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Plantation Business Privates in Preventing Land Disputes: Evidence from Indonesia

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Abstract

This study examines the highest land disputes or conflicts. Law No 39 of 2014 concerning Plantations in conjunction with Law No. 11 of 2020 concerning Job Creation, hereinafter referred to as the Plantations Law on a certain scale requiring a plantation business permit has developed after the reform period. The research method used is normative juridical research method. The research results show the highest land dispute or conflict is in the plantation sector. There is a problem in Law No. 39 of 2014 concerning Plantations. Strengthening the legal position stated in the law and its psychological impact where plantation business actors (companies) can control plantation land according to permits on customary law community, customary land rights. Balance as a principle in managing plantation business is very important in realizing the values of justice and courage. Balance as a principle in managing plantations is in accordance with the basic values in Pancasila and the 1945 Constitution of the Republic of Indonesia. Balance through the position of plantation business actors (companies) with customary law community has the same position of fulfilling rights and obligations.

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1. Introduction

Law No. 39 of 2014 concerning Plantations in conjunction with Law No. 11 of 2020 concerning Job Creation, hereinafter referred to as the Plantation Law on a certain scale requires a plantation business permit (IUP/IUP-B/IUP-P) has developed after the reform period. The meaning of plantation includes all plants that fall into the category of perennial or long-term plants. Types of plants included in this plantation category include Coffee, Cocoa, Cloves, Nutmeg, Rubber, Coconut, Oil Palm, Sugarcane, Tea, Candlenut Sunan, Patchouli, Pepper, Sago, Cotton, Cashew, Tobacco, and others. Plantation businesses of a certain scale must have IUP/IUP-B/IUP-P such as Oil Palm Plantations (Elaies), although other plantations also have IUP/IUP-B/IUP-P. It's just why choose one of them is Palm Oil. Of course apart from the large area, business actors from large business circles, also the biggest dispute or conflict is this oil palm plantation, including development policies and facilitation of IUP/IUP-B/IUP-P is Oil Palm which is developed massively. It turns out that the Oil Palm Plantation Business has caused disputes in several plantation cultivation business locations with the community who own the land. Even land disputes which are the biggest conflicts are land conflicts related to plantations.

The Consortium for Agrarian Reform (KPA) recorded 659 agrarian conflicts throughout 2017, with an area of 520,491.87 hectares (ha). The number of agrarian conflicts increased by 50 percent compared to 2016. Plantations still occupy the first position, with 208 conflicts, or 32 percent of the total conflicts. Successively after that, namely property 199 conflicts (30 percent), infrastructure 94 conflicts (14 percent), agriculture 78 conflicts (12 percent), forestry 30 conflicts (5 percent), coastal/marine conflicts 28 (4 percent), and mining 22 conflicts 3 percent (Kompas, 2017).

Throughout 2018 KPA recorded at least 410 incidents of agrarian conflict with an area of conflict reaching 807,177.613 hectares and involving 87,568 households in various provinces in Indonesia. Thus, cumulatively during the four years (2015 – 2018) during the reign of Jokowi-JK there have been at least 1,769 eruptions of agrarian conflicts. This year, plantations again occupy the highest position as a sector contributing to agrarian conflicts with 144 (35%) conflict eruptions, the property sector 137 (33%), the agricultural sector 53 (13%), mining 29 (7%), the forestry sector 19 (5%), the infrastructure sector 16 (4%) and finally the coastal/marine sector with 12 (3%). Of the 144 explosions of agrarian conflicts that occurred in the plantation sector so far this year, 83 cases or 60% occurred in oil palm commodity plantations (Agrarian Reform Consortium, 2018).

The Consortium for Agrarian Reform (KPA) noted that during 2019 there were 279 cases of agrarian conflict in Indonesia with an area of conflict reaching 734,239.3 hectares. The number of people affected by the conflict is 109,042 heads of families spread across 420 villages in 33 provinces. There are 10 provinces with the highest agrarian conflicts, namely West Java with 28 conflicts, followed by North Sumatra with 24 conflicts, Central Kalimantan with 23 conflicts, East Java with 21 conflicts, Jambi with 16 conflicts, DKI Jakarta with 16 conflicts, Riau with 14 conflicts, Aceh with 12 conflicts, South Sulawesi with 12 conflicts, and Central Java with 11 conflicts. There were a total of 241 cases of agrarian conflict that occurred throughout 2020. The total cases occurred in 359 regions in Indonesia with 135,332 households (KK) affected victims. "The highest agrarian conflicts occurred in the plantation sector, namely 122 cases. This number increased by 28 percent compared to 2019, namely 87 cases (Kompas, 2019).

One of the facts on the ground is that there are several disputes over land for oil palm plantations, both indigenous peoples, the general public, and plantation companies. There are also land disputes that occur by creating conflicts among fellow communities. As an example, the plantation land dispute occurred in the West Kutai Regency area, as obtained by Mongabay (Mongabay, 2015).

In fact, the Company's actions, with strong support from the authorities, repressively arrested three Dayak Modang Long Wai traditional leaders in Long Shape Village (or also known as Bentuq), Busang District, East Kutai, East Kalimantan, and were forcibly picked up by the police after the fatal incident of a village road to cut off the palm oil company's activities, on January 30 2021. Even as happened in East Kotawaringin, Central Kalimantan Province, the Dayak Customary Council (DAD) held a customary meeting to help resolve an oil palm plantation land dispute between a palm oil company and an individual business covering 620.28 hectares.

These facts cannot be separated from the Plantation Law which contains Sovereignty as a principle, even though the principle of sovereignty is not a concrete norm, it has a legal impact because behind the special norms it regulates the allotment of plantation land. Plantation business actors (companies) who accept the principle of sovereignty that plantation management upholds the sovereignty of plantation business actors who have the right to develop themselves.

2. Materials and Methods

This research was conducted using normative juridical research with theoretical concepts through the statutory approach, namely the Plantation Law, and the concept approach. This approach is to focus on the Plantation Law regarding the concept after the enactment of Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation to become Law, initially from Law No. 11 of 2020 concerning Job Creation, especially on the Plantation principle precisely in Article 2 letter a, so that it has implications for the established norms as stipulated in Article 12 paragraph (1) and paragraph (2) of the Plantation Law. So that the study is carried out by deepening philosophically.

3. Results and Discussions

The Nature of Equilibrium as a Principle in Sustainable Plantation Business

The principle of balance (equilibrium) as a normative idea for the implementation of the Law on Plantations so far has given rise to various land conflicts. Equilibrium language terminology is Latin. The word equilibrium is actually adopted from the Latin "aequilībrium" which starts with aequi which connotes equi, and lībra which means balanced, stable, not moving, and/or not changing. In Indonesian, equilibrium is usually translated as balance or equilibrium and in Arabic it is known as tawazzun (Muhammad, 2002).

The balance of interests (equilibrium interest) as a parameter or measure is the State that determines it for legal subjects and legal objects. The element or parameter of balance lies in equality, the same legal standing. Here the balance (equilibrium) can be divided into 2 (two) parts in terms of interest (interest), namely public equity (public balance) and private equity (private balance). Equalibrium public (public balance) is a balance in the public interest, a balance in the fulfillment of rights and obligations, while the determination and the determining subject of the balance is determined by the state (power) that determines it. Privat equilibrium (private balance) was born on the basis of the agreement of the parties through an agreement. But the balance based on this agreement cannot be separated from the public balance which is formed by the state's norms in fulfilling its rights and obligations.

The role of the state is to balance the interests (equilibrium interest) of people's rights and the obligations they carry should be directly proportional to the right to control and the obligation of the state to realize prosperity and prosperity. The state should eliminate the view so far, that "to realize

the larger interests of sacrificing the interests of the smaller". Pancasila as the foundation of the life of the nation and state is related to this, more precisely is "social justice for all Indonesian people".

The rule of law is not only subject to the rule of law, but also includes ethical (moral) values, good norms in this case contained in the law or as a civilization that lives in society for the public interest which has an impact on society. There is equality before the law, in this case everyone regardless of their position and class in society is subject to the same law. Likewise, state functionaries are subject to the same laws as those that apply to ordinary people. Law which is a series of regulations and or laws and regulations that give birth to state institutions and or government agencies that have their respective authorities granted by the laws and regulations, where such authority and power cannot be used outside the legal corridor. This is because it must be subject to the principle of equality before the law (Rumiartha, 2022).

The government of the Republic of Indonesia should be able to create a constructive balance. This constructive balance is manifested in providing guarantees of legal certainty that these rights and obligations can be fulfilled. The rights of individuals and groups (community) against the rights of other parties can be fulfilled. This means a balance of rights and obligations of all parties. The Government of the Republic of Indonesia exists as a counterweight and is able to solve problems. The interests of the State are too great with a focus on economic achievement. So that legal problems occur various problems. The root of the problem lies in the legal rules governing plantations. According to Albertus Sentot Sudarwanto, said: Inconsistency amongst regulations certainly is inhibition in achieving the objectives of the establishment of any regulations. In general, the objective of law is to regulate and organize the life of people in a country. It is constructed by establishing certainty, advantage and justice between state and society (Sudarwanto, 2022).

In fact, disputes or conflicts over land for plantations are increasing due to legal policy issues from the Government which are more concerned with economic interests than legal, social and environmental interests. The construction of plantation laws that need to be revamped. Data on the quantity and quality of plantation land disputes or conflicts is in the highest order compared to other problems. In fact, according to Rijal Ramdani and Anu K.Lounela in Albertus Sentot Sudarwanto, this fact explains: The strength of the "Principle of Sovereignty" in the Plantation Law, namely in Article 2 letter a, and the explanation states: Plantation management must be carried out by upholding the sovereignty of Plantation Business actors who have the right to develop themselves. It turns out that this Sovereignty Principle has led Plantation Companies to have excessive powers granted by the state to own large tracts of land with the plantation business permit (Sudarwanto, 2022).

Nagan & Hammer in Sigit Riyanto, explains state sovereignty, as follows: State sovereignty is often used to refer to the notion: "the highest power possessed by the state government". Sovereignty is also given the meaning of the plenary (highest) political authority possessed by a country to regulate and determine itself. In academic discourse it seems that a single definition of sovereignty cannot be established. The term sovereignty has various meanings and interpretations. The term sovereignty is often given different meanings by academics, journalists, politicians, international officials, juries and other groups with different professional, cultural and intellectual disciplinary backgrounds (Riyanto, 2014).

Sovereignty means supreme power. A sovereign state does mean that the State does not recognize a power higher than its own. The space for this supreme power to apply is limited by the boundaries of the territory of the State, meaning that a State only has supreme power within its territorial boundaries. Another opinion that emphasizes state sovereignty based on the International Commission on Intervention and State Sovereignty (ICISS), concludes regarding sovereignty, namely: "…..denotes the competence, independence, and legal equality of states. The concept is normally used

to encapsulate all matters in which the state is permitted by international law to decide and act without intrusion from other sovereign states. These matters include the choice of political, economic, social, and cultural systems and the formulation of foreign policy…." (ICISS, 2001).

Inequality in land/land tenure creates various disputes or conflicts. Gunawan Wiradi stated that inequality in the "control structure" of agrarian resources is a very prominent religion in the country. The extent of the land or land already in the permits owned by the plantation company at least imposes its will to control the land, even though there are people and the Customary Law Community who own it (Wiradi, 2009).

Land with cultivation rights issued or cultivation rights issued, there are often land rights claims from other parties, especially claims from Indigenous Peoples. Differences in legal principles regarding clearing of fields (gardens) on land under the control of one entity whose claims collide with other entities, by other parties who have capital, is a fundamental root that can trigger further follow-up conflicts which may have the face of intimidation and violence (Andiko, 2010).

In fact, this has been happening all over Indonesia. There is hidden power (Shadow), namely capitalist power in controlling land or land for plantation businesses. According to Magnis Suseno in 1992 in Lilis Mulyani, that in using Marx's theory, Bernstein analyzed it in an agrarian context by trying to connect classes that were created from the relations that were formed in the agrarian context itself. In several studies in Indonesia that have also attempted to 'translate' Marx's works, such as Magnis-Suseno (Magnis Suseno, 1999), it is revealed that in the original works of Marx, the explanation of what is meant by class (although it was mentioned many times by Marx) was not very clear, until finally it was given a special definition by one of Marx's students, namely Lenin, with the following explanation: "large groups of people differing from each other by the place they occupy in a historically determined system of social production, by their relation...to the means of production, by their role in the social organization of labour, and, accordingly, by the dimension of the share of social wealth of which they dispose and the mode of acquiring it" (Mulyani, 2018).

The Concept of Equilibrium as a Substitute Principle for Sovereignty in Allotment of Plantation Land.

Legal ideals as clear thinking ideas on problems that occur from the existence of the principle of sovereignty in the Plantation Law. Sovereignty is given by the state to Plantation Business Actors (Plantation Companies), only because they are considered "merit" to be able to bring large investments into the Republic of Indonesia as an effort to advance the economy. Sovereignty as a principle in the Plantation Law has had an impact on the increasing number of plantation land disputes/conflicts. Equal treatment by the state, regardless of which interests are bigger or smaller as a substitute for the principle of sovereignty. The new principle must be able to provide equal opportunities. Law exists and is manifested as a balanced form of fulfillment of rights and obligations.

Plantations are currently inseparable from economic interests. The economic interest comes from the state, because the foreign exchange is expected to be obtained from the plantation activities. The economic interest is certain from investors or plantation companies who hope that their business will gain large profits. The state should position stakeholders, including the state as the holder of full power, and must be able to create a balance of economic interests. This is as a comparison, as follows (Harotono, 2000): The principle of balance requires a balance between: public interests and private interests, producers and consumers; entrepreneurs and workers; and the interests of the various parties involved in the agreement.

The principle of balance in principle should come from who created it? The principle of balance which has the domination of the right to create it must be based on strength from power, namely state sovereignty. It is the essence of the state's existence and purpose that encourages the creation of a balance principle or not. The principle of balance should be interpreted as having equal fulfillment of

rights and obligations, fulfillment of natural conservation interests and economic interests, subjective interests, namely groups of people who are smaller than groups of people who are more numerous.

The idea of the concept of thinking is the importance of maintaining a balance of interests, even though the state has absolute sovereignty. Balance as a concept to be used as a substitute for the principle of sovereignty in implementing sustainable plantations cannot be separated from the facts that have occurred so far. Land disputes and/or conflicts are increasing and occupying the majority are in the field of plantation land.

The principle of balance is presented as an idea for disputes and or conflicts over land/plantation land between large business actors, namely companies and community land owners, both individuals and those gathered in the MHA Community. The principle of balance as a legal ideal in the future is to answer the problem of plantation land conflicts.

Legal ideals function as a guiding star (Leitstern) for the achievement of society's ideals. Even though it is an impossible end point, legal ideals are beneficial because they contain two sides: with legal ideals we can test the positive law that applies, and with legal ideals, we can direct positive law as an effort with coercive sanctions towards something just / Zwangversuch zum Richtigen (Wiyono, 2015). Law matters not just for the evaluation of the state but also for the day-to-day operations of its main institutions and for people's understanding of their day-to-day interactions with it. Whatever else it does, law governs the categorization of rules and standards into those that are presented by the state to its subjects as legitimate demands and those that are not. Many people also accept the law as reason giving (Murphy, 2014).

The state has absolute authority and power to act as the highest absolute owner of land. The absolute authority and power in owning the land originates from the teachings of state sovereignty (dominion) to automatically become the absolute owner of land within the state's territorial environment (dominium). However, state ownership is not regulated based on property law (jus proprietatis), because the property law only regulates land ownership owned by people as legal private property, namely citizens (Soesangobeng, 2012). The large plantation system in particular Indonesia is one of the countries with prominent plantation economy characteristics. The large plantation system, at least in Asia, is a new phenomenon compared to smallholder agriculture. As the entry point for Western capitalism into the economies of the Third World, this plantation system was introduced primarily to produce the raw materials and tropical crops necessary for the benefit of the industrialized countries (Hayami, 1990).

A balance should also be prepared for saving natural resource assets (natural resource savings) as reserves that are inherited for future generations. Land tenure must be understood and interpreted as avoiding disputes and or conflicts and utilization through proper land use. Ownership of land or plantation land by companies. This can be seen, among others, from the contents of the the basic agrarian law which means (Nasoetion, 2002):

1. land at the highest level is controlled by the state and used for the greatest prosperity of the people;
2. excessive land ownership/control is not justified;
3. land is not an ordinary economic commodity, therefore land may not be traded solely for profit;
4. every citizen who owns/controls land is obliged to work on his own land, look after and maintain it, in accordance with the principles of environmental quality sustainability and natural resource productivity; And
5. customary law over land is recognized as long as it meets certain requirements.

Balance as a principle for plantations aims to create harmony of interests that are accommodated from the start through plantation planning, particularly with regard to land availability. Identification

of customary law community land ownership or truly free state land. The balance of interests, then spatial planning as the main key where it is the sovereignty of the state that has the highest authority to regulate land use. So far, various stakeholders have used maps in different formats. Differences or partial mapping give rise to disputes and or land conflicts.

Uncertainty about the designation of forest areas for plantations is also one that can hamper the rate of investment, infrastructure development and the effectiveness of forest governance itself, such as land rehabilitation and water catchment area protection. So this problem can also be a major source of tenure conflicts between various parties. From the data obtained, the forest area for 5 provinces (Riau, East Kalimantan, Central Kalimantan, West Sulawesi and Papua) is 57,989,655 ha. Of the 57,989,655 ha, the area of forest area in the 5 provinces that has not been determined is 18,056,925 ha (31.14%). This figure of 18,056,925 ha is the target of the Stranas PK for Designation of 100% Forest Areas during the 2020-2021 period. Details of Forest Areas that have not been determined per Province (December 2020) are as follows: (a) Central Kalimantan: 8,625,551 ha (67.81%); (b) East Kalimantan: 412,850 ha (4.92%); (c) Papua: 5,698,153 ha (18.75%); (d) Riau: 3,289,990 ha (60.85%); (d) West Sulawesi: 30,382 ha (2.78%) (Corruption Prevention National Secretariat, 2021).

One map which is determined from spatial determination which previously identification must be carried out on land or in spatial planning is called an area. Clarification of this area that can be assigned to plantation businesses or other businesses. The involvement of indigenous peoples in spatial planning should also be included in plantation planning. Therefore Article 12 of the Plantation Law must be amended in accordance with the principle of the intended balance.

The balance that places equal rights and obligations under the state's right to control as the highest principle governing the allotment and rights over land granted to legal subjects. The meaning of the State's tenure rights over land as the authority to regulate the legal relations of utilization of land rights by members of the public. Considering land as a natural resource which is a source of complications in society. Land as a limited economic resource is needed by everyone, so it requires regulation from the State so that its ownership and utilization will bring maximum prosperity (Daeng Kunu, 2012). Including the recognition of land rights from customary law community Ulayat Rights. Sovereignty actually resides with the State, so only the state holds sovereignty over its entire territory. The state is also obliged to provide protection to all Indonesian people. This protection is not only for the subject, but more broadly for the objects or rights owned by the people, including land and natural resources as long as the state does not want it for the interests of the state or the public interest (Nurjaya, 2008). While the plantation business is not a public interest, but a business interest.

The Indonesian Constitution can effectively protect indigenous peoples' rights to customary lands when the lands are being developed for infrastructure development. The relevance of justice to guarantee the right to life and property of indigenous peoples under the Indonesian constitution, constitutional protection and human rights interact to ensure the security of customary lands in Indonesia, all Indonesian laws and regulations regarding constitutional relations and human rights to protect customary lands will be reviewed (Rumiartha, 2022).

The state's protection of indigenous peoples' rights should have been reflected in the norms as in Article 12 paragraph (1) and paragraph (2) of the Plantations Law, showing the non-disclosure and principle (principle) of free consent and clear information (free and prior informed consent principle), not recognizing and protecting human rights as a whole, especially the rights of indigenous peoples and legal pluralism in the control and utilization of natural resources. and choosing the form of cooperation with Plantation Business Actors (Companies) without having to surrender the land and the rewards obtained.

4. Conclusion

Based on the discussion, there are several things that are important to serve as principles to replace the principle of sovereignty in the Plantation Law. The first is the new principles of balance (equilibrium), the right to control the state, and free and prior informed consent (principle of free and prior informed consent). The two norms based on the principle of balance gave birth to the new provisions of Article 12, namely: (1) Deliberations must be held in preparing spatial planning for plantation cultivation between the Regional Government and the Customary Law Community in the area to be designated as a cultivation area. (2) The Customary Law Community has the right to obtain approval freely in deliberations and obtain clear information on plantation planning in accordance with the regional spatial layout.

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