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Ratio Legis Of The Principle Of Sovereignty In The Regulation Of Plantation Business As A Settlement Of Land Disputes/Conflicts

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Abstract

Plantation businesses have existed since the past, especially growing rapidly during the Dutch colonial era. The Dutch Colonial Government then made several laws and regulations regarding the regulation of land . Currently, plantations are under the umbrella of the Plantation Law and UUCK. In terms of Legis ratio, the inclusion of "the principle of sovereignty in the Plantation Law actually increases the legitimacy of Plantation Companies to take MHA Ulayat land by force and arbitrarily. The principle of sovereignty in the Plantation Law is not in line with the state's right to control all natural resources in Indonesia's territorial territory. Land disputes and conflicts leading to plantation land are an indirect implication of the Principle of Sovereignty, which is systematically formalized in the Plantation Law to strengthen the position of Plantation Companies, even though it reduces the sacred value of a nation and State, which is given through the principle of sovereignty to Plantation Companies.

Keywords: Principles of Sovereignty, Plantation Businesses, Disputes, Conflicts, Land

INTRODUCTION

Indonesia currently has the largest plantation area in the world. Based on data from *the United States Department of Agriculture* (USDA), Indonesia's mature oil palm plantation area is estimated to reach 11.75 million ha in 2019 or 49.5% of the world total of 23.74 ha. Unfortunately, the vast area of oil palm land is also accompanied by deforestation and forest and land fires every year which results in deforestation. The area of land planted to produce palm oil in Indonesia is twice that of Malaysia which only has 5.3 million ha or around 23% of the world total. As is known, Malaysia's palm oil harvest area is the second largest after Indonesia, followed by Nigeria with an area of 2.5 million ha in third place.

In reality, there are still many problems related to disputes or conflicts that occur, especially related to land use. Land disputes often escalate into land conflicts between plantation companies and customary law communities (HMA).

Since the reform period in 1998, changes in managing plantation businesses with certain commodities in the form of Palm Oil have been developed massively with Government policy providing various conveniences for investors to invest capital (investment). Law Number 18 of 2004 concerning Plantations, was later revoked by Law Number 39 of 2014 concerning Plantations, abbreviated as UUPerkebunan, and underwent changes to several articles in Law Number 6 of 2023 concerning , abbreviated as UUCK.

In the history of plantations in Indonesia, land disputes or conflicts have always occurred, in essence from the past until now, according to J. Sembiring, the conflicts that have occurred for centuries show almost the same symptoms, namely the demand for the return of people's rights to plantation land because It is claimed that the land was obtained by the plantation by "seizing" or by fulfilling compensation payments (land) which were considered too small. These demands were followed by land occupation by the community (including looting).

The root of the problem is of course the extent to which legal products in the form of Laws *(Statutes)* are able to accommodate the wishes of both parties, namely the Plantation Company and the MHA with the formulation that behind the norms there are values and principles, behind the principles are the values of truth and justice. From the Principle of Sovereignty in Law Number 39 of 2014 concerning Plantations, hereinafter abbreviated as the Plantation Law, it brings problems in the form of land disputes or conflicts.

The norms are outlined in commands *(gebod)* and prohibitions *(verbod)*. The values and *principles* contained in the regulation of plantation land as outlined in Articles 11 to Article 18 include those amended in Law Number 6 of 202 3 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law -Act (called UUCK) leading to an increase in cases of land disputes or conflicts. The KPA recorded a total of 241 agrarian conflicts in 2020. The highest conflict was in the plantation sector with 122 cases and forestry with 41 cases . The total area of conflict land is 624 thousand hectares, including the forestry sector of more than 312 thousand hectares and plantations of 230 thousand hectares. The most agrarian conflicts in the plantation sector were on oil palm land with 101 cases and sugar cane with 3 cases. Most conflicts were related to private companies with 106 cases and BUMN with 12 cases.

Based on various facts, disputes or conflicts have always increased since the implementation of the Plantation Law and additional changes as outlined in the UUCK. The problem lies in the "principle of Sovereignty" which leads to land disputes and conflicts, namely plantation land, which needs to be studied more deeply in legal terms in terms of accuracy in accordance with the principles of establishing legislation in resolving land disputes or conflicts, namely plantation land.

RESEARCH METHODS

The presentation is carried out in a prescriptive and descriptive qualitative manner. This research was studied normatively by focusing on the values, principles and norms contained in the Plantation Law. The focus of this research is included in the category of research on legal principles (*Rechtsbeginselen)* . There are things that from a legal perspective need to be researched into the principle of sovereignty found in the Plantation Law. The amount of rights given by the state to plantation business holders regarding the IUP/IUP-B/IUP-P they own. According to Soetandyo Wignyosubroto, this prescriptive analysis method is *a theory building method* for researching and solving problems conceptualized at the micro level of analysis as symbolic reality

RESULT AND DISCUSSION

A Brief History of the Development and Classification of Plantation Businesses in Indonesia

The development of plantations in Indonesia, as expressed by Sartono Kartodirdjo and Djoko Suryo, explains:

In 1830 the Dutch East Indies colonial government focused on plantations as the main sector that supported the Dutch East Indies economy. The plantation system is part of the commercial and capitalistic agricultural economic system. The plantation system is realized in the form of large-scale and complex agricultural businesses, capital *intensive*, use of large land areas, large labor organization, detailed division of labor, use of *wage* labor , neat work relationship structure, and the use of modern technology, specialization, administrative and

bureaucratic systems, as well as the cultivation of commercial crops *intended* for export commodities on the world market. The plantation system at this time was known as the *Cultuurstesel program* or better known as the forced cultivation system which was initiated by Van Den Bosch.

Colonialism carried out by the Dutch against Indonesia with the main aim of controlling natural resources (SDA). Indonesia's very rich natural resources have greatly benefited the Netherlands in world trade, especially in Europe which needs plant spices for the needs of European countries. So that the Dutch, in their trade monopoly, formed the VOC, according to Rusdi Evizal, explaining:

The presence of the Dutch in Indonesia began with the formation of the East India Trade Company or *Vereenigde Oost Indische Compagnie (VOC)* in 1602, such as: (1) conquest and violence, (2) monopoly contracts, and (3) based on agreement or free trade. . The trade commodity exploitation system is carried out using a mandatory leverage system and a contingency system. In the mandatory leverage system, conquered regional leaders handed over commodities and the VOC bought them at a certain price. In the contingency system, leaders were required to hand over a set amount of commodities, and the VOC would provide little or no payment. These two systems are similar to the system of tribute from conquered areas to the king in the feudal system.

Dutch power implemented liberal political principles, namely the principle of no government interference in the business sector, the private sector was given the right to develop its business and capital in Indonesia. The Dutch Colonial Government was encouraged to issue a second policy called *Agrarisch Wet* (contained in Staatblad 1870 Number 55). The creation of *Agrarisch Wet* was of course politically strong in the Dutch's desire to control land in Indonesia at that time. According to Masyrullahushomad and Sudrajat, explaining:

As a Dutch colony, in Indonesia at that time there were two prominent plantation systems, namely the "state" plantation system (1830-1870) and the "liberal" private plantation system (post 1870). In the first system, the government uses more of its authority *(high authority)* to purchase various commodities that are needed and often by coercive means.

As Ahmadin, Mubyarto said, to obtain a cinematography regarding colonial policies in the agrarian sector, the following describes the condition of plantations in several regions in Indonesia:

1) in Maluku, sources of cloves and nutmeg are limited and collective punishment is given to smugglers and compulsory labor is required;
2) in pepper areas such as Banten, Lampung and Central Sumatra, agreements were made with kings in port cities to determine quotas and prices set by the VOC;
3) in the mountainous land of Priangan, coffee plantations were opened using nobles as contractors to provide labor;
4) in the Jakarta area and its surroundings, including coastal areas, there were almost 100 leased plots of land managed by local employees (appointed by the VOC);
5) plantation owners of almost all plantations who had the privilege of being grand lords over the villagers;
6) in Central Java, which had only been half conquered by the VOC, imposed simple taxes in the form of rice, wood, cotton, thread, nuts and money.

Furthermore, as stated by Clifford Geertz in his book "Agricultural Involution" (1963), quoted by Ahmadi, he said:

divides views regarding land ownership into two parts. The Java and Madura regions, which he calls "Inner Indonesia", assume that land is property rights and a means of production, and for the sake of land, everyone is willing to risk their lives to defend that land.

After entering the reform period in 1998, plantations were regulated by law. The first time the term plantation was regulated by law was the creation and ratification of Law Number 18 of 2004 concerning Plantations, then this Law was replaced by Law Number 39 of 2014 concerning Plantations.

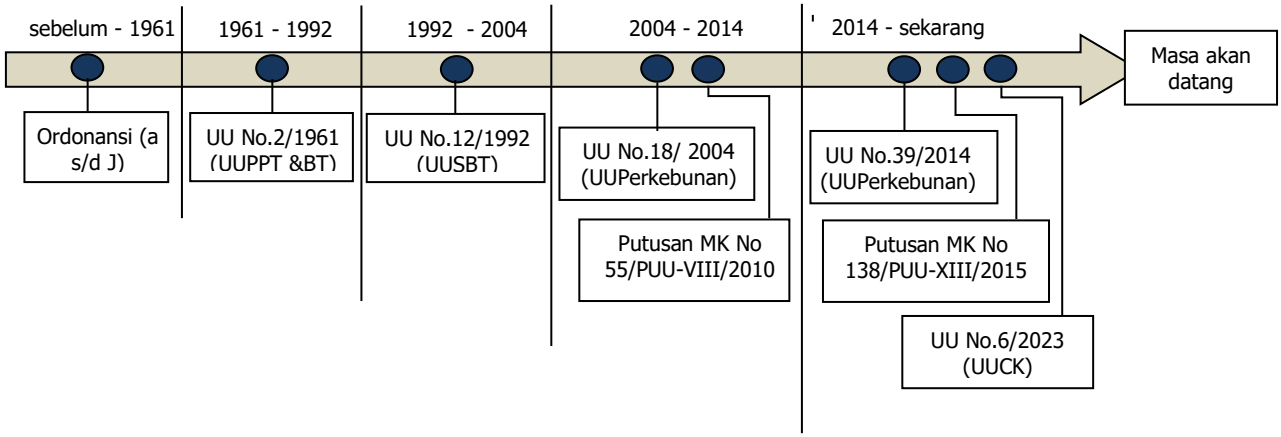

Figure 01: History of Plantation Legislation in Indonesia
Source: Processed by the Author, 2021

Information:

(a) Ordinance on the Tea Crisis *(Crisis Thee Ordonnantie, Staatsblad 1933 No.203)* , (b) Ordinance on the Cinchona Crisis *(Crisis Kina Ordonnantie, Staatsblad 1933 No.204)* , (c) Ordinance on the Coffee and Cocoa Crisis *(Crisis Koffie en Cacao Ordonnantie, Staatsblad 1933 No.205)* , (d) Ordinance on Cinchona Plantation *(Kinaaanplant Ordonnantie, Staatsblad 1934 No.70)* , (e) Ordinance on Production of Plantation Rubber *(Ondernemings Rubber-uitvoer Ordonnantie, Staatsblad 1934 No.342)* , (f) Ordinance on Public Rubber Production *(Bevolkings Rubber-uitvoer Ordonnantie, Staatsblad 1934 No.343)* , (g) Ordinance on Rubber Planting *(Rubberaanplant Ordonnantie, Staatsblad 1934 No. 346)* , (h) Ordinance on Kapok's Interests *(Kapok-belangen Ordonnantie, Staatsblad 1935 No.165)* , (i) Ordinance on Tea Planting *(Thee-aanplant Ordonnantie, Staatsblad 1936 No.119)* , (j) Ordinance on Krosok *(Krosok Ordonnantie, Staatsblad 1937 No.604)*

Content of Principles in Plantation Law Norms

The birth of the Plantation Law and the development of the latest changes through UUCK prove the great interest of the state in the plantation business. According to Nurhasan Ismail, legal certainty contains the essence of rigidity or static because it originates from the world of ideas which, through deductive thinking, are expressed in statutory law. Deductive thinking starts from the process of simulation, categorization, and norm formulation . The simulation process is a stage of exploring the world of ideas regarding the scope of behavior and circumstances to be regulated. The results are organized into a categorization of behavior and circumstances using certain concepts, which are then used as the basis for formulating written norms .

Norms containing the principle of sovereignty in the Plantation Law. The following describes the basic content contained in the norms of the Plantation Law, so there are 3 (three) important things, namely:

1) Purpose of Plantation Management

The formation of laws in general certainly has objectives to be achieved, as stated in Article 2 of the Plantation Law, namely:

Plantation management aims to:

a. improving people's welfare and prosperity;
b. increasing the country's foreign exchange sources;

c. providing employment and business opportunities;
d. increase production, productivity, quality, added value, competitiveness and market share;
e. increasing and meeting domestic consumption and industrial raw material needs;
f. provide protection to Plantation Business Actors and the community;
g. manage and develop Plantation resources optimally, responsibly and sustainably; And
h. increasing utilization of Plantation services.

The aim of the Plantation Law as referred to in Article 2 letter a, is "to increase the welfare and prosperity of the people". This goal is the highest essence of a law in general, including in this case the Plantation Law. The aim of improving the welfare and prosperity of the people in the essence of the formation of the Republic of Indonesia is expressly stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely:

"Then, to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's blood and to promote general welfare..."

Welfare and prosperity are the ultimate goals of the state. According to Maleha Soemarsono, he said:

The final goal of prosperity is the prosperity of the people, which gives rise to the form of a material legal state. At this stage, the formal form of a legal provision is no longer important, because what is more important is the content/material of the legal provisions for the prosperity of the people. So the main task and goal of the state (in this case the government) is the prosperity of the people *(welfare state)* . In implementing this goal, the government is no longer bound by the formal form of law. So it is *vrij bestuur* , not *gebonden bestuur* , as long as the aim is for the interests/welfare of the people. Welfare and prosperity in the Pancasila philosophy are contained in the fifth principle , namely Social Justice for all Indonesian people.

The plantation business should be part of natural resource management from upstream to downstream (production into ready-to-use goods). Regarding the provisions of Article 33 paragraph (3) of the 1945 Constitution which provides The authority for the state to control "...production branches which are important for the state and control the livelihoods of many people..." is not intended for the sake of power alone from the state, but has the intention of enabling the state to fulfill its obligations as stated in the Preamble to the Constitution. 1945, namely; "...protect the entire Indonesian nation and all Indonesian blood and to promote general welfare..." and also "...realize social justice for all Indonesian people...". The meaning contained in state control is that the state must control the branches of production under its control to fulfill three things that are in the interests of society, namely: (1) sufficient availability, (2) equal distribution, and (3) affordable prices for many people.

The essence of the purpose of administering this plantation is very basic, and is connected to its basic foundation, namely the principle of "Sovereignty", which has no correlation at all. Of the several objectives of running the plantation. The textual principle of Sovereignty aims to administer plantations to provide protection to Plantation Business Actors and the community. The textual principle of Sovereignty also in the explanation of the Plantation Law equates "Plantation Business Actors" and "community". The explanation of the Plantation Law states that what is meant by protection for Plantation Business Actors and the community is intended to ensure that the implementation of Plantations becomes the glue and unification of the nation. The "glue and unification of the nation" goal of running a plantation business becomes difficult to fulfill as long as obligations and fulfillment of rights are not fulfilled. In fact, the issue of plantation land with MHA and individuals has not been resolved as the seed of conflict because there has been "expropriation" of customary land in several areas. This incident shows the legal ideals through the aim of implementing plantation businesses in the Plantation Law as just a "slogan" so that the debate over the purity of the Plantation Law's norms has been fulfilled. In

reality, with the weak position of the MHA because there is no certainty regarding its recognition and customary territory, the Plantation Law is implemented unilaterally. Because the form of recognition and obligation to recognize MHA's rights is regulated in another law , namely a special law regulating this matter which has not yet been discussed and passed into law. ... widespread conflict between MHA and capital owners or with Government-Owned Enterprises or with the government itself.

It's just that in the explanation of the Plantation Law, this community is seen very broadly, not specifically which communities are entitled to protection. Protection is provided in various aspects or fields such as legal protection, economic protection, social protection, political protection. However, according to Philipus Hardjon, there are two types of legal protection for the people, namely:

a. *Preventive* legal protection means that people are given the opportunity to submit their opinions before the government's decision takes a definitive form which aims to prevent disputes from occurring.
b. *Repressive* legal protection aimed at resolving disputes. Legal protection is a guarantee provided by the State to all parties to be able to exercise their legal rights and interests in their capacity as legal subjects.

2) Planning in Plantation Management

The management of plantations is carried out through a careful, systematic and directed planning process. The Plantation Law in Articles 5 to 10 regulates how plantation management planning is carried out. Planning is a series of preparatory actions to achieve goals. Guidelines are guidelines, outlines, or instructions that must be followed if you want good results.

Planning for plantation implementation as intended in Article 5 of the Plantation Law is addressed to the Government and Provincial and Regency/City Regional Governments. Article 5 paragraph (1) of the Plantation Law reads:

Plantation planning is intended to provide direction, guidance and control tools for achieving the goals of implementing plantations as intended in Article 3.

Article 3 referred to in Article 5 paragraph (1) above is the aim of running a plantation business. Indonesia's total land area is 192 million hectares, divided into 123 million hectares (64.6%) as cultivation areas and the remaining 67 million hectares (35.4%) as protected areas. Of the total cultivated area on land with potential for agricultural areas of 101 million hectares, including 25.6 million hectares of wetlands; Dry land for annual crops is 25.3 million hectares and dry land for annual crops is 50.9 million hectares. To date, 47 million hectares of the area that has potential for agriculture have been cultivated, so there are still 54 million hectares remaining that have the potential for expanding agricultural areas.

In order to ensure the success of plantation development on a large scale, one of which is Oil Palm, it is necessary to carry out the assessment and land preparation stages first which include location and land suitability, processing of oil palm plantation business permits, socialization, partnerships, land acquisition, area planning and coconut plantation operations. palm oil, and social responsibility. Finally, the development and management of oil palm plantations must refer to the principles and criteria set out in *Indonesia Sustainable Palm Oil* (ISPO).

The implementation of the Plantation Law, including Law No. 18 of 2004 concerning Plantations, derivative technical regulations are not regulated by Government Regulations, but directly by technical regulations of the Minister of Agriculture Regulation Number 98/Permentan/OT.140/9/2013 concerning Guidelines for Plantation Business Licensing. In fact, this Regulation of the Minister of Agriculture also applies to the Plantation Law which is currently still in effect, namely Law No. 39 of 2014. However, now with the changes to the Plantation Law in the UUCK, in terms of the hierarchy of statutory regulations, the

implementation of the Law is a Government Regulation. The Government Regulation referred to has now been regulated by Government Regulation Number 26 of 2021 concerning the Implementation of the Agricultural Sector. Plantation planning is prepared starting from the Government (national) by the Minister, provincial plantation planning is prepared by the Governor, and Regency/City Plantation Planning is prepared by the Regent/Mayor. It turns out that the strong role of business actors in preparing this planning involves the involvement of Plantation Business Actors, as emphasized in Article 5 paragraph (3) The Plantation Law, reads:

Plantation planning as intended in paragraph (2) is carried out by the Central Government and Regional Governments in accordance with their authority by involving Plantation Business Actors and community participation.

Community participation in plantation planning is needed because it involves rights to their land which could be part of the cultivation area, and is related to the socio-economic aspects of the community which have an impact on increasing welfare or vice versa. However, Plantation Business Actors involved in planning preparation can influence the preparation of planning and intervention decisions of authorized officials.

On the basis that the state is the holder of the highest power, planning is absolutely necessary. The basics in preparing plantation planning are used as the scope of plantation planning as regulated in Article 6 paragraph (2) of the Plantation Law, stating: (a) area; (b) Plantation Plants; (c) human resources; (d) institutional; (e) Plantation areas; (f) upstream-downstream linkages and integration; (g) facilities and infrastructure; (h) financing; (i) capital investment; and (j) research and development of science and technology.

According to Sudikno Mertokusumo, the main aim of law is to create an orderly society, creating order and balance. Planning, of course, prepares various legal activities in the management of natural resources in the form of plantation businesses, including its designation to create an orderly society in managing natural resources, namely plantation businesses and including restrictions on the land used. The state is present in planning land allocation for plantations.

However, this does not mean that the state is "arbitrary", without paying attention to the land rights owned by the community. The state has sovereignty in planning which determines the direction and sustainability of the plantation with minimal efforts to prevent conflict *and* environmental damage .

One of the plantation plans is prepared as intended in Article 6 paragraph (1) letter b, Plantation Law, which states that plantation planning is based on regional spatial planning. So by using a sociological/teleological interpretation, the planning is carried out as thoroughly as possible, to be able to provide benefits to the community because the allocation is provided by the state.

The Principle of Sovereignty is Incompatible with the State's Right to Control

The state's right to control land and the state's right to control land are two very different things. The state's right to control land is based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which reads: "Earth, water and outer space, including the natural wealth contained therein, are controlled by the state for the greatest prosperity of the people." According to Sri Hayati, the state authority stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is not yet a norm in its true sense. The state authority stated in it also has the characteristics of a vague norm and an open norm. The state as an organization of power for all the people, in the sense of being the personification of all the people, has the authority to regulate matters relating to land.

The authority is related to Article 2 paragraph (2) of the UUPA as the state's right to control land, according to AP.Parlindungan think:

In this way, the state as an organization has the power to regulate so that it makes

regulations, then administers, which means carrying out (execution) the use or allocation (*use*), supply (*reservation*) and maintenance (*maintenance*) of the earth, water, space and natural resources contained therein. . Also to determine and regulate (determine and make regulations) what rights can be developed from the right to control the country. Then determine and regulate (determine and make regulations) what the relationship between people or legal entities should be and the earth, water, space and natural resources contained therein.

Land controlled directly by the state is land that is not owned by anyone, namely people and legal entities (corporations). However, in essence, according to Bernhard Limbong, the state will determine where, when, what companies, carried out by the central government and by regional governments, or handed over to a private legal entity or to someone. It all depends on the interests of the state or the interests of the people as a whole. Likewise about land. The state controls all the land.

Basically, in various legal interpretations, it is necessary to distinguish between the right to control land by the state and the right to control state land. The state's right to control land is based on reference to the provisions of Article 2 of the UUPA. According to Bakri, land control by the state is divided into three, namely:

1. Full control, namely, over land that is not owned by right by a legal subject. This land is called "free land/state land" or "land controlled directly by the state". The state can give this land to a legal subject with a right.
2. Limited/incomplete control, namely, over land that is already owned by right by a legal subject. This land is called "land of rights" or "land controlled indirectly by the state"
3. State power, which originates from the state's right to control land over private land, is limited by the contents and rights of that right. This means that the state's power is limited by the power (authority) of the holder of land rights granted by the state to exercise his rights.

Plantation as a form of business by cultivating large areas of land, the UUPA specifically provides for various types of land rights, namely Business Use Rights (HGU). In accordance with the provisions of Article 28 paragraph (1) UUPA, it reads:

Cultivation rights are the right to cultivate land directly controlled by the State, within the period as stated in article 29, for agricultural, fishing or livestock enterprises.

The provisions of Article 28 paragraph (1) of the UUPA emphasize that obtaining HGU is conditional; (1) land controlled directly by the state, (2) there is a term limit for HGU, (3) HGU allocation is only intended for agriculture, fisheries or animal husbandry.

Based on the provisions of Article 28 paragraph (1) of the UUPA, plantations as businesses owned by plantation business actors must originate from land directly controlled by the state. This, as stated by Bakri above, is included in the classification of full control where the state can give this land to a legal subject with a right. Land rights are permanent, namely HGU which is an act of deliberately "abolishing" in Article 34 UUPA is (1) terminated before the term ends because a condition is not fulfilled, (2) revoked for the public interest, and (3) abandoned. The conditions for deletion are: (1) the term ends, (2) the right holder releases it before the term ends, (3) the land is destroyed, and (4) the legal subject is no longer fulfilled, as intended in Article 30 of the UUPA.

Abandonment is an act that can be categorized as intentional or negligent by plantation business actors. After obtaining an IUP/IUP-B/IUP-P, plantation business actors still do not immediately continue their plantation business according to the plantation business stages. Abandoned Land based on Article 1 point 2 of Government Regulation Number 20 of 2021 concerning Controlling Abandoned Areas and Land, reads:

Abandoned Land is freehold land, land with management rights, and land obtained based on the basis of land control, which is intentionally not cultivated, not used, not exploited, and/or not maintained.

The abandoned land qualification is also imposed on land intended for plantation business. Synchronizing Government Regulation Number 20 of 2021 concerning Controlling Abandoned Areas and Land, the obligations for HGU holders are also regulated in Article 28 letter e, Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Flat Units and Land Registration, that the Holder HGU is prohibited from abandoning land.

In fact, in several plantation cases regarding land disputes between plantation business actors (companies) and MHA, they were not invited to deliberation, but immediately carried out land *clearing* . One of the causes of conflict. Land conflicts between rural communities and oil palm plantation companies continue to increase, but until now there is no adequate resolution mechanism. Experts assess that an institution is needed to solve this problem. The latest report by six organizations/universities found that, in the last decade, 789 citizens were arrested, 19 died, and 236 citizens were injured.

Based on the data and facts that occur in the field, it is proven that there is a norm problem , namely the imbalance in the form of recognition and guarantee of legal certainty between the Ulayat Rights of MHA and the rights granted in the form of HGU to plantation business actors. The sovereignty given to plantation business actors as contained in the Plantation Law is a strength to suppress MHA, apart from having their rights protected by the state, there is also a weakness in terms of the recognition of customary rights to MHA by the state.

Recognition legalized by the State through the authority given to the Regional Government, namely the Provincial Government if its customary territory is the customary land of MHA across districts/cities. Determination of MHA customary land rights within the Regency/City area is the authority of the Regency/City. This form of recognition is carried out in partial Regional Regulations which directly mention subjects and objects, such as Lebak Regency Regional Regulation Number 32 of 2001 concerning Protection of the Customary Rights of the Baduy Community, and Nunukan Regency Regional Regulation Number 4 of 2004 concerning Ulayat Rights of the Lundayeh MHA of Nunukan Regency, for several other regional regulations, MHA's Ulayah Rights are determined by the Regional Head's Decree.

Until now, the existence of customary rights in these two areas is still maintained, where plantation businesses cannot enter due to formal legalization from the state regarding the existence of MHA customary rights. If plantation business actors want to use this customary land, then the legal standing , namely MHA and Plantation Business Actors, have the same legal power.

sovereignty provides the delegation of authority from state sovereignty to regions to carry out predetermined plantation business operations. Only state sovereignty can delegate its authority as an element to impose one's will which can still be carried out behind formal legal power, as stated in Article 2 paragraph (4) of the UUPA, namely:

The exercise of the right to control from the State above can be delegated to Swatantra regions and MHA communities, as long as it is necessary and does not conflict with national interests, according to the provisions of Government Regulations.

That this provision is conditional on the state "being able", empowered to the current Swatantara regions (Provincial and District/City regions) and the MHA community. Authorized to regions as a form of delegation of authority to Provinces and Regencies/Cities has been regulated by Law Number 23 of 2014 concerning Regional Government. However, no obligation is not necessarily enforced because the word "can" (has a relative tendency) to the MHA Community. This condition is also confirmed in Article 3 of the UUPA, namely:

Bearing in mind the provisions in articles 1 and 2, the implementation of customary rights and similar rights from the MHA community, as long as they are in accordance with the facts. still exists, must be such that it is in accordance with national and State interests, based on national unity and must not conflict with the law and other higher regulations.

The element of imposing the will of Plantation Business Actors is because the existence of MHA with its Ulayat Rights is not in accordance with national interests, including growing investment so that foreign exchange increases, labor absorption capacity, wider welfare and prosperity of the people, and the fulfillment of infrastructure and public facilities. Technically, plantation business actors have incurred very high costs starting from establishing a legal entity according to Indonesian law, the licensing process and preparation for *land clearing* .

In fact, by adhering to the provisions of Article 2 paragraph (4) of the UUPA, there are only 2 (two) elements that can receive delegation of authority from State Sovereignty, namely Swatantara regions (now Provincial Regions and Regency/City Regions). So the Sovereignty Principle in the Plantation Law is contrary to the UUPA, besides that including Sovereignty as a principle in the Plantation Law is not appropriate.

Basis of Rights in Obtaining HGU for Plantations

Land rights granted by the state to Legal Subjects in carrying out plantation businesses are in the form of HGU. HGU in the UUPA is a permanent right, but there is a time limit for ownership. Other names for HM, HGU, HGB, HP in Dutch on BW are such as *Eigendom, Erfpacht, Oprstal, Vruchtgebruik, Hypothiek* , while customary rights are known by various names in Dutch or Indonesian such as *erflijk individueel bezitsrecht* , customary property rights. , Tanah Girik, Tanah Letter C, Grand Sultan, *Grand Controleur* or *Grand Delimaatschapij* . The term HGU before the UUPA was passed, HGU in Dutch terms was *Erfpacht* found in Article 720, Civil Code (KUHPerdata), which reads:

Cultivation rights are material rights to fully enjoy immovable property belonging to another person , with the obligation to pay annual tribute to the land owner, as recognition of ownership, whether in the form of money or in the form of proceeds or income. The basis for the birthright of the right to cultivate must be announced in the manner specified in Article 620.

The existence of UUPA means that old rights are regulated into new rights, called conversion. The conversion of *Erfpacht* into Cultivation Rights, especially related to plantations, is conveyed in Article III paragraph (1) of the UUPA, in full it reads:

erfpacht rights for large plantation companies, which existed at the time this Law came into force, have since then become the cultivation rights referred to in article 28 paragraph (1) which will last for the remaining period of the *erfpacht rights* , but for a maximum of 20 years.

Following are brief identifications of the property rights of communities around plantation companies in the East Kalimantan and North Kalimantan regions in the table below:

Table 01. Classification of Conflicts of Interest in Plantation Businesses Regarding Land Rights

Plantation Company	Other Parties (Surrounding Communities)	Information
State Land		
IUP/IUP-B/IUP-P	1. Community Cultivates Land and obtains SKT/SPPT	• Comes from cultivated land (facts occur in East Kalimantan, namely in Samarinda, Kutai Kartanegara, East Kutai, West Kutai, East Kutai, Berau, PPU, and Paser) • Usually the land comes from APL and some comes from former HPH owned by the company which has been returned to the state.

		• Land cultivation also occurs in forest areas such as protected forests (a fact in the Bukit Soeharto protected forest area, and some in KNP) • Located in concessions and outside plantation concessions.
	. The community owns land from customary/individual handover	• Derived from customary land owned by individuals and passed down from generation to generation (Mahakam Ulu, West Kutai, East Kutai, Berau) • The land is then administratively formalized and an SKT/SPPT is made • Located inside and outside plantation concessions
	3. MHA Ulayat Rights Land	• Jointly owned by MHA Found in Paser (Paser Muluy Community, Benuaq Dayak Community in Kubar, Bahau Dayak Community in Long Pahangai and Long Apari Mahakam Ulu, Wahea Dayak Community in Villages, namely Nehas Liah Bing Village, Long Wehea Village, Diaq Leway Village, Dea Beq Village, and Bea Nehas Village in East Kutai, Lundayeh Dayak Community Kayan Mentarang Forest in Malinau and Nunukan)

Source: Author's field study results, 2017 – 2021

Then, from the provisions of Article 58 paragraph (1) of the Plantation Law, it has undergone changes and is contained in Article 29 UUCK which amends the provisions of Article 58 paragraph (1) of the Plantation Law, namely Article 58 paragraph (1) UUCK, which reads:

Plantation Companies that obtain permits to undertake business cultivation where all or part of their land comes from:

a. other use areas that are outside the right to cultivate; and/or
b. areas originating from the release of forest areas, must facilitate the development of community gardens covering an area of 20% (twenty percent) of the land area.

The provisions of Article 29 of the UUCK which amends the provisions of Article 58 paragraph (1) of the Plantation Law, in the interpretation also bring legal thought to interpret that plasma is carried out outside the HGU. Here, HGU is obtained from state land whose area status is Other Use Area (APL) and Forest Area Release. In fact, the use of other areas in other areas has the potential to trigger social conflict. Areas allocated by the Ministry of Forestry for community management, through district head permits, tend to be used for oil palm plantations

or mining. Based on data from the Ministry of Forestry, the area for other uses (APL) reaches 8.325 million hectares. Of the target of 500,000 hectares of community forest, only 26,000 hectares have been achieved in three years.

CONCLUSION

Whereas in the history of plantations in Indonesia, the dominance of Plantation Companies to control plantation land was supported by the state through statutory regulations which further weakened the legal position of MHA. That the principle of sovereignty in the Plantation Law is not appropriate and in line with the state's right to control land and all existing natural resources. This gives rise to implications of disputes leading to land conflicts, because the highest conflict in 2020 was in the plantation sector and continues to this day .

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