May – June 2020
ISSN: 0193-4120 Page No. 17644 - 17651

Managing the Disputes of Land Rights of State Own Plantation versus Poor Farmers

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Abstract

Land rights disputes often involve the social conflicts. The purpose of this research was to proposed a model of settlement disputes of land. It took the cases in North Sumatera of Indonesia, based on the observation and identification that recorded more than 2000 cases. A Research and Development (R & B) Design was conducted to collect the data of the sources of land disputes in North Sumatra, from colonial to post colonial eras. Data obtained revealed that land disputes tended to be more complicated year by year. Farmers rights were displaced by the benefits of capitalists in which the benefit of folks could never fulfill through agrarialaws.Yet, the settelemt of land disputes in North Sumatera of Indonesia had not been successfully resolved through some models, namely; litigation and security approach (non-litigation). A new proposed model of conflict resolution offered the settlement of land disputes through performing the compensantion. The compensation had been done by Government Plantation Enterprises by purchasing all plants, and passed the Cultivation Rights Title (HakGuna Usaha/ HGU). In short, both parties avoided the involvement of the court in resolving land disputes. Settlers did not want to have more complicated conflicts, yet they achieved the fair aggrement which provided the advantages for both parties; cultivators and State Plantation Enterprises.

Keywords; *Land disputes, cultivation rights, model of settlement..*

I. INTRODUCTION

Conflicts of land rights in developing countries are high. The most plantation land disputes occurred particularly in enclaves such as Java and Sumatra that had emerged due to several factors, namely; new agreement, extension, and displacement of plantation rightswhich had been cultivated or notby society. Furthermore, the areas of dispute tended to widespread, not only in rural communities but also in urban ones. The eviction of homes in large cities, for instance, it was used for the needs of capital owners, developers of luxury residence, as well as a number of government-owned projects. In the East Coast of Sumatra, the conflicts between settlers and Indonesian (State) Plantation Enterprises met a deadlock solution after the post colonial government took the ownership of the Ex-Dutch Colonial Plantation Enterprises. It additionally could not be separated from the history of Indonesia which had started from kingdom based-government prior to the establishment of the Republic of Indonesia.

It noted that the first land dispute occurred in the East Cost of Sumatraa where the Dutchmen used public land through long-term agreements established by the King or *Sultan* and Dutchmen. *Deli Maatschappij*, a cultivating tobacco plantation, was the first plantation company owned by the Dutchmen in 1869 that experienced a very great success. In this case, Dutch traders had intended to grow the best tobacco in this place and earned a big profit which was taken from the sale of the tobacco. Furthermore, tobacco trade cycle gave the huge advantages in Europe. Yet,both the plantation company and the Dutchmen were not satisfied with

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May – June 2020
ISSN: 0193-4120 Page No. 17644 - 17651

this success. Throug a new target, they expanded their business by planting several varieties of plant, such as; rubber, tea, fiber and palm oil in several regencies of Sumatera, such as; Pulau Raja, Asahan, and LabuhanBatuRegencies. For example, both cultivators and plantation Entreprises or *PTPN III*(The State Owned Plantation Enterprise) who had the Cultivation Rights Title *(Hak Guna Usaha/HGU)* seemed so hard to achieve the land ownership completely. In addition, Indonesia has the national plantation company called *PTPN (PT Perkebunan Nusantara)* which is part of Indonesia state owned enterprises). Originally, PTPN had come up from Dutch company thathad been taken over by the government of the Republic of Indonesia through Nationalization in 1958in accordance with Indonesia Law No. 86 of 1958 (LN 1958-162).

Unfortunately, a complicated land dispute in 1990 appeared because the Kings and the people began feeling loss of their land rights in East Coast Sumatra. The tension was coming from socio-historical problem of the Dutchmen land ownership status; it related to the commercial agreement of plantations. But the social conflicts appeared among the plantations, although the Kings and the Dutchmemhad tried to find out a solution to overcome the land disputes. However, problem solving could never meet because they could not agree each other on the conditions made whereby the overall conditions would protect the rights of both parties without harming the ownership of Kings (Karl, 1977).

Through the Round Table Agreement in 1949, the Indonesia government had intended to protect all the interests of the plantation entrepreneurs because the plantation products greatly affected the source of state income. On the other hand, Indonesian peasants who depending on the land for their daily life should have the legal protection involving two essential rules, namely; recognizing their existences as the legal laborers in plantation Enterprises, and confessing the land cultivated by folksin which Dutchmen in which plantation Entreprises could not grab the folks' rights arbitrarily. Unfortunately, this land law accepted was not implemented. It was proved that the Indonesian farmers felt exteremely disappointed with the coalition of economic power of plantation entrepreneurs with the power of local rulers. To overcome this matter, the Indonesian government passed the Emergency Law No. 8 of 1954 dicssuing about the*erfpacht*right of plantation reffered to the Indonesia folks that the right mentioned cultivating land occupied by the Indonesian people was not categorized as not law violation, yet, the any dispute occured shoud be overcomed through granting the rights for both Indonesia folks and Ducth Entreprises.

Furthermore, Indonesia Agraria Law No. 5 Year 1960 (Eddy, 2006), stated that all land laws had been adjusted to the traditional law completely, so all forms of land rights in the Dutch era were abolished and changed to the rights regulated by the Indonesia agraria law which regulated two important things, namely; establishing restrictions on land owenrship in order not to harm the public interest, and protecting the rights of individual lands placed in the functional dimension which meant the land rights referred to the public benefit.However, landowners tried to avoid AgrarianLaws in various ways because the implementation of the land reform program. This program because there was an obstacle toward the land ownership extent.Also, another impediment of the land issue was the use of land reform as a strategy of the Communist Party of Indonesia*(known as Partai Komunis Indonesia PKI)*spread the negative influence among villager communities, then, PKI used the issue of land reform to polarize villagers into two opposing classes, namely landlords and farmers.

Then, the new order Indonesia government began paying attention to this case through the establishment of development policy by relying on the Indonesian economy. This, of course, causes different perceptions of the function of the lands as

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May – June 2020
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one of the most unique natural resources in which every land has two main functions that as a mean of investment and capital communication tool. This surely led to the transformation which focused on land policy in which the policy changed the whole regulation that tended to the capitalists whose benefit rather than publics whose loss. Relating to this case, Indonesia land law was kept, even though it was no longer become the applicable regulations in agriculture fields. Then, there are several opposite laws to agriculture laws, namely; Law no. 1 of 1967 concerning Foreign Investment and Law no. 5 of 1967 considering thebasic regulations of forestry which provides opportunities for various parties to obtain Forest Concession Rights (HPH) and Forest Product Harvesting Rights (HPHH). Unluckily, the enactment of this law caused the rights of the community to be excluded, for example, the traditional land law was not accepted anymore. Then, their rights were displaced by the benefits of capitalists in which the benefit of folks could never fulfill through agraria laws. It showed that government did not concern traditional law for solving the land conflict, instead, the folks got the loss when the development carried out by investors and foreigner.

II. RESEARCH METHOD

This study used a Research and Development Design (R & D) to collect the data of land disputes, to evaluate the Indonesian Laws and Government Regulations concerning with land rights, and to propose a new model of settlement disputes. It traced the Indonesia AgrarianLaw No 5 of 1960 concerning law land which regulates the any landrights for both civil and national land politic administration. The effectiveness of this law created the unification of Indonesia land system so any cases can be solved by using that law. In short, Indonesia Agrarian law wasevaluated well to find the real facts of land ownership based on laws or goverment reguations. On behalf of development, government was the media for public and foreigner.Then, Law no. 20 of 1961 concerning the Revocation of Land Rights and All Objects, for the public interest or even for the private benefit, so both Governor and Regent had rights to undertake revocation. These evictions often make many social conflicts because some settlers find the process with unfair compensation which was clearly very unjust to them.

III. DATA AND DISCUSSIONS

The issue of land disputes in Indonesia has been tremendously complicated since the reformation era in 1998 where people grabbing the plantation area to rob,grab, and control the plantation lands and demanding the unfair settlement of land during the New Order period. In this regard, they asked the planters to return the land to the tillers and the community. Based on North Sumatra government data, there are 2833 cases of land disputes related to Cultivation Rights Title *(HGU*) of National Plantation Company III or *PTPN III* which occurred in North Sumatera (North Sumatra Provincial Government of 2012, Public Lecture of North Sumatera Governor 17 September 2012 at Dharmawangsa University). Clearly, the problems are visualized in Table 1.

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May – June 2020
ISSN: 0193-4120 Page No. 17644 - 17651

Table.1. The Land Disputes in Plantation Company (PTPN III)

o	Complicated Area		Land Matters	The Settlements
	Plantation Units	Ha		
1	Pamela Mountain	611,54	Planted with tubers	Compensation, intentionalityand court
2	Monako Mountain	137,20	Planted with hard plants	Compensation
3	SilauDunia	647,83	Planted with hard plants	Compensation and Court
4	Para Mountain	9,14	Buildings	Compensation
5	SeiPutih	2,00	Planted withcassava	Compensation
6	PulauMandi	2,00	Water absorption	Litigation/court
7	SarangGiting	76,21	Planted with tubers	Litigation/court
8	Rambutan	75,80	Hard plants and Buildings	Compensation
9	Bangun	697,88	Hard plants and Buildings	Asset License Process
10	Bandar Betsy	280,40	Planted with cassava and hard plants	Litigation/court
		12,00	Planted with hard plants	
11	Ambalutu	40,86	Planted with cocoa and palm	Compensation
12	Huta Padang	2,93	Planted with hard plants	Compensation
13	SeiSilau	673,47	Planted with tubers	Compensation
14	Merbau Selatan	158,22	Owned by society	Compensation
15	RantauPrapat	49,57	Planted with hard plants	Compensation
16	AekNabara Utara	3,60	Official residence	Compensation
17	Batang Toru	278,93	Traditional land	Compensation and Litigation
	Total	3.759,58		

Source : National Plantation Company PTPN-III Per February 2014

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TEST Engineering & Management

May – June 2020
ISSN: 0193-4120 Page No. 17644 - 17651

The table above shows that National Plantaion Company III *or PTPN III*, part of the State Owned Enterprises,had lost both material and non-material. It can be seen from the decreasingof employee productivity which affects to the company's performance, Then, the leaders and employees of plantation Entreprises spend much of their time to settle the land dispute. Furthermore, the above data also indicate that Cultivation Rights Title owned by Indonesian plantation Entreprises is more legally stronger than the peasant community whose status as a cultivator of land marked by Using License (Surat Izin Menggarap SIM) issued by the head of village.

However, the philosophy of land disputes is not only a matter of law, but it is also essentially an emotional problem in which there is a handover from the society as a cultivator to the legal view held by the plantation company. When viewed from the point of view of the land tenants, they see that the law of land status is determined by the *de facto* intensity, that is, the more intense, the stronger right to control the land. Moreover, it is also linked to the religious belief that land is the power of God that anybody who is willing to work to use the land.Yet, two perspectives above are different from the point of view of plantation Enterprises who think logically that how long and how hard a person work on that land will not determine the right to the land.

3.b. Discussions

There are two concepts of land ownership under the European legal system, namely; *ipso jure*, and *ipso facto*. Ipso jure is a legal system of land ownership originating from the government, which in this case land ownership rights originated from the *Sultan* or King of Indonesia to the Dutch Indies Government. While, the *Ipso facto* is a legal system of land ownership that declares tenure, placement and settlement are not depended on how long the ownership of the land, yet the tillers hardly keep insisting to own that land for a long time.

There are five reasons for land tillers of the Cultivation Rights Title *(HGU*) of National Planatation Company area in North Sumatra, namely;

1. They have worked on that land generations by generations.
2. Unresolved compensation process. The value of compensation is very low and there is intimidationso that the people give back the ownership rights forcefully.
3. The difference between land area measured by the community and land area measured by the plantation company.
4. Plantation land is traditional land inherited by the Sultan or King.
5. Land is not maintained so that people manage the land with crops, even hard crops.

Based on variety of reasons for land disputes, this issue is getting more complicated. Various ways have been done to resolve land disputes between communities and plantation Enterprises.

Indonesia plantation company is the company or legal corporation which maintains Indonesia plantation business cycle established based on Indonesia law (Law. No 18 of 2004 concerning Plantation, Act 1 No 6).While, Indonesia owned-state enterprises (*known as BUMN, Badan Usaha Milik Negara*) is the business that the whole or partial capital owned by Indonesia government through direct participation derived from the assets of Indonesia (Law No 19 of 2003 concerning Indonesia owned-state enterprises BUMN.

Besides, the Company referred as *Persero* (a limited state-owned enterprise) which is a limited liability company whose capital divided into shares wholly or at least 51% (fifty one percent) of its shares owned by the Republic of Indonesia in which main purpose is to pursue the profits (Law No. 19 of 2003 relatong to BUMN, Article 1 No 2). There are three doctrines of BUMN Plantation, they are: job vacancy, increasing the revenue, and environmental

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May – June 2020
ISSN: 0193-4120 Page No. 17644 - 17651

conservation. Currently in North Sumatra Province, there are three state-owned plantation Enterprises namely PT. National Plantation Entreprises, PT. *Perkebunan Nusantara (PTPN) II, III and IV.*

All land disputes occurred in Indonesia is related to Indoneisa Plantation Company *PTPN* and the Cultivation Rights Title *(HGU).* Cultivation Rights Title *(HGU)* s one of the types of land rights recognized legally by Article 16 and Article 28 - 34 as the Basic Agrarian Law No 5 Year 1960 and Government Regulation Number 40 of 1996 on Cultivation Rights Title *(HGU).* Relating the laws and government regulations, Cultivation Rights Title *(HGU)* is defined as the right to cultivate state-controlled land in long-term aggrement for a maximum period of 35 years and it can be extended till 25 years which is used by agricultural, plantation, fishery and farm Enterprises. In relation to HGU, Indonesian citizens and Legal Entities established under Indonesian law which is located in Indonesia are eligible to have Cultivation Rights Title *(HGU).*

Absolutely, the holder of Cultivation Rights Title *(HGU)* is the right holder, while Indonesian government is the partythat grants its right. Conditionally, If the period of rights is expired and it is not renewed, the right surely will be returned to the Indonesia government. In this case, a recognized right is the right accepted based on the perspective of a positive law defined as the nationality granted by law to the legal subject to do something or not. According to the law, there are three ways to cause Cultivation Rights Title *(HGU)* to be published, namely; government determination, conversion terms, and agreements. Then, to have legal force, Cultivation Rights Title *(HGU)* must be registered legally either it is as a transition or abolishment. Seeing from the civil law aspect substantively, the purpose of this registration is to have an important momentum to make material rights. Whereas, in the aspect of civil law adjectives, Cultivation Rights Title *(HGU)* registration is undertaken to have strong evidence, but itis not applied to Cultivation Rights Title *(HGU)*holders who have not period of ownership anymore.

Furthermore, the Agrarian law does not prohibit the Cultivation Rights Title *(HGU)* holders to switch over their rights to others. However, in Government Regulation No. 40 of 1996, the handover of rights to others is strictly prohibited, yet, there is an exception for those whose unexpired Cultivation Rights Title *(HGU)*based on law established. This case surely raises a question what if Cultivation Rights Title *(HGU)* has ended and it is not renewed whether the holder of Cultivation Rights Title *(HGU)* allowed to hand over to others?

Unfortunately, Agrarian Law and government regulation No. 40 of 1996 did not provide a firm solution. Explicitly, Indonesian law states that there are juridical consequences which mean the land becomes state land. Furthermore, if the HGU holder does not extend the permit, then there are two obligations that arise, namely;

1. Breaking down the buildings and all objects lied on the land.

a. Giving back the lands and crops located on Cultivation Rights Title *(HGU)* land former to the state within the time limit stipulated by the Minister.

Seeing from the first obligation of breaking down the buildings and objects located on the land, the former holder of the HGU still has the right to all buildings and objects on the land which is in accordance with the principle of horizontal separation of the law which is adopted by agrarian law. In contrast, the second obligation, the Cultivation Rights Title *(HGU)* holder is obliged to return the land which has the term of its ownership to the state with the provision of the deadline given by the Minister of National Land implemented by the Head of the National Land Agency (BadanPertanahanNasional). Furthermore, in the agrarian law and government regulation no. 40 of 1996 related to Cultivation Rights Title *(HGU),*

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May – June 2020
ISSN: 0193-4120 Page No. 17644 - 17651

Building Rights Title, and Right to Use Title stated that that one of the Cultivation Rights Title *(HGU)* holders is a Legal Entity established under Indonesian law and located in Indonesia (Tan, 2006).

IV. A NEW MODEL OF SETTLEMENT DISPUTES

Based on data analysis, to manage the land disputes under the applicable regulations of several Indonesiaboards or institutions authorized to resolve these land disputes, namely;

1. Courts of justice (litigation), general courts, and state administrative courts as written in Law No. 48 of 2009 on judicial power.
2. Non-Justice Mode (Non Litigation). On this path, the settlement of land disputes can be conducted by mediation and arbitration as written in Law No. 30 of 2009 on arbitration and Law No. 17 concerning long-term planning of development *(Rencana pembangunga jangka panjang RPJPN)*Chapter III, point IV through the authority of the administration of justice and alternative dispute resolution. Then, the authority of land agency as the provision of Presidential Decree 26/1998 and 10/2006.
3. Particular resolution. In this way, the settlement of land disputes is perfomend through the National Land Board Team – Indonesian National PoliceMoU No. 10 / SKB / XII / 2010-B / 31 / XII / 2010 aggred on 3rd December 2010 concerning fiscal disputes in the event of criminal incidents.
4. Local governments have authority in resolving land dispute issues based on Presidential Decree No. 34/2003 on national policy on land affairs, settlement of land disputes implemented by district / municipality governments in one province implemented by the relevant provincial government.
5. Regulation of the Agriculture Ministeryor the head of the national land board no 5/1999 on guidelines for the settlement of customary community rights recognizing the power of national wisdom in controlling land rights. In this case, the land affairs field enforces the policy of strengthening the rights of national wisdom individually and collectively by being empowered and strengthened through the recognition of registration of the land rights. This regulation serves as a guideline for local governments in implementing traditional law which is still prevailing in certain areas. Furthermore, individual land rights are getting stronger as people try to get their rights protected by using agrarian policies on land ownership and they are starting to leave traditional law (Kusbianto, 2010)
6. Decision of National Land Board Republic of Indonesia No 34 of 2007 concerning technical guidance of land problem settlement which stated that land problem covering technical problem, dispute, conflict and matters related to problem solving. Subsequently, land disputes in this regulation meanvalues, interests, opinions and perceptions differences regarding to the status of certain occupations, ownership, and use of land between one individual and legal board.
7. The use of alternative dispute resolution paradigm in which this approach based on a philosophy that conflict is not always solved by win-lose solution perspective, but conflict can also be solved by involving all parties as a win-win solution.
8. GustafRadburch stated that there are three basic ideas of law used as legal objectives by the majority of legal experts and philosophy law, namely; justice, certainty, and expediency. According to Radburch these three legal bases aim to resolve land disputes using priority principles. The first priority is justice, then proceed to second priority is certainty, and the last is expediency. In other words, certainty and expediency should not be contradictory justice, also, expediency should meet with certainty (Achmad, 2009).
9. Eugen Ehrlich argued that positive law has effective feedack, if it contains living law. It is very influential that there is a difference between positive law and living law (Lily, 2007) so, current legal issues are no longer as a matter of formal legality, but rather it isas a mea to participate in new life

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arrangements in accordance with the present conditions (George, 1951).

10. Dispute resolution theory developed by Ralf Dahrendorforiented towards social structures and institutions. Dahrendorf argued that society has two faces, namely; disputes, and consensus.

V. CONCLUSIONS

Managing the land disputes of Indonesian farmers and State Plantation Entreprises *(PTPN III)*which used the Cultivation Rights Title *(HGU)* can be solvedthrough four steps in the formation of mediation as the following;

a. Indonesian government forms a mediation team who handle land disputes to prevent horizontal conflicts.

b. Indonesian government invites land tenants and State Plantation Enterprises for meetings and offering discussing and sharing in order to achieve the peaceful aggrement through compensation.

c. Employees and company management are asked to stop all activities and work processes in plantation Enterprises in ordet to maintain the good situation.

d. The plantation company's directors form a problem-solving team

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