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EX-PTPN-II CULTIVATION RIGHTS ISSUES AND THE CURRENT DEVELOPMENT

ISU-ISU HAK PENGELOLAAN EX-PTPN II DAN PERKEMBANGANNYA SAAT INI

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Abstract: The settlement of non-renewable (Ex) cultivation rights owned by Nusantara Plantation Limited Company (PTPN)-II has been underway since 2002 and unfinished until now. The problems faced in its settlement are not only issues of land administration but are related to various aspects. This research used empirical methods with the description approach. The type of data used is primary and secondary data. Data collection was done by interview and a literature study with primary, secondary, and tertiary legal materials. The results of this study are to explain and give an overview of the very long process of land settlement in the ex-PTPN-II cultivation rights in North Sumatra Province. In conclusion, it is necessary to revise Decree of the Head of the National Land Agency Number 42/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Deli Serdang Regency, North Sumatra Province, Decree of the Head of the National Land Agency Number 43/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Langkat Regency, North Sumatra Province, and Decree of the Head of the National Land Agency Number 44/HGU/BPN/2002 concerning the rejection of the application for the extension of the period of the land use rights located in the city of Binjai, North Sumatra Province, respectively dated November 29, 2002. A legal consensus needs to be formulated to accelerate the completion of ex-PTPN-II cultivation rights, as well as a Presidential Decree to be the legal basis for its resolution.

Keywords: Cultivation Rights, State Assets, Land Administration.

Intisari: Penyelesaian masalah Hak Guna Usaha (HGU) Ex. PTPN-II telah berlangsung sejak tahun 2002 dan telah 18 tahun belum selesai hingga sekarang. Masalah yang dihadapi bukan hanya masalah administrasi pertanahan tetapi terkait dengan berbagai aspek. Penelitian ini menggunakan metode empiris dengan pendekatan deskriptif. Jenis data yang digunakan adalah data primer dan sekunder. Pengumpulan data dilakukan dengan wawancara dan studi literatur dengan materi hukum primer, sekunder, dan tersier. Hasil penelitian ini memberikan gambaran umum dari proses penyelesaian lahan yang sangat lama terhadap HGU ex PTPN-II di Provinsi Sumatera Utara. Kesimpulannya adalah perlu untuk merevisi Keputusan Kepala Badan Pertanahan Nasional Nomor 42/HGU/BPN/2002, Keputusan Kepala Badan Pertanahan Nasional Nomor 43/HGU/BPN/2002, dan Keputusan Kepala Badan Pertanahan Nasional Nomor 44/HGU/BPN/2002. Perlu dirumuskan secara legal konsensus untuk mempercepat penyelesaian HGU ex-PTPN-II, dan diperlukan Keputusan Presiden, yang dapat menjadi dasar hukum untuk penyelesaiannya.

Kata Kunci: Hak Guna Usaha, Aset Negara, Administrasi Pertanahan.

A. Introduction

The cultivation rights (Hak Guna Usaha/HGU) as one type of land rights is regulated in Articles 28-34 of Law Number 5 of 1960 on Basic Regulation of Agrarian Principles. Further rules regarding land use rights are contained in Government Regulation Number 40 of 1996 concerning building rights, cultivation rights, and use rights (Articles 2 to 18). Concerning the cultivation rights both regarding the subject, the imposition, the transfer and the abolition of cultivation rights, the matter that needs attention is concerning the land status that can be granted by the cultivation rights. Provisions in Article 28 paragraph (1) of Law Number 5 of 1960 and Article 4 of Government Regulation Number 40 of 1996 states that land that can be granted with cultivation rights is land that is directly controlled by the State. The cultivation rights can also be given to Plantation Companies on land whose status of rights existed before the Law Number 5 of 1960 came into effect such as *Erfpacht Rights*, concessions or leases, provided that the conditions must be converted to cultivation rights no later than September 24, 1980 (Basic Regulation of Agrarian Principles 1960).

PTPN-II, as a State-Owned Enterprise (BUMN), engaged in plantation business, has an area of business in North Sumatra as a company engaged in plantations, the status of the rights to the land controlled and managed following the provisions of the Law Number 5 of 1960 and Government Regulation Number 40 of 1996, namely HGU. The HGU owned by PTPN-II originally came from the PTP-IX and PTP-II areas. PTP-IX is a change from the Deli Tobacco National Plantation Company, which manages tobacco cultivation in the East Sumatra region. The area of the Deli Tobacco National Plantation Company was originally 250,000 Ha, managed by a Dutch company, N.V. Verenigde Deli Maatschappij/N.V.VDM, with the status of concession rights (Harsono 2007) from the Sultan (Sultan Deli, Langkat, and Serdang) as outlined in the Concession Deed.

The B Plus Committee was formed by the

North Sumatra Provincial Government to settle land disputes over the PTPN-II area based on North Sumatra Governor Decree Number 593.4/065.K/Year 2000 February 11, 2000 and Number 593.4/2060.K Year 2000 dated 17 Mel 2000, also recommended the reduction/release of PTPN-II's cultivation rights area of 5,873.06 hectares and has been strengthened by Decree of the Head of the National Land Agency Number 42/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Deli Serdang Regency, North Sumatra Province, Decree of the Head of the National Land Agency Number 43/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Langkat Regency, North Sumatra Province, and Decree of the Head of the National Land Agency Number 44/HGU/BPN/2002 concerning the rejection of the application for the extension of the period of the land use rights located in the city of Binjai, North Sumatra Province, respectively dated November 29, 2002 which confirms that the 5,873.06 Ha area of land is land directly controlled by the State which governs control, use and the allotment was submitted to the Governor of North Sumatra for processing in accordance with the provisions of the legislation in force after obtaining permission to release the asset from the authorized Minister as it is known that PTPN-II is a state-owned company in the form of a limited liability company whose capital is divided into shares that are all or at least 51% of the shares owned by the State whose primary purpose is to pursue profits (Law Number 19 2003).

As a State-Owned Enterprise (BUMN), PTPN-II manages state assets in the form of state assets that have been separated from the State Budget (APBN) to be used as state capital participation in Persero and or Perum and other limited liability companies. The operationalization and management of PTPN-II are under the guidance of the Minister of BUMN. Therefore, if the state assets are to be released, they must obtain permission from the Minister of State-Owned Enterprises.

Until now, 18 years have passed, and the land

issue of the ex-PTPN-II cultivation right has not yet been entirely resolved. In this research, it is explained a number of the causes of problems in settlement of the ex-PTPN-II cultivation rights in North Sumatra Province.

B. Ex-PTPN-II Cultivation Rights Now

The problems of the ex-PTPN-II cultivation rights issue are caused by several interrelated aspects. The substance of the problem is (Campbell 1978) the authority of each relevant stakeholder, the aspects of land administration, the interests of relevant stakeholders, changes ((people's demand, government interests, and government policy) and development of community economic and spatial planning (See table 2). This problem is also caused by the fact that PTPN II's cultivation rights, which were not renewed, were broad enough to reach 5873.06 Ha, which is about 5.59% of the previous total area of PTPN II's cultivation rights (Sitorus & Dick 2002; Pelzer 1991). The area of the non-renewed cultivation rights is almost the same as twice the size of the Yogyakarta City, the Special Province of Yogyakarta. The distribution of ex-PTPN-II cultivation rights also covers three (3) regencies (Langkat, Deli Serdang, Serdang Bedagai) and One (1) City of Binjai (See Table 1).

Tabel 1. List of PTPN II's Cultivation Rights in North Sumatra Province (Land Area in Hectares (Ha))

No.	Regency/City	Area of Cultivation Rights Previous	Area in Process Extension of Cultivation Rights	Area of Cultivation Rights are not renewed
1	Deli Serdang	39.669,92	35.277,03	4.392,89
2	Langkat	63.121,71	61.910,84	1.210,87
3	Serdang Bedagai	2.029,59	1.998,81	30,78
4	Kota Binjai	238,52	0,00	238,52
	Amount =	105.059,74	99.186,68	5.873,06

Source: Processed from various sources, 2020.

The completion of the ex-PTPN-II cultivation rights involved the Central Government, North Sumatra Provincial Government, and Local Government (Langkat Regency, Deli Serdang Regency, Serdang Bedagai Regency, and Binjai City). At each level, the levels of government have their respective interests in the process of settling

ex-PTPN-II cultivation rights. The central government (the Ministry of Agrarian and Spatial Planning/National Land Agency), for example, to date wants Decree of the Head of the National Land Agency Number 42/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Deli Serdang Regency, North Sumatra Province, Decree of the Head of the National Land Agency Number 43/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Langkat Regency, North Sumatra Province, and Decree of the Head of the National Land Agency Number 44/HGU/BPN/2002 concerning the rejection of the application for the extension of the period of the land use rights located in the city of Binjai, North Sumatra Province, respectively dated November 29, 2002, to be completed.

On the other side, the provincial government, in its journey, the decree issued by the central government, was still challenging to implement because of various obstacles. The regency/city government also experiences the same thing as the Provincial Government. Examples of constraints are the incompatibility of both quantitative and qualitative data from the decree with real facts and dynamics that occur in the field, land size discrepancy, the incompatibility of ex HGU recipients lists, and other fundamentally technical issues.

Meanwhile, PTPN-II, as the previous landowner, also could not do much because the regulation of the distribution of ex-PTPN-II cultivation rights was under the authority of the provincial government and regency/city government. The difficulty is further compounded by the regulation that the ex-PTPN-II cultivation rights under state administration are recorded as a state asset whose release process is regulated separately.

Tabel 2. List of ex-PTPN-II Cultivation Rights Conditions in North Sumatra Province (Land Area in Hectares (Ha))

No.	Regency/ City	People's Demands	Arable	Application for Retired Houses Employee PTPN-II	Regional/ Spatial Planning (RUTRWK)	Malay Customary Community	University of Northern Sumatra
1	Deli Serdang	900,98	280,22	441,99	2.219,70	250,00	300,00
2	Langkat Serdang	467,40	120,96	114,04	308,47	200,00	0,00
3	Bedagai Kota	8,74	22,04	0	0,00	0,00	0,00
4	Binjai	0,00	122,90	2,32	113,30	00	0,00
Amount =		1.377,12	546,12	558,35	2.641,47	450,00	250,00

Source: Processed from various sources, 2020.

The people's demands and respect for the Malay tradition accommodated by the government are part of a long story of the history of PTPN-II land that was ambiguous in the past (Sibarani, KNP 2020). This people's demand, for example, is due to the chaotic nature of land administration in the past, where annexation of community areas that were not previously cultivation rights became cultivation rights areas. The appreciation of the Malay tradition is a kind of "reconciliation and mutual consensus" (Assiddiqie 2008) towards the win-win solution in rectifying the history of PTPN II's cultivation rights land, which in the past was very close to the Sultanate and the Malay traditional people. What was decided later was certainly not able to satisfy all parties. However, this is a significant advance in land law history in Indonesia. The law is enforced and carried out against landowners forsake a sense/value of justice (Raharjo 1998; Al-Thahanawi 2007).

Based on Decree of the Head of the National Land Agency Number 42/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Deli Serdang Regency, North Sumatra Province, Decree of the Head of the National Land Agency Number 43/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Langkat Regency, North Sumatra Province, and Decree of the Head of the National Land Agency Number 44/HGU/BPN/2002 concerning the rejection of the application for the extension of the period of the land use rights located in the city of Binjai, North Sumatra Prov-

ince, respectively dated November 29, 2002, allotment for varied ex-PTPN-II cultivation rights. The non-renewal of PTPN II's cultivation rights covering an area of 5873.06 Ha is due to several factors (See Table 2), that is: The existence of people's demands; Arable; Application for PTPN II Employee Pensioners; Regional/Spatial Planning (RUTRWK); Appreciation to Malay Customary Community; and For the benefit of educational development of the University of Northern Sumatra.

PTPN-II, as one of the BUMN's company, refers to the principles of Good Corporate Governance (GCG) (Wibowo, Tomo, dan Nogi 2004). The granting of the PTPN-II employee's house request, which later became the land of ex-PTPN-II cultivation rights, is evidence that PTPN-II applies the principle of Responsibility and Fairness. PTPN-II is responsible for paying attention to the welfare and appreciation of the loyalty of its employees. The Principle of Responsibility is also carried out following the principle of fairness where the approval of the release of ex-PTPN-II cultivation rights land assets for employee housing is following the list of residents who have inhabited the house.

Ex-PTPN-II cultivation rights land was also allocated for educational purposes, namely the development of the University of Northern Sumatra. The University of North Sumatra is a state-owned public university in North Sumatra Province. As the times evolve and educational needs continue to increase, it is necessary to develop the campus. For this reason, a large amount of land is needed, and strategic easy to reach. PTPN II's non-renewed cultivation rights land is located in areas that are quite strategic and easily accessible. This object became one of the grounds for the Ex-PTPN-II cultivation rights land.

Furthermore, spatial change is a necessity in society, and the State continues to grow and improve all the time. PTPN II's cultivation rights covering an area of 2,641.47 Ha by the Central Government was not granted an extension of its rights due to changes in regional and regional/spatial planning (RUTRWK) (Presidential Regulation

Number 62, 2011). This RUTRWK change occurred in the Deli Serdang Regency, Langkat Regency, and Binjai City, bearing in mind the needs of developing the region.

Since the issuance of Decree of the Head of the National Land Agency Number 42/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Deli Serdang Regency, North Sumatra Province, Decree of the Head of the National Land Agency Number 43/HGU/BPN/2002 concerning the granting of an extension of the term of the land use rights located in the Langkat Regency, North Sumatra Province, and Decree of the Head of the National Land Agency Number 44/HGU/BPN/2002 concerning the rejection of the application for the extension of the period of the land use rights located in the city of Binjai, North Sumatra Province, respectively dated November 29, 2002, it means that it has been more than 18 years the process has been running. This process has not been completed until now. During this period, several areas that were possible to be processed and resolved, then the land legalization process was carried out (see Table 3).

Tabel 3. List of Recapitulation of PTPN II Asset Legalization Process (Cultivation Rights) in North Sumatra Province (Land Area in Hectares (Ha))

No.	Asset Legalization Process	Land Area
1	Certificate of Cultivation Rights Has been Issued of Decree of the Head of the National Land Agency of Cultivation	93.290,77
2	Rights but Not yet processed Certificate Land Certification Process (First Land	1.350,78
3	Registration)	3.020,57
4	Land Certification Process (Renewable Cultivation Rights)	4.905,00
Amount =		102.567,12

Source: Processed from various sources, 2020.

Meanwhile, the area of ex-PTPN-II cultivation rights covering 5873.06 Ha, which has been settled, is 2,768,285 Ha ($\pm 47.13\%$) and the remaining 3,104.77 Ha ($\pm 52.87\%$). So that within 18 years, more or less half of the ex-PTPN-II cultivation rights area was completed. Ex-PTPN-II cultivation rights areas that have been settled are cultivation rights areas that have been written off as State

assets and transferred from PTPN II to another stakeholder. (See Table 4).

Tabel 4. List of Land Settlement of Ex-PTPN-II Cultivation Rights Assets in North Sumatra Province (Land Area in Hectares (Ha))

No.	Types of Ex-PTPN-II Cultivation Rights Land Allocation	Land Area
1	Nominative List	2.216,285
2	University of Northern Sumatra	300,00
3	Islamic Center of Northern Sumatra	50,00
4	Botanical Garden of North Sumatra Provincial Government	200,00
5	Senior High School 1 Beringin	2,00
Amount =		2.768,285

Source: Processed from various sources, 2020.

The unresolved land issue of ex PTPN-II cultivation rights has led to allegations of land mafia involvement that has taken advantage of the protracted land problems. So then get the attention of the President. The President on March 11, 2020, then held a limited meeting to discuss the acceleration of the resolution of land issues in North Sumatra (<https://www.presidentri.go.id/foto/president-pimpin-ratas-percepatan-penyelesaian-pertanahan-sumut/>).

The principal of the problem in question is the resolution of the ex PTPN II HGU land issue. As of this writing, the follow up of the limited presidential meeting was the descent of a task force team from the central government to study and prepare concrete steps in resolving land issues in North Sumatra. This team was immediately given a mandate by the President and later reported it to the President.

C. Conclusion

From the description above, it appears that it takes quite a long time for the completion of the ex-PTPN-II cultivation rights land owned by PTPN II in North Sumatra Province. It takes 18 years to complete about half of the ex-PTPN-II cultivation rights land. These facts mean that it took 36 years to complete it entirely and that legal uncertainty lasted for so long (Manan, H.A. 2014). To complete, it takes the same time as the first cultivation rights, which is 35 years. What a very long and inefficient time. This long time

certainly also requires a tiring effort for all parties involved. Costs incurred are certainly not small. Not to mention the economic value of land that cannot be optimized for the development and welfare of the people in the region.

The current regulation regarding the extension of cultivation, particularly concerning BUMN, such as PTPN II, is inadequate for a fast and efficient process. Economic development and rapid socio-economic changes require an adaptive regulation that responds to the needs of various stakeholders.

Indonesia is a state of law (Tamanaha 2006). The government, as a state-based is responsible for improving the quality of public services (Komisi Hukum Nasional RI 2003). The central government, in this case, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, must make a legal innovation that can answer problems like this. Given the future, the Indonesian nation will compete with other countries in terms of advancing the economy through investment. The slow handling of land problems will be a limiting factor in the pace of investment in Indonesia. Investors will be reluctant to invest if the land problem is slow to solve. The government must be able to provide fair (Zaini 2012) legal certainty (Soeroso 2013) related to land to support investment.

D. Recommendations

In this research, several recommendations can be made that could be a breakthrough in efforts to accelerate the completion of ex-PTPN-II cultivation rights land, that is:

1. Settlement of ex-PTPN-II cultivation rights land can be accelerated if Decree of the Head of the National Land Agency Number 42/HGU/BPN/2002, Number 43/HGU/BPN/2002, Number 44/HGU/BPN/2002 and Number 10/HGU/BPN/2004 are revised by the Central Government in terms of this is the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency. Revision is based on the fact that a lot of data that is not suitable both quantitatively and

qualitatively is contained in the decree. The revision of the decree is also needed considering that within 18 years, there must have been many changes in the field of data that are no longer appropriate. Regulations should be adaptive to the various changes that occur.

2. Then, in addition to making revisions, it must be formulated legal consensus for clearer and simpler regulations regarding the status of state land that is recorded as a state asset. In this case, the case of the non-extended PTPN-II cultivation rights land, which became state land but was held hostage as a state asset, must be resolved by a separate mechanism. It needs to make a regulation that any ex-cultivation rights land owned by PTPN-II or BUMN in general that has not been extended, will automatically become state land granted by the Right of Use or Management Right to the Provincial Government. The basis for the consideration is that the ex-cultivation rights land, its distribution authority, is by the Governor (Provincial Head). Also, by becoming the Right to Use or Management Rights of the Provincial Government, the stakeholders related to the ex-cultivation rights land will face the respective Regional Heads and not directly face the Company (BUMN/PTPN-II). This fact will at least have a different psychological impact and maybe better for all stakeholders. Where later, the people will deal directly with the leaders they elect in the elections and not with companies that have business connotations. Of course, the leader will be easier to talk to the people who elected him as the head of the area related to the ex-cultivation rights land.
3. Specifically, on this issue, the President has taken the initiative to make his priorities and concerns an appropriate policy. The fact is that the resolution at the provincial level cannot be completed quickly and complete all this time. This settlement requires a

strong political will from the highest government, namely the President. This strong political will from the President must be immediately realized with concrete steps. The result is expected to be able to make a Presidential Decree as a legal basis for overcoming the resolution of this problem.

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