



The Equitable and Prospering Utilization of Former HGU (Right of Exploitation) Land for Indonesian Farmers

Atik Winanti; M. Arafah Sinjar; Andriyanto Adhi Nugroho

Lecturer at UPNVJ, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i10.1989>

Abstract

The right of exploitation (HGU) case in Rangkas Bitung district, Lebak Regency can indeed be classified as a light agrarian conflict category. This cannot be separated from the conflict dynamics involving various parties with varied interests. The reclaiming and compensation cases with Rangkasbitung people constitute other clear facts which show that not only this HGU only presents ecological facts, but it also indicates socially-constructed landscape to meet a function as an area of living, a place to grow the collective identity of a community group and to develop the community culture.

Keywords: *Prospering Utilization; Former HGU; Indonesian Farmers*

Introduction

When the right of exploitation (HGU) of a land expires or the land itself is abandoned, it is assumed that there is still a 'priority right' or 'civil right' embedded to the original right holder (company). Under the Government Regulation No. 40 Year 1996, a company is considered to hold the right to extend their entitlement or to get a 'priority' in obtaining its new right. While the HGU may have expired, the plantation companies formerly holding the entitlement are considered to have the 'civil right' in the form of buildings and plants on the HGU land. Hence, it is legitimate for these companies to sue if the land entitlement is transferred to a new right holder or any citizen who has used it. This has always been the case. Some of court cases were won by the company holding the old formal right, even if the right of exploitation has obviously expired or been abandoned and the land has been used and managed by local citizens.¹

One of the examples is when some farmworkers and farmers in Pasir Tanjung village, Rangkasbitung district, Lebak Regency asked the government not to extend the right of exploitation of Kebon Cisolak Baru owned by PT Perkebunan Nusantara (PTPN) VIII in Cikadu block, Cininih, and Gunung Tunggul block. The problem was that the HGU owned by the state-owned company managing

¹ AN Luthfi, Dwi Wulan TA, Dian Aries M, *Problematika Pemberian Hak atas Tanah Bekas HGU di Sumatera Utara [The Problems of Right Grants of Right of Exploitation Land in North Sumatra.]*, Systematic Research Result of STPN 2016, p. 2

the oil palm plantation had expired since 2005 and it was never extended by PTPN VIII until recently. Some farmers in Pasir Tanjung Village, Rangkasbitung District hope that the government will not extend the HGU of PTPN VIII because it is no longer feasible for Rangkasbitung district to have an oil palm plantation area. The farmers hope that the oil palm plantation area which HGU has expired since 2015 is turned into a reformed land, such as the case in Tanjung Lesung, Panimbang district, Palembang, by transferring the land to local citizens.

There is a conflict of norms in the Ministerial Regulation of Home Affairs No. 3 Year 1979 (dated August 22nd, 1979). The fact that it is the implementation of Presidential Decision No. 32 of 1979 (dated August 8th 1979) particularly in the case of HGU makes it actually an effort to settle the occupation by citizens over the farm lands which had been occurring since the Japanese period and not even resolved yet until the end of President Soekarno administration.

From the explanation above, the writer took the problem of how is the utilization of former the right of exploitation land that makes the citizens, especially farmers, prosperous?

Discussion

It is normatively stated that plantation plays an important and strategic role in the national development, particularly in the attempt of increasing the people's prosperity and well-being, the reception of foreign exchange, the provision of employment, the gain of added values and competitiveness, fulfillment of consumption needs, industrial raw materials, and the sustainable optimization of natural resources management.² Plantation does not only serve the purpose of increasing the economic growth aimed at improving the people's prosperity and well-being, but also the ecological and socio-cultural functions. The ecological function means the utilization and conservation of old resources, while the socio-cultural function means the harmonious relationship between stakeholders. This is indicated by the cooperation between the plantation company with the local residents and citizens, laborers and workers and also other stakeholders. This makes the plantation sector as the nation's unifier.³

Conflicts in farming sector is one of the oldest conflicts in the history of Indonesian agrarian conflicts. This conflict in farming sector had been occurring since the Dutch colonial period and it is still going on until now. Now, those Dutch plantations give birth to new conflicts.⁴

One of the examples is when some farmworker and farmers in Pasir Tanjung village, Rangkasbitung district, Lebak Regency asked the government not to extend the right of exploitation of Kebon Cisolak Baru owned by PT Perkebunan Nusantara (PTPN) VIII in Cikadu block, Cininih, and Gunung Tunggul block. The problem was that the right of exploitation owned by this state-owned company managing the oil palm plantation has expired since 2005 and it was never extended by PTPN VIII until recently. Some farmers in Pasir Tanjung village, Rangkasbitung district hope that the government will not extend the right of exploitation of PTPN VIII because it is no longer feasible for Rangkasbitung district to have an oil palm plantation area.

The farmers hope that the oil palm plantation area which right of exploitation has expired since 2015 is turned into a reformed land, such as the case in Tanjung Lesung, Panimbang district, Palembang, by transferring the land to the citizens. The land is also no longer suitable to be a plantation in Rangkas

²Explanation of Law of the Republic of Indonesia No. 39 of 2014 concerning Plantation (State Gazette of the Republic of Indonesia of 2014 No. 308, Additional State Gazette Republic of Indonesia No. 5613)

³ Decision No. 55/PUU-VIII/2010 and Decision No. 122/PUUVIII/2015 Review of Law No. 18 of 2004 dan Law No. 39 of 2014 concerning Plantation.

⁴ Palm Plantation Kaleidoscope 2014, The Task of Resolving Legacy Conflicts in The Oil Palm Plantation, Palm Bunches, Edition No. 8 December 2014, p. 3.

Bitung Area that has become an urban area and the oil palm area permit should not be extended by the government and should be shared to the local citizens instead. Moreover, the right of exploitation of oil palm plantation owned by State-owned Enterprise (BUMN) has expired for 13 years.

From the explanation above, the writer took the problem of how is the utilization of former HGU land that makes the citizens, especially farmers, prosperous?

Agrarian Reform in Realizing the Citizens' Justice and Welfare

John Rawls' theory of justice touches the basic social structure and is implemented effectively in a democratic society like in Indonesia.⁵ This theory of justice emphasizes more on social justice. This is related to the conflict emerging between individual and the state's interests at that time. Rawls sees that the main interest of justice is the guarantee of human life stability and balance between personal life and others' life.⁶

Rawls' perspective towards justice principles is termed as fairness.⁷ Rawls stated that they are involved in the social cooperation choosing the principles that give them the basic rights and obligations and decide the division of social advantages; everyone should decide rationally on what constitutes these advantages, their rational goals to be chased and they decide what is fair and unfair in their opinions, and eventually, they decide what becomes their principles.⁸ Rawls believes that a good theory of justice is the one which is a contract guaranteeing interests of all parties fairly.⁹

Relating this Rawls' theory of justice with right of exploitation (plantation), it can then be seen that poverty is related to the asset ownership and the fact shows that 60-80% of poor people in Indonesia have the wealth of uncertified land. As a result, these poor people cannot use their assets as the tool to gain business capital because the most important asset for them is these uncertified lands. The second asset is the property around these lands and the third one is social asset, i.e. their dependence on family and neighbor. Taking these into consideration, the Plasma Core partnership pattern is actually a breakthrough to problem resolution for one of the right of exploitation conflicts to prevent these conflicts from creating economic and social imbalance around the farm.

The current government has issued the Presidential Regulation No. 86 Year 2018 in Article 1, stating that Agrarian Reform aims to: a. reduce the imbalance between land authorization and ownership in order to create fairness; b. Handle Agrarian dispute and conflict; c. Create the source of society's prosperity based on the agrarian through the management of land authorization, ownership, use, and utilization; create employment to decrease poverty; e. Improve the society's access to economic sources; f. Increase the food security and sovereignty; and g. Improve and maintain the quality of living environment.

Some citizens and farmers in Pasir Tanjung village, Rangkasbitung district, Lebak regency demand the land which the right of exploitation has expired since 2015 to be turned into a reformed land

⁵Rawls himself sees the theory of justice as a political concept. That is why the basic social structures management becomes the main focus in his study. Rawls believes that citizens as a social cooperation institution can only grow and develop well if the citizens' basic rights are given a place and its exercise is protected surely by the government through a fair constitution. Therefore, justice in the sense of fairness as a political theory can only be applied effectively in a democratic society. See Rawls' opinion cited by Andre Ata Ujan in his book's foreword *Keadilan dan Demokrasi; Telaah Filsafat Politik John Rawls* [Justice and Democracy; A Study of John Rawls' Political Philosophy], Kanisius Publisher, Yogyakarta, 2001, p. 5.

⁶ Hari Chand, *Modern Jurisprudence*, Kuala Lumpur, International Law Book review, 1994, p. 278".

⁷ John Rawls, *A Theory of Justice* (Teori Keadilan), translated by Uzair Fauzan and Heru Prasetyo, Pustaka Pelajar, Yogyakarta, Second Edition, 2011, p. 13

⁸ *Ibid.*

⁹ Andre Ata Ujan, *Keadilan dan Demokrasi; Telaah Filsafat Politik John Rawls* [Justice and Democracy; A Study of John Rawls' Political Philosophy], Yogyakarta, Kanisius Publisher, 2001, p. 95-96

by transferring the land entitlement to the local citizens. The land is also no longer feasible to be a plantation considering that Rangkas Bitung has become an urban area. The oil palm plantation permit should not be extended by the government and should be shared to the local citizens. Moreover, the right of exploitation of oil palm plantation owned by State-owned Enterprise (BUMN) has expired for 13 years.¹⁰

Agrarian reform is a movement to restructure (or rearrange) ownership, authorization, and use of agrarian sources (especially land). It aims to reform the society, which had long been feudal and colonial in nature, to be a fair and equitable one. The term Agrarian Reform was introduced in 2001, i.e. the first issuance of MPR Decision No. IX/MPR/2001 concerning Agrarian Reform (Indonesian: Reformasi Agraria) and Resources Management. This means that the Indonesian term *Reformasi Agraria* was first known in scientific discourse before the term *Pembaruan Agraria* (even if the terms mean the same).¹¹

Krishna Ghimire gives the same definitions to agrarian reform and land reform. In his book, he defines agrarian reform or land reform as a big change in agrarian structure bringing the access improvement for poor farmers to land and also the tenure certainty for those who cultivate the land, including the access to the input of agricultures, markets, services, and other assistance needs.¹²

Ben Cousin, on the other hand, distinguishes agrarian reform from land reform. Land reform is related to the land rights with each characteristics, power and distribution, while reform is not limited to the concept of land reform, rather it has wider sense involving the class character issues from the relationship of production and distribution of each related agricultural sector and company and how all those things are connected to a wider class structure. In other words, agrarian reform is related to the economic and political powers and the relationship of both. Agrarian reform in this context must include:

1. Agrarian policy instrument with qualitative characters and henceforth refers to the smaller changes such as subsidy, tax fee, etc;
2. Structural change to modify the agricultural structure such as credit program, investment in infrastructure sector, counseling, etc;
3. Institutional reform that changes the basic economy of society and rural area such as land redistribution, rental change, collectivization, etc.¹³

Article 4 of MPR Decision No. IX/MPR/2001 sets the following twelve principles of agrarian reform and resources management. The agrarian reform and natural resources management must be implemented according to the principles of:

1. Conserving and maintaining the integrity of the Unitary State of the Republic of Indonesia.
2. Respecting and upholding the human rights;
3. Respecting the law supremacy by accommodating the diversity in law unification;
4. Prospering the society, especially through the improvement of Indonesia's human resource quality.
5. Developing the democracy, legal compliance, transparency, and the society's participation optimization.
6. Creating justice including gender equality in ownership control, use, utilization, and maintenance of agrarian resources or natural resources.

¹⁰ Data of Lebak Banten Regency Government 2017

¹¹ Bernhard Limbong, *Reforma Agraria [Agrarian Reform]*, Margaretha Pustaka; Jakarta, 2012, p.2

¹² 2 Khrisna Ghimire in Article Hakikat Reforma Agraria [The Essence of Agrarian Reform], source: <http://www.berdikarionline.com/opini/20111231/hakikat-reformasi-agraria.htm#ixzz2JY1hdWzt>.

¹³ Ben Cousin, *Agrarian Reform and the Two Economies: Transforming Sout Africa's Countryside, draft of chapter 9 in Ruth Hall and Laungisile Ntsebeze, eds., The Land Question in South Africa: The Challenge of Transformation and Redistribution*, HSRC Press, Cape Town, South Africa, 2007 in Bernhard Limbong II book, Ibid., p. 30.

7. Maintaining the continuity that gives optimal benefit to both the current generation and the future generation by paying a heed to the environment's carrying and supporting capacities.
8. Implementing the social, conservation, and ecological functions based on the local socio-cultural condition.
9. Increasing the cohesiveness and coordination between development sectors and between regions in implementing the agrarian reform and resources management;
10. Acknowledging, respecting, and protecting customary law community rights and culture diversity over the agrarian resources or natural resources;
11. Striving the balance of rights and obligations of the nation, government (central, regional, provincial, city, and village or the equivalent)
12. Implementing the decentralization in the form of authorization division in the national, provincial, regional, city, and village or the equivalent levels.

Back to the the right of exploitation case in Rangkas Bitung, farmers hope that the oil palm farm area which HGU has expired since 2015 could be turned into a reformed land, like the case in Tanjung Lesung, Panimbang District, Pandeglang by transferring the land entitlement to the local citizens. Also, it is no longer feasible for Rangkas Bitung to have a plantation area since it has become an urban area. Therefore, the oil palm plantation should not be extended by the government and should be shared to the local citizens instead. Moreover, the the right of exploitation of this state-owned oil palm plantation (BUMN) has expired for 13 years.

The plantation's entitlement was not granted an extension because it was not under the plantation's control due to the reclaiming made by the farmworkers as the HGU was close to its expiry date. Some causes were behind this, and one of them was the illegal reclaiming made to the mentioned area. The reclaiming made to this plantation area prevented its beneficiary from utilizing the area for their plantation business.

The provision in the decision letter of the right of exploitation extension that excludes an area of 573.41 hectares in Rangkas Bitung district shows that the government opens a chance and gives a hope for the citizens to own the land they occupied since the people get the priority for that. This resolution is inspired by the Presidential Decision No. 32 Year 1979 and Ministerial Regulation of Home Affairs No. 3 Year 1979 which stated that to the lands occupied by the people, there no of entitlement renewal or extension would be given, rather the cultivation problems should be resolved first.

Farmworkers own the first and main priority to apply for rights of the land they occupied. The fairness aspect becomes the main consideration in resolving the cultivated land in addition to the balance for both parties. From the perspective of HGU owners, the provision in decision letter of the right of exploitation extension that excludes an area of 573.41 hectares in Rangkas Bitung district shows that the government cannot give a legal protection for the plantation land owner. If every HGU area approaching their expiry date is to get a reclaiming, then the government decides to exclude the reclaimed area from the right of exploitation area, hence eventually every the right of exploitation plantation land in existence will be gone.

This worries the plantation company because there is no guarantee for the continuity of plantation business, weak security guarantee, and uncertainty of HGU owner's right. Finally, in a long run, it does not only disserve the right of exploitation owners, but also the investors in plantation sector and no businesspeople would be interested in doing business in plantation sector that it will give bad impact to the economy. Law No. 18 Year 2004 on Plantation Article 10 paragraph (3) strictly forbids the right transfer of plantation business land resulting in business unit with less than minimum required area.

This provision should be violated by the plantation company if they are to comply with the obligation emphasized in the decision letter of the right of exploitation extension in THIRD dictum point which obliges the plantation company to release an area of 126.58 hectare which has been the problem of Right Grant over Former HGU Land located in Rangkas Bitung, Lebak Regent and or given a priority to adjust it to the land use which correspond with the General Spatial Zoning Planning (RUTRW) of Lebak Regency if the construction/development is to be done. This creates a separate legal polemic between maintaining the right for keeping the certainty and legal order and giving benefit for citizens who do not own land.

From the interview with Land Office of Rangkas Bitung, Lebak Regency, it was found that the agreement to return the land between the Regent and Plantation Company in 2015 could not be accepted by the people because more than 50% of the area had been cultivated actively and productively by the people. Besides, irrigation had been built in the rice filed area independently by the people. However, these people should return the cultivated lands due to an intimidation saying that those who refused to return the land were to be assumed as a communist element or the member of Indonesian Communist Party (PKI).

The people were helpless to prevent the plantation company from a forcefully tractoring their cultivated fields at that time. From the interview above, it was also known that the main cause of cultivation done by the citizens was the reclaiming demand over the areas which were forcefully taken by the plantation company in 1970. The reclaiming demand was caused by the unfinished compensation process. The plantation company was assumed to have not finished the compensation process in a good way and force the citizens to give the land to be used as a plantation.

The compensation given by the plantation company was felt unfair but the citizens should accept it because there was an intimidation. However, the plantation company, according the collected data, stated that the land acquisition as stated by the cultivators was completed through Land reform committee of Lebak regency in 1972 by direct deliberation settlement with the local citizens. If the statement is true, the grant of HGU to and on the behalf of PTP VII actually took place in problematic lands. As explained before, the plantation area reclaiming started in 1996. If it was related to the development planning of Rangkas Bitung Regency and the political situation in the reform period in Indonesia and also the legal status of the plantation land rights, it could be seen that there was an external cause of the right of exploitation PTPN VIII area reclaiming in Rangkas Bitung.

The case example shows that BPN currently choose a position as the executor of land administration. With the current position as a ministry, it is improper for ATR/BPN Ministry to do so. As the holder of The Right of State Control and the executor of state land management policy, including land to be given the right of exploitation and right of use, the ATR/BPN Ministry should be brave and independent in managing the former the right of exploitation land, as the formulator and executor of Indonesia Agrarian Politics. One important element in those three cases above is the existence of the Spatial Zoning Planning. This becomes a form of the existence of agrarian politics which manages the direction and allocation of Indonesia's lands. It is therefore perfect that the land institution is becoming the Agrarian and Spatial Planning Ministry/BPN RI, which is tasked not only to administer lands, but also manage Indonesia's space and landscape. From those three cases above, we can learn that the formulation of spatial planning is built under the Problems of Right Grant of Former Land (bottom up). ATR/BPN Ministry's structure which places spatial sector only in central (Director of General Space) needs to be reviewed. In ATR/BPN RI Ministry's structure, the spatial planning should be existed in every regency/province in Indonesia.

Conclusion

The utilization of former the right of exploitation land which makes the people, especially farmers in Lebak regency, prosperous will open a chance and hope for the people to get their occupied land back, because they have the priority for that. This resolution is inspired by the Presidential Decision No. 32 Year 1979 and Ministerial Regulation of Home Affairs No. 3 of 1979 which stated that in lands occupied by the people, no rights will be renewed or extended, yet the cultivation problems should be resolved first. The decision to grant an HGU extension excludes an area of 573.41 hectare in Rangkas Bitung regency.

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Regulations

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Peraturan Pemerintah Republik Indonesia Nomor 7 Tahun 1996 tentang Peleburan Perusahaan Perseroan (Persero) PT Perkebunan II dan Perusahaan Perseroan (Persero) PT Perkebunan IX menjadi Perusahaan Perseroan (Persero) PT Perkebunan Problematika Pemberian Hak atas Tanah Bekas HGU ... 51 Nusantara II (Lembaran Negara Republik Indonesia Tahun 1996 Nomor 13. [Government Regulation of Republic of Indonesia No. 7 Year 1996 on The Merger of Limited Liability Partnership Company (Persero) PT Perkebunan II and Limited Liability Company Perusahaan Perseroan (Persero) PT Perkebunan IX to becomes Limited Liability Partnership Company (Persero) PT Perkebunan Problems of Right Grant over HGU Used Land ... 51 Nusantara II (State Gazette of the Republic of Indonesia Year 1996 No. 13)]

Putusan Nomor 55/PUU-VIII/2010 dan Putusan Nomor 122/PUUVIII/2015 Pengujian Undang-Undang Nomor 18 Tahun 2004 dan Undang-Undang Nomor 39 Tahun 2014 tentang Perkebunan.

- [Decision No. 55/PUU-VIII/2010 and Decision No. 122/PUUVIII/2015 of Review of Law Test No. 18 Year 2004 and Law No. 39 Year 2014 on Plantation].
- Putusan PTUN MEDAN Nomor 94/G/2009/PTUN-MDN Tahun 2010 [Decision of PTUN MEDAN No. 94/G/2009/PTUN-MDN Year 2010],
<http://putusan.mahkamahagung.go.id/putusan/47e127985a08bc6412369314124348de>
- Surat Gubernur Sumatera Utara No. 593/2582/2003, No. 593/0763, No. 593/6193, No. 593/6969, No. 593/11900 [North Sumatra Governor Letter No. 593/2582/2003, No. 593/0763, No. 593/6193, No. 593/6969, No. 593/11900.]
- Undang-Undang Republik Indonesia Nomor 39 Tahun 2014 tentang Perkebunan (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 308, ambanan Lembaran Negara Republik Indonesia Nomor 5613) [Law of Republic of Indonesia No. 39 Year 2014 on Plantation (State Gazette of the Republic of Indonesia Year 2014 No. 308, Supplement to Additional State Gazette of the Republic of Indonesia No. 5613)].

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