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Analysis of Owning Former Land of Cultivation Rights of PT Blang Kolam Adipratama Concerning the Implementation of Land Reform in Southern Aceh

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Abstract

The issue is to the ownership of land previously designated as HGU (Cultivation Rights) by a plantation company located in the Aceh province, specifically in the Northern District of Aceh. PT. Blangkolam Adipratama, a firm in the palm plantation industry, with a parcel of land located in Gampong Sido Muliyo, Kuta Makmur district, North Aceh district. The utilization of this land is governed by the Right of Use of Enterprise (HGU) with the designation of 8, granted in 1989 by the Decree of Grant of Rights number 53/HGU/PBN/1989, including an area of 652.67 hectares, which expired in 2018. Thus yet, there has been no prolongation or reauthorization of the HGU that has lapsed during that particular year. The research method employed

in this study is the Yuridis empirical research method. The objective of this study is to elucidate the land ownership status of the former rights of use of PT Blang Kolam Adipratama firm, regarding the implementation of Agrarian Reform in North Aceh. Based on the research findings, the legal status of the former territory of HGU is determined by legal principles. PT. Blangkolam Adipratama is considered state land because the company, which operates in the field of plant cultivation, has not renewed its HGU (Right to Use Land) since 2018. According to Article 26, paragraph (2) of Government Regulation No. 18 Year 2021, the application for renewal of the right to use the land must be submitted within 2 years after the expiration of the previous term.

Keywords: Land Owning Status, Cultivation Right, Land Reform Implementation

Introduction

Under the Act No. 5 of 1960 on the Basic Regulations of Agrarian Trees (hereinafter UUPA), planting companies acquire land rights in the form of Employment Rights (HGU) regulated in Articles 28 to 30 of UUPA and the conversion rules of Article III. Thus, HGU in addition to a new form of right also constitutes a “continuation” or conversion (change) of the erpacht Agrarische Wet 1870. Furthermore, the right converted into HGU is given a permanent period of 20 years to be immediately converted to HGU or returned to the State ^[1]. However, for now, after the entry into force of the UUPA, the agrarian regulations relating to the land in the colonial era have been abolished, and the rights to the western land converted into business and building rights, only for a temporary period for the remainder of the rights, for a maximum period of 20 years.

HGU is granted for a maximum period of 25 years, but companies that require longer periods can obtain HGU up to a maximum of 35 years. In addition, holders of HGU can extend the period up to another 25 years at their request, taking into account the circumstances of their company. Article 30 explains that the parties entitled to have HGU include Indonesian citizens and legal entities established and resident in Indonesia. However, if the party acquiring the HGU no longer fulfills these conditions, within one year they must relinquish or transfer the right to the other eligible party. Otherwise, the right will be lost and will be further regulated by the Government Regulations. This emphasizes the importance of compliance with the terms and conditions in force in the ownership and use of HGU.

In addition to the UUPA, the renewal of the HGU is also regulated in Government Regulation No. 18 of 2021 on management rights, land rights, housing units, and land registration. According to article 22, paragraph (1) of Government Regulation No. 18 of 2021, concerning the period, it is stated that:

The right to enterprise shall be granted for a period not exceeding 35 (thirty-five) years, extended for a maximum of 25 (twenty-fifth) years and renewed for the maximum of 35 (thirty-five) years.

According to the article, it is known that, in the provisions of the UUPA, the request of the right holder and consideration of the situation of the company with a maximum of 25 years. Whereas in the provision of the Government Regulation No. 18 Year 2021 the rights can be granted for 35 years, then can be extended for 25 years, and after that can be renewed again to 35 years.

Land ownership of the former HGU is a complex issue in the context of the implementation of agrarian reform. Agrarian reform is an attempt to create agrarian justice through the redistribution of land, the renewal of agricultural institutions, and the improvement of farmers' well-being. Article 1 of Presidential Decree No. 62 of 2023 on Accelerating the Implementation of Agrarian Reform, explains that Agrarian reform is the re-establishment of more equitable structures of possession, ownership, use, and use of land through asset establishment and access for the prosperity of the people.

Agrarian reform or land reform is a major change in the agrarian structure, which brings increased farmers' access to the land, as well as the certainty of tenure for those who cultivate the ground, including access to agricultural inputs, markets, services, and other accompanying needs^[2].

Land ownership with the status of HGU tends to create land ownership inequality because allowed to own land to a relatively unlimited extent. Therefore, the limitation of the maximum extent taking into account the needs and availability of agricultural land is one of the alternatives besides alternatives to convert such rights into use rights^[3].

The problem of possession of former HGU land by one of the plantation companies in the province of Aceh, specifically in the Northern District of Aceh. The company is PT. Blangkolam Adipratama, a company operating in the palm plantation sector, has owned a plot of land in Gampong Sido Muliyo, Kuta Makmur district, North Aceh district. The use of this land is regulated by the Right of Use of Enterprise (HGU) with number 8 given in 1989 by the Decree of Grant of Rights number 53/HGU/PBN/1989 with an area of 652.67 Ha and such possession ended in 2018. However, so far, there has been no extension or renewal of the HGU that has expired in that year.

Since the end of HGU in 2018, P.T. Blang Kolam Adipratama has undertaken a loan agreement to use the former HGU land with a community of about 61 (sixty-one) people to manage the land from 2021 to the present. The possession of the former HGU land without the extension of HGU permission by P.T. Blang Kolam Adipratama until now is still in progress.

Based on the above, it can be known that the main problem identified in this case is the legal uncertainty that covers the ownership and use of land formerly Right of Use of Enterprise (HGU) by PT. Blang Kolam Adipratama in the province of Aceh, in particular in the Northern District of Aceh. Although the HGU license period expired in 2018, the company still has ownership of the land without any renewal or renewal of the license.

The former land of HGU was leased or borrowed to the surrounding community without legitimate permission, creating uncertainty about the status of the land and the rights of use for the parties involved. The involvement of local communities in land management can potentially lead to social and economic conflicts between companies and communities. In addition, the environmental impact of former HGU land management is also a concern, especially

if such management does not take into account the principles of sustainability and environmental conservation. Thus, the a need to resolve this legal uncertainty to prevent potential conflict as well as protect the interests of local communities and the environment.

Research Method

This method of research includes empirical jurisprudence, i.e. the study of applicable legal provisions as well as what is happening to reality in society^[4]. Still guided by existing legal principles and foundations, empirical jurisprudence is the study of law concerning the enforcement or implementation of normative legal provisions in action on any particular legal event that occurs in society^[5]. The research is located in the northern district of Aceh.

Results and Discussions

HGU is granted by the decision of the Minister or the appointed official. As proof of the issuance of the decision, the certificate of the right to the land is issued. To be issued a certificate HGU, the applicant must take the procedural route first as prescribed in the provisions of the laws.

According to the Technical Guidelines on Identification and Research of Expired Land Rights No. 5/Juknis-700.TL.02.01/II/2022 the Ministry of Agriculture and Space Administration/National Farming Agency states that land rights holders may be granted an extension or renewal of rights if the land is still being exploited and well used under the circumstances, nature, and purpose of the granting of rights, the conditions of granting rights are well met by the right holders, the right holder still qualifies as the rightholder, and the land still conforms to the spatial planning.

In addition to such obligations there are other obligations regulated in the laws of the land and in the decisions on the granting of land rights or land-related permits to be carried out by the landowner. However, in practice, before or after the term of the right to the land expires, there are some rightholders who do not fulfil the obligations that should be fulfilled by the right-holder, such as not using the land, does not use the land in accordance with the provisions and does not extend or renew the right until the land is abandoned. The consequences of non-compliance with the obligations of the rightholders include the deterioration of the physical quality of the land and the environment, land transfer, and the emergence of disputes and conflicts with the community. With regard to the above, the palm planting company of PT Blangkolam Adipratama obtained operational permission under Decree of Rights No. 53/HGU/PBN/1989, which expired in 2018. When HGU's ownership of the land has expired under such a letter of grant, its legal status becomes invalid. This means that the company no longer has the legal right to use or manage the land. Once the HGU expires, the land is returned to the state and the government will decide on further use.

In accordance with Article 22 of Government Regulation No. 18 of 2021, after the period of grant, extension, and renewal expires, HGU returns to state land or management rights. Then the re-establishment of disposal, utilization, and ownership becomes the authority of the Minister, which may subsequently be distributed for the public interest or other purpose according to the provisions of the legislation^[6].

HGU is granted for a maximum period of 35 years, with extension up to 25 years and renewal up to 35 years. After

the period of grant, extension, and renewal of HGU expires, the land returns to the land directly owned by the State or the land of management rights. The re-management of land in direct state control is the competence of the Minister, with priority given to the former rightholder if the land is still being exploited and well used, the conditions for granting rights are met, the rightholder is still eligible, land is in accordance with the spatial plan, is not used for the public interest, and takes into account natural resources, the living environment, and the conditions of the land and the surrounding communities.

According to the results of the research, it is known that P.T. Blangkolam Adipratama to this day still owns the land of palm plantation whose period HGU has expired, but the company until now has not also done the updating of its HGU. Meanwhile, the party of P.t. Until the palm plant has reached the age of 10 years, however, the planting company has no intention of updating the HGU to the Regional Office of the National Agriculture Agency of Aceh Province.

The statement, as submitted by Mr. Tamal Khani, the field manager of Blangkolam Adipratama, says that the company has been replanting palm trees in the land of the former HGU since 2014 without any renewal of the HGU. According to him, that company has already attempted to extend the HGU. The files for the extension of the HGU have also been prepared and the land has also been measured. However, the extension of the HGU is controlled by the cost of the PNPB process. (Penerimaan Negara Bukan Pajak)^[7].

In connection with the statement, T. Pitra said that if the company still wants to manage the land of HGU then the company must take care of the renewal of its HGU. If the company is not able to manage it because of the lack of costs, then how can the company manage the land of 652.67 Ha^[8].

Furthermore, T. Pitra Excellency explained that the company should undertake the process of HGU renewal if it still wants to run business in the land with the same commodity. In connection with the inability to pay the GNP, this indicates that the company is not able to fully control the land of the area HGU previously owned. Therefore, to provide equity and justice, companies should only apply for the land they can afford.

A large number of land owned by a company that is not legally, or administratively the company does not have the right to the land, but still claims the right because of the assumption that there is still the right of ownership of the land and the crops that are still productive on the land. To legally recognize its rights, the company should have a land certificate. If it refuses to make a certificate, then according to the rules, the authorities have the right to take coercive action to take care of the certificate; otherwise, the land will be considered to be directly owned by the state.

The right to privacy contained in the right to land is a property right that contains a set of authority, obligations, and/or prohibitions of the right holder to do something about the land he owns^[9].

Under Government Ordinance No. 18 of 2021, the right of privacy contained in the right to land is included in Articles 27, 28 and 29. This means that P.T. Blangkolam Adipratama does not have the right of privacy over the right to land because its HGU has expired.

Based on the information provided by Tamal Khani, he has already communicated to his boss or directors that the HGU

PT. Blangkolam Adipratama has ended, but the answers provided by his supervisor or his director are that HGU is in the process of extension so it does not matter if the company remains operational. However, until now, that is 2024 HGU has not been extended by PT. Blangkolam Adipratama. According to Mr. Geuchik Gampong Sido Muliyo, based on the information received from the company PT. Blangkolam Adipratama HGU has expired its period of administration^[10].

M. Yusuf, one of the citizens of Gampong Sido Muliyo, revealed that the Gampong community was not allowed to cultivate the land of the former HGU PT. Blangkolam Adipratama with annual-age plants, although the company's HGU has ended since 2018^[11].

One of the other citizens named Fauziah expressed his disappointment that the land that the local community should use to fit the crops, is still under the control of PT. Blangkolam Adipratama^[12].

Furthermore, they explained that for the people who wanted to cultivate the land, they were obliged to conclude a loan agreement with the company. This means that, although HGU has legally ended, Blangkolam Adipratama still demands that the public deal directly with the company to obtain land use permits. This situation creates legal uncertainty among the citizens of the Sido Muliyo community regarding the implementation of law enforcement. On the other hand, the people want to cultivate and own the land and they expect the intervention of the authorities to resolve this issue for the sake of justice and the well-being of the people.

According to Tamal Khani that, in connection with the loan agreement with the community it is because in the land that the community is harvested there are still trees that the company still uses. In addition, in the land of the former HGU PT. Blangkolam Adipratama there is also a problem of overlapping of the land because in the former land of HGU there are land rights of the Government of Northern Aceh district, precisely the waterfalls of blang pools which the Tourism Department of the Northern Ace district manages. This is what Mr. Syahriar said in his interview^[13].

In this regard, the Department of Agriculture of North Aceh district hoped that at the time the company updated its HGU and carried out a re-measurement so that the district government's land could be separated from the HGU so that there was no overlap with the new certificate with the old certificate.

Based on the explanation above it can be known that, the status of the former HGU land belonging to PT. Blangkolam Adipratama suffered problems because in the certificate of the HGU there are land rights owned by the Government of Northern Aceh district. The land in question includes an area that is part of the Blang Kolam waterfall. This shows that there is an overlap of ownership and management of land between companies and the district government that can cause conflict in the use of the land.

In 2010 P.T. Blangkolam Adipratama carried out the binding of the right of dependence on Bank BRI Jakarta by using the HGU certificate owned by P.P. According to Tamal Khani, he borrowed funds to build the Sawit Coke Factory (PKS) in Perlak district of East Aceh. But the CCP suffered a barrier that eventually failed to work and was abandoned.

With regard to the former land of HGU P.T. Blangkolam Adiprata and the Northern District of Aceh Farm Office may

carry out a registration to shut down HGU that has expired its term on the certificates and land books based on the Decision of the Minister of ATR/BPN issued after doing the Inventory of the Mastery, Ownership, Uses and Uses of Land (IP4T) and/or through land deposits of Agrarian Reform Objects (TORA) by the agrarian reform task group [14].

Both the central government and the district government have their own responsibilities. In the Department of Agriculture, there is a control element in charge of overseeing the process of control of HGU which is to be terminated, has expired, or has been granted but has not been used as it should. This control task involves a team from the Farm Office coming down to the field to check whether the land of the HGU is still in the possession of the old applicant or has been used by the community. This process involves measures such as inventory, identification, and possession and exploitation of the land.

In this case, the status of the HGU land which has expired legally has been returned to the state. But according to Oloan Sitorus, if the term of the right to the limited land is expired, then the status of the land becomes the land of the state [15].

According to the theory of legal certainty presented by Sudikno Mertokusumo, the law must provide guarantees that existing rules are properly implemented by the authority and authority. This legal certainty requires a clear and firm rule and is made by an authority that has legitimacy so that the rule has jurisdictional power to guarantee its implementation. In the case of P.T. Blangkolam Adipratama whose HGU land status expired in 2018 but still controls the land, then there is legal uncertainty. Based on this theory, the company does not have a valid legal basis because the period of the right has expired. Therefore, companies should no longer have the right to own and manage the land. The authorities need to take action by existing rules to restore the land to a status consistent with applicable law, ensure that the law functions as a rule to be obeyed and provide justice and legal certainty for all parties involved.

This uncertainty reflects a violation of the principle of legal certainty put forward by Sudikno Mertokusumo. The principle emphasizes that the law must be enforced clearly and consistently so that people can know their rights and duties without confusion or injustice. When the law is not strictly enforced, as in the case of P.T. Blangkolam Adipratama who still owns land without a legitimate HGU, society becomes the victim of legal uncertainty. They can't use land that shouldn't be under corporate control, and this creates a sense of injustice and mistrust of the legal system. Therefore, in order to legal certainty, a firm and consistent enforcement of the law by the competent authorities is required. The government and the relevant agencies must ensure that the HGU, which has expired, no longer authorizes the company to control the land, and the land must be returned under the regulations in force. Only in this way can the principle of legal certainty be realized, giving clarity and security to the community of Gampong Sido Muliyo in the use of the land.

The Government of North Aceh District, through the Ministry of Agriculture, will make an effort in dealing with the land issue of the former HGU PT. Blangkolam Adipratama which still controls the company despite the expiry of its term. One of the main steps being taken is to strengthen the existing rules, ensuring that regulations on

business rights and land transfer are implemented strictly and consistently. The Department of Agriculture will also enhance monitoring of land use to prevent any violations of the law by companies or individuals. In addition, the district government will cooperate with various stakeholders, including law enforcement, the Farm Office, and the local community, to ensure that the issue is addressed comprehensively. This collaboration is aimed at enforcing legal certainty, protecting the rights of the public, and preventing the abuse of authority by unrighteous parties. Thus, this effort is expected to solve the land problem fairly and sustainably.

In the theory of the legal system proposed by Lawrence M. Friedman, the possession of the land of the former HGU P.T. Blangkolam Adipratama that still continues after the expiry of the term of HGU in 2018 can be analyzed from several perspectives. First, in terms of the legal substance, the status of the land should change because the HGU, which has expired its term, no longer grants exclusive rights to the land to PT. Blangkolam Adipratama. Secondly, in the context of legal culture, continued possession reflects practices or customs within the legal system that allow companies to remain in possession of land even though legal formalities have expired. Thirdly, from a legal culture point of view, this phenomenon may indicate how norms, values, and practices in local legal societies influence the interpretation and implementation of laws relating to land ownership. Evaluation of the legal status of land possession of the former HGU PT. Blangkolam Adipratama should take into account the complex interaction between aspects of legal substance, legal culture, and legal culture.

By combining the theory of legal responsibility and Friedman's legal system theory, it can be known that the responsibility for the illegal operation of PT. Blangkolam Adipratama lies not only on the company but also on the failure of the legal system as a whole. Ineffective legal structures, unstrictly enforced legal substance, and a weak legal culture all contribute to these violations. Therefore, the solution to this problem requires improvements in the three components of the legal system, including strengthening supervision, enforcement of stricter rules, and increased awareness and compliance of the law among the public and entrepreneurs.

Conclusion

To conclude, Article 31 and Article 22 paragraph (2) of Government Regulations No. 18 of 2021 as well as Article 81 of the Regulations of the Minister of Agriculture and Space Administration/National Farming Authority No.18 of 2021 stipulate that one of the HGU shall be deleted due to the expiry of the period as stipulated in the decision to grant, extend or renew its rights. This means that jurisprudently, the HGU land that has expired its term then HGU the land returned to be the land controlled directly by the state along with the buildings, objects or plants grown on it. Jurisprudentially, the legal status of the former land of HGU PT. Blangkolam Adipratama is the land of the state because the company that moves in the field of the plantation has not made an update against its HGU since the year 2018 and according to Article 26 paragraph (2) of Government Regulation No. 18 Year 2021, the application for renewal of the right to enterprise is filed no later than 2 (two) years after the expiration of the period of right of enterprise.

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