

Identification of Leading Factors And Legal Aspects For the Settlement of Apparently Abandoned Land In West Aceh District, Indonesia

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ABSTRACT: This research aimed to identify and explain the causative factors of unutilized land with its Cultivation Right (HGU) and legal aspects of abandoned land settlement. There are 119,400 ha. (31.48%) of abandoned land within the 379,374.02 ha of land with HGU in Aceh Province, while in West Aceh District there are only 20,380.68 ha. (46%) out of a total of 44,301.49 ha. of land for plantations. This situation is cause t for concern since both the national government and the local government of Aceh have the same vision to increase the farmer's welfare through their strategic programs of "Agrarian Reform", which have the main objective to redistribute land in order to decrease economic gaps between people in the country. Therefore, this research is important in order to find possible alternative ways to reuse HGU land which has been identified as abandoned land. The results show that there are four factors that cause HGU land to remain unplanted (1) the land is used for supporting facilities; (2) the physical condition of the land means it cannot be utilized eg., deep peat land; (3) the land is used as a reserved area; and (4) the land rights are disputed. There are several regulations that apply to land that is indicated as or apparently is abandoned land: first, an inventory must be made of land rights and in particular must identify land that is apparently/indicated as abandoned; second, identification and research into the land that is indicated as abandoned; third, warnings must be given to current rights holders; and last, the determination of the land as abandoned. Land with HGU that is apparently abandoned in West Aceh District has been identified and research into it's status has been conducted but none has yet to be designated as abandoned land.

KEYWORDS: cultivation rights, abandoned, identify, utilize

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I. INTRODUCTION

It has been acknowledged that the earth's land surface area is limited and whilst growing due to sedimentation and coastal reclamation is also tending to decrease as a result of natural events in particular sea level rising due to global warming, whereas the need for land is increasing for various interests corresponding to increases in population and their needs (Abolina and Luzadis, 2015; Low et al., 2015). The creation of legislation in the field of land affairs is intended to bring about equilibrium and equity in the control and utilization of land, both for cultivation and for community functions and every plot of land should be utilized in accordance with its functions (Pias et al., 2014; Lasanta et al., 2017). The Indonesian Act No. 5 of 1960 concerning Basic Regulations for Agrarian Principles sets out various kinds of land rights, one of which is the Right to Cultivation. Indonesian Government Regulation Number 40 of 1996, concerning Cultivation Rights, Building Rights, and Use Rights on lands, states that Rights to Cultivation of Land can be used for agricultural businesses including plantations, fisheries, and raising livestock.

Article 34 sub e of the Indonesian Act Number 5 of 1960 and Article 17 Paragraph (1) of the Indonesian Government Regulation Number 40 of 1996 stipulate that Land Cultivation Rights are abolished if the land is abandoned. Abandoned land is a type of resource, a wasteland that can significantly damage the ecological environment and can affect construction in a city (Wang et al., 2017). In many regions worldwide, abandoned cropland is increasing, which has strong, known environmental and socio-economic consequences (Low et al., 2015). Abandoning of agricultural land often occurs with more marginal lands (Smaliychuk et al., 2016). There are 129 plantation companies that have Cultivation Rights to Land in Aceh with a total area of 379,374.02 hectares, spread over 15 districts. From this total area, there are 119,400 hectares (31.48 percent) which have not yet been planted since the granting of rights to cultivate that appear to be abandoned (Aceh

Regional Secretariat, 2013). On the other hand, the Government of Aceh has been planning equitable distribution of agricultural land of at least 2 hectares per householder/farmer family, but this effort cannot be realized because there is no valid data about the agricultural lands that can be utilized for it (Government of Aceh, 2011). Therefore, it is urgent to find alternative models for control and utilization of Cultivation Rights on Land that appear to be abandoned, so that the utilization of this agricultural land can be optimised by redistribution to potential new land users to help them increase their prosperity through farming. In relation to this matter, the problems to be looked at in this study are as follows: (1) What factors are causing land which has been granted with Cultivation Rights to remain unutilized and hence to become abandoned, and (2) How to resettle lands which have been abandoned.

II. LITERATURE REVIEW

Determination of the maximum area of agricultural land ownership per family is necessary in order to be able to distribute agricultural lands fairly because agricultural lands tend to be accumulated by wealthier owners (Wang et al., 2017; Griewald et al., 2017; Wineman and Liverpool-Tasie, 2017). In addition, increases in the economic value of land has resulted in widening social gaps between those who have access that allows the control of land that exceeds the limits of fairness with those who need land the most but do not have access to it (Sumardjono, 2008: 11). Equitable land access is widely recognized as important for both increasing the pace of agricultural growth and the extent to which such growth will reduce poverty and will distribute prosperity more widely. (Wineman and Liverpool-Tasie, 2017).

The regulation on the maximum limit of agricultural land is specified in Indonesian Act No. 56 / PRP / 1960 on the Stipulation of the Land Area for Agriculture. Article 1 paragraph (2) which states that the maximum area of agricultural land which may be owned by a person or a family is determined by the population density and the area of a region, and the range is between 5 (five) hectares and up to 15 (fifteen) hectares for paddy fields or 6 (six) hectares and up to 20 (twenty) hectares for dry land or both together not to exceed 20 (twenty) hectares. However, Article 2 Paragraph (1) specifies that under special circumstances the Minister may increase the maximum area up to 25 (twenty five) hectares, for instance if the land is very barren and the number of family members is large (Harsono, 2005: 75).

Furthermore, in Article 2 paragraph (4) the meaning of this maximum area shall not apply to this type of agricultural land that is (a) controlled by rights to use or other rights that are temporary and restricted by the government, and (b) controlled by legal entities eg. plantation companies. . At least there are three things that can be observed from these rules. Firstly, a maximum size limit for the control of agricultural land is an absolute thing that must be implemented as a prerequisite for the realization of greater prosperity of the people, especially for poor farmers. An indication of the inequality of land distribution is the small number of people who control most of the land while the majority of the population only control a small part of the land. Only 0.2% of Indonesia's population controls or owns 56% of the national assets, mostly in the form of land, whilst on the other hand, in the period 1993-2003 the number of smallholders grew from 10.8 million to 13.7 million people (Kompas, 2012, January 6). Secondly, the maximum limit set in Indonesian Act No. 56 of 1960 is no longer suitable for current conditions because the population has more than doubled since the 1960's, in addition the extent of agricultural land has tended to decrease due to natural events and to land conversion. Every year at least 100,000 hectares of productive agricultural land changes function, especially rice fields in Java, for various purposes, especially for housing estates and industry (Kompas, 2012, July 24). This condition will certainly reduce the agricultural land that can be utilized by small farmers to support themselves and their families.

According to Ismail, N. (2007: 184) the maximum limit of the area of land specified in Indonesian Act No. 56/1960 is based on several variables which have produced a varied maximum limit which has tended to open up opportunities for the rich farmers to keep large areas of land in family ownership. Rajagukguk (2012: 19) has said that the maximum limit of land tenure in Indonesia is high compared to that in Japan, Taiwan and South Korea when those countries implemented their land reform programs, therefore the maximum limit of land tenure in Java should be reduced to two hectares, so then the additional land available can be re-distributed to farmers who have very little or no land. Furthermore Ismail, N. (2007: 186-190) has stated that the exclusion of a maximum size limit for agricultural land for Cultivation Rights, especially those controlled by legal entities tends to the accumulation of more land by plantation companies. The provision of Cultivation Rights for a relatively unlimited period of time has limited opportunities for the utilization of farmland by local farmers, and there is also an indication that the lands employed by local farmers under customary law tend to be regarded by the government as state lands which can later be granted with Cultivation Rights to plantation companies. This Cultivation Rights transfer has led to land use changes which have brought environmental, economic and social consequences as well (Griewald et al., 2017; Padonou et al., 2017) There are also cases of the cultivation by villagers of plantation lands that are not being used. These have caused conflicts between plantation companies and villagers resulting in material losses and also in casualties (Gradinaru et al., 2013). In 2011 the Agrarian

Reform Consortium noted that agrarian conflicts involved 69,975 families across Indonesia in disputes over 476,048 hectares of land and the death of at least 22 people (Kompas, 2012, May 29).

Exceptions to the extent of agricultural lands controlled by Cultivation Rights and/or legal status indicates that legislators and bureaucrats have ignored the substance of Article 33 Paragraph (3) of the 1945 Indonesian Constitution which states "the earth and water and the natural resources contained therein are controlled by the state and will be used for the greatest prosperity of the people". Of course, it is difficult to achieve the greatest prosperity of the people if most of the Indonesian farming population only controls a very small area of land while most of the land is controlled by a small number of rich people and their companies. Whatever the considerations are, these have had implications for the inequality of land tenure distribution. Special and excessive treatment for plantation companies that control land with Cultivation Rights with relatively unlimited extent has harmed the spirit of the land reform program as mandated in the Legislation of the Government of Aceh (UUPA) which essentially wants equitable distribution of land tenure. Hence, this has not been synchronized, because on one hand there are laws that restrict the control of land by individuals but on the other hand there are no laws that restrict the control of land by the companies holding agricultural land including Cultivation Rights (Badan Pertanahan Nasional (BPN), 2009: 112).

Literally the maximum limit of land set out by the Minister of Agriculture mentioned before will not occur unless PMNA/KPBN 2/1999 is taken into account which formulates the maximum limit for a company and for a group of companies. This means that this maximum limit will apply to a group/holding company. However, for now the maximum limits of land tenure with Cultivation Rights status needs to be reviewed so that it can accommodate the needs of farmers and investors equally (Ismail, I., 2012: 352-363).

The existence of land with Cultivation Rights which has not been used by the rights holder has the potential to be cultivated by other parties and this tends to cause disputes which are difficult to resolve completely (Ismail, I. et al, 2015: 1-17). Moreover the Agrarian Reform Consortium noted that in 2011 alone there were 163 agricultural conflicts recorded involving 69,975 families with the extent of conflict area reaching 472,048.44 hectares and the people killed by agrarian conflict amounted to 22 compared to the number of agricultural conflicts in 2010 which was only 106 cases, therefore it showed an increase (Kompas, January 6, 2012).

III. RESEARCH METHOD

Material for the writing of this article was sourced from literature and in-field data. Library research was done first followed by the field research. The literature materials to be reviewed in the contents were the legislation, relevant expert views and previous research results. While the data collected in-field related to the documents relevant to Cultivation Rights. The literature data review was conducted by clarifying and reviewing legal materials (primary, secondary and tertiary), while other data was collected through in-depth interviews with the stakeholders plus document tracking.

IV. RESULTS AND DISCUSSION

a. Factors causing land with Cultivation Rights to be unutilized

Particularly, based on the most recent data available which is from 2013, in West Aceh District there were 8 plantation companies with a total area of 44,301.49 hectares, only 20,380.68 hectares (46.00 percent) of which were planted (Aceh Regional Secretariat, 2013: 57-65). There are four factors that cause land which has been granted with Cultivation Rights to remain unutilized.

First, the land is used for supporting facilities. About 916.63 hectares (2.06%) of the total area held by plantation companies is used for various supporting facilities such as roads, offices, plantation buildings, workshops and employee housing (Aceh Regional Secretariat, 2013);

Second, the physical condition of the land means that it cannot be utilized. 5 out of the 8 HGUs (lands which have been granted Cultivation Rights) therein have areas that are categorized as conservation land indicated as peat lands with depth of peat of at least 3 meters. The total area in this category amounted to 1,773.70 hectares or 4.00 percent of the total cultivation land area (Aceh Regional Secretariat, 2013).

Third, the land is categorized as reserve areas. There are 16,368.84 hectares of land granted Cultivation Rights, which are categorized as reserve areas and which have not been cultivated at all and there are 4,371.64 hectares in which the land clearing has been done but the land has not yet been planted up so it is also considered as land that is not cultivated ie/ abandoned (Aceh Regional Secretariat, 2013).

Fourth, there are disputed lands. Some local communities have cultivated some of the unused Cultivation Rights land areas held by these companies. Although no concrete data was obtained on the extent of cultivation rights land in dispute with the local communities, 5 of the 8 companies holding cultivation rights, namely PT. SIR, PT. KTS, PT Betami, PT. PAAL, and PT. ASN have parts of their land disputed by local communities. PT PAAL has sought to resolve their dispute by providing compensation to the community (Manulang, Public Relations Department at PT PAAL, interview, July 13th 2016). In addition, there are also

disputes with the Government of Aceh in connection with the issuance of the Plantation Business License proposed by the (which?) company (M. Jailani A. Bakar, Head of Forestry and Plantation Office of Aceh, Interview, July 22nd 2016).

b. The settlement of land that is apparently abandoned

Badan Pertanahan Nasional (National Land Board/BPN) Provincial Office has been directed to provide data on abandoned land based on identification and research to a Committee established to handle it. The identification and research activities are carried out starting three years after the issuance of land rights, or since the expiry of the license/decision/letter of land ownership issued by the authorized officials. (Dinas Kehutanan dan Perkebunan Kab. Aceh Barat, 2016) The main thing to be identified by research is the cause of the non-implementation of the land use for which rights have been granted or the causal factor causing the discontinuity of the land rights use to the land. Unutilized reserve areas and disputes over land are two significant factors yet to be followed up by the investigatory process. Funding shortages including tough requirements to get bank loans are one kind of excuse for the land to remain unused for a relatively long time.

Concerning the land dispute between the local community and PT. PAAL, there have been efforts to find a solution through talks facilitated by the West Aceh District Government which resulted in an agreement for compensation and the implementation of a plasma plantation area, although the recent realization of the plasma plantation area only resulted in 271.90 hectares of the planned 7,022.00 hectares (Forestry and Plantation Office of West Aceh District, 2016).

Another dispute was between PT. SIR and the Government of Aceh regarding the issuance of a Plantation Business License proposed by PT. SIR based on letter number 775/pt.sir/xi/2013 dated November 15, 2013. PT. SIR sued the Aceh Government in the State Administrative Court of Banda Aceh which, pursuant to Decision Number 13/G/2014/PTUN-BNA dated February 17, 2015, essentially stated that the lawsuit was not granted. PT. SIR appealed the decision and based on the Decision of the Administrative High Court of Medan with No. 73/B/2015/PT.TUN.MDN dated July 8, 2015 the appeal was accepted and the decision of the State Administrative Court of Banda Aceh was cancelled. Surprised by the decision, the Government of Aceh filed an appeal and subsequently won the following appeal based on Supreme Court Decision Number 557. K/TUN/2015 dated December 14, 2015 which reinstated the 2015 Decision of the State Administrative Court of Banda Aceh. Therefore the Government of Aceh has the authority not to issue a SIUP for PT. SIR and PT. SIR cannot get Cultivation Rights or a SIUP for the areas of land concerned (A SIUP is a permit to plant crops on land).

To this date, what has been done by the BPN Provincial Office of Aceh concerning land which could be cultivated but appears to be abandoned is only at the phase of identification and research, no land has yet been declared as abandoned. At present the authority to declare land with cultivation right as abandoned land lies with the National Head of the National Land Agency (According to Saiful Azhari, Head of the Department of Land Rights and Land Registration, BPN Provincial Office of Aceh, in an interview on July 22nd 2016). There needs to be a regulatory change related to the authority for declaring land cultivation rights abandoned, which currently lies with the Head of the National Land Agency authority. This authority should be transferred to the provincial level so that it can be administered more efficiently.

V. CONCLUSIONS

There are four factors that cause land to be unused for its Cultivation Rights in Aceh and in West Aceh District in particular, namely: (1) the land is used for supporting facilities; (2) the physical condition of the land, which means it cannot be utilized; (3) the land is set aside as a reserve area; and (4) it is land where a dispute has occurred. There are several regulations related to the reuse of abandoned land for new settlements/uses, which include: the inventory of land with rights for basic tenure which appears to be abandoned land; identification and research to list apparently abandoned land; warnings have to be given to the rights holders; and finally the determination has to be made of the land as abandoned land. For some lands indicated as abandoned an authorized institution has been conducting identification and research, but so far no land has yet been officially designated as abandoned.

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