

Cultivating Farmer's Efforts in Maintaining Their Rights to Uncertified Land in Land Clearances

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Introduction (All Chapters, Subsections, and Subsections of Times New Roman 11pt font)

Land clearances for plantation purposes often clashes with the rights of cultivating farmers previously controlled the state-owned land. The cultivated land that they have managed for generations is their source of livelihood which they must maintain. Various efforts have been made by cultivating farmers in defending their cultivation rights, and not infrequently this has resulted in anarchic actions.

The main issue causing conflict in land clearances are mainly in regards to the compensation which is considered unfair and there is no agreement between farmers and companies. This research uses the Juridical Normative Research Method. The results show that cultivating farmers can fight for their rights through litigation (court institutions) or non-litigation (outside of court) efforts, namely mediation which provides more solutions for both parties.

key: arable land, cultivating farmers, land clearance

Method

This research conducted in the form of normative legal research, namely research on law that focuses on the use of library materials as research sources. This survey does not use observation or interviews with respondents. Normative law is a legal study that uses secondary data that begins with an analysis of legal issues from both literature and law. (Sunggono, 2010)

Discussion

Introduction

According to data by Indexmundi.com, Indonesia is the largest CPO producer in the world. In 2021, Indonesia's palm oil production reached 44.5 million tonnes, with a compound annual growth of 3.61 percent. According to data from the Indonesian Palm Oil Association (*Gapki*), the data is even higher, reaching 46.8 million tons. This large-scale production is supported by the availability of 15.1 million hectares of plantation land. The Ministry of Agrarian Affairs and Spatial Planning states that the territory of Indonesia has grown to 14.9 million hectares compared to 2020. (Isnaini, 2022)

Along with the rapid development of the palm oil industry, it is directly proportional to the need for land for its development. The land needed is not only for the plantation itself but also for other supporting needs such as offices, factories for processing raw materials into raw materials, production storage warehouses, parking lots, employee canteens, employee residences and so on.

Investing to the Indonesian manpower has big implications for the nation's economic development. This is because the goal is achieved. Investment Act No. 25 Year 2007 (UUPM). As stated in the Introduction, it is necessary to pay attention to letter a to create a just and prosperous society based on Pancasila and the 1945 Indonesian Constitution. Sustainable national economic development based on economic democracy in achieving national goals. (Ramadhani et al., 2019)

Land availability is one of the key factors in developing palm oil plantations. The land for this plantation is available from a Right of Cultivation (*HGU*) permit issued by the regional government. However, land clearances has not been carried out from the community residing within the *HGU* location. (Administrator, 2021)

The state-owned land, which should have been given to the plantation company, had been previously managed by cultivating farmers. For this reason, the company is obliged to acquire the land by providing appropriate compensation to the cultivators for the plants that grow upon it.

Conflicts began to arise during the processes in which the land clearing process occurs. The Agricultural Reform Organization (*KPA*) recorded 74 agricultural conflicts in the sector of plantation with an area of 276,162,052 hectares. The number of affected victims is 23,531 families. (Indonesia, 2022) Secretary General of KPA, Dewi Kartika, said more than 50 percent of the conflicts occurred in palm oil plantations, which cover an area of 255,06,06 hectares. In the decade from 2012 to 2021 (except 2014). The plantation sector is the leading cause of agricultural conflict every year. (Indonesia, 2022)

Practice in the field area shows there have been several clashes that have caused cultivating farmers feeling that their rights have been taken away and has tried to use various efforts. One example is the incident in Mekar Prakota Bharu Village, which objected to compensation provided by palm oil companies. The company provides compensation for palm oil worth Rp. 35,000, in which the price is considered very cheap, while the standard price for 1 palm oil branch is 2 million rupiah. (Susanti, 2022)

In addition, there are also forced occupation of arable land managed by local residents. This incident occurred in Langkat in North Sumatra which sued PT. Amartani to return their land, according to the residents their land has been taken forcibly since 36 years ago. Residents claim to have land certificates covering an area of 1,500 hectares. (Yunas, 2018)

Siti Rakhma Mary Herwati in her research stated that there were four cases of land disputes in Central Java. Where in the face of this land dispute, plantation companies report farmers who try to claim their land rights. Companies use legal means not only through criminal law, but also civil law and state administrative courts as individual cases proceed. It is also known that the three plantation companies have close ties to the authorities. More access to security, thugs and justice. (Rakhma & Herwati, 2013)

The description above shows that the process of land clearance can result depravity of cultivating farmer's rights. From the description above, has prompted the author to conduct research on: *How do cultivating farmers defend their rights in land clearance without a certificate?*

Discussion

Land clearance or more precisely, as regulated by law referred to as land acquisition, is an activity that aims to provide land in exchange for fair and impartial compensation to the beneficiaries. (Article 1 paragraph (2) of Law No. 2 Year 2012 concerning Land Procurement for Development in the Public Interest). Land clearance can be carried out by the private sector or the government. For the plantation sector, this land clearance is carried out by the private sector on the basis of Confirmation of Spatial Utilization Activities (KKPR) first for a location permit, to cultivating farmers currently managing the land.

Data from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (BPN) shows that of the 126 million plots of land in Indonesia, 78 million have been certified, meaning that there are still 48 million plots of land that have not been certified. In other words, since the *Law of Basic Agrarian Principles* was enacted in 1960 until 2022 for 62 years, there currently still 38% of land that is not certified.

The arrangement for land clearance transactions that are not certified is regulated differently from registered land with a certificate. For registered land with a certificate of land clearance, may be able to use transactions by means of lease transactions, buying and selling, exchanging, sharing joint rights, grants, and so on. The transfer of certified land rights is stated in a deed whose template has been determined by the BPN by involving state officials (Land Deed Official).

Meanwhile, uncertified land does not have a sufficiently strong legal framework as in the case of certified land transactions. Land clearance transactions that are not certified are still the same as other civil agreements in which all clauses are determined by the parties under the Indonesian Civil Code.

The regulations and provisions regarding arable land are still not uniform, in some regions it is only based on the governor's decision, such as in East Kalimantan, two local government efforts to formally regulate arable land. First, agreement was reached through verbal agreement through a forum meeting between regional and National Land Agency (BPN) office staff, many provincial and district government agencies, and sub-district and village heads throughout East Kalimantan. The forum is in the form of a series of meetings and training guided by the Regional Office of the East Kalimantan BPN. Second, the product of the regional legislature, namely the Regulation of the Governor of East Kalimantan Number 97A/1994, a year later the Governor of East Kalimantan concerning Guidelines for Controlling Certificates of Control and Ownership of Buildings/Plants on State Land. (Simarmata, 2017)

Historically, non-certified cultivation was carried out by cultivating farmers, where the acquisition was carried out in 3 ways, namely land by clearing their own land, buying from other parties and by inheritance passed down by their ancestors.

Simply put, farmers who live around the forest are those who depend on forest resources. This conversion of forest to palm oil plantations causes changes in the livelihood sector to have an impact on the livelihood structure of farmer households. (Suryadi et al., 2020)

The basis for the birth of the right to cultivate is Article 529 of the Indonesian Civil Code concerning *Bezit* which explains that possessing means that a party that controls or obtain gains of an object, either personally or through the intercession of another party, as if the item belongs to the party. These arable lands are generally not supported by legalization or documents on the land rights. Cultivating farmers will usually handle the certification of the land they manage when the state land is to be cleared and given to palm oil companies. The party who manages and cultivates arable land must have written evidence regarding land tenure and a cultivation permit from the competent authority, the purpose of which is to serve as legal evidence for working and cultivating the land. Cultivators

should handle the issuing certificate of ownership in the form of a Land Tenure Statement (SPPT) or a certificate from the local District Head regarding the ownership of the arable land.

Conflicts usually arise when the land clearance process takes place, as conflicts of interest in the field often occur, this usually arises because of dissatisfaction of the compensation provided and the forced occupation of land.

Article 1 point 3 of the Decree of the Minister of Agrarian Affairs / Head of National Land Agency Number 21 of 1994 concerning Procedures for Land Acquisition for Companies in the context of Investment stipulates that "transfer or release of land rights is an activity that releases the legal bond between the owner of land rights and the company-controlled land by providing compensation in a balanced manner".

Discussions aimed at finding collective agreements tend to be difficult and lead to protracted feuds, even after plantation companies have obtained their land rights in the form of a Right of Cultivation certificate (*HGU*), agricultural land disputes still frequently occur. The Right of Cultivation certificate (*HGU*) granted continues to provide compensation to cultivators whose rights to use has not completed, moreover the compensation that occurs to the wrong person (not the actual farmer) thus leaves a 'refund'. The dispute lasted during the validity period of the Right of Cultivation (*HGU*), there were also disturbances from the cultivators and the surrounding community regarding arable land disputes, which in the end could be raised by a number of parties, including disputes between the company and the surrounding community.

The rights of cultivating farmers in the land clearance process include getting compensation for plants, buildings that the farmers manage on state-owned land and the right to refuse if an agreement is not reached.

These cultivating farmers can take several steps to protect their interests in the land clearance process. The initial step that cultivating farmers can take is through litigation, in this case cultivating farmers can use judicial channels, namely the State Administrative Court and the General Court. The option to go to court would cost a significant sum of money and take up a lot of time. In some cases, courts were found to take too long to resolve land disputes, reducing trust in the judiciary system. Moreover, economic conditions and the lack of knowledge of regulations and law regarding land causes choosing through litigation an unrealistic solution to the farmers. The second step that can be taken by cultivating farmers is the non-litigation route, namely through arbitration and alternative dispute resolution efforts (Consultation, Negotiation, Mediation, Consolidation, and expert judgment).

One alternative in a land dispute resolution is where the settlement of land disputes is carried out by deliberation. This mediation method has become very popular because it is a step that is often taken in resolving this dispute. Mediation is the process of resolving disputes between two or more parties through negotiation or agreement with the support of a neutral party who does not have decision-making authority. (Suryadi et al., 2020)

The mediation process outside the court is not regulated in laws and regulations, the regulation is only limited to the use of mediation, but not about the process of organizing mediation. Therefore the mediation process is based on the experience of mediation practitioners and research by experts. The absence of regulation of the mediation process in the law is both a strength and a weakness of the mediation process. The absence of a mediation stage arrangement is seen as a mediating strength because this situation provides flexibility for both the parties and the mediator. (Asmawati, 2014)

In disadvantaged areas, land dispute resolution is often carried out by influential figures in the area, such as customary heads, village heads or clan heads. This is because each figure owns data about the land in question, such as land boundaries and land use by local communities.

If the first mediation at the village-level fails, the next step is mediation at the sub-district level by involving the district-level conference (*muspika*) (including police police, local military headquarters and district head). And if no agreement is reached on this stage, the next step can be taken by bringing this land dispute at the district level by involving the regional head and related agencies. Although in the regulations the mediation is carried out at National Land Agency (*BPN*).

Dispute resolution in relation to the theory of Dean G. Pruitt and Jeffrey Z. Rubin states the process must take into account the interests of the people who use the land, the interests of other residents in the area concerned and the area of land required by the company or forestry agency to carry out its business or duties. The settlement is still carried out preceded by deliberation with the parties concerned so that it does not necessarily empty or take criminal action.

Settlement of arable land disputes by means of mediation has more solutions, because this dispute resolution prioritizes solutions for each party, while if the matter goes to court the result is always injustice for those who feel they have failed. Above all cultivate land for those without permission from the landowner. Based on the principle that the protection of rights must be respected/legal certainty, then the court's settlement decision will be considered fair because it is based on evidence of ownership. Based on the principle of profit, justice will prevail if the dispute resolution is mutually beneficial and mutually acceptable.

Conclusion

Efforts that can be taken by cultivating farmers in defending their rights are by completing documents as the basis for their actions in managing arable land. This is a form of effort that is more preventive in nature so as to minimize legal risks that may arise in the future. In addition, if legal problems arise as a form of dispute in land clearance, then the efforts that cultivating farmers can take are litigation, namely by filing a lawsuit to the court (State Administrative Court or General Court) or other efforts outside the court including arbitration and alternative dispute resolution (Consultation, Negotiation, Mediation, Consolidation, and expert judgment).

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