceive the ownership of the land and buildings, evidence of land and building tax payments was procured from 1993-1998. Even though for 6 (six) years after "purchasing" the building in 1987 there was no payment of any PBB. All evidence of paying PBB contains or has been intended as a background and desire to justify the confiscation of other people's property through a positive law mechanism. If we trace the chronology of the events of the violations of the law, then the evidence from Mrs. Caecilia Maria Wahyu Kartini actually presents a series of engineering by the land mafia which is full of scandals and fraud.

### **Settlement of Land Ownership Rights Dispute Between M.M Lachinsky and Ny. Caecilia (Case Study of Ex. Eigendom Land No 19114 Cipinang Cempedak Village, East Jakarta)**

Cibadak Religious Court Number: 16/Pdt.P/1995/PA-Cbd in January 1995 agreed that Max Rudolf Lachinsky was the son of Michael Maximilian Lachinsky and Jeane Marie Paulus and he was the only legitimate heir. Because Michael Maximilian Lachinsky had passed away in 1967, immediately and immediately since the deceased died as in the law of inheritance, at that very moment all goods, all rights and obligations were automatically transferred to his heirs. This is clearly stated in Article 833 Paragraph 1 of the Civil Code which states that heirs automatically comply with the law and acquire ownership rights to all assets, all rights and all receivables from the deceased. In the law of inheritance there is also a principle which states that when a person dies, immediately his rights and obligations are transferred to his heirs. Derived from the French language namely principle "dead seize the living" or commonly known as the rights of *saisine*.

In accordance with the Bogor District Court Decree No. 59/1977/Pdt/P and Birth Certificate No. 134, Max Rudolf Lachinsky is an Indonesian citizen and is a Veteran fighter for the Republic of Indonesia, then the land with the Right to Build is returned to being a Freehold in accordance with Article 1 Paragraph 1 and Article 21 of the UUPA Conversion Provisions No. 5 of 1960 which states that only Indonesian citizens can have property rights. And this land has been the object of dispute since 1967, so hereditary ownership rights according to Article 20 Paragraph 1 of the Basic Agrarian Law No. 5 of 1960 are the most powerful and complete rights that people can have over land, bearing in mind the provisions in article 6. Therefore, the ownership of the land fell to Max Rudolf Lachinsky bin Michael Maximilian Lachinsky.

In the High Court Decision No. 1063/PDT/1999/PT.DKI, it was wrong to judge UUPA No. 5 of 1960, especially regarding lands that were formerly Property belonging to foreign nationals. The Court of Appeal in its legal considerations at the convention has made the wrong judgment that "the late

Michael Maximilian Lachinsky was a Polish citizen, so that since the enactment of UUPA No. 5 of 1960 the land has become state land" (paragraph 4 page 8 High Court Decision aquo). This is wrong because the Agrarian Law cq UUPA No. 5 of 1960 never stipulated that since the enactment of the UUPA owned landscitizen foreigners into land controlled by the state. Whereas on the other hand, when the UUPA comes into force, the old land rights must first apply the conversion provisions that are relevant to the position of the case, in this case, Article 1 paragraph (3), (4), (5) Provisions Conversion of UUPA and Article 12.

Instead, these rules are loose and protect former rightsPropertyowned bycitizen foreigners who are burdened with former rightsground lease. This concession and protection are explicitly or implicitly stated in these regulations, namely when there are obstacles for foreign nationals to obtain land conversion.Propertybecome property rights based on Article 1 paragraph (1) of the UUPA Conversion Provisions No. 5 of 1960, then article 1 paragraph (3) protects foreign ownership through conversion to building use rights referred to in article 35 paragraph (1) UUPA No. 5 of 1960. Whereas according to Article 36 paragraph (1) point a. Building use rights are forcitizen Indonesian only.

As for rightsProperty owned by foreign nationals who are encumbered with rights Ground leasegiven protection by Article 1 paragraph (5) of the Conversion Provisions of UUPA No.5 of 1960 which states that the relationship between theProperty and rights holdersground lease can be resolved according to the guidelines of the Minister of Agrarian Affairs. At the level of the Ministerial Regulation itself, protection of rightsProperty burdened with rightsGround lease stipulated in Article 11 of the Minister of Agrarian Regulation (PMA) No. 2 of 1960 which suspended the recording of the conversion of these rights until there was a settlement as to who would be recorded as the holder of the Building Use Rights.

However, the choice of which rights to protect is clearly stated in Article 12 of the Minister of Agrarian Regulation No. 2 of the 1960's. This article guarantees that the recording of the conversion of rights Ground lease encumbering rightsProperty become a Building Use Right, can only occur if it is confirmed that the rightProperty concerned is converted or converted into Property Rights. Sourced from an error in applying the rule of law, to identify the real case, namely the imposition of rights in the pre-UUPA period, namely the existence of rights Property belonging to foreigners burdened with rightsGround lease whose transitional settlement must be carried out through Article 1 paragraph (3), (4), and (5) UUPA Conversion Provisions No. 5 of 1960 junctis Article 12 and Article 11 of the Minister of Agrarian Regulation No. 2 of 1960, and not Article 4 and Article 2 of the Minister of Agrarian Regulation No. 2 of the 1960's.

This also still intersects with evidence from the chronology of Mrs. Caecilia Maria Wahyu Kartini who bought a house on Jalan Taman Cornel Simanjuntak No. 9 covering 1,291 m<sup>2</sup> in fact it was the beginning and at the same time the source of the occurrence of wrong perceptions regarding the affirmation of rights to become state land or land directly controlled by the state (change of private land to state land through an affirmation event by an SKPT sheet issued at the request of Mrs. Caecilia Maria Wahyu Kartini). This erroneous perception stems from the misguided paradigm that it was as if the issuance of the UUPA in 1960 applied a kind of "tawang-karang adat" or "law of the jungle" to lands owned by foreign citizens.

This erroneous perception is explicitly exhibited in the legal considerations of the High Court decision aquo on page 8 of the third paragraph. Even though the panel of judges should understand or at least be considered worthy of knowing that the SKPT, which incidentally originates from PP No. 10 of 1961, cannot possibly be used to erase structural/institutional mistakes in the early 1960s which ignored the application of the provisions on the conversion of UUPA Article 1 paragraph (3), (4), and (5) to the groundProperty belonging to foreigners who are encumbered with rightsGround lease. Meanwhile, PP No. 24 of 1997 concerning Land Registration Article 1 paragraph (3) expressly states that State land or land directly controlled by the State is land where there is no land right on it.

If faced with the object of the dispute, namely the former Eigendom land of western rights, a portion ofVerponding No 19114, Meetbrief or Measurement Letter No.291/1939, from Persil No.6520 remaining, covering an area of 1,441 m<sup>2</sup> in Civil Cases, Number935 K/Pdt/2001 between Ir. Hermina Sujono Hadi with her power of attorney Prof. Mr. Dr. Sudargo Gautama and colleagues as the Plaintiff against Mrs. Caecilia Maria Wahyu Kartini as the Defendant, placed the object of the dispute in the form of Eigendom land based on the Minutes of Delivery Number 43/2007 ex Jo. No. 281/Pdt.G/1998/PN.Jkt.Tim in 2015 with boundaries:

1. To the north it is bordered by Sugiyono's House
2. To the east it is bordered by the General's residence
3. To the west it is bordered by Jalan Taman Cornel Simanjuntak Timur
4. To the south it is bordered by the Office of the Mayor of East Jakarta

That in accordance with the results of the trial examination, then by the Panel of Cassation Supreme Court Judgescourt Agung of the Republic of Indonesia, has handed down a Decision for the civil cassation case Number 935 K/Pdt/2001, November 1 2006, the verdict of which is as follows:

Grantapplication cassation from Appellant Ir. Hermina Sujono Hadi;

Canceled the decision of the Jakarta High Court Number 1063/PDT/1999/PT.DKI dated 30 May 2000 which annulled the decision of the East Jakarta District Court Number: 281/Pdt.G/1998/PN.Jkt.Tim. July 26, 1999;

#### IN CONVENTION

1. Granted the plaintiff's claim in part;
2. Declare the plaintiff is the only legal owner of the landProperty half ofVerponding No.19114, Measurement Letter No.291/1939, from Persil No. the remaining 6520, with an area of 1441 m2, is located at Taman Cornel Simanjuntak Timur No.9 East Jakarta;
3. Ordered Defendant II to issue a Certificate of Ownership on behalf of the Plaintiff on the landProperty half ofVerponding No.19114, Measurement Letter No.291/1939, from Persil No. the remaining 6520, with an area of 1441 m2, is located at Taman Cornel Simanjuntak Timur No.9 East Jakarta;
4. Stating Building Use Right Certificate No. 740 area of 1291 m<sup>2</sup>, dated April 26, 1988 in the name of Defendant I has no legal force;
5. Declare the validity and value of the Collateral Confiscation carried out by Eddy Nugroho, Bailiff at the East Jakarta District Court on May 6, 1999;
6. Punish Defendant I or anyone who obtains rights from him within 8 (eight) days of this decision being pronounced to hand over the land located at Taman Cornel Simanjuntak No.9 East Jakarta in an empty state to the Plaintiff to be subject to a forced payment of Rp. 5,000,000.- (five million rupiah) every day in cash and all at once;
7. Ordered Defendant II to submit and comply with this decision;
8. Refuse the remaining claims;
9. Punish the Defendant

#### IN RECONVENTION

1. Rejected all Reconvention lawsuits

Because agrarian disputes are the most common disputes in Indonesia, the only way is to identify potential conflict disputes earlier, so that land disputes are not limited to the excesses they cause. And the cause of many land disputesproperty verponding itself because the National Land Agency was not careful in issuing certificates and was wrong in investigating land boundaries, causing overlap with land rights ownersproperty pledge.

In a land disputeproperty usually involves a very large plot of land with relatively high compensation or compensation, many parties are dissatisfied with alternative dispute resolution channels out of court oralalternative dispute resolution (ADR) so that what happens is that the dispute case is forwarded to the court because a third party appointed as a mediator sometimes intervenes in the case that is happening and eventually gets involved in the case that is being disputed. The settlement path through the courts will usually drag on for decades and can even create new disputes. As in this case, the lawsuit was filed in 1998 and ended in 2015 when Mrs. Caecilia Maria Wahyu Kartini filed a voluntary lawsuit at the Supreme Court of the Republic of Indonesia through the Cibadak Religious Court which was finally decided in June 2015 with the ruling that the cassation request from the cassation applicant Caecilia Maria Wahyu Kartini was unacceptable. The time limit for filing a civil lawsuit according to Article 1967 BW is 30 years. Based on the verdictabove The case is included in a land disputeverponding No.19114 burdened with a loan contractground lease No. 107 of 1949. Against this different court decision will trigger a dispute between the parties because each has pocketed their own court decision which results in land not being executed and re-ownership becomes unclear. Dispute resolution through the courts actually speeds up the dispute resolution process rather than having to use alternative routes which only complicate matters.

This is because the settlement process of this case is more based on existing rules and pays close attention to the balance of interests between the disputing parties and pays special attention to the balance of interests of the disputing parties and defends justice. Settlement of cases through the courts is suitable for vertical dispute resolution in matters of tenure and ownership; compensation; violation of the rights experienced by the people; and stipulation and registration of land. In addition, it is also suitable for triangular disputes related to compensation or compensation, land acquisition and stipulation and registration of land.

## CONCLUSION

Land status property pledge after the conversion period is still a strong evidence as long as the rights have not been transferred, even though the land has been certified by another party. For rightsProperty owned by citizen foreigners burdened with rightsGround lease given protection by Article 1 paragraph (5) UUPA Conversion Provisions No. 5 of 1960 which states that the relationship between ownersProperty and rights holdersground lease then finalized according to the guidelines of the Minister of Agrarian Affairs. At the level of the Ministerial Regulation itself, protection of rightsProperty burdened with rightsGround lease stipulated in Article 11 of the Regulation of the Minister of Agrarian Affairs (PMA) No. 2 of 1960 which suspends the recording of the conversion of these rights until there is a settlement as to who will be recorded as the holder of the Building Use Rights.

However, the choice of which rights to protect is clearly stated in Article 12 of the Minister of Agrarian Regulation No. 2 of the 1960's. This article guarantees that the recording of the conversion of rightsGround lease encumbering rightsProperty become a Building Use Right, it can only be carried out after there is firmness of the rightProperty concerned is converted into Property Rights. Sourced from an error in applying the rule of law, to identify the real case, namely the imposition of rights in the pre-UUPA period, namely the existence of rightsProperty belonging to foreigners burdened with rightsGround lease whose transitional settlement must be carried out through Article 1 paragraph (3), (4), and (5) UUPA Conversion Provisions No. 5 of 1960 junctis Article 12 and Article 11 of the Minister of Agrarian Regulation No. 2 of 1960, and not Article 4 and Article 2 of the Minister of Agrarian Regulation No. 2 of the 1960's.

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