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Legal Reconstruction of Land Ownership Restrictions on Business Use Rights to Plantation Companies Reviewed from the Perspective of Social Justice

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Abstract. *This study discusses the legal reconstruction related to the restriction of land ownership of the Right to Use (HGU) by plantation companies from the perspective of social justice. The concentration of land ownership by large corporations often results in injustice for local communities and small farmers. The study aims to identify key issues in current HGU regulation and propose legal measures that can support a more equitable distribution of land as well as the recognition of the rights of indigenous and local peoples. The research method used is a normative study with a legislative approach and public policy analysis. The data used includes laws and regulations, academic literature, and reports from various related institutions. The results of the study show that it is necessary to limit the maximum area of HGU that can be owned by plantation companies, accelerate the agrarian reform program, and increase transparency and public participation in the process of granting HGU. In addition, stricter supervision and effective law enforcement are also very important to prevent abuse of business use rights. This study concludes that legal reconstruction that prioritizes the principle of social justice can reduce the land ownership gap and improve community welfare. The recommendations submitted are expected to be the basis for policymakers in formulating fairer and more sustainable regulations in the agrarian sector.*

Keywords: *Effort; Land; Ulayat; Use.*

1. INTRODUCTION

The study of history on a problem related to events and everything that happened in the past or knowledge or descriptions of events and events that really existed in the past,[1] in this case is associated with land ownership, namely the history of land

[1] Prima Pena Team, The *Great Dictionary of Indonesian* Language (Gita Media Press, no year), p. 684

ownership by humans and society at a time and place.

Ownership itself is an important thing in human life, if the world does not belong to it, in that world everyone can enter certain spaces or places without the need to obtain prior permission or without having to pay attention to whether the space or place belongs to someone. After there is ownership, then there is a person who claims to be the owner, in this case the owner will enjoy several benefits, namely the owner has the discretion to enjoy the object of his ownership without any interference from other parties, the owner can obstruct, prevent or eliminate the interference of others with the object of his ownership, the owner can also transfer the object of his ownership to any party according to his will.[2] With ownership, there is a restriction on the freedom, movement or traffic of others over a certain object/place, because there is someone who has placed his or her recognition or claim on the object/place.

According to C.B. Macpherson, ownership or property in the general sense is property, while in law property is not property but a right, the right to an object, while the right itself is a claim that can be imposed on the use and benefit of an object.[3] Land ownership is the right to land with a claim that can be imposed on the use and benefits of the land, therefore any name is given for a right to land, such as property rights, business use rights, building use rights, use rights, use rights, regardless of the difference in strength/limitation of each right, then the rights to the land in question are also called land ownership.

The history of land ownership is certainly inseparable from *the history of the first human* being to set foot on earth, namely the Prophet Adam Alaihissalam (AS) and can also be traced from *the history of laws* that have been made and or enforced in human civilization.

2. RESEARCH METHODS

The method used is normative juridical with a legislative approach, in addition to that, this study also uses qualitative data analysis.[4] To Unravel the Problem of Legal Reconstruction of Land Ownership Restrictions on Business Use Rights to Plantation Companies Reviewed from the Perspective of Social Justice

3. RESULT AND DISCUSSION

3.1 History of Customary Land Law

In the story of the Indies, G.J.F Beigman, said that Indonesia was originally called the land of the Indies, which since ancient times was inhabited by a nation called the Malays, only Papua was not inhabited by the Malays, even Malacca and small islands on the continent of Australia and Madagascar were inhabited by the Malays, all Malays had the same hair color, facial features, cognate nature and language, but the customs

[2] Embun Sari, *Reformulation of Abrasion Soil Compensation in the Implementation of Fair Land Procurement in Indonesia*, Dissertation, (Medan: University of North Sumatra, 2023), pp. 54-55
[3] CB Macpherson, *Basic Thoughts on Property* Rights (Jakarta: Yayasan LBH Indonesia, 1989), pp. 2-3
[4] Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 2012).

and intelligence are different, later came more intelligent foreign nations such as the Hindus, Arabs, Portuguese and Dutch who changed and improved the customs of the East Indies.[5]

The customs and religion of the East Indies (Malays) in ancient times considered all things to be alive, animals, plants, stones and others, some were magical or objects with great power such as big trees, mountains and weapons, some lived there were always changing places of residence like the Kalang people on the island of Java in the 17th century BC, some were good at forging iron and planting rice. Then came the Hindus, bringing their customs and religions, teaching various kinds of knowledge, especially the science of writing, playing puppets and gamelan, rice fields, making roads, carving stones and making walls, while the religions brought by the Hindus, namely Brahma and Buddhism. Some Hindu relics are in the form of temples, inscriptions and kingdoms. Temples are found in Central Java such as Borobudur Temple in Kedu (Buddhist temple), Sewu Temple near Perambanan, while inscriptions are found in West Java, while the famous Hindu kingdom is Majapahit which was founded 300 AD near Mojoagung Village in Mojokerto Regency. The Maharaja ruled in the capital of the country (palace), the area was divided into several parts and appointed *a monarch* (regent) who was obliged to deliver tribute once a year to the Maharaja and the nobles did not receive a salary but were awarded a piece of land that would be worked by his subordinates and part of the proceeds were handed over to his master. The lands that were conquered by Majapahit were Central Java, East Java, Bali Island, Lombok, Sumbawa, parts of Sumatra, Berunei Beach, Banda, Seram and Ternate, including Singapore.[6]

Subsequently, Arabs and Persians came to do business as well as teach Islam and marry indigenous children and some mixed with the local government and became Islamic kings/sultans, such as the Sultan of Pontianak, Malikulsaleh in Aceh (1354 AD) to Sultan Iskandar Muda (1606-1630) including ruling West Sumatra, Indrapura, Deli, Siak and Johor, while on the island of Java, famous for wali-waliullah (susuhunan/sunan), such as Maulana Malik Ibrahim (Gresik), Raden Rahmat (Ampel), Raden Paku (Giri), Sunan Bonang (Tuban), Sunan Drajat (Sedayu), Sunan Kudus (Jepara), Syech Nuruddin (Sunan Jati). It is said that Raden Rahmat taught Islam to Raden Patah (son of Brawijaya/Maharaja Mahapahit) and built a palace in Demak then gathered Muslims to destroy Majapahit and also other Hindu Kingdoms, so that the Hindus retreated to Banyuangi and Bali, so that on the island of Bali until now they still obey the customs and religion of the Hindus.[7]

In the book Complete History of Indonesia by Adi Sudirman, it is explained that the kingdoms and sultanates in Indonesia numbered more than 700 and the kingdoms/sultanates that will be discussed were a small part of which were large kingdoms in their time and succeeded in uniting all or part of the archipelago under their power.

The kingdoms in the archipelago that are influenced by Hindu teachings include:

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[5] G.J.F. Biegman, *Hikayat Tanah Indies, History of the Dutch East Indies from the Pre-Hindu Period to the 19th Century*, (Yogyakarta, Octopus, 2014), pp. 1-2

[6] Ibid, pp. 11-16

[7] Ibid, pp. 17-24

a. The Kingdom of Kutai, which was established around the 5th century AD in East Kalimantan with a prominent king, Mulawarman, in its social life there was a division of classes, namely brahmins and knights in accordance with the teachings of Hinduism which recognized the division of castes in society, with its economic life that is not known for sure but is estimated to rely on mining and livestock

b. The Kingdom of Tarumanegara in West Java in the 4th to 7th centuries AD with the largest King being Purnawarman who controlled almost all of West Java, the pattern of the economy was agriculture because in one of the monument inscriptions it was described the creation of a river for irrigation canals for people's rice fields.

c. The Kingdom of Kalingga in Central Java around the 6th century AD, with Queen Shima as the famous leader of the Kingdom, the economic pattern of the Kingdom is unknown, but from one of the inscriptions is depicted a clean and clear spring which in addition to describing the relationship between humans and Hindu gods is also related to agriculture, namely water that flows through people's agricultural land.

d. The Srivijaya Kingdom in Palembang since the 7th century AD with a very wide area of power stretched from the land of Java, Sumatra, the Kalimantan Coast, to Malaysia, Cambodia and Southern Thailand and was a maritime kingdom because the center of the Kingdom on the Musi River became a center of trade

e. The Kingdom of Sunda in the western part of Java Island ruled from about 669 to 1579 AD, standing in place of the Kingdom of Tarumanegara with the region of Banten and the western part of Central Java and covering the province of Lampung, led by the maharaja Sri Jayabupati, the citizens of the Kingdom generally lived from agriculture especially plantations.

f. The Kingdom of Kediri, founded in the 12th century between 1042-1222 centered on the banks of the Berantas River in the city of Daha, Kediri which was part of the ancient Kingdom of Mataram, with famous leaders King Airlangga and Jayabaya. The people live with agriculture, livestock and trade with the Berantas River being a crowded shipping route.

Meanwhile, the kingdoms that were influenced by the great teachings of Buddhism include:

a. The Singasari Kingdom which is located in the Malang area was founded by King Ken Arok around 1222 to 1292, there is no explanation regarding the economic pattern of this Kingdom.

b. The Mahapahit Kingdom with King Hayam Wuruk and Patih Gajahmada is known for the Palapa Oath in 1336 AD as the politics of unifying the archipelago from Sumatra to Papua/Irian and is the largest and most famous kingdom, with its economic style in the field of trade.

While there were kingdoms that were influenced by the teachings of Islam, the kingdom became a sultanate led by the Sultan, including:

a. The Samudera Pasai Sultanate in North Aceh was founded by Sultan Malik as-Saleh in the 13th century with its economic pattern in the field of trade by relying on pepper as a commodity, as well as agriculture and livestock.

b. The Sultanate of Ternate on the island of Maluku in the 14th century, and experienced the peak of its glory during the reign of Sultan Babullah and the Kingdom territory to the Southern Philippines and is famous for the archipelago Kingdom controlling approximately 72 islands, the economic pattern is the cultivation and trade of spices including cloves and pepper.

c. The Sultanate of Pagaruyung (1500-1825) is an Islamic Malay Kingdom located in West Sumatra, founded by Sultan Alif and the famous one is Sultan Tangkal Alam Bagagar.

Ter Haar said that the community/villagers have the right to work on customary land, which rights apply both to the villagers themselves (inside) and to residents outside the village (outside). Inside, it is regulated that the community as a unit has the right to enjoy the land and is responsible for the misappropriation committed by foreigners on the land, then each member of the community has the right to get their own share of the land and exercise their individual rights by being limited by the interests of the community. Outside, that outsiders can only work the land or collect the products from the land (forest) with permission from the group in the village by paying losses or money as a token of service.[8]

Ter Haar emphasized that the relationship between customary law communities and their land can be reviewed as a totality, namely indigenous peoples exercise customary rights by enjoying or collecting land, animals and plants, as a ruling body, customary law communities limit the freedom of citizens to collect the results of customary land, but residents have the right to personally enjoy their share of the land with a reciprocal relationship with the Communion with the aim of maintaining harmony in accordance with the interests of the community and its citizens.[9]

As for the personal/individual rights of the citizens of the customary law Federation over their land, according to Iman Sudiyat quoted by Soerjono Soekanto, he called it natural personal rights, consisting of: a) Property rights, yasan rights (*inland bezitrecht*); b) The right to vote, the right to vote, the right to precede (*voorkeursreht*); c) The right to enjoy the results (*genotrecht*); d) The right to use (*gebruiksrecht*) and the right to cultivate/cultivate (*ontginningsrecht*); e) The right to profit from the position (*ambtelijk profitrecht*); and the right to buy (*naastingsrecht*).[10]

The characteristics of such customary rights include: a) only the members of the legal community themselves have the right to freely use the uncultivated land within their territory, for example clearing land, establishing housing, gathering crops, hunting, herding livestock and so on, b) foreigners who are not members of the legal community (e.g. people from other villages) may only use the land with the permission

[8] B. Ter Haar Bzn, *Beginselen en Stelsel van het Adatrecht,* (Groningen-Jakarta: JB. Wolters, 1950), p. 56,
[9] Ter Haar, 1950, p. 57
[10] Soerjono Soekanto, 2021 : p. 9

of the legal society concerned, without their permission they are considered to have committed a violation, c) foreigners must pay a *recognitie* (giving money, materials or goods to a person or legal society in recognition of the rights of that person or legal society), d) customary law communities are responsible for certain crimes committed by unknown persons within their territory, e) indigenous peoples cannot alienate (dismantle) these customary rights. f) Customary rights are still valid on lands that have been well cultivated and those in their territory, but the inherent rights can still be strong or weakened.[11]

The last mentioned nature of customary rights shows that there is still an inherent "common right" in the ownership of land by the indigenous people, so that land transactions such as selling or pawning require the intervention of the legal community and are sometimes only allowed to apply among the members of the customary law community itself, as well as lands that are left alone or if the owner dies without heirs. will fall back into unlimited customary rights, until the customary head decides to give the land to another person or use it for the public interest, meaning that customary rights can penetrate, cover and regulate all the rights of the citizens, including on the lands that have been well cultivated.

3.2The Problem of Legal Reconstruction of Land Use Rights Ownership Restrictions to Plantation Companies Reviewed from the Perspective of Social Justice

In the customary law community, all activities are centered in the hands of the customary head (*adathoofd)*/village head, who is the father of the indigenous community/village and who is considered to know all the customary regulations and customary laws of the customary law community he leads.[12]

Substantively, the UUPA expressly repeals and is declared invalid, namely all Article 51 of the IS including *Agrarische-Wet* in 1870, all domein statements from the Government of the Dutch East Indies, regulations on *agrarian rights-eigendom and Articles of* Book-II of the Civil Code as far as the earth, water and natural resources contained therein are concerned. In addition, in terms of conception, the UUPA is based on customary law with the recognition of land ownership, both in the form of collective rights such as customary rights and individual rights such as property rights, as well as the adoption of western rights such as *erfpacht rights* into business use rights and *opstal rights* into building use rights, with the note that all individual land rights in principle remain within the scope and are shouted with collective rights called national rights and the right to control the state, which automatically eliminates its absolute nature.

The restriction on the ownership of agricultural land as stipulated in Article 1 stipulates that a person or persons who in their livelihood are a family together are only allowed to control agricultural land, either their own property or belonging to another person or controlled in its entirety must not exceed 20 hectares, both rice fields, dry land and rice fields and dry land, then Article 8 stipulates that the government conducts efforts

[11] Ibid, pp. 9-10

[12] Bushar Muhammad, *Principles of Customary Law (An Introduction*), Jakarta: Pradnya Paramita, 1976), p. 39

so that each farmer in the family has Minimum agricultural land of 2 hectares.[13]

However, considering that businesses in the agricultural field can be developed to support economic development and considering the history of land ownership since the colonial period which has provided land ownership for plantation businesses on a large scale and a large area, agricultural land ownership arrangements are made that adopt the rules contained in Western civil law into the land rights in the UUPA. namely *Erfpacht Rights and Opstal Rights* by naming them as Business Use Rights and Building Use Rights, although it is stated that HGU and HGB are not pure erfpacht rights and opstal rights in the Civil Code, but new rights with the principles of national agrarian law.

Article 28 of the UUPA regulates the Right to Use Business, by specifying as follows:

(1) The right to use business means the right to cultivate land directly controlled by the State, within the period as mentioned in Article 29, for the use of agricultural, fishery or livestock companies.

(2) The right to use business is granted to land with an area of at least 5 hectares, with the provision that if the area is 25 hectares or more, it must use appropriate capital investment and good company techniques, in accordance with the times.

(3) The right to use business can be transferred and transferred to other parties.

The problem is that the New Order government policy that pursues economic growth, economic growth requires capital/investment, investment that is expected only from abroad, especially corporations, investors ask for guarantees of ease and freedom to get a place to do business in the form of large plots of land, then rules are made that

[13] Regarding the ownership of the land, there has been a decision of the Constitutional Court regarding the restriction of land ownership, especially agricultural land, although in fact it only concerns agricultural land on a small scale, which is linked to the provisions of land reform as stipulated in Law Number 56 of 1960 Prp 1960 concerning the Determination of Agricultural Land Area, with the registration of case Number 11/PUU-V/2007 which was requested by Yusri Adrisoma as the heir of Dukrim bin Suta whose land was subject to restrictions by Law Number 56 of the 1960 Civil Code, postulating that Law Number 56 violates personal rights that have the strongest and fullest nature so that they cannot be taken arbitrarily by anyone as stated in the constitution.
The case was decided on September 20, 2007 with the decision of the panel of Constitutional judges as "Declaring the Petitioner's Application rejected". According to the Court, the provisions that regulate the maximum limit of agricultural land area that can be owned by individuals/families of Indonesian citizens have provided clear rules or provided legal certainty in the context of rearranging land ownership (landreform) in accordance with Article 33 paragraph (3) of the 1945 Constitution, UUPA and Law Number 56 of 1960 which reflect that land and its ownership have a social function. The granting of the strongest and fullest property rights in accordance with the explanation of Article 20 of the UUPA does not mean that the right is absolute, unlimited and inviolable as the right of eigendom according to the Burgerlijk Wetbook definition. Because such a nature is contrary to the nature of customary law and the social function of each right, even though the UUPA and Law Number 56 of 1960 are based on customary law. The words "strongest and fullest" are intended to distinguish them from the right to use business, the right to use, the right to use and other rights (Yance Arizona, *Agrarian Constitutionalism* (Yogyakarta: STPN Press, 2009), p. 230).

can create a conducive climate for investors, the first rule that was made is Law Number 1 of 1967 concerning foreign investment,[14] Subsequently, sectoral laws in the field of agrarian resources were made, such as the Forestry Law and the Mining Law, and followed by various policies in the form of economic deregulation packages, including in the land sector, especially the granting of business use rights and building use rights which are indeed a legacy of Western rights that allow corporations and individuals not only to strengthen land ownership that has existed since the colonial era but also to provide rights new land ownership on land removed from forest areas to be used as plantation land, with land area without restrictions. These sectoral laws and regulations no longer make the UUPA a consideration, thus ignoring the people's rights to land ownership based on customary law.

4. CONCLUSION

The change in the legal structure in the form of norms restricting land ownership of the Right to Use to plantation companies, juridically occurred due to changes in power/government that historically began in the era of customary law communities with legal constructions built on the foundation of customary law that allows federal citizens to obtain use rights and property rights for agricultural businesses with certain restrictions but are still bound by common rights called customary rights (communal) and believed to be sacred given by supernatural (religious) powers, then came the colonial nation with a colonial government that changed the building of the land ownership legal system on the basis of Western Law based on the principles of individualism and capitalism by granting erpacht rights and concession rights for plantation businesses, then in the era of independence the construction of land ownership laws with the value of independence and the constitution was overhauled by issuing a UUPA that returned to the basics customary law by making customary rights with a communalistic-religious framework raised to a higher level (state) by calling it the doctrine of the right to control the state (public) and it is possible to be granted by the state individual rights including HGU which remains bound by the doctrine of the right to control the state with the affirmation of the purpose of its use for justice and prosperity of the people, then there is a change of power to the new order government with a paradigm development that attaches importance to economic growth and for that must invite foreign investors by providing facilities, so that sectoral legal rules and implementing regulations of the UUPA are made which are considered to return to the individualist-capitalist principle

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[14] Law Number 1 of 1967 was still signed by President Soekarno on January 10, 1967 but at that time Sukarno was on the verge of falling, because on March 11, 1967 a March 11 decree was issued which became a milestone in the handover of state power from Sukarno to Suharto.

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