



## Status of Land Formerly PT.Kalista Alam's Cultivation Plantation Business Permit After Revocation of Aceh Governor's Permit No.525/BP2T/5322/2011

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<http://dx.doi.org/10.18415/ijmmu.v11i4.5637>

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### **Abstract**

On August 25 2011, the Tripa Peat Swamp Area was granted a Cultivation Plantation Business Permit (IUP-B) to PT. IUP-B) to PT. KA. Then on September 27 2012 the Governor of Aceh revoked the IUP-B given to PT. 1,605 Ha. The revocation was carried out as a result of the Indonesian Forum for the Environment (WALHI) lawsuit at the Banda Aceh State Administrative Court (PTUN) (Case Register No.19/G/2011/PTUN-BNA dated 23 November 2011). The High State Administrative Court (PTTUN) granted the Plaintiff/Appellant's lawsuit and declared null and void the decision issued by the Governor of Aceh on 25 August 2011 No.525/BP2T/5322/2011. With the annulment of Aceh Governor's Decree No.525/BP2T/5322/2011, of course there will be legal consequences for the status of land controlled by PT KA covering an area of  $\pm$  1,605 hectares. So it is necessary to carry out a scientific study regarding the position or status of the former IUP-B PT.KA land after the annulment of Aceh Governor Decree No.525/BP2T/5322/2011.

**Keywords:** *Land Status; Plantation Business Permit; Revocation of Permit*

### **Introduction**

Rawa Tripa is a peat forest in Nagan Raya District, Aceh Province, covering an area of 61,803 hectares. Tripa Swamp is part of the Leuser Ecosystem Area (KEL) management and is protected by law, namely Law No. 11 of 2006 on the Government of Aceh and Law No.26 of 2007 on Government Regulated Spatial Planning. In Government Regulation (PP) No.26 of 2008 on the National Regional Spatial Planning (RTRWN) lists it as a strategic area with protective functions. In addition, according to Aceh Qanun No. 19 of 2013, Aceh Regional Spatial Plan 2013-2023, peatlands with a thickness of 3 (three) meters or more in Nagan Raya District are stipulated as Aceh protected areas.<sup>1</sup>

The majority of the Tripa Swamp Peat Area (around 60%) is located in Darul Makmur District, Nagan Raya Regency. Meanwhile, the remainder (around 40%) is in the Babahrot area, Southwest Aceh Regency. The Tripa Swamp Peat Area as a protected area has a very important role, namely as a regulator

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<sup>1</sup> Lihat Pasal 32 Huruf c, Pasal 35 Huruf c dan Pasal 36 Huruf a Angka 2 Qanun Aceh No. 19 Tahun 2013 tentang Rencana Tata Ruang Wilayah Aceh Tahun 2013-2023.

of fresh water and flood cycles as well as a natural fortress against tsunami disasters. Apart from that, Tripa can also maintain local climate stability, such as rainfall and air temperature which play a positive role in agricultural production in the surrounding area. Apart from that, the Rawa Tripa peat forest is very rich and is the best habitat for various types of freshwater fish which have high commercial value such as catfish (regular and jumbo), eels, paitan and shellfish. The Tripa Swamp Peat Area also provides non-timber forest products such as bee honey and medicinal plants that can be used by the community. Apart from that, the Tripa peat swamp is also a habitat for rare and protected animals.<sup>2</sup>

The potential of Tripa Swamp can be seen from various aspects, as follows:

### 1. Socioeconomic Community

The main livelihood of most of the Tripa population is in the agricultural sector (rice, cocoa, palm oil) and traditional fishing (especially for swamp fishery products such as catfish and sea cucumber). A small number of people work on oil palm plantations as manual laborers/daily workers. Thus, the Tripa Peat Swamp with its natural riches has great potential to be used as an economic resource for the community.

### 2. Ecological Aspects of Tripa Swamp

The Tripa peat swamp is part of KEL which is known for its rich biodiversity and has been designated as a National Strategic Area (KSN) to ensure environmental protection. The Tripa Peat Swamp has very important ecological functions for the surrounding community, including:

- a. As protection from tsunami disasters
- b. Water cycle regulator and flood preventer
- c. Carbon reserves
- d. Rich biodiversity

The Tripa peat swamp forest is an important habitat for the Sumatran Orangutan (*Pongo abelii*), which is one of the endemic animals of Sumatra which is currently critically endangered.<sup>3</sup> Of the approximately 6,600 Sumatran orangutans remaining in the world, more than 4% (or around 280 individuals) are found in the Tripa Swamp.<sup>4</sup> The vegetation and plant types in Tripa are also thought to have a diversity of flora types that grow like in other peat swamps. This diversity is caused by a combination of several environmental factors around the Rawa Tripa area such as topography, soil type, climate, altitude, water supply, forest humidity and especially rainfall.<sup>5</sup>

Based on the description above, it is clear that the Tripa Peat Swamp has quite useful potential, both as an economic resource for the community around the Tripa Rawa, and as a KSN for environmental protection. On August 25 2011, the Tripa Peat Swamp Area was granted an IUP-B to PT.KA covers an area of ± 1,605 Ha. Then on September 27 2012 the Governor of Aceh revoked IUP-B PT. IUP-B to: PT.KA covers an area of ± 1,605 Ha. The revocation was carried out as a result of WALHI's lawsuit at the Banda Aceh State Administrative Court (PTUN) (Case Register No.19/G/2011/PTUN-BNA dated 23 November 2011. In this case WALHI sued the Governor of Aceh (as Defendant I) and PT.KA (as Defendant II Intervention).

<sup>2</sup> Suhaimi, Abdurrahman, Chadijah Rizki Lestari, *Dokumen Kajian Pembentukan Taman Hutan Raya (TAHURA) di Eks IUP PT. Kallista Alam, Di Rawa Gambut Tripa, Nagan Raya*, Yayasan Hutan Alam dan Lingkungan Aceh dan Fakultas Hukum Universitas Syiah Kuala, Banda Aceh, 2023, hlm. 7.

<sup>3</sup> *Ibid.*, hlm. 7-10.

<sup>4</sup> Serge A. Wich, Karyl B. Swartz, Madeleine E. Hardus, Adriano R. Lameira, Erin Stromberg, Robert W. Shumaker, A case of spontaneous acquisition of a human sound by an orangutan, *Primates*, 10.1007/s10329-008-0117-y, 50, 1, (56-64), (2008).

<sup>5</sup> Agusti Randi, Togar Fernando Manurung, Sarma Siahaan, Identifikasi Jenis-jenis Pohon Peyusun Vegetasi Gambut Taman Nasional Danau Sentarun Kabupaten Kapuas Hulu, *Jurnal Hutan Lestari*, Vol. 2 No. 1, 2014, hlm. 66-73.

The lawsuit was filed against the decision of the State Administration Official (in this case the Aceh Governor's Permit No.525/BP2T/5322/2011 dated 25 August 2011). The Banda Aceh PTUN decision on April 2 2012 stated that the Banda Aceh PTUN had no authority to examine, decide and resolve the dispute and stated that it rejected the Plaintiff's lawsuit. However, at the appeal level, the PTTUN granted the Plaintiff/Appellant's lawsuit and declared null and void the decision issued by the Governor of Aceh on 25 August 2011 No.525/BP2T/5322/2011. This decision, which has permanent legal force, was then used as the basis for the Governor of Aceh in issuing a decree issued on 27 September 2012 with No.525/BP2T/5078/2012 concerning Revocation of the Aceh Governor's Permit No.525/BP2T/5322/2011.

Learning from the case above, it is important to take corrective steps by the Government so that the above incident does not happen again, especially since the area where forest and land fires (karhutla) occurred is within the administrative area of Darul Makmur sub-district, Nagan Raya. Darul Makmur District is one of the areas that has Peat Swamps, namely the largest Tripa Peat Swamps reaching 60% (sixty percent) on the west coast of the island of Sumatra. Tripa Swamp is a peat swamp that provides:<sup>6</sup>

- a. Various direct and indirect environmental services such as wood and non-wood;
- b. As a habitat for endemic flora and fauna;
- c. As a water controller;
- d. As a large carbon catchment area;
- e. As a provider of ecotourism environmental services.

Therefore, it is necessary to understand the position or standing of PT. KA's previous plantation business permit after the revocation of the Aceh Governor's Permit No.525/BP2T/5322/2011. The status (location) of land is an important issue and therefore needs to be balanced with efforts to overcome various problems that arise in the land sector.

### **Research Methods**

According to the purpose of this study, find out and explain the current situation of former PT.KA IUP-B, the appropriate type of research for this study is normative legal research. The study of using legal materials to solve problems through legal and regulatory approaches. Invitational and conceptual approaches. This is done by reviewing all laws and regulations relevant to the legal issue being addressed. Legislative provisions are written provisions containing generally binding legal norms promulgated or formulated by national agencies or authorized officials through laws and regulations.<sup>7</sup>

### **Result and Discussion**

The Tripa Peat Swamp Land is located in the western region of Aceh Province which includes two districts, namely Nagan Raya District and Southwest Aceh District. Around the 1990s, the peat swamp ecosystem was covered by coastal peat swamps covering an area of 60,696 ha. Referring to the land unit map published by Puslitanak in 1980 on a review scale, the peat swamp ecosystem is mostly

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<sup>6</sup> Anya Yenanda, Ashabul Anhar, Sugianto, Estimasi Laju Deforestasi Kawasan Ekosistem Gambut Rawa Tripa dengan Pendekatan Data Penginderaan Jauh, *Jurnal Ilmiah Mahasiswa Pertanian*, Vol. 8, Nomor 1, Februari 2023, hlm.621-622.

<sup>7</sup> Pasal 1 Angka 2 Undang-Undang Nomor 12 tahun 2011 tentang Pembentukan Peraturan Perundang-undangan sebagaimana telah diubah untuk kedua kalinya dengan Undang-Undang No. 13 Tahun 2022 tentang Perubahan Kedua atas Undang-Undang Nomor 12 tahun 2011 tentang Pembentukan Peraturan Perundang-undangan.

peat land with a depth of more than 1 to 4 meters.<sup>8</sup> This map also shows indications of the existence of peat domes with a depth of more than 2 meters.<sup>9</sup>

The Tripa peat bog ecosystem is part of the KEL, which was established under Presidential Decree No.33 (Keppres) of 1998 on the management of the KEL, which at that time was considered a protected management area. As a follow-up to this policy, the Aceh Provincial Government has also issued Decree of the Governor of Aceh No.19 of 1999 concerning Directions for Forest Functions in Aceh Province, where the Tripa Peat Swamp Forest ecosystem area is made a protected area outside the forest area.

At the national level, PP No.26 of 2008 concerning RTRWN has been issued as amended by PP No.13 of 2017, KEL including the Tripa-Babahrot peat swamp ecosystem is declared a national strategic area with a protection function natural resources and the environment as well as the Tripa - Batee Watershed (DAS) become a National Strategic Watershed. According to Law No.11 of 2006 concerning Aceh Government, the KEL is also included as part of the conservation area<sup>10</sup> in Aceh Province. Furthermore, in Aceh Province, in Aceh Qanun No.19 of 2013 concerning the 2013-2023 Aceh Regional Spatial Planning, it is also stated that peat areas with a thickness of 3 (three) meters or more, located in Nagan Raya Regency are Aceh Protected Areas.<sup>11</sup>

The Tripa peat swamp ecosystem, which in the early 1990s covered more than 60,000 Ha, now only has around 5,000 Ha remaining. Meanwhile, the others have become Palm Oil Company Cultivation Rights (HGU) concessions and community plantation land. One of the remaining peatlands is the former PT.KA IUP-B which covers an area of 1,605 Ha.

It is said that the land was the former IUP-B of PT.KA, because previously the 1,605 hectare land had already been given an IUP-B to PT.KA. The granting of the IUP-B covering an area of 1,605 Ha was carried out through the Decree of the Governor of Aceh No.525/BP2T/5322/2011 dated 25 August 2011, which then due to WALHI Aceh's lawsuit at the PTUN, the Aceh Government revoked the permit. The official decision to revoke the Aceh Provincial Government's permit is contained in the Decree of the Governor of Aceh No.525/BP2T/5078/2012 dated 27 September 2012 concerning the Revocation of the Aceh Governor's License No.525/BP2T/5322/2011.

The considerations for the issuance of Decree of the Governor of Aceh No.525/BP2T/5078/2012 dated 27 September 2012 concerning the Revocation of the Governor of Aceh's Permit No.525/BP2T/5322/2011 include:

1. Whereas the Medan State Administrative High Court with its decision No.89/B/2012/PT.TUN Medan dated 30 August 2012, has canceled the Aceh Governor's License No.525/BP2T/5322/2011 dated 25 August 2011.
2. Whereas based on the provisions stipulated in the Aceh Governor's Permit No.525/BP2T/5322/2011 dated 25 August 2011, PT.KA has not yet built a plasma plantation covering an area of 30% (thirty percent) for the community. and not submitting periodic reports on the physical development of the business every six months to the Provincial Technical Service and a copy to the Nagan Raya Regency Technical Service.

<sup>8</sup> Suhaimi, Abdurrahman, Chadijah Rizki Lestari, *Op. Cit.*, hlm. 41.

<sup>9</sup> Tropical Forest Conservation Action for Sumatera (TFCA-Sumatera), *Menyelamatkan Ekosistem Rawa Tripa*, <https://tfcasumatera.org/menyelamatkan-ekosistem-rawa-tripa/#:~:text=Ekosistem%20Hutan%20Rawa%20Gambut%20Tripa,Raya%20dan%20Aceh%20Barat%20Daya,> 22 Oktober 2020, diakses tanggal 2 November 2023.

<sup>10</sup> Wilayah Konservasi atau Kawasan Konservasi itu sendiri mencakup Kawasan Pelestarian Alam (Taman Nasional, Taman Wisata Alam, Taman Hutan Raya), Kawasan Suaka Alam (Cagar Alam, Suaka Margasatwa) dan Taman Buru.

<sup>11</sup> Lihat Pasal 32 Huruf c, Pasal 35 Huruf c dan Pasal 36 Huruf a Angka 2 Qanun Aceh Nomor 19 Tahun 2013 tentang Rencana Tata Ruang Wilayah Aceh Tahun 2013-2023,

3. Whereas the decision of the Medan High State Administrative Court No.89/2012/PT.TUN Medan dated 30 August 2011 as referred to above, includes state administrative cases that do not meet the requirements for cassation and PT.KA also does not implement them. obligations as referred to in letter c above, so that the Aceh Governor's License No.525/BP2T/5322/2011 dated 25 August 2011 has met the requirements for revocation.

Based on the considerations above, the Governor of Aceh revoked the Governor of Aceh's License No.525/BP2T/5322/2011 dated 25 August 2011 in the name of PT.KA covering an area of 1,605 Ha which is located in Pulo Kruet Village, Darul Makmur District, Nagan Raya Regency, Aceh Province. The consequence is that starting from the revocation of the Aceh Governor's Permit No.525/BP2T/5322/2011 dated 25 August 2011 as mentioned above, all activities previously carried out on the land area, must be stopped immediately and the land area is 1,605 The hectares previously controlled by PT.KA were again controlled and became State Land (Tanah Negara).

Based on the description above, it appears that the status of land rights according to the Decree of the Governor of Aceh No.525/BP2T/5078/2012 dated 27 September 2012 concerning Revocation of the Governor of Aceh's License No.525/BP2T/5322/2011, is re-controlled and becomes land belonging to the State (State Land). If the issue of land status is analyzed in depth according to applicable laws and regulations, especially national agrarian law, it can be said that in accordance with the state's right to control, the state (in this case implemented by the government) can regulate the allocation and utilization of resources. agrarian power (earth, water and the natural resources contained therein). All agrarian resources (including land and forests) are within the power of the State to regulate their allocation, use and exploitation for various functions and purposes as well as their conservation.

By returning the rights to the land to become state land (land controlled directly by the state), then in accordance with the state's right to control, the state has the right or authority to regulate the allocation and use of said land for various functions and purposes. What is more important in this case is maintaining its sustainability, considering that the land is included in KEL and has become KSN. So that the land is not misused, or used by irresponsible parties.

The state's authority mentioned above includes the authority to preserve natural resources as stated in Article 2 paragraph (2a) of the UUPA which states that the State's Right to Control gives the authority to "regulate and carry out the allocation, use, supply and maintenance of earth, water and outer space." This maintenance authority is intended to preserve agrarian resources.

In connection with the right to control the state, the state is given the authority to determine and regulate the legal relationship between people and the earth, water and natural resources contained therein. With the existence of the legal relationship in question, land rights emerge which can be given to people, both individuals and legal entities. So that there is a legal relationship between the person and the land. With the existence of a legal relationship, where the concrete form is the existence of land rights granted to certain legal subjects, then these legal subjects have rights (known as land rights), in addition to obligations towards a plot of land (such as obligations to maintain fertility).

In this connection, Article 14 paragraph (1) of the UUPA states that the Government, within the framework of Indonesian socialism, shall make a general plan regarding the supply, allocation and use of earth, water and the natural resources contained therein. This provision is intended so that agrarian resources can be utilized optimally and in accordance with the capabilities of the agrarian resources concerned.<sup>12</sup>

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<sup>12</sup> Suhaimi, Herawati, Mujibussalim, Penertiban Terhadap Hak Milik Atas Tanah Yang Terindikasi Terlantar Di Kota Banda Aceh, *Syah Kuala Law Journal*, Vol. 1(1), April 2017, pp. 287-300.

Meanwhile, for land that has not been granted or does not yet have land rights, the land does not yet have the status of private land, but is still state land. This is like the land that was granted a IUP-B to PT.KA covering an area of 1,605 Ha, where by granting the IUP-B PT.KA only has the right to carry out business in the plantation sector. Meanwhile, the legal relationship between PT. There is no legal relationship between PT.KA and the land it controls, in the sense that PT.KA does not have land rights to the land he controls and the status of the land is state land. In the absence of a legal relationship between PT.KA and the rights to the land (i.e. land that was previously controlled based on IUP-B), PT.KA does not have any rights to the land. So PT.KA cannot maintain its rights if the state determines other policies to determine or regulate the designation and use of land, including regulating and determining the legal relationship between other people or legal entities and the land.

Thus, when the Governor of Aceh revoked the IUP-B which he had given to PT.KA covering an area of 1,605 Ha through the Governor of Aceh's Permit No.525/BP2T/5322/2011, the revocation was carried out by Decree of the Governor of Aceh No.525/BP2T/ 5078/2012 dated 27 September 2012, it is clear that the former (ex) IUP-B land of PT.KA has returned to being land controlled by the state and has become State Land.

Based on the description above, it is clear that the former PT.KA IUP-B land as disputed has now returned to being free state land with no rights attached to it. Thus, in accordance with the state's right to control, the state (in this case implemented by the government) can regulate its allocation and use. With the revocation of the IUP-B, it can also be used as one of the government's efforts in the context of restructuring, controlling and using land.<sup>13</sup> This is understandable, because all agrarian resources (including land and forests) are within the power of the State to regulate their allocation and use for various functions and purposes as well as their preservation.

## **Conclusion**

Based on the description stated above, it can be concluded that in terms of the status of the land, a IUP-B was granted to PT.KA based on the Decree of the Governor of Aceh No.525/BP2T/5322/2011 dated 25 August 2011, which then based on the Judicial Decision, the Aceh Government revoked the permit with the Decree of the Governor of Aceh No.525/BP2T/5078/2012 dated 27 September 2012, so the status of the land returned to free state land (land) with no rights attached to it. Therefore, with land status like this, it is possible for the land to be used for other purposes. PT.KA's former IUP-B land covers an area of 1,605 Ha, where with the grant of IUP-B PT.KA only has the right to carry out business in the plantation sector. Meanwhile, there is no legal relationship between PT.KA and the land it controls, in the sense that PT.KA does not have land rights to the land it controls and the status of the land is state land. So once the IUP-B is revoked, the land status returns to state land.

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<sup>13</sup> Della Rafiq Utari, Suhaimi, Pendaftaran Tanah Yang dikuasai Oleh Tempat-tempat Ibadah Ummat Islam di Kecamatan Kuta Alam Banda Aceh, *Syah Kuala Law Journal*, Vol. 4(3), 2020: 310-322.

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