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Utilization of State Land by Plantation Business Use Rights Holders in North Sulawesi

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Abstract

This research was conducted to know and analyze the regulation of state land use with plantation business use rights and finding out and analyzing the implementation of state land use by plantation HGU holders in North Sulawesi. The method used in this study is normative legal. The research results show that plantation HGU arrangements are regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). The implementation of Plantation HGU in North Sulawesi shows that there are still many violations by plantation HGU holders managed by legal entities. Violations occur in the form of not properly managing plantation HGUs granted by the government. Many plantation HGU lands are neglected, so this situation encourages the community to settle in and work on abandoned HGU lands. The implementation of Plantation HGU in North Sulawesi shows that there are still many violations by plantation HGU holders managed by legal entities. Violations occur in the form of not properly managing plantation HGUs granted by the government. Many plantation HGU lands are neglected, so this situation encourages the community to settle in and work on abandoned HGU lands. The implementation of Plantation HGU in North Sulawesi shows that there are still many violations by plantation HGU holders managed by legal entities. Violations occur in the form of not properly managing plantation HGUs granted by the government. Many plantation HGU lands are neglected, so this situation encourages the community to settle in and work on abandoned HGU lands.

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1. Introduction

One of the objectives of the Indonesian nation, as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution the Republic of Indonesia), is to advance public welfare. In order to advance the general welfare, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people (Suseno, 2019).

The provisions of Article 2 paragraph (2) of Law No. 5 of 1960 concerning Basic Agrarian Regulations explain that the Indonesian nation, as the holder of rights and bearer of the mandate at the highest level, is delegated to the Republic of Indonesia as the organization of the power of all the people (Setyawan, N., & Israhadi, 2021). The state, an organization of power for all the people, has the authority to regulate and administer the allotment, use, supply, and maintenance of earth, water, and space. Based on the provisions of Article 2 above, the state's responsibility in land management is carried out or represented by the government to provide welfare for every citizen.

The existence of natural resources, especially land in an area, can be useful as capital for the government in carrying out development. As stated in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the land management policy aims to provide welfare for the people of Indonesia. Therefore, the government allows the community to acquire land rights and use them for their welfare. One of the land rights that the community can obtain is the right to cultivate in the plantation sector.

The legal basis for the existence of Cultivation Rights (HGU) is regulated in Article 28 to Article 34 of the UUPA Jo. Article 2 to Article 18 Government Regulation (PP) No. 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Usage Rights. HGU is the right to cultivate land directly controlled by the state within the period referred to in Article 29 of the UUPA for agricultural, fishery, or livestock companies. Land rights are rights that give authority to use land that is given to people or legal entities. In principle, the purpose of land use is to fulfill two types of needs, namely to be cultivated and to build something (Notess et al., 2021).

The existence of land as one of Indonesia's natural resources has a very important social function for the Indonesian people to increase prosperity and welfare; the people are faced with a problem, namely that in terms of quantity the land area is limited and not proportional to the population which is increasing every year (Allan, 2004). This is the main problem faced by every agricultural country related to this fact, namely the problem of how to maintain, designate, use management, and profit sharing in such a way that is beneficial for the welfare and prosperity of the Indonesian people.

The provisions of Article 1 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration state that a parcel of land is a part of the earth's surface which is a limited parcel of land. The legal basis for land, as stipulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations for the existence of land, is to be used or exploited with various rights that can be obtained. Article 4 paragraph (2) Law Number 5 Years1960 concerning the Basic Agrarian Regulations further explained that: "The rights to the land give the authority to use the land not only the surface of the earth concerned but also the body of the earth that is beneath it and the water and space that is above it."

In the agrarian scope, the land is part of the earth, which is called the surface of the earth (Oya, 2013). The land referred to here does not regulate land in all its aspects but only regulates one of its aspects, namely land in a juridical sense which is called rights. Land as part of the earth is referred to

in Article 4, paragraph (1) of the UUPA, namely, "On the basis of the right to control from the state as referred to in Article 2, it is determined that there are various kinds of rights over the surface of the earth, called land, which can be given to and owned by people, both alone and together with other people and legal entities". Thus, it is clear that land, in a juridical sense, is the surface of the earth, while land rights are rights to certain parts of the earth's surface, which are limited, and have two dimensions with length and width (Elden, 2010).

According to Fialkowski, M., & Bitne (2008), it can be understood that land is something of value to humans. The value of land is related to many aspects. The economic aspect, with land as a very important natural resource, the social aspect, bearing in mind that various groups of people with their social values have different rights in land tenure and political aspects, as well as legal aspects that uphold and regulate land tenure rights. Land tenure rights include; Legal institutions, namely Property Rights, Building Use Rights, Use Rights, Rights for Business, and others.

Provisions in Article 2 to Article 18 and Article 14 paragraph (1) Government Regulation No. 40 of 1996 concerning HGU, HGB, and usage rights, specifically regarding HGU, stipulates that holders of usufructuary rights have the right to control and use the land granted with usufructuary rights to carry out business in the field or for agricultural, plantation, fishery companies. However, the existing phenomenon is that in reality there are still many land use rights for plantations that do not use the land in accordance with existing regulations. It can cause plantation land to be abandoned, which results in not providing economic value according to the purpose for which it was given (Wibowo, 2020).

The problem sometimes does not stop with the abandonment of plantation HGU land but continues with the illegal occupation of neglected HGU land by members of the community around the HGU area by establishing settlements or cultivating the land by planting plants. This triggers a wider problem which has an impact on horizontal conflicts between community members and the HGU holders when the HGU land will be functioned according to its designation. These issues make it important for this research to be carried out to be able to find out the problems in the field of state land use that is inherent in plantation business use rights in a comprehensive manner to obtain solutions to overcome them so that the granting of plantation HGU can proceed according to the purpose of granting it. The solution is to grant tenure rights so that government agencies can freely plan the allotment and use of land either for their own use for the purposes of carrying out their duties or for giving to other parties.

2. Materials and Methods

This research is normative legal research supported by empirical (field) research (Cf. Ardani, 2021; Adnyana, 2021; Ariana, I. G. P., & Rumiartha, 2021; Ardani, N. K., & Ibrahim, 2022). In normative legal research, the aim is to find out the regulatory policies for plantation HGUs, while empirical research is meant to find out whether the regulatory policies for plantation HGUs in North Sulawesi have been implemented in accordance with statutory provisions and in order to get an overview of the problems that occur related to plantation HGUs in North Sulawesi to find a solution. As an empirical legal research, this research took locations in several districts or cities in North Sulawesi, namely in Manado, Minahasa, South Minahasa, Bitung, Bolaang Mongondow, North Bolaang Mongondow, and North Minahasa.

The data in this study consisted of primary data and secondary data. Primary data is obtained directly in the field by collecting data through interviews to complete the necessary data. At the same time, secondary data consists of primary legal materials in the form of laws and regulations related to HGU, namely Law No. 5 of 1960 regarding Basic Agrarian Regulations (UUPA), Government

Regulation No. 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Rights, Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration. Secondary legal materials in the form of writings or opinions of legal experts in the land or agrarian sector.

The data collected was analyzed according to the character and nature of each data, so in this study, a data analysis method called content analysis was used for primary and secondary legal materials, while the data obtained through interviews used qualitative data analysis.

3. Results and Discussions

Arrangements for Utilization of State Land with Plantation Cultivation Rights in North Sulawesi

The provisions of Article 1 of Law No. 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA) state that the scope of the earth is the surface of the earth and the bodies of the earth beneath it and those underwater. The surface of the earth as part of the earth is also called land. The land in question is not regulated in all aspects but only regulates one of them, namely land in a juridical sense which is called land tenure rights. The notion of mastery can be used in a physical sense as well as in a juridical sense. There is mastery of private and public aspects.

Mastery, in a juridical sense, is control based on rights protected by law and generally gives authority to the right holder to physically control the land being claimed. For example, the land owner uses or takes advantage of the land being claimed, not handing it over to another party. Besides that, in connection with the control of land rights, the term state land is also known. The UUPA and laws related to land and their implementing regulations do not explicitly state and regulate state land.

UUPA itself, the term used for state land, is "land directly controlled by the state." Regarding the term state land, the Defense AP said: "Actually, the term state land in the UUPA system is not known. There is the only land that is controlled by the state. Article 1 or Article 2 of the UUPA also states that land controlled by the state is an elaboration of the state's right to control land, water, and space. Even so, in many legal products, they still use state land an erroneous use. State land connotes that the land belongs to the state. However, in reality, it is not the case.

In the land sector, the right to control the state has a juridical problem, namely that it is not ordered by the 1945 Constitution to be regulated in law. In the 1945 Constitution, before the amendment, the word 'controlled by the state' was contained in Article 33, Paragraph (2) and paragraph (3). Article 33 Paragraph (2) stipulates that "Production branches which are important for the State and which affect the livelihood of the people at large are controlled by the State." Whereas Article 33 paragraph (3) stipulates that "Earth and water and the natural resources contained therein are controlled by the State and used for the greatest possible prosperity of the people." in the Elucidation of the 1945 Constitution. Likewise, after the amendment, there was no interpretation that specifically explained the meaning of "controlled by the State".

The principle of the right to control by the state actually has the spirit of replacing the principle of domain verklaring, which was in effect during the Dutch colonial period, which turned out to only provide benefits to the Dutch colonial government at that time. The principle of domain verklaring is stated in Agrarisch Besluit as implementing regulations for Agrarisch Wet (1870). Grammatically, "Domein" means state-owned territory or land, and "verklaring" means statement. So, "Domen Verklaring" means a statement that land whose owner cannot be proven is considered state land . The purpose of this Verklaring Domain was to take control of customary land for which there was no

written evidence so that it would be difficult to prove and could be controlled by the Dutch Government.

Juridically, the right to control from the state is regulated in Article 2 paragraph (2) of the UUPA, which gives authority to:

1. regulate and administer the allotment, use, supply, and maintenance of the earth, water, and space;
2. determine and regulate the legal relations between people and the earth, water, and space,
3. determine and regulate legal relations between people and legal actions concerning the earth, water, and space.

Understanding the concept of the meaning and substance of the state's right to control over land is important for rectifying existing authority in the form of regulating, administering or managing, and supervising to avoid confusion and arbitrariness. Some of the provisions in the UUPA that mention state land are:

a. Article 21, paragraphs (3) and (4) state that a foreigner and/or Indonesian citizen and/or a person with dual nationality who obtains ownership rights but then loses his/her citizenship must relinquish these rights within 1 (one) year. If not, then the ownership rights fall to the state.
b. Article 26 paragraph (2) The transfer or transfer of ownership rights to foreigners or Indonesians with dual citizenship or legal entities that are not designated has the consequence of being null and void, and the land belongs to the state.
c. Article 24a: the abolition of property rights and the land falls to the state, due to revocation of rights; because of voluntary surrender by the owner; because it was abandoned; and because of the letters a and b above.
d. Article 28 paragraph (1): Usufructuary rights are rights to cultivate land that is directly controlled by the state.
e. Article 37: the occurrence of building use rights on land that are directly controlled by the state.
f. Article 41 paragraph (1): Usufructuary rights are rights to use and/or collect produce from land that is directly controlled by the state.
g. Article 43 paragraph (1): Insofar as it concerns land directly controlled by the state, the usufructuary rights can only be transferred to another party with the permission of an authorized official.
h. The fourth dictum letter A of the UUPA: rights and authorities over land and water from autonomous or former autonomous regions, which still existed at the time this law came into effect, are abolished and transferred to the state.

The definition of state land as land that is directly controlled by the state is land that is not attached to any land rights, as stipulated in the UUPA and is also experiencing development. The definition of state land is also then not constituting communal land of customary law communities and/or not belonging to the state or region or BUMN or BUMD or Village as contained in the draft Land Bill.

Article 4 paragraph (1) UUPA Explains that on the basis of the right to control from the state as referred to in Article 2, it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people either alone or together. The same as other people and legal entities. This article authorizes the use of the land in question as well as the body of the earth and water and the space on it, only for purposes directly related to the use of said land within limits according to this law and other higher legal regulations.

Land rights originating from state control over land can be granted to individuals, both Indonesian citizens and foreign nationals, groups of people collectively, and legal entities, both private legal entities and public legal entities. The authority possessed by holders of land rights over their land is divided into 2, namely:

1. General Authority

General authority, that is, the holder of land rights, has the authority to use the land, including the body of the earth and water and the space on it, which is only needed for interests that are directly related to the use of the land within limits according to the UUPA and other legal regulations.

2. Special Authority

Special powers, namely the holder of land rights, have the authority to use the land in accordance with the type of land rights. For example, the authority on land with property rights can be for agricultural purposes and/or constructing buildings, building use rights (HGB) to construct buildings, and HGU (rights Business Use) for the benefit of agriculture, plantation, fishery, and animal husbandry.

Various types of land rights are contained in Article 16 in conjunction with Article 53 of the BAL, which are grouped into three areas, namely:

1. Permanent land rights These land rights will continue as long as the BAL is still valid or has not been repealed by a new law. Example: Property Rights. HGU, HGB, usufructuary rights, rental rights for buildings, and rights to collect forest products.
2. Land rights to be stipulated by law Land rights to be born later will be stipulated by law.
3. Temporary land rights These land rights are temporary in nature. In a short time, they will be removed because they contain extortion and feudal characteristics and are contrary to the spirit of the UUPA. Examples: Liens, Production Sharing Business Rights, Hitchhiking Rights, and Agricultural Land Lease Rights.

By granting land rights, a legal relationship has been established between the person or legal entity, in which legal action can be taken by those who have the rights to the land to other parties. The provisions governing the Cultivation Rights are contained in Article 28 paragraph (1) of the UUPA, which reads: The Cultivation Right is the right to cultivate land directly controlled by the state, within the period referred to in Article 29, for agricultural, fishery or animal husbandry companies. In contrast to property rights, the purpose of using land owned by usufructuary rights is limited, namely to farming, fishing, and animal husbandry. This usufructuary right can only be granted by the state. Based on Article 30 of the UUPA, the right to cultivate can be owned by: (1) Indonesian citizens. (2) A legal entity established according to Indonesian law and domiciled in Indonesia.

Meanwhile, Article 29 of the UUPA stipulates that the term of the right to cultivate is 25 years or 35 years and, at the request of the right holder, can be extended for a maximum of 25 years. Removal or expiration of the Cultivation Right when the term expires is terminated before the period expires because a condition is not met, is released by the rights holder before the term expires, is revoked for a public interest, abandoned, the land is destroyed, and the provisions in Article 30 paragraph (2).

As an implementation of HGU provisions stipulated in the UUPA, the government has enacted Government Regulation No. 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Rights. The consideration for the enactment of PP No.40 of 1996 is that land has a very important role in the life of the Indonesian nation or in the implementation of national development, which is carried out as a sustainable effort to create a just and prosperous society based on Pancasila and the 1945

Constitution. The next consideration is that, Therefore, arrangements for control, ownership, and use of land need to be more directed towards increasing order in the field of land law, land administration, land use, or maintenance of land and the environment.

Developments that have taken place are related to HGU arrangements, namely that on February 2, 2021, the government enacted Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration. This Government Regulation is the implementation of Law Number 11 of 2020 concerning Job Creation which the government of this PP will become a national strategic policy that will regulate in detail the arrangements in Law Number 11 of 2020 concerning Job Creation.

The General Explanation of this PP states that in its entirety, the policy directives in strengthening Management Rights, Land Rights, Flat Units, granting rights to Upper Land and Basement Spaces, including accelerating electronic-based Land Registration, are to overcome various bureaucratic obstacles and challenges and regulations that hamper economic and business growth in Indonesia. This Government Regulation unifies (omnibus law), harmonizes, synchronizes, updates, and revokes irrelevant provisions based on Law Number 11 of 2020 concerning Job Creation. among others, Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights, Government Regulation Number 24 of 1997 concerning Land Registration.

HGU arrangements in PP No. 18 of 2021 are not much different from the previous PP (PP No. 40 of 1996). For example, who is the subject of Cultivation Rights in Article 19 stipulates that HGU is given to Indonesian citizens and legal entities established according to Indonesian law and domiciled in Indonesia. Land that can be granted Cultivation Rights includes state land and land with management rights (Article 21).

Article 22 paragraph (1) determines the maximum period of HGU is 35 (thirty-five) years, extended for a maximum period of 25 (twenty-five) years, and renewed for a maximum period of 35 (thirty-five) years. PP No. 40 of 1996 does not specify the period for HGU renewal. Paragraph (2) stipulates that after the period for granting, extending, and renewing, as referred to in paragraph (1) ends, the land with cultivation rights returns to become land directly controlled by the State or Land with management rights.

According to the provisions of Article 27, the holder of the right to cultivate is subject to the following obligations:

a. Carry out agricultural, fishery, and/or animal husbandry business in accordance with the designation and requirements as stipulated in the decision on the granting of the rights no later than 2 (two) years since the rights were granted;
b. cultivate land with good use rights in accordance with business feasibility based on the criteria determined by the technical agency;
c. build and maintain existing environmental infrastructure and facilities within the area of the usufructuary right area;
d. maintaining the land, including increasing fertility and preventing damage to it as well as preserving the environment;
e. provide a way out or waterways or other facilities for the plots of land that are confined;
f. manage, maintain, and supervise as well as maintain the function of a high conservation value area (high conservation value, in the event that a conservation area is in an area of cultivation rights;
g. maintain the conservation function of water bodies or other conservation functions;
h. comply with the spatial utilization provisions regulated in the spatial layout plan;

i. facilitating the development of community gardens in the vicinity of at least 20% ((twenty percent) of the area of Land granted with usufructuary rights in the event that the right holder is a legal entity in the form of a limited liability company and its use is for plantations;
j. submit a report at the end of each year regarding the use of usufructuary rights;
k. relinquish Land Rights either in part or in whole in the event that it is used for development in the public interest; And
l. handing back the land granted with usufructuary rights to the state or management rights holders after the usufructuary rights have been erased.

Apart from obligations to HGU holders, PP No. 18 of 2021 also imposes several restrictions on holders of usufructuary rights as follows.

a. handing over the utilization of land with cultivation rights to other parties, except in cases where permitted according to laws and regulations;
b. confining or closing yards or other plots of land from public traffic, public access, and/or waterways;
c. opening and/or cultivating land by burning;
d. destroying natural resources and preserving the capacity of the environment;
e. abandoned his Land; And
f. Constructing permanent buildings that reduce the function of embankment conservation, border conservation function, or other conservation functions in the event that in the right to cultivate area, there are water body boundaries or other conservation functions.

The deletion of HGU according to the provisions of Article 31, namely;

a. The usufructuary right is terminated due to: the expiry of the period as stipulated in the decision to grant, extend or renew the right; And
b. The rights are canceled by the Minister before the period expires because:
    1. non-fulfillment of the provisions on obligations and/or prohibitions as referred to in Article 27 and/or Article 28;
    2. administrative defects; or
    3. court decisions that have obtained permanent legal force;
c. the right has been changed to another Land Right;
d. released voluntarily by the rights holder before the expiry of the period;
e. released for the public interest;
f. repealed by law;
g. designated as Abandoned Land;
h. designated as Destroyed land;
i. the end of the Land utilization agreement, for the right to cultivate on the Land Management Right; or
j. the right holder no longer fulfills the requirements as the subject of the right.

Implementation of Utilization of State Land by Plantation Business Use Rights Holders in North Sulawesi

Basically, the right to cultivate plantations has the same context as the HGU for use in other sectors. The HGU subject is an area of 5 hectares – 25 hectares for Indonesian Citizens. Whereas for legal entities established according to Indonesian law and domiciled in Indonesia, a plantation HGU

can be issued if the land has an area of more than 25 hectares.. In addition, HGU holders can take advantage of the land affected by changes in the RTRW by adjusting the type of rights. It needs to be of great concern if the land given by the HGU for the plantation is to be used by other parties, then the owner can relinquish his rights by obtaining compensation in accordance with statutory regulations.

Bearing in mind that the land being managed belongs to the state, the right to cultivate plantations has a limited time, which is given for a maximum of 35 years and can be extended for a maximum of 25 years. It should be noted plantation HGU can only be issued if it is in accordance with the Regional Spatial Plan.

If the holder of the Cultivation Right no longer fulfills the requirements within one year, then he is obliged to relinquish or transfer the Cultivation Right to another party who fulfills the requirements. Meanwhile, if within a certain period of time, the Cultivation Right is not relinquished or transferred, the Cultivation Right is nullified by law and the land becomes State land. Cultivation Right Status can be abolished in certain conditions and situations, especially if there is a violation according to what has been stipulated in laws and ministerial regulations. According to PP Number 40 of 1996 Jo PP Number 18 of 2021, HGU is abolished if the following conditions occur.

a. After the term and extension expire, the right holder can apply for a renewal of rights. The application itself is filed no later than two years after the expiration of the term and/or extension. However, if the application is not submitted within two years, then the HGU is nullified by law, and the land becomes state land.
b. If the holder of the Cultivation Right no longer fulfills the requirements within a period of 1 year, then he is obliged to relinquish or transfer the Cultivation Right to another party who fulfills the requirements. Meanwhile, if within a period of 1 year, the usufructuary rights are not released or transferred, then the usufructuary rights are annulled by law, and the land becomes state land.
c. Expiration of the period as stipulated in the decision to grant or extend it.
d. The rights are canceled by the authorized official before the expiry of the term due to non-fulfillment of the rights holder's obligations and/or violation of provisions, as well as court decisions that have permanent legal force.
e. Released voluntarily by the rights holder before the expiration of the period;
f. revoked based on Law Number 20 of 1961.
g. Abandoned
h. The land is dissapeared

Applications for plantation use rights can be made through the local Land Agency office according to the domicile where the land is located. For the record, the HGU applicant must respect and provide access to the land owner in the event that there are parcels of land that cannot be acquired or the land owner is not willing to surrender his land. Below are five processes that must be followed when applying for a plantation business use right.

1. Measurement

The measurement of land parcels is basically the responsibility of the Head of the Land Office. To apply for measurement, the applicant first attaches a number of documents including complete identity, location permit, proof of land acquisition or title base, a summary of land acquisition and map of land acquisition, land acquisition, map of application for measurement complete with a layer of land parcel boundary markers that have been installed and have been approved by the directors of the company. There are also other documents that must be attached, namely permits from the

relevant technical service, maps of the survey area requested for measurement from the Land Office or the BPN Regional Office, a statement of non-dispute, and a statement letter that has installed boundary markings attached with a list of the coordinates of the boundary monuments that have been installed.

2. Rights Application

After going through the measurement process, the next step is to submit a written application for rights through the Land Office by attaching the following supporting documents:

- Identity of the applicant and/or proxy
- Power of attorney, if authorized
- Recapitulation of land acquisition and land acquisition recapitulation map
- Deed of the establishment of a legal entity and its amendments, validation, or approval from the competent authority and company registration certificate.
- Land technical considerations in the Framework of a Location Permit
- Recapitulation of land acquisition and land acquisition recapitulation map that has been verified and validated by the Land Office
- Permit or recommendation or statement from the relevant agency, which contains a location permit in accordance with the spatial plan, a business permit from the competent authority, and a statement letter stating that the land being applied for is not included in the peat area; Forest; and areas burned in accordance with the provisions of the legislation.
- Map of core and plasma plots
- Investment approval (if using investment facilities)
- Partnership cooperation agreements with surrounding communities are attached with a list of plasma participants appointed based on proposals from the sub-district head or village head determined by the regent or mayor, or appointed official.
- A statement letter from the directors of the company in the form of a notarial deed.

3. Soil Examination

Land inspection procedures are the full authority of the land office. In the process, a committee will be formed, including the composition of its members. As the applicant, his job is only to assist when the land inspection is carried out.

4. Determination of Rights

Regarding the determination of rights, this will involve the authority to determine HGU with the condition that if the land area is less than 25 hectares, then the assignment of rights will be the task of the land office. Meanwhile, for plantation areas of 25 to 250 hectares, the determination of rights will be given by the BPN Regional Office. Another right is that if the land area is more than 250 hectares, then the Minister of Agrarian Affairs or BPN will grant the right to cultivate the plantation.

5. Registration of Rights

Registration of Cultivation Rights is the last stage to be taken, in which the process is carried out at the local Land Office. However, if the decree on the granting of HGU is under the authority of the Minister or Regional Office of BPN, the registration can only be carried out after a copy of the decree on granting HGU has been received by the Land Office. The implementation of the registration of rights can only be carried out after the obligations contained in the decree have been fulfilled by the recipient of the HGU.

North Sulawesi Province has a very large plantation area of approximately 410,605 Ha, with plantations managed by the private sector amounting to 3.43% and community plantations amounting to 96.57%. Plantations managed with HGU status have an area of 14,092 Ha spread over several areas in North Sulawesi, with the largest plantation commodity being coconut, where plantation HGU holders total 52 companies (Kansil, 2015).

Existing HGUs in North Sulawesi can be classified as some that are still active and some that have expired. As for the HGUs that are still active and some that have expired, they are scattered in several regencies and cities, namely Manado City which has expired 2 and Minahasa Regency 1, Bolaang Mongondow Regency which is active with 24 and ended with 15, Bitung City which is still active with 1 and the has ended 4, active North Minahasa Regency numbered 3 and ended 8, South Minahasa Regency active numbered 25 and ended 5, Active Southeast Minahasa Regency numbered four and ended 7, North Bolaang Mongondow Regency active numbered two and ended 4, East Bolaang Mongondow Regency active numbered two and ended 5, active Bolaang Mongondow Selatan Regency numbered two and ended.

The management of HGU plantations in North Sulawesi is inseparable from problems ranging from not being managed properly to the point where HGU lands are simply abandoned so that the community uses them as settlements and also works on existing land. As happened to the residents of Magkit and Basaan Village, Belang District, Southeast Minahasa Regency, who used the former land use rights (HGU) of PT Asiatik in 1982 and was divided into three parts, PT Mawali Waya, PT Nusa Cipta Bhakti and PT Kinawang Waya which were neglected to become a residential area for about 92 years. At the end of October 2018, the Ministry of Agrarian Affairs and Spatial Planning or the National Land Agency (KATR or BPN) issued land certificates covering 444.46 hectares consisting of 313 families.

In the Buha Village, Mapanget District, there is land that was formerly owned by the erfpach, which was originally controlled by the Dutch, but after Indonesia became independent, the land was controlled by the state, which will then be presented by the government to regulate the management and use of the land according to the mandate of UUPA No. 5 of 1960. On May 7 in 1985, the government granted usufructuary rights to PT. Chairaat Plantation, with a land area of 38.0798 hectares, as a coconut plantation business until the end of the right, namely December 31, 2010. At the same time, the community occupied the land as a residential area which later became a people's village. The status of the ex-cultivation rights land becomes state-controlled land, and then the state presented by the government will re-regulate the use, control, and ownership of land. Communities who live on land with ex-cultivation rights feel that physical tenure has not yet provided strong legal protection without being accompanied by juridical control. Therefore, the government needs the right policy to avoid imbalances in land tenure.

Other plantation HGU lands in North Sulawesi whose terms have expired are HGU managed by PT. Nyiur Wicaksana, located in Ilo-Ilo, Wori Village, Wori District, North Minahasa. The ex-HGU Land has been utilized by the community as a residential area and arable land. To provide legal certainty to the community, the government adopted a policy of converting land into residential land through a land redistribution program covering 23 hectares consisting of 611 plots of land which is in the process of making certificates by the North Minahasa BPN Office. HoweverNot all residents living in

the area are included in the land redistribution program. However, households that have not been accommodated can be included in other land ownership programs.

4. Conclusion

Some conclusions obtained from the results of this study are as follows:

1. Utilization of state land with cultivation rights for plantations in North Sulawesi refers to several governing provisions, namely Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Government Regulation No.40 of 1996 concerning Business Use Rights, Use Rights Building and Land Rights, Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration.
2. Utilization of state land by plantation concession holders in North Sulawesi has not all gone according to the purpose of granting plantation HGUs because it was found that there were plantation HGU holders who did not manage it properly and even indicated that they had neglected the land thus encouraging other people to occupy or work on the HGU.

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