

The Ownership Status of Land Rights in Nucleoplasm Partnership Agreement on People's Nucleus Plantation Industrial Sector

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ABSTRACT

Partnership is a form of cooperative relationships between partners which is stipulated in PP No. 44/1997 concerning Partnership. The partnership participants are Farmers as representatives of small businesses with Plantation Companies as owners of large or medium-sized businesses. To do their business, these two parties make a partnership agreement prior to the business running at the NucleoPlasm Plantation. This agreement is usually made unnotarized or drawn up before a notary. Thus, the role of a notary is needed, in this case, in accordance with his/her obligations contained in the Law pertaining the Notary's Position, a notary is obliged to provide legal counselling in connection with the deed making. On the subject of the partnership agreement pattern, basically, it has been strictly regulated by laws and regulations, nevertheless in practice it does not work as necessary, so it's not yet possible to provide legal certainty and legal protection for the people who are members of the Plasm Farmers community. For this reason, in the business of this nucleoplasm plantation industrial sector, partnership agreements are very important to be considered, in order not to cause harm to certain parties, so that objectives and interests of parties could be achieved and protected. The method of this paper used normative-socio legal research.

Keywords: *agreement, NucleoPlasm, land rights, Plasm Farmers, People's Nucleus Plantation, notary*

1. INTRODUCTION

Land rights is an individual ownership system (*privaatrechts*) on land stipulated by the Principal Law of Agrarian and Laws with regard to lands. Additionally, land rights become the rights of a person or business entity upon a piece of land and what lies on it (a building or plants), as proven by the evidence of rights ownership in the form of a certificate. [1]

Legal principles of a certain land rights in connection with the history of the establishment of a law on national land which highlights three principles, i.e. based on customary law, having a view of nationality or nationalism, and the social function of the land. That means, in each of these rights it must provide convenience, national interests or the interests of Indonesian citizens, and on the other hand it does not jeopardize social interests.[2]

In view of lands' status, there are two characteristics of the status of lands. At first, the state lands, which are consisting of pure state lands, state lands with the origin of the conversion of Western Rights whose deadline expires, and state lands originated from land released by the holder(s). The second status of land is land rights, or the so-called Freehold Title, Cultivation Rights Title, Building Rights, Rights of Usage over

Land, etc. Principally state lands are not possibly traded, whereas land rights can be traded, swapped.[2] As an agrarian country that relies prosperity on the agricultural sector, Indonesia is well known for having very fertile areas, one of which is the plantation sector. As one of the branches of agriculture, plantations greatly supporting in economic growth and welfare of the Indonesian people. Due to increasing the production of non-oil and gas commodities, increasing income, assisting the development of the region and supporting the success in transmigration, therefore it was issued the Instruction of President of the Republic of Indonesia No. 1 of 1986 on The Development of Plantation with the Pattern of People's Nucleus Companies Associated with the Transmigration Programme.

The plantation itself was regulated in Article 1 number 1 of Law Number 39 of Year 2014 concerning Plantations which set forth that plantations are all activities of natural resource management, human resources, production facilities, tools and machines, cultivation, harvesting, processing, and marketing related plantation crops.[3]

From the above understanding of plantations, that there are important matters which can be underlined, i.e. there are processing and marketing activities, there

are development of science and technology, as well as other facilities and infrastructure needed along with good management in order to achieve the expected goals among plantation business actors and the community.

If we interpret the facts occurred within the communities, the plantation activities done using technology and science as determined in the definition of the said plantation activities, it can be a serious problem. Because it requires a large enough amount of capital; given that it requires large capital, consequently the plantation activities can be hampered and this can slow down the growth of economic potential in the agricultural sector.

In the Governmental Regulation Number 44 of Year 1997, Partnership is a business cooperation between Small Business and Medium Business and/or with Large Business accompanied by coaching and development by Medium Business and/or Large Business by observing the principle of mutual need(s), mutual strengthening and mutual benefit.[4]

However, even though this partnership agreement has been stipulated in the laws and regulations and has been made in a cooperation agreement, either in an unnotarized agreement or by authentic deed. However, there are still many conflicts that can be found in its implementation. For instance, there are still many farmers who do not have knowledge about the partnership agreement. So that these circumstances can open the chance for certain depraved persons to carry out actions which can harm the farmers who run the plantation business.[5]

In this case, losses are mostly often experienced by farmers as the parties running the plantation business due to the lack of socialization obviously, regarding nucleoplasm partnership agreements. So that at the time of running the business, farmers worked in accordance with their responsibilities as farmers, disregarding the rules that had been consented between farmers and owners of the companies by the people's nucleus agreement.

In this pattern of agreement, transmigrants will be given the land right status of Management Rights over the Freehold Title. However, existed in this case, the indigenous people who were invited to surrender the land as the location of nucleus and plasm plantations. The company was then required to provide production facilities for oil palm plantations and to develop the transmigration. Lands surrendered by the community (indigenous people) to the company could cause problems between the community and the company. The problem arises because the people do not understand that their lands surrendered will be certified by the Cultivation Rights (HGU). The HGU certificates are used as collateral by the company to obtain investment loans (capital loans) for plantations from banks appointed by the government in accordance with Bank Indonesia (BI) Regulation No. 6/12 / PBI / 2004.[5]

The financing provisions on PIR-Trans project come from the Nucleus Company and Investment Credit. The cost for the construction of the nucleus company plantation (estate) should be minimum 35%; the

remaining 65% comes from the Investment Credit / bank loan. For the cost of a people's plantation (plasm) which is 2 hectares / Household, 100% of Investment Credit (Bank Loan) also by the company. What does it mean? All costs incurred by the plasm farmers community starting from land clearing, seedlings, fertilizer and maintenance will be returned to the bank in installments. The first interest rate is 16% per year, and can be reviewed by BI (*Article 5 of BI Regulation on Investment Credit in the PIR-Trans Pattern*).[5]

Therefore, the role of the notary here is such important in terms of making cooperation agreements between the two parties. Starting from this formula, this research is entitled "**The Ownership Status On Land And The Pattern Of People's Nucleus Partnership Agreement On People's Nucleus Plantation Industrial Sector**"

2. METHODS

The method used is normative-socio legal research. The method used can be observed by the human senses, so that the method used can be known and observed by others. Namely, visiting farmers and company related to the evaluation processes, analysing the problems. Besides that, using library data and informations sources from journals, theses, dissertations that take up the same topic of the problems.

3. BACKGROUNDS

2.1. The Status of Plasm Farmers' Land Ownership After the Entering into Nucleoplasm Partnership Agreement

Land is a natural resource given by the One God Almighty to the Indonesian people as a national wealth which bridging the way to engage in the communities' life activities and has a very important role for the sustainability of human life, because everyone definitely needs land. The functions of land are enormously varied, because land is not only perceived as a factor of production which is economically very requisite to meet the needs of human life, either as savings or investment, etc. Furthermore, culturally it is also considered as a social status which is the ancestral heritage to be preserved for the sake of future generations. So the management of land is a mandate that must be carried out for the benefit of humans.[6]

Principally, in the case of land acquisition, even though it has been regulated in the law regulations, there remains frequent conflict occurrence between business actors. This is evidenced by the large number of news regarding the disharmony of business actors in the pattern of people's nucleus agreements. This disharmony often occurs due to unclear status of land rights ownership of (plasm) farmers which has

become a link between farmers and business owners, (plasm) farmers are not given rights by business owners, and there are many more problems that has not yet possibly been resolved in this people's nucleus agreement.

In the pattern of people's nucleus agreement, based on Article 38 Law Number 39 of Year 2014 if the company or the applicant for the the cultivation rights firstly possessing a land with an area of 250 hectares, then 20% of the total area requested for Cultivation Rights for the surrounding community in the form of partnerships (plasm). This is an obligation that must be fulfilled by the company, however, it should not be less than 20%. This is conducted by the government in order that people whose micro-economics having the same opportunities to manage land resources in Indonesia.

In a circular from the Minister of Home Affairs number 593/3044/Agr dated May 30, 1985 stated that *PIR* (People's Nucleus Plantation) participating farmers are only real farmers, meaning that those who actively work on agricultural land and reside on the said location.[7] This is in line with the principle of Land Reform which requires the State to carry out "land reform" or "agrarian reform". This means that agricultural land must be actively worked on or cultivated by the owner him/herself.[8]

Although the requirements as nucleus company are more demanding than the managing company, usually private companies would be more focused on the establishment of the nucleus company. However, this can make farmers easier in obtaining government abandoned land in the form of *HGU* (Cultivation Rights) as a nucleus plantation, as well as the demonstration plot and the buffer for the nucleus company.

Founded on the author's interview with one of the plasm farmers named Suroto, stated that in *PIR* (People's Nucleus Plantation) pattern the large estates (business owners) built nucleus estates, in this case palm oil plantations, based on the provisions stipulated by the Acts/Laws. Afterward, a new business owner built a factory. This factory is useful to process the plantation products purchased from plasm farmers (smallholders). Then building plasm, this plasm land is usually the farmer's own land in collaboration with the company. On this land those farmers cultivate their plantations and the results to be sold to the company through cooperatives. Initially this land was a land that was certified Freehold Title, then after the nucleoplasm partnership was signed, the status of this land changes into Cultivation Right (*HGU*).

It has been explained that one of the obligations of a partner company is providing and finding appropriate credit facilities for plasm farmers that becomes its partners. The credit facilities referred are usually come from banking institutions, i.e. banks. In this case a bank is not the party included in the plasm nucleus contract, the bank's function here as the funder needed to finance the plantation empowerment activities that have been agreed between the plasm farmers or Cooperatives who represents the farmers with the

nucleus company. The construction of legal relationship between the parties related to the plasm nucleus agreement with this bank by drawing up a separate credit agreement between the plasm farmers or Cooperative who represents the plasm farmers as debtors and the bank as the creditor and here the nucleus company or manager as the guarantor (*avalist*).[9]

Broadly speaking, the work of developing the *PIR* (People's Nucleus Plantation) programme includes three stages. The first stage, the nucleus company will carry out plantation development. In the second stage, the transfer of plantations to the plasm farmers and the credit agreement conversion. Next, the third stage is the loan repayment or paid off (farmer's loan).

However, in the practice there are still many which are not in accordance with the rights and obligations between parties, either plasm farmers or the nucleoplasm company. This happens because of the lack of understanding of plasm farmers regarding the partnership patterns made by the nucleus company. Therefore, in some cases which are repeatedly found there are remaining plasm farmers who complain and inquire the ownership status of the plasm lands they manage. Because there are a number of companies which do not provide clarity related to the status of plasm lands which loan facilities have expired. Whereas in Article 13 paragraph (2) of the Decree of the Minister of Agriculture No. 353 / Kpts / Kb.510 / 6/2003 concerning the First Amendment to the Decree of the Minister of Agriculture No. 333 / Kpts / Kb.510 / 6/1986 concerning the Implementation of Estate Development Procedures in the Pir-Trans Pattern set forth that plasm plantations are surrendered to participating farmers when the plants reach maturity according to the type of plants and meet the physical standards stipulated by the Director General of Plantation Production Development and the related participating farmers have signed a loan agreement from a Government Bank, provided that in case of a *PIR-TRANS* project with oil palm and hybrid coconut plants at the initial production stage, that is in the 4th year.

In the author's interview to Mr. Ir. Mat Kasrun who stated that in terms of building the partnership between farmers and the company, the source of funding for plantation development are from bank loans. In this case the farmers are placed as the owner of the lands / estates which will pay the loan in stages. On the other hand, the company will become the guarantor of credit (*avalist*) for farmers and have the task of developing the plantation while managing its maintenance. The advantage of *PIR* (People's Nucleus Plantation) is that the company guarantees the supply of palm oil fruits from the farmers' lands they manage. The nucleo-plasm partnership will end as the farmers' credit paid off. If the farmer's loan is paid off, as a result the land ownership status will be fully owned by the farmers.

On the other hand, this *PIR* pattern can basically menace the ownership status of the community's Freehold Title, in this case plasm farmers. Given that lack of information and knowledge about the *PIR*

pattern, the farmers finally agreed to invest through plasma. In fact, plasma farmers do not know the consequence which will be caused in the future. For the reason that based on article 29 paragraph (3) Ministerial Regulation Number 98/Permentan/OT.140/9/2013 concerning the Plantation Licensing Guidelines set forth that binding by partnership agreement should be at least 4 years, more precisely if the shortest 4 years, consequently the plasma farmers cannot fully acquire their ownership of land rights, because their mentioned land rights ownership has changed into HGU (Cultivation Rights). However, if plasma farmers wanted to extend their agreement, then this partnership can be established by consent of parties.

Therefore, even there remains nucleus companies with no providing in legal certainty upon the status of land ownership of plasma farmers, however, the government has confirmed in Article 12 of Ministerial Regulation Number 98/Permentan/OT.140/9/2013 pertaining Plantation Licensing Guidelines in relation to the period of the Sustainable Processing Partnership carried out in accordance with the written agreement and duly stamped for a period of at least 10 (ten) years according to the format as attached in Appendix IV which is an integral part of this Regulation.[10] By this article, plasma farmers can get enlightenment about the status of their land ownership. With the regulation on the time period for the enactment of the partnership agreement, it must also be considered the time period for the investment credit relating to the plasma farmers to process their own plantations. Accordingly, subsequent to the end of the nucleoplasm agreement, plasma farmers have got experience of processing their plantations and doing production activities to marketing independently. Additionally, the ownership status of plasma land that has been managed to be owned by plasma farmers after the end of the nucleoplasm agreement. Thus, plasma farmers could be possibly return their land status from the Cultivation Rights into Freehold Title after the completion of nucleoplasm agreement.

2.2. The Role of the Notary in the Pattern of Partnership Agreements Between Plasma Farmers and the NucleoPlasm Company

Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws, this is based on Article 1 of Law Number 2 of Year 2014 concerning Amendments to Law Number 30 of 2004 regarding the Position of the Notary.

The Position of the Notary as public official, in the sense that the Notary's authority has never been given to other officials, as long as the authority is not the authority of other officials. In accordance with these provisions, the Notary Public is the only official authorized to make the authentic deeds concerning all deeds, agreements and appointments required by a

general regulation or by the interested parties to be stated in an authentic deed, all as long as the making of the deed by a general rule is also not assigned or excluded to other officials or other people.

In the (Indonesian) Civil Code itself, based on Article 1868 it has been explained that an authentic deed is a deed in the form determined by the Act made by and/or before public officials in charge for that purpose and the place where the deed was made. Other officials who are given authority to make authentic deeds other than notary public.[11]

There are three important elements in order to be fulfilled the formal requirements of an authentic deed, namely:

1. In the form determined by the law.
2. Made by and before public officials.
3. Deed that was made by or before the public official authorized for it and at the place where the deed was made.[12]

Referring to the partnership pattern, the notary is authorized to make a partnership agreement between the plasma farmers and the nucleus company. Although in the Regulation of the Minister of Agriculture Number 98/Permentan/OT.140/ 9/2013 Article 29 paragraph (2) which confirms that the Partnership as referred to in paragraph (1) is made in the written form of an agreement in accordance with the format as attached in Appendix IV which is inseparable part of this Regulation. By this regulation it has been explained that the partnership agreement must be drawn up in writing. This nucleoplasm partnership agreement can be made authentically and unnotarized which the conditions must be based on the applicable laws and regulations.

There are two categories of deeds made by a notary according to the form and procedure specified in the Law of Notary's Position. The first is a deed made by (*door*) a Notary, commonly referred to as a *relaas* deed and the second is a deed made before (*ten overstaan*) a Notary which is usually referred to as a party deed or with the term deed of *partij*.

The nucleoplasm agreement should be made in written, either an authentic deed or unnotarized, in accordance with the consent of parties. But agreements made with authentic deeds have the power of proof that is perfect compared to the unnotarized power of proof. Based on Article 1868 of the (Indonesian) Civil Code which set forth that an authentic Deed is a deed in the form determined by the Law/Act, made by or before the public employee who is authorized for that purpose where the deed was made. While an unnotarized deed is drawn up and prepared by the parties in the contract personally, and not before a notary or other competent authority; the unnotarized deed does not have perfect power of proof. If an unnotarized deed was not denied by the Parties, it means that the party recognized and does not deny the truth of what was written in that unnotarized deed, therefore according to article 1857 of the Indonesian Civil Code the unnotarized deed obtains the same power of proof as an Authentic Deed . However, if the mentioned unnotarized deed denied

by one of the parties, then the deed must be proven by the party who doubts the truth.

According to the author's interview with Notary Dessy Susilawati Rahman, S.H., M.Kn., in the nucleoplasm agreement pattern, the parties that make the nucleoplasm agreement before a notary, there's notary's authority in carrying out their position as public official, specifically providing legal counseling to the making of the deed. Herein found the role for a notary to provide legal counseling to the parties. Before all the information passed on into a notarial deed, the notary provides suggestions relating to legal actions to be taken by the parties. If the suggestions from the notary are accepted and agreed by the parties, the legal recommendations must be included in the deed and the suggestions must be stated as statements or statements by the parties themselves.

However, not all the statements made by the parties were directly written into the deed. It must be previously observed, whether it was in contrary to applicable laws and regulations or not. If it was in contrary, the notary is obliged to provide legal advice by taking the applicable provisions into account.

According to the author's interview to the Notary Suhardi, S.H.,M.Kn. stated that before signing the deed or nucleoplasm agreement, the notary has his obligations as a notary in accordance with the law of notary's position and the notary code of ethics, i.e. acting honest, thorough, independent, impartial, and protecting the interests of parties involved in legal actions and authorized to provide legal counseling to the parties in order that the parties do not feel mutually disadvantaged by the existence of the mentioned nucleoplasm agreement. Herein the notary performs the role by acting honestly, in the sense that in making the deed no matters remain unrevealed. Acting carefully, meaning that the notary must be careful and thorough in listening to the statements of the parties and write down the statement into the deed. Do not take side with anyone because it is in accordance with the obligations of the notary mentioned in the Law of Notary's Position. Because there are times when one party does not understand what is explained by the notary. So, as a public official, the notary must not only read out the deed but also must explain what is stated in the agreement clearly in order that it was easily understood by the parties. So that no problems to be occurred in the future.

3. CONCLUSION

- Nucleo-Plasm Agreements are partnership agreements between plasm farmers and the nucleus plantation. The nucleus plantations are required by the government to facilitate the development of the community's eataes approximately at least 20% (twenty percent) of the area of land requested for Cultivation Rights for the surrounding community.
- The notary as public official authorized to make authentic deeds has an important role in making the partnership agreement. in terms of making a

notarial deed the notary must act honestly, thoroughly, independently, impartially, and protect the interests of the parties involved in legal actions. These are in order that the notary as a public official who makes an authentic deed can act fairly and justly according to his/her authority, so that the parties do not feel mutually disadvantaged.

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