Settlement Of Conflict Utilization Of Plantation Land Above Ulayat Rights Of Indigenous Communities

Alpi Sahari
Legal studies, Universitas Muhammadiyah Sumatera Utara
Faculty of Law Universitas Sebelas Maret Surakarta
alpisahri@umsu.ac.id

Abstract: Conflict resolution disputes that are carried out through the courts often experience obstacles, including the absence of legal benefits in resolving disputes between communities cultivating customary land rights and plantation company authorities. The development of this conflict will certainly have an impact on national development plans related to the welfare of the entire community. One example of a dispute occurring in North Sumatra Province is the control of plantation land by a company which is claimed by the community as customary land of the Deli Sultanate, based on historically before the independence of the Republic of Indonesia, it was the land of the local community which was handed over to the Sultan to be managed. Keselutanan Deli then collaborated with the Dutch Colonial to manage the land handed over by the community based on the Van Consessie Deed which was signed by Sultan Maimon Al Rasyid Perkasa Alam and Deli Cultur Administrator Maatschaappij J.G. A. Godenhart and approved by Resident der Outkust Van Sumatra P.J Kooreman. The results showed that the revitalization of plantations in the agricultural, trade and manufacturing industries could be a strategy for improving community welfare and avoiding land problems between plantation companies that were granted management rights to customary law communities.
INTRODUCTION

The 1945 Constitution of the Republic of Indonesia is the juridical basis, the foundation and the foundation of idealism in developing the national economy. This is mandated in the formulation of Article 33 of the Constitution of the Republic of Indonesia. The constitutional changes in the form of the fourth amendment to the 1945 Constitution of the Republic of Indonesia have brought about quite basic changes to the national economic system, there are two fundamental changes, namely economic democracy and the principle of justice. These principles and principles are closely related to the goal of realizing a national economic system so that national development in the economic sector and public welfare will be achieved. 1 Sustainable development in the economic sector as a national development goal requires harmonization of the relationship between the government and the community to improve welfare at both the infrastructure and development superstructure levels. One of them is the creation of a harmonious relationship between business actors and the community. This relationship includes an attitude that emphasizes the community and entrepreneurs as the main actors in development 2 and the government as the party that is obliged to direct, create, and organise an atmosphere that supports the development. 3 This requires a complementary and

---

1 Amandemen keempat Undang-Undang Dasar 1945
complementary attitude as a system to achieve development goals. The purpose of this harmonization is the existence of order. Because in principle, a problem is easier to solve through deliberation as long as both parties are open to each other and want the best solution for all parties.

The control of land rights requires the state to respect the traditional customary rights (layout) of the community, as long as these traditional rights still exist. Respect for ulayat matters by relying on conditions "as long as the fact is still there", which contains various differences from one another, creating conflicts about the status of these ulayat rights. This is presumably because ulayat rights do not have formal juridical evidence which often creates difficulties in adjusting the application of national law on agrarian matters. In principle, Article 2 of the UUPA contains the principle that all land rights are controlled by the state. Meanwhile, Article 18 of the UUPA contains the principle that land ownership rights "can be revoked in the public interest". Recognition of customary rights in the UUPA that lasts as long as it exists and does not conflict with the national means that there is legal pluralism.

This pluralism occurs in the form of weak legal pluralism, because in addition to the UUPA as a state law that applies nationally, in certain areas of the community the customary law system of indigenous peoples applies to customary land. Its weak legal pluralism in national land law is marked by the enactment of the UUPA and its various implementing regulations as positive law in the form of written state/national law, on the one hand, and on the other hand, customary law applies which is generally unwritten and specifically applies to each country. each party. each area where the customary law applies. The dominance of national law, namely the UUPA, is very strong against customary land law. Land law pluralism appears to refer to the fact that there are regulations regarding land law by customary law in addition to state law which

---


is characterized by centralized characteristics. Weak legal pluralism is one of the factors causing legal disputes in the substantive order, especially in land disputes over customary rights which affect its implementation in the field and cause injustice, meaning that weak land law pluralism is often sought to be eliminated because of the land political policies adopted, more oriented towards economic growth. The requirements put forward by the provisions of Articles 3 and 5 of the UUPA are often the reason for eliminating legal pluralism and making the UUPA the centre of various land regulations (legal centralism), and is the only land regulation that applies nationally (legal unification). In addition, restrictions on the contents of Article 2 and Article 18 of the LoGA are a source of disputes that arise because several articles of the law are declared incapable of resolving problems that arise. In general, the problems that often arise are experts into four groups, namely: First, those that are directly or indirectly related to the social function of land rights. Second, regarding land regulation or realignment of land ownership/control. Third, regarding land use, including the obligation to maintain land. Fourth, regarding land rights and regarding legal certainty of land rights.

The existence of customary rights of indigenous peoples that cause disputes also occurs in North Sumatra, especially in the city of Medan, most of which are in the city of Medan, including the Tanjung Morawa area which is included in the territory of the Sultanan Deli. The emergence started from the emergence of land rights originating from the basis of rights in the form of the Grand Sultan, the song Grand Sultan includes many parties including Natoratis and PPAT who are vulnerable to being involved in legal problems. One of the Grand Sultans that caused many legal problems was the position of the Grand Kurnia of the Deli Sultanate which was transferred without the approval of the Deli Sultanate. Grand Abu Kurnia is part of the land by the sultan to be used, intended for residence for the subject. if it is no longer used and used again, the land handed over is handed back to the sultan. The land handed over by the sultan may not be transferred without obtaining permission from the sultan. Grant Sultan is a certificate

7 Ibid, hlm. 119
8 M. Yamin, Beberapa Dimensi Filosofis Hukum Agraria, Pustaka Bangsa Press, Medan, 2003, hlm. 4
Regarding land rights that can be owned by indigenous people with the permission, grant or acknowledgement of the Sultan for land rights granted to his subjects. In 1889, the Dutch Governor determined a sample deed which became known as the Grant. Then in 1890 a certificate was issued by the Sultan regarding the granting of a piece of land called a kurnia, which means the sultan handed over a piece of land to his subject as a gift given to his subject. This Grand is handwritten in Arabic letters. In the certificates, a stipulation was added that the rights granted would be null and void, if the land was not used properly and that the rights to other people had to be with the permission of the Sultan.  

The Deli Sultanate is an area that has a certain area including its provisions regarding land using the Swapraja Land Law. The land regulations contained in the Deli Sultanate use land regulations in East Sumatra. That is why the Sultanate is one of the Swapraja areas. The lands in the Swapraja areas in East Sumatra are owned by Swapraja's copyright. In the area of the Deli Sultanate, for example, there are lands known as:

a. Grant Sultan, semacam hak milik adat, yang diberikan oleh Pemerintah Swapraja.

b. Grant controleur, given by the government of Swapraja for non-subjects of Swapraja.

c. Grant Deli Maatschappij, located in the city of Medan and given by Deli Maatschappij, a company that owns a large tobacco plantation.

The Sultan's grant was proposed, as far as the Malay part was concerned, to be issued by tribal chiefs (XII Kota, Serbanyaman, Sukapiring and Senembah Deli). After being signed by the tribal chief, he failed and was given a stamp, the Grant was sent to the Sultan and Cap. In areas where there were formerly Malay kingdoms such as Percut Sungai Tuan, Padang and Bedagai, a similar procedure was also carried out. In areas that are ruled directly by the Sultan such as around Medan (Matsum City, P. Brayan, Titipapan, Glugur, Labuhan, Tanjung Morawa and the Medan area itself). The Grand Sultan was immediately signed by the Sultan himself. The form of the sultan's grant was given in various ways, such as Soerat Penentoean Milik which means to give a piece of

---

9 Berita Acara Penyidikan, Subdit Tanah dan Bangunan Direktorat Reserse Kriminal Polda Sumatera Utara, 2016
10 Ibid
land into ownership. Geran Menentoeakan Haq Kebon, namely permitting to own a garden or Soerat Penjerahan for Land Acquisition, which is giving up the right to control a piece of land.\textsuperscript{11}

METHOD

This research is a normative legal research. This research tends to use secondary data in the form of primary legal materials and secondary legal materials.\textsuperscript{12} Primary legal materials are laws and regulations relating to land ownership and land use by indigenous peoples in the form of ulayat rights. Secondary legal materials are the views of legal experts quoted from the literature that support the framework of thought and analysis of the object of research. The secondary legal materials, in the form of reading books that are relevant to this research, the results of scientific writings such as theses, dissertations, journals, papers, and research reports that are in accordance with the topic of this research study, while supporting Tertiary Legal Materials which include materials providing instructions and explanations of primary, secondary legal materials, such as general dictionaries, legal dictionaries, scientific magazines and journals, as well as materials outside the legal field that are relevant and can be used to supplement the data needed in research.

RESULT AND DISCUSSION


This land issue has been going on for a long time since the plantation concessions granted by the sultanate/self-government and the Dutch colonial government to plantation companies. The concession land concerns the community's customary rights. The granting of concessions to plantation entrepreneurs occurred during the sultanate and colonial times continued with the modification of

\textsuperscript{11} Ibid

concession rights into *erfacht* rights. This condition was also continued during the independence period, where concession lands and *erfach* Rights\(^\text{13}\) given to plantation crops whose expiration date becomes a Cultivation Right (HGUDuring these three periods, land disputes were still ongoing between the plantation entrepreneurs and the waiting communities as well as the cultivating communities.\(^\text{14}\) These two fields by presenting erfacht rights during the colonial period which violated land rights according to customary law were a source of conflict in the land because the colonial government did not recognize rights according to customary law, especially after enacting them as Domein Verklaring, namely the state became the owner (eigenaar ), unless people can prove that they have eigendom rights to the land.\(^\text{15}\) Given that the rights of the people of East Sumatra (Deli Sultanate) to their land are based on customary law, based on Domein Verklaring all community lands become state land, so that lands of entrepreneurs with customary rights can be given to plantations with erfacht rights.

The description of the land problem above is illustrated in the Decision of the Lubuk Pakam District Court of North Sumatra Province No. 75/Pdt.G/1999/PN-LP in the form of a land dispute between a plantation company and a waiting community that claims that the plantation land managed by one of the government plantation companies, namely the Limited Liability Company Perkebunan Nusantara II (PTPN-II) is above the community's customary rights customary law so that the HGU granted by the government according to the community does not pay attention to and recognize the layout rights of the waiting community. This dispute began with a lawsuit by the Indonesian People's Struggle Agency (BPRPI) against the Limited Liability Company for Plantation Nusantara II (PTPN-II) as to Defendant I, the Minister of State for Investment as Defendant II, the Minister of Forestry/Plantation of the Republic of Indonesia as Defendant III.

\(^{13}\) Pasal 720 B.W menyatakan hak erfacht adalah suatu hak kebendaan untuk mengeyam, menikmati atas suatu benda yang tidak bergerak kepunyaan orang lain, dengan kewajiban membayar upeti tahunan kepada pemilik tanah, sebagai pengakuan tentang pemiliknya baik berupa uang maupun berupa hasil atau pendapatan.

\(^{14}\) *Ibid*, hlm. 10

\(^{15}\) Muhammad Bakri, dkk, *Penyelesaian Sengketa Pemakaian Tanah Perkebunan Tanpa Izin yang Berhak atau Kuasanya*, Studi Kasus Daerah Jawa Timur, Malang, Universitas Brawijaya, hlm. 2
The plaintiff argues in his lawsuit that the plaintiff as a waiting community owns and controls the customary land as the layout rights of the Malays which was obtained from generation to generation from the adat holders. They are known as Reba farmers or Reba viewers, namely farmers who clear the forest where after the forest is cleared the community processes it into agricultural land. The farming system was developed by the plaintiff's parents. The cultivation system is regulated by customary leaders or customary holders, so that land use is guided by customary law. According to the plaintiffs, the customs adopted are the indigenous peoples of East Sumatra and cannot be changed or revoked by anyone except the indigenous peoples themselves who change the law.\textsuperscript{16}

The plaintiffs stated that their position with their land had a master's relationship which could not be proven by formal legal provisions. This is evidenced by the Dutch contract with the Sultan of Deli which stated that the contracted land belonged to the people by applicable customary law. Historically, the first contract for the cultivation of deli tobacco was given by a Dutch businessman named Nienhuys. In this first contract, although there is no uniformity regarding the terms of the contract award, according to research on contract deeds, there are always two provisions as follows: the obligation of the plantation party to provide land for farming for the waiting people. Second, the obligation of the plantation party to hand over the land of the former tobacco plant (lane land) to the waiting people to plant rice. In addition, there are several obligations of the Dutch side, namely holding Arabian land, village land, protected forest land and lane land, this provision shows the existence of customary acknowledgement. The customary land which is the happiness of layout rights belongs to the people of Tanjung Mulia Village, Labuhan Deli District which was lent by the Dutch for tobacco cultivation. The land in question is 93 ha. According to the plaintiffs, their customary land is also based on UUPA No. 5 of 1960, namely Article 3 in conjunction with Article 5 and the Agrarian Regulation/National Land Agency no. 5 of 1999 concerning Guidelines for Settlement of Customary Law Rights Issues.

\textsuperscript{16} Pasal 3 Jo Pasal 5 Undang-Undang Nomor 5 Tahun 1960 tentang Undang-Undang Pokok Agraria
The regulation above states that layout rights and similar rights to customary law communities are the authority that according to customary law certain customary law communities have over certain areas which are the living environment of their citizens to take benefits and natural resources, including land in that area. for the relationship between life and life that has arisen outwardly from generation to generation is unbroken between the customary law community and the territory concerned. According to the defendant, the defendant who obtained the HGU for 35 years was illegally taken over unilaterally and confiscated the lands that had been controlled by the waiting people. The defendant, in this case, stated that the management rights granted by the government to PTPN II and worked on by the plaintiffs were part of the Hak Guna Usaha (HGU) by HGU Certificate No. 13/ Sampali Village on 3 February 1995 covering an area of 2,024.56 ha (two thousand twenty-four hundred and fifty-six hectares) located in Sampali Village, Percut Sei Tuan District, Deli Serdang Regency, North Sumatra Province issued by the Land Office of Deli Serdang Regency. HGU based on the Decree of the Minister of Agrarian Affairs No. SK-24/HGU/1965 dated June 10, 1965. Therefore, the action of the defendant as the holder of the HGU to occupy the land of the case is legally valid. questions such as the defendant is a legal entity whose assets are owned by the Republic of Indonesia and are subject to applicable laws and regulations as well as the policies outlined by the GMS (General Meeting of Shareholders).

The judge's consideration in this case after paying attention to the existing evidence, namely the Van Concessie Mabar Deed, was attacked by the plaintiff in that area, that the Van Concessie Mabar Deed dated 24 July 1898 which was signed by the Sultan of Deli Maimon Al-Rashid Perkasa Alam Syah as the party entitled to give to the Dutch company Deli Cultuur Mastschapij. The provisions in the Van Concessie Mabar Deed can be seen that the Sultan of Deli as the customary ruler at that time recognized the existence of indigenous peoples' rights to the concession land and their existence was recognized. The rights of indigenous peoples, among others, in Article 9 of the Deed of Van Concessie Mabar states that concessionaires are required to give part of their land that is within the concession limits to the people for one harvest, including in the customary law community of East Sumatra known as the lane land which is given to the community and then it is abolished. by the
defendant (PTPN-II). The Panel of Judges in their decision stated that the plaintiff's claim was granted in part.

B. Analysis of the Court's Decision on the Utilization of Plantation Land on the Ulayat Rights of the Deli Sultanate Community.

The interesting thing in the case described above for analysis is the existence of indigenous peoples on the concession land controlled by Deli Cultuur Mastschapij as a plantation company owned by the Dutch Colonial. Through the Deed of Van Concessie, it is illustrated that the principle of partnership during the Deli Sultanate has occurred where customary law communities have the right to use land in the concession area to cultivate crops once harvested. The judge's decision in assessing the existence of layout rights, in this case, is quite controversial because the judge has decided by stating that the split land is the object of the layout rights of the Malay culture community. The judge as to the subject of layout rights in this case is no longer a group of people who are governed by their customary order as common citizens in a certain particular law that recognizes and applies these regulations in everyday life. The judge, in this case, has made an analogy that the plaintiffs who consist of various ethnicities are considered Malays. Another interesting thing when analyzed is that the decision of the District Court was decided after the issuance of Regulation of the Minister of Agrarian Affairs/Head of BPN No. 5 of 1999, but the judge did not consider this regulation. This Regulation of the Minister of Agrarian Affairs expressly states that the criteria for the existence of customary rights in the relevant customary law community must be fulfilled as follows: 17 "If there is a group of people who are still bound by their customary legal order together with certain legal awareness that recognizes the provisions of these provisions in everyday life, there is a certain layout of land which is the living environment of the legal citizens and there are no daily actions and there is an order. customary law regarding the management, control and use of customary land that is applicable and adhered to by the customary law. In addition, there are parcels of land which at the time of enactment of regional regulations, if

17 Pasal 2 ayat (1) dan ayat (2) Peraturan Menteri Agraria/Badan Pertanahan Nasional Nasional Nomor 5 Tahun 1999
owned by individuals or legal entities and have been released by government agencies, layout rights can be recognized again.”

In addition to this Regulation of the Minister of Agrarian Affairs, it is illustrated that Judges do not obey the source of the law, namely the acknowledgement of jurisprudence issued by the Supreme Court in Decision No. 294/K/Sip/1971 which requires that the lawsuit must be filed by a person who has a legal relationship. Based on the Supreme Court’s decision, it is clear that the plaintiff must have a clear legal relationship with the land object of the case. If the District Court states that the object of the case is Malay customary land rights, then the Court must consider that the subject of the litigation is the plaintiff, whether from the Malay customary lawsuit, in fact, the plaintiffs are from various ethnicities including Malay, Javanese, Toba Batak, Karo Batak and Mandailing. Based on jurisprudence, of course, the plaintiff is not an indigenous community who has a legal relationship with the object of the case, namely customary land rights.

Furthermore, the concept of the right to control the state as understood by the government often contradicts the values that live in society. The State’s Right to Control which is implemented by the government completely respects the customary rights of the community for reasons of national development, meaning that the government is only based on the provisions of the law that applies formally, where in its implementation it is only based on the legal norms that exist in the legislation without laws. the law of social reality, in the form of living law and the legal culture that exists in society. As a result of the implementation and understanding of the law, the existence of customary rights of customary law communities is not protected. The formal legal basis in question is contained in Article 5 of the UUPA which states that: "Agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national interests and state interests, which is based on national unity, with Indonesian socialism and with the regulations contained in this law and other statutory regulations, everything with due regard to religious elements.

Moreover, according to the land acquisition law in Indonesia, in order to own land, a private company must contact the land owner
of the indigenous community as the subject of the contract for the development of ulayat land directly.\textsuperscript{18}

The above provisions mean that national agrarian law must serve the national and state interests. Not to hinder the government's plans and efforts in achieving the greatest prosperity for all the people of Indonesia. Thus the government based on reasons for the national and state interests can take or open the community's customary land rights and the community must not hinder it. The implementation of this UUPA in practice raises problems, especially regarding community land rights based on customary law which the development government has for the national and state interests. Based on the general explanation II of the UUPA, the settlement of land disputes involving customary rights is carried out using deliberation and offering compensation or recognition, but in the implementation of the deliberation, it changes to offering compensation with improper payments making the community poorer than before.

CLOSING

What is done by the government should be able to bridge issues related to land ownership between the community and plantation companies as referred to in the dispute decided by the Lubuk Pakam District Court through a partnership program so that land disputes do not drag on and the land can be utilized and the land in question is not abandoned. The program launched by the government through the revitalization of plantations in the sector, trade and manufacturing industry as a welfare strategy for economic growth (growth-oriented strategy) can be used as a breakthrough in improving the community and avoiding land problems between plantation companies that are given management and waiting for communities as customary law communities. The government program in the field of revitalization

is the agricultural sector which consists of oil palm, rubber and cocoa plantations.

REFERENCES

Amandemen Ke empat Udang-Undang Dasar 1945
Djuhaedah Hasan, Material Guarantee Institution for Land and Other Objects Attached to Land in the Conception of Application of the Horizontal Separation Principle (A Concept In Welcoming the Birth of the Mortgage Institution), Bandung: Citra Aditya Bakti, 1996.
Supraba Sekarwati, Plants Regarding the Establishment of a Land Bank in the Context of Sustainable Housing and Settlement Development in Indonesia, Bandung: Dissertation Manuscript of the Graduate Program of Padjadjaran University, 2003
Mocthar Kusumaatmadja, Functions and Developments of Law in National Development, Bandung: Law and Criminology Research Institute, Faculty of Law-Padjadjaran University, Binacipta, Cetakan Kedua, 1986.
Minutes of Investigation, Land and Building Sub-Directorate of the Criminal Investigation Directorate of the North Sumatra Police, 2016.
Muhammad Fatah Bachtiar, Analysis Of Land Law Related To The Development Of Tourism Sites In Traditional Land, Budapest International Research And Critics Institute (BIRCI-Journal): Humanities And Social Sciences 5 (1), 2022
Liston Habonaran Simorangkir, Settlement Of Dispute Between Buyers Of Moi Ulayat Land In Sorong District, International
Journal of Multicultural and Multireligious Understanding 8 (8), 313-316, 2021
Irsan, *Dispute Resolution Of Land That Has Certified Rights In Bungo District Office*, International Journal Of Multicultural And Multireligious Understanding 7 (1), 398-403, 2020