

THE DYNAMICS OF DEVELOPMENT OF LANDING SYSTEM REGULATION TO PLANTATION COMPANY IN THE FRAMEWORK OF FOREIGN CAPITAL INVESTMENT IN INDONESIA

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ABSTRACT

This research is motivated by the dynamics of the development of legal arrangements on land regulatory system for plantation companies in the context of investment in Indonesia which still shows the possibility of foreign companies to control land rights in the plantation business sector through the regulation of land tenure system through legal gaps available in the existing regulation. The aims of this research are to analyse and find the dynamics of development of landing system regulation to Plantation Company in the framework of investment in Indonesia, starting from the Dutch colonial government that is very exploitative, dualistic and feudalistic. Whereas after Indonesia today, the objective of protecting and strengthening land rights for the Indonesian nation has not been realized, the land regulatory system for plantation companies in the context of foreign investment in Indonesia still allows the establishment of limited liability companies in the framework of foreign investment can own and control the land with cultivation rights as the utilization of the legal gap set out in Chapter 30 of the basic agrarian law.

Keywords: Dynamics of Regulation, Land Rights Control, Foreign Investment, Plantation Company.

A. Introduction

Land has an important meaning in a country, which is a major supporting factor for the life and welfare of its people.¹ The function of the land is not only limited to the needs of residence, but also a place to grow social, political, and cultural development of a person and a community community.² The dynamics of land development in the context of the history of land law in Indonesia indicates years during the colonial period, the Dutch colonial government was concerned with land tenure. For that reason, the Dutch colonial government made laws.

The agrarian law made by the colonizers especially the Dutch colonial period, then clearly the purpose is made solely for the interests and advantages of the invaders. The agrarian law prevailing before the enactment of the Basic Agrarian Law (UUPA) is an agrarian law largely based on the objectives and desires of the colonial government itself and partly influenced by it. So that the provisions of the existing Agrarian Law and applied in Indonesia before the UUPA is produced by the nation itself is still a colonial Agrarian Law that is very detrimental to the interests of the Indonesia.³

At first, Dutch colonial government worked together to utilize feudal groups that exist to exploit community land by utilizing the rules that previously applied by the king, such as in the application of taxes, tributes, and compulsory labour. To facilitate management of such arrangements in taxes and compulsory labour, the Dutch colonial government introduced the communal system in Java and implemented a system of forced cultivation which was a conservative implementation of the Dutch colonial government.

But not long after the system of forced cultivation (*cultuurstelsel*) was abolished by the Dutch colonial government. Began the liberal system, liberal politics is the opposite of conservative politics abolished and the liberal system begins. The principle of liberal politics is the absence of government interference in the field of business, privately granted the right to develop business and capital in Indonesia. This is due to the increasingly sharp criticism addressed to the Dutch Government because of its agrarian policy encourages the issuance of a second policy called *Agrarisch Wet* (contained in *Staatblad* 1870 Number 55).⁴

The development of liberalism in the western countries also coloured the pattern of land control over land in the colonies. The system of liberalism adopted by the Dutch colonial government is also applied in Indonesia, by giving the private sector the opportunity to participate in export-oriented agricultural production. For that the Dutch private sector was given

¹Maria S.W. Sumardjono, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Kompas, Jakarta, 2001, pg. 9.

²Winahyu Herwiningsih, *Hak Menguasai Negara Atas Tanah*, Total media dan FH UII, Yogyakarta, 2009, pg. 1.

³Muchsini, *Hukum Agraria Indonesia dalam Perspektif Sejarah*, Bandung Refika Aditama, 2007, pg. 9

⁴*Ibid*, pg. 13.

the opportunity to invest in the field of plantation. To support the interest, especially to provide certainty of land tenure in the long term, in 1870 the colonial government passed Agrarian Law (*AgrarischeWet*). In this era, land tenure is in accordance with western civil law such as property rights (*eigendom*), business rights (*het erfpachtsregt*), usage rights (*het vruchtgebruik*), the right to be (*bezit*), the right of service (*erfainest*) reef passengers (*het regt van opsaad*), and others.

However, with the enactment of UUPA (Law No. 5 of 1960 on Basic Agrarian) there is a fundamental change in Agrarian Law in Indonesia, especially the law in the field of land, such as changes that occur in the provisions on the dynamics of regulatory development of land tenure system for plantation companies in the framework of foreign investment in Indonesia.

The changes in the development of legal arrangements on land regulatory systems for plantation companies in the context of investment in Indonesia show that there is no legal protection for state and community interest in regulation that allows foreign companies to control land rights in the plantation business sector. This is because of a legal loophole that can be used by foreign investors in the field of plantation business.

Referring to the description above, it becomes interesting to analyze and discover how the dynamics of regulatory development of land tenure system for plantation companies in the context of foreign investment in Indonesia?

B. Research Methodology

This research is normative legal research. The object of his research is the dynamics of regulatory development of land tenure system for plantation companies in the framework of foreign investment in Indonesia from the colonial era to the present (Reform era). This study uses secondary data sources, including primary legal materials, secondary legal materials and tertiary legal materials.

This study uses two approaches. The first approach is the statute approach that is an approach that examines regulations relating to the weakness of the land tenure system for plantation companies in the context of foreign investment in Indonesia. Second, research using legal history approach is caused among others;⁵ (a) the law not only changes in space and location, but also in time and time trajectories; (b) legal norms are often only understandable through legal history; (c) the notion of legal history is essentially an important entry for junior jurists to recognize culture and public order; and (d) the law is laid in its historical development and fully recognized as a historical phenomenon.

C. Results and Discussion

1. The Pre-Independence Year of 1945

a. The period before Agrarische (1870)

VOC established in 1602-1799 as a trade body and an endeavour to avoid competition between Dutch merchants. The VOC does not alter the structure of land tenure and ownership, except the tax on proceeds and corvee labour.

Agricultural political policies that oppress the Indonesian people published by the VOC include among others. First, *contingenten*, ie the tax on agricultural land must be given to the Dutch colonial rulers, without paying a dime. Second, *verplichteleverantenis* a form of provision decided by the Dutch with the kings regarding the obligation to hand over all crops with payments whose prices have also been determined unilaterally. With this provision, the peasantry cannot really do anything and the people are not in control of what it produces. Third, the *roerendiensten* known as corveelabor, which is charged to the people of Indonesia who do not have agricultural land.⁶

Meanwhile, the agrarian legal policy issued by the VOC relates to the land rental system (*landrente*) for the plantation companies in the framework of investments in Indonesia that occurred in 1602-1871, based on several basic rules including: (1) the Law of the Company in the West - Heeren XVII (daily best of the VOC; its full *besture* is comprised of 60 *bewindhebbers*); (2) *Landrente* Regulations, issued and enforced beginning March 1818 (*Stadblad 1818*), replaced with *Stadblad 1819* Number 5 valid until issued and enacted *Stadblad 1870* Number 66 (*Agrarisch Wet*); (3) *Regerings-Reglement* (RR) 1818 or *Stadblad 1818* is more liberal namely; (a) Agriculture shall be free, (b) *Verplichte* Culture abolished, (c) *Ambtelijklandbezit* abolished; and (d) Village heads are prohibited from making contracts, in which farmers should plant and deposit cultivated crops; (5) the peasant is free from coercion to fulfil the contract.⁷

On December 31, 1799 the history of the VOC which had brought the people into the valley of poverty. In the Year 1808, Herman William Daendels was appointed by the Dutch King Lodewijks to become the new Governor

⁵John Gilissen, Frits Gorle dan Freddy Tengker, *Sejarah Hukum : Suatu Pengantar*, Refika Aditama, Bandung, 2005, pg 1.

⁶Urip Santoso, *Hukum Agraria & Hak-hak Atas Tanah*, Kencana, Jakarta, Edisi Pertama, Cet. Ke-2, 2005, pg. 16.

⁷R. Roestandi Ardiwilaga, *Hukum Agraria Dalam Teori Dan Praktek*, Cetakan Ke 2, N.V. Masa Baru, Bandung, 1962, pg. 121.

to replace Wiese as the last of the Company's Guardians. The policies adopted by Daendels are to continue to apply "*stelselcontingent*" and "*verplichteleverantien*", and further aggravated.⁸

Governor General's Policies, Herman Williem Daendels, in the years 1808-1811, famous for land politics run by selling land to people who have large capital for plantation crops to China, Arabia, and the Netherlands.⁹

The *eigendom* on the land is not known by the people, who have always been used to work under the command of the Regent and other chairman and the people feel happier, treated as a planter, as long as receive a decent wage, rather than as the owner or lease the land, in his barbaric circumstances that. The colonial ideal of Daendels was the landlord who organized the labour of the people under his command and wise enough to improve his farm, Daendels himself ruled Java like a head of the landlords.¹⁰

The *eigendom* land is a private land that has special properties and features. The distinction with other *eigendom* land is the rights of the owner that tend to state called *landheerlijkerechten* or proprietor rights. The rights of proprietor for example:¹¹

- a. The right to appoint or certify ownership and dismiss the heads of village;
- b. The right to sue for forced labour or to collect compensation money for forced labour from the population;
- c. The right to impose levies, either in the form of money or agricultural products of the population;
- d. The right to establish markets;
- e. The right to charge the road and crossing usage fees;
- f. The right to require residents every three days to cut grass for the landlord's needs, a day of the week to keep his house or warehouses and so on.

In the next period, Raffles stated that all the land under government control as *eigendom* government. On this basis each land is subject to land tax.

The provisions relating to land tax among others can be explained:¹²

- a. The land tax is not directly charged to landowner farmers, but assigned to the head of village. The heads of village were given the authority to assign the amount of rent each farmer had to pay;
- b. The village head was given full power to make changes to the land ownership by the peasants. If it is necessary to smooth the income of the land tax. Can be reduced in size or can be deprived of his control, if the farmer concerned does not want or does not pay the land tax assigned to him, the land concerned will be given to other farmers who can fulfil it;
- c. The practice of land tax overturns the law that regulates the ownership of the people's land as the amount of village head power. It is the extent of land ownership that determines the amount of tax to be paid, but in practice the tax collection of land is actually the opposite. The amount of rent that can be paid that determines the area of land that can be controlled by someone.

Other Raffles Government policies are "fiscal principles" and "*landrente*" which are set in accordance with the Bengali *stelsel*, ie for the rice fields; 1/2, 2/5 or 1/3 of the harvest and for dry soil; from 1/4 to 1/2 of the land. At that times, *rodi*, *contingenten* and *verplichteleverantien* were considered unfair. However, due to the state financial condition, the work of corvee is not abolished.¹³

In the Raffles period, the question of agrarian can be regarded as a milestone in the Indonesian context. Because with the political government that adheres to the principle of *domein* ultimately the state controls the land without limits in the public interest.¹⁴ Raffles' goal with his *domein* theory is simple, that is, to apply the tax system of the earth like what is used by the UK in India.

The policy of "*Stelselbelasting*" and "*Stelselhandel*" in the Reign of C. Th. Elout (1816 - 1819), marked by the birth of the *Landrente* Rule (*Stadblad* 1818) is based on historical experience or the traces of Daendels and Raffles. According to Murtinghe's view, the purpose of the establishment of Dutch power was the prosperity of the Netherlands and to obtain financial results, sufficient to finance the government and defence to protect the colonized people. For that purpose there are two paths, including: (a) *Stelselbelasting* (like *Bengali stelsel*); the people become the basis for the government; *belasting* worthy of the people, is a source of income and wealth;

⁸*Ibid*, pg. 121

⁹Al Araf dan Awan Puryadi, *Perebutan Kuasa Tanah*, Lappera Pustaka Utama, Yogyakarta, 2002, pg. 56.

¹⁰Roestandi Ardiwilaga, *op.cit.*, pg. 116.

¹¹Urip Santoso, *Op.cit*, pg. 18.

¹²*Ibid*.

¹³Roestandi Ardiwilaga, *Ibid.*, pg. 115.

¹⁴Gunawan Wiradi dan Soedino, *Dua Abad Penguasaan Tanah Serta Penguasaan Pertanian di Jawa Dari Masa Ke Masa*, Gramedia, Jakarta, 1985, pg. 10.

and (b) *Handelstelsel*; the merchant's king, and the people must serve trade interests (such as the company's *telsel*).¹⁵

In 1819, Van der Capellen was appointed as the Dutch State Administrator in the colonies of Indonesia (1819-1825). In his tenure as Van der Capellen has issued a number of policies, including: (a) Western plantations are deliberately prevented from beginning and re-purchasing private land (such as Sukabumi) on the grounds of correcting the errors of the Dandles and Raffles; and (b) in the "Van der Capellen Colonization Rapport dated 17-7-1822" discussed whether the land belonging to Europeans in the Indies was to be recommended or supported by the Governor.

In 1830 the Governor-General van den Bosch established a land policy known as the Cultivation System or the *CultuurStelsel* that farmers were forced to plant a particular crop that was directly or indirectly required by the international market at that time. The agricultural products are handed over to the colonial government without any compensation, whereas for people who do not have agricultural land are obliged to give up their workforce, which is one-fifth part of their working life or 66 days for a year.

Furthermore, under the policy of van de Bosch, for the Javanese and other regions, the land is considered to be the *eigendom* of the *souverein* (government), in harmony with everyone who owns it, may exercise its proper rights, that is, to demand the obligations of the land user to perform certain jobs in accordance with their customs.¹⁶

The "*Culturestelsel*" policy above, aims to help the Netherlands financially in a bad state. The basis used by Raffles is government-owned land, village heads are deemed to be hired to the government, and then the village head lends to the farmers.¹⁷

The existence of a government monopoly with a system of forced cultivation in agriculture has limited private capital in large agricultural fields. Besides, basically, the rulers do not have their own land that is large enough with a strong guarantee in order to cultivate and manage the land for a long time. The business undertaken by private entrepreneurs at the time was to lease land from the state. The land that is usually rented is still empty country land.

After van de Bosch's policy was replaced by J.B. Baud (1833-1836) was subjected to *Landrente* regulations and continued to prohibit the expenditure of land to grow coffee, sugar, indigo, without permission from *Operbestuur* (King of the Netherlands).

According to Baud, the sale of private land is politically incorrect, for the landlord's interests will remove the heads of the people (the intermediate classes) which are the basis of Western power, and legally also illegal (*onrechtmatig*). According to Baud, *souverein's* right to land is of two kinds: (a) Unlimited, in areas that are not entirely undertaken by the people (*onbebouwd*), which are far from the inhabited areas; such land can be sold by the government (the area in question is among others in Banten: Southern and Western districts, East Java: East and South); and (b) Very limited, in areas that have been opened or otherwise used by the people, this farm (*bebouwdegronden*) which cannot be sold by the government first; on such land can only be subject to *landrente or erfpacht*. But based on the custom of *erfpacht* there is an absolute requirement, that each village has a certain *woestegronde*, although it cannot be explained by what extent is there, where there are materials for various purposes of the people and also used for coffee plantations. The people are free to use this land, and only after the opening, can be subjected to *landrente*. *Woestegronde*, which lies between the farms, also can not be sold or *hypotheeked* by the government.

Landrente Regulatory Implementation Policy at Governmental Period of A. J. Duymaer van Twist (1851-1856) and Government Minister Myer and Takranen (1867-1870) in the expenditure of land according to K.B. 20-3-1831 began to be allowed again, which had previously been stopped with I.B. 25-2-1840 and 17-4-1841. Twist argues that the governor has the right to use *woestegronde* as a result of *souvereiniteit*, but object to the sale of the lands.

In the preparation for R.R.1854, the Dutch government did not have a clear stand on land rights, and this doubt is due to: (a) Nothing written about the rights of the people's land; (b) Inadequate knowledge of culture; and (c) Errors in investigations in that direction, which are always aligned with western understanding and knowledge.

The main objectives of the liberal movement in agriculture are: (a) for the government to give recognition to the control of land by the indigenous as an absolute property (*eigendom*), to enable sales and leases. Therefore, lands under communal rights or customary powers, cannot be sold or leased out; and (b) in order that with the principle of *domein*, the government provides an opportunity for private entrepreneurs to be able to lease long-term and

¹⁵R. Roestandi Ardiwilaga, *op.cit.*, pg. 121.

¹⁶R. Roestandi Ardiwilaga, *op.cit.*, pg. 121.

¹⁷Gunawan Wiradi, *op.cit.*, pg. 11.

cheap land (*erfpacht rights*). To achieve these objectives, in 1865 the Minister of Colonies Frans van de Putte, a liberal, proposed a bill plan, the contents of which were the Governor-General would grant the right of *erfpacht* for 99 years; indigenous property rights are recognized as absolute property rights (*eigendom*); and communal land is the property of the individual *eigendom*. It turned out that this bill was rejected by the parliament because it was strongly opposed by fellow liberal groups themselves with the main character Thorbecke and then minister Van De Putte fell. The objective of the Dutch private sector to invest in agriculture in Indonesia has not been achieved.¹⁸ Minister Van De Putte fell in a hurry to give the indigenous rights of *eigendom* while the intricacies of agrarian in Indonesia are not known correctly.

b. The Period of Agrarische Wet, 1870 until the Proclamation of Independence

Agrarische Wet was born in 1870 is a very important milestone in the history of Indonesia's agrarian. *Agrarische Wet* published and aims to provide widespread opportunities for foreign private capital. It does work. Another goal is to protect and strengthen the rights to land for the native Indonesian nation was far from expectations. Moreover, coupled with the attitude of the Kings or the Sultan both in Java and outside Java are tempted to give concessions to foreign private entrepreneurs. This is expressed among others by Bool who states:¹⁹ "... the whole system, is the result of the negligence of the sultans at the time of first giving concession rights, they are not trying to guarantee the provision of land for their people, but giving away the unlimited extent."

Agrarische Wet was enacted in S.1870-55. was incorporated into Indonesia, incorporating Chapter 62 of the RR, which originally consisted of 3 articles, with the addition of the 5 articles so that Chapter 62 of RR became 8 articles, those are article (4) to article (8), which among others stated that "Governor Generals will grant *erfpacht* rights for 75 years. In the end, Chapter 62 of this RR becomes Chapter 51 IS.

Agrarische Wet in its implementation requires regulations and decisions, therefore the Dutch government issued a regulation of one of them known as *Agrarische Besluit* contained in *Koninklijk Besluit*.

The provisions of Chapter 1 of the *Agrarische Besluit* contain a statement of principle which is essential to the development and enforcement of the administrative law of the Dutch East Indies. The principle is regarded as a lack of respect, even "rape" the rights of the people to the land derived from customary law.

The provision in Chapter 1 of the *Agrarische Besluit*, known as *Domein Verklaring* (*Domein Statement*) originally also applies to Java and Madura only. But then the *domein* statement was applied also to direct government areas outside Java and Madura, with an ordinance enacted in S.1875-119a. With the existence of the *domein* statement, the lands of the Dutch Hindi are divided into two types: (a) *Vrijlands Domein* or free country land, i.e. land on which there is no right of the inhabitants of the son earth; and (b) *Onvrijlands Domein* or the land of the land is not free, i.e. the land on which there is a right of the population and the village.

According to *Agrarische Wet* granting rights *erfacht* to entrepreneurs set in ordinance include:²⁰

- a. Java and Madura, with the exception of the Swapraja regions: (*Agrarische Besluit* (S.1870-118) Chapters 9 through 17 and the Ordinance contained S.1872-237a, which have been amended several times, most recently in 1913 reorganized and enacted in S.1913-699;
- b. Outside Java and Madura, with the exception of the Swapraja regions: initially there were some ordinances governing the granting of *erfachts* that prevailed in certain areas. In 1914, an ordinance was enacted for all direct government areas outside Java and contained in S.1914-367 the new ordinance was known as "*Erfachtordonantie Buitengewesten*". All old ordinances withdrawn except for their respective Chapter 1;
- c. Swapraja areas outside Java, arranged in S.1910-61 as *erfachtordonantie Zelfbesturende Landschappe Buitengewesten*. Applicability in each Swapraja according to the instructions of the Governor General. Prior to the existence of the ordinance in Swapraja areas outside Java was not granted *erfacht* rights, but rather concession rights to large garden companies. The land lease of the people to big gardens is also regulated by ordinance, which has undergone changes to *Grondduurordonantie* (S.1918-88), applicable in Java and Madura, except Surakarta and Yogyakarta and *Vordtenlands Grondduur Reglement* (S.1918-20), prevailing in the Swapraja regions of Surakarta and Yogyakarta.

Agrarische eigendom is a *koninklijk besluit* dated on April 16, 1872, No. 29, concerning the right of *agrarsche eigendom* which aims to provide indigenous Indonesians with only a strong right, which must be registered and whose rights may be burdened with *hypotheek*. But in practice the opportunity to replace his property by becoming an *Agrarsche eigendom* is not widely used.

2. Independence Period

a. The Period before UUPA (1995-1960)

¹⁸Gunawan Wiradi, *op.cit.*, pg. 11.

¹⁹Singgih Praptodihardjo, *op.cit.*, pg. 25.

²⁰Boedi Harsono, *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta, Revision Version, Cet. Ke-8, 1999, pg. 39

During the Japanese occupation period, not many rules were made in relation to land. However, it does not mean that at that time there was no concern at all regarding the land-related legal issue. It is declared and recognized by the Japanese occupation government, the Dai Nippon Armed Forces Government set forth in the explanation of Law Number 17 Year 2602 (1942) on Private Land, which in essence can be explained as follows:²¹ "...bahwa karena oeroesan tanah penting sekali dalam kehidoepan masjarakat, tetapi di Indonesia ini tanah-tanah sering sekali bertoekar-toekar orang yang mempoenjainya. Teroetama di tanah Djawa ini oeroesan tanah soedah mendjadi banjak sekali seloek beloeknja, sehingga kesoekarannja boekan boeatan dan tidak sedikit mendatangkan pengaroeh jang boeroek. Oleh karena itoe perloe dipeladjadi dengan teristimewa untuk mengoebah keadaannja." ("...because the affairs of the land are very important in the life of the people, but in Indonesia these lands often exchange people who have it. Especially in the land of Java this affairs of the land has become a lot of ins and outs, so the difficulty is not artificial and not least bring a bad influence. Therefore it needs to be studied with the utmost to change the situation.").

The only one that directly governs the land is Law Number 17 Year 2602 (1942) effective from 1 June 1942 on the conversion of private lands into the land of the land. Private land is a land of *eigendoms* rights originating from the Dutch Governor at the time of the *OostIndischeCompagnie* given to high-ranking officials of Government or sold to ordinary citizens in order to earn money to cover the Government's cash.

With that politics, private landowners in addition to getting full ownership rights also gained state privileges over vast lands. In filling the legal vacuum of the post-independence Republic of Indonesia, the rules of chapter 2 of the Transitional Rules of the 1945 Constitution²²: "As long as the power and regulatory bodies have not yet been replaced with the new ones still apply". Therefore, the colonial legal system remains in force as long as there are no new rules governing the same provisions in regulating the behavior of the people, including in this case the terms of the agrarian law in Indonesia at that time. Such conditions prompted lawyers to immediately put an end to the existence of colonial law, because they must immediately make changes and reform of the legal order in Indonesia with a new legal order. The desire of the jurists to immediately make changes and reforms of the colonial law is due: (a) the legal values of the Dutch East Indies government are not in accordance with the values of the free society and more serve the interests of the colonial nation; (b) the enactment of the old system creates a legal dualism that does not reflect legal certainty; and (c) the basic philosophy of liberal-capitalist law stems from Western social life and is not the same as the basis of the Indonesian philosophy.²³

Based on the experience that occurred in the colonial period it can be concluded that all agrarian policies that ever exist always harm the people of Indonesia, because the existing legal products are very exploitative, dualistic and feudalistic. There are two steps taken by the government, to end the product of colonial law, namely:

- a. Partial legislative enactment until the formation of a comprehensive Agrarian Law that takes sides with the community. Among the important legislation that was born as a new wisdom and interpretation, include:
 - (1) Abolition of the right of conversion with Law Number 23 of 1948 which is then supplemented by Law Number 5 of 1950.
 - (2) Abolition of private land with Law No. 1 of 1958.
 - (3) Changes in land tenure legislation with Emergency Law No. 6 of 1951.
 - (4) Arrangement of production sharing agreement with Law Number 2 of 1960.
 - (5) Transfer of tasks of agrarian authority with the Presidential Decree 1955 and Law Number 7 of 1958.
- b. Formation of designer legislation committee, which serves rubbing and shaping the Law (RUU) Comprehensive Agrarian favor of the community.

It will be described below some government policies related to the former land of Indies plantations, namely:

- 1) Former Land of Dutch Owned Plantation

The change of Japanese government toward the formation of a new government has also enabled peasants to occupy the Dutch plantation lands left behind by their owners and become displaced. For the whole of Java, the land occupied by the people is 80,000 hectares. In the plantation area of East Sumatra, the population who seized the tobacco plantation estates is estimated at 65,000 people, while those who seized the rubber, palm and other estates were estimated at 60,000 people. Thus, it is clear that some of the plantations began to be controlled by the people spontaneously.

President Soekarno with Emergency Law No. 8 of 1954 on the use of plantation land by the people, helped to support the above actions. The act of occupying abandoned estates is not claimed to be unlawful.

- 2) Nationalization of Foreign Owned Companies

In order to destroy the power of foreign private economy, especially Dutch domination, Soekarno stipulated a Government Regulation in Lieu of Law (PERPU) on the nationalization of Dutch-owned

²¹Sartono Kartodihardjo, *Politik Multikulturalime Menggugat Realitas Kebangsaan*, 1972, pg. 27

²²Sartono Kartodihardjo, *Ibid.*, pg. 55.

²³Sartono Kartodihardjo, *Ibid.*, pg. 55.

companies located in Indonesian territory (Law No. 86 of 1958, L.N.1958, Number 162). This law is enforced and continued in various implementing regulations in the form of Government Regulation.

In Chapter 1, Government Regulation No. 2 of 1959, LN 1959, Number 5 on the Principles of the Implementation of the Dutch Company Nationalization Law, it is mentioned that all Dutch companies can be nationalized, including private Dutch-owned companies, legal entities whose shares are entirely or parts of the Netherlands, a company domiciled in Indonesia and companies domiciled in Indonesia owned by a legal entity domiciled in the Netherlands.

3) Private Lands

The Government enacted Law No. 1 of 1958 on the Elimination of Private Land, practically all forms of rights originally attached to private lands were also erased. These rights include the right of appeals, which means the right to appoint and dismiss the village head, to demand forced labor, to establish markets, to charge the use of road and crossing fees. The deprivation of very oppressive rights of the cause causes the basis of the legal power and the freedom of the power of private land tenure which, in the past, freely manages its lands, is similar to that of state power which causes harm to the interests of the peasants to come to an end.²⁴

4) Rental

The land lease ordinance in force in the Dutch period is seen as urgent to be renewed. Objections to the old rules revolve around the length of the contract, the rental price, the minimum fund, how to calculate the rent. To that end, the government passed the 1951 Emergency Law Number 6 of the 1952 Gazette Number 46.

Regarding the duration of the restrictions on long-term contracts for 22.5 years for rice fields, what is required as a job security for employers is considered too long. With this new regulation it is stipulated that land lease contracts now should not last longer than a year or a year of crops. Only for sugarcane "and other crops" will be allowed to deviate from what is prescribed. This deviation is regulated by the minister of agriculture.

The government also regulates the price of land rent. The price of renting the land, with colonial regulation is considered to be detrimental to the peasants. *Reglement* governs conversion rights. Furthermore, to reaffirm has been issued regulation of addition and implementation of Law 1948 Number 13 about the Change *vorstenlandsegronduurreglement* with Law Number 5 of 1950.

b. The UUPA Period (After the Issuance of Law no. 5 of 1960) on Basic Rules of Agrarian Principles Date 24 September 1960.

The land law policy that gave birth to the UUPA on 24 September 1960 was based on Chapter 33 Article (3) of the 1945 Constitution. The UUPA regulates the basic provisions of HGU. With the enactment of UUPA 1960, then all the basic agrarian law which originated from *Agrarische Wet* 1870 was replaced by UUPA 1960.

The birth of UUPA due to the background of a long process, after the independence of Indonesia, since the beginning of the government has actually been concerned about agrarian issues. Begin with the Agrarian Committee of Yogya (1948), Jakarta Committee (1951), Suwahjo Committee (1956), Sunarjo Design (1958), and finally Sadjarwo Design (1960).

The objectives and orientation of government policy in the field of agrarian law, has been done the arrangement of ownership of land rights began to be done with the legal basis set by the government of Indonesia, including the land that became the object of land reform 1964 SK / 49 / KA / 64 about the redistribution of plantation land for the benefit of the people and villages around the plantation. Unfinished about the land arrangement has emerged turmoil of 1965 on G / 30.S / PKI which leaves the issue of the arrangement of the land.²⁵

The implementation of the land reform, has failed due to several other factors, those are: a) the slowness of government practice in relation to the right to control the State; (b) the demands of mass organizations of peasants wishing to redistribute land immediately, resulting in unilateral action; (c) elements of anti-land reform undertake various mobilization forces to derail land reform; and (d) the occurrence of a dispute between anti-land reform and those that support land reform which is a widening of violent disputes at the state elite level.

The process of establishing land reform as an agrarian political strategy is based on a dispute between two camps of interest: the representative of the landless peasant versus the representatives of the landlord and the landowner. At the level of the state elite, this conflict of interest is reflected in the House of Representatives and at the DPA, there are three groups. First, the radicals, derived from elements of the *PKI*, the *PNI*, the *Murba* Party. They proposed the division of land based on the principle of land only for those who worked on it. Second, are the conservative group, which consists of, elements of Islamic parties, and some *PNI*. They rejected allegations that

²⁴Sudargo Gautama, *Masalah Agraria*, Alumni, Bandung, 1973, pg. 15-20.

²⁵Pandangan tersebut disarikan dari Pidato Pengukuhan Guru Besar, Achmad Sodiki, June 17, 2000 in Universitas Brawijaya Malang.

there had been exploitation due to extensive land tenure. They also refused to limit the extent of land ownership. Third is the compromise class. This group accepts the radical views, but they advocate its application gradually. Included in this reformist group were President Soekarno and Minister of Agrarian Sadjarwo who had been a member of the BTI before this peasant organization was under the influence of the PKI, and subsequently became a member of *Pertani* (National Peasant Union of Indonesia) under the *PNI*.

In the time of change from the Old Order regime to the New Order regime, in this period the question of land arose because the legal ownership of the land was carried out by force by those ruling politically at that time against those considered to be involved in G 30 S / PKI²⁶. The arrangement of land during the New Order period cannot meet the sense of justice for the community at that time. Nevertheless, the community did not experience any turbulence because it was suppressed by the security apparatus on the basis of stability.

Substitution of the New Order regime to reform left a land problem that resulted in the demands of citizens who felt deprived of their rights during the New Order period appearing on the surface, reaching almost 50% more plantation land in Indonesian territory generally experiencing disputes on the basis of demanding that their rights be repossessed the New Order regime at that time.²⁷

The problems of land, especially plantation land during this reformation period, indicate that the escalation of disputes is increasing along with the national political change from the repressive authoritarian regime to a more loose and open regime.²⁸

SholihMu'adi²⁹ concludes that one of agrarian disputes / land conflicts over the ownership of plantation land that emerged during the post-reform era was principally due to differences in perceptions between the community and the plantation company on ownership of plantation land. On the one hand, the people have an understanding that the ownership of land rights is based on the history of the emergence of plantation lands previously employed by their "ancestors" based on substantial ownership under customary law and that by society is considered to be hereditary and lawful ownership. Meanwhile, on the other hand, the plantation company has an understanding that the ownership by the plantation is based on formal ownership (West civil law or civil law) by referring to the certificate of Business Rights obtained legally under the applicable law.

Some opinions from agrarian experts related to the form of conflict or agrarian disputes on land plantations that occur post-reform today. According to Sayogo³⁰, since the enactment of the Basic Agrarian Law (UUPA), the problem of land can be solved, but in reality leaving the problem, which is still quite a lot of elements from the provisions of UUPA 1960 until now there has been no clear explanation, for example: social function of property rights to land. In addition, other fundamental law, such Law no. 41 of 1999 on the Principal of Forestry, had opened the path of forest concession for large companies logging natural forest wood.

Arie S. Hutagalung,³¹ argues that the emergence of the dispute is actually inseparable from the public's understanding of the perceived ownership of land rights differently from formal legal ownership of land rights. Then explained by ArieHutagalung, that from the concepts of approaches made by the planters, it raises some of the dominant factors that led to the emergence of land disputes plantations that occurred in this period, so that can be identified as follows:³²

- a. The existence of social gap between the surrounding community and the plantation. The communities around the plantations felt that they did not have the land that could be cultivated to meet the needs of family life, so that the community dared to occupy / plant the plantation lands;
- b. The existence of long-standing rights disputes (acute);
- c. The existence of plantation attitudes that do not carry out environmental development around the plantation; and
- d. The existence of external factors that encourage the community to dare to ask, occupy, till the plantation lands.

D. Conclusion

Based on the history of the development of legal arrangements on land regulatory systems for plantation companies in the context of foreign investment in Indonesia, it can be concluded that the dynamics of regulatory development of land tenure

²⁶Cited from Pidato Pengukuhan Guru Besar, Achmad Sodiki.

²⁷Cited from Pidato Pengukuhan Guru Besar, Achmad Sodiki, 17 June 2000, di Universitas Brawijaya Malang.

²⁸Sholih Mua'in, *Penyelesaian Sengketa Hak Atas Tanah Perkebunan Dengan Cara Litigasi Dan Non Litigasi*, Prestasi Pustaka, 2010, pg. 24.

²⁹Sholih Mua'di, *ibid.*, pg. 360-361.

³⁰Sayogo, in Karl J. Pelzer, *Sengketa Agraria : Pengusaha Perkebunan Melawan Petani*, Pustaka Sinar Harapan, Jakarta, 1991, pg. 10.

³¹Arie S. Hutagalung, *Perspektif Hukum Penyelesaian Sengketa Pertanahan*, Makalah disampaikan pada Komisi Konstitusi, Tanpa Penerbit, 2000, pg. 1.

³²Arie S. Hutagalung, *ibid.*, pg. 3.

system for plantation companies in the context of foreign investment in Indonesia, ranging from the Dutch colonial government is very exploitative, dualistic and feudalistic. Whereas after Indonesia to date the objective of protecting and strengthening land rights for the Indonesian nation has not been realized, the land regulatory system for plantation companies in the context of foreign investment in Indonesia still allows the establishment of limited liability companies in the framework of foreign investment can own and control the land with Cultivation Rights as the utilization of the legal gap set out in Chapter 30 of UUPA.

E. Suggestion

Based on the conclusion above, the suggestions that can be found related to the dynamics of the development of legal arrangements on land regulatory systems for plantation companies in the context of foreign investment in Indonesia, it is necessary to take these steps:

1. The harmonization of UUPA Implementing Rules with UUPA, and between Several Other Legislation Regulations related to regulation of land tenure system for plantation companies in the framework of investment with UUPA;
2. Make amendments to the UUPA, particularly to the provisions regulating land rights and registration of land rights and not granting HGUs to companies that are foreign investments of foreign investment companies may be granted the Right of Concession / Lease of Land both to state land, *ulayat* land, or land owned by the people, without the release and transfer of land ownership, for a period appropriate to the age of plantation crops based on the recommendation of Plantation Experts Consultant, maximum 75 years, which can be secured by the Mortgage Rights and the determination of the maximum extent of land tenure throughout Indonesia, as well as at the provincial level, for agricultural and plantation enterprises by an agricultural or plantation company, either individually or in groups and affiliated.

REFERENCES

- Al Araf and Awan Puryadi, *Perebutan Kuasa Tanah*, Lappera Pustaka Utama, Yogyakarta, 2002.
- Arie S. Hutagalung, *Perspektif Hukum Penyelesaian Sengketa Pertanahan*, Makalah disampaikan pada Komisi Konstitusi, unpublished, 2000.
- AP Parlindungan, *Serba Serbi Hukum Agraria*, Alumni, Bandung, 1984.
- Boedi Harsono, *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta, Edisi Revisi, Print.8, 1999.
- Dianto Bachriadi, *Revormasi Agraria: Pembaharuan Politik Sengketa dan Agenda Pembaruan Agraria di Indonesia*, FE UII, Jakarta, 1997.
- Gunawan Wiradi and Soedino, *Dua Abad Penguasaan Tanah Serta Penguasaan Pertanian di Jawa Dari Masa Ke Masa*, Gramedia, Jakarta, 1985.
- John Gilissen, Frits Gorle and Freddy Tengker, *Sejarah Hukum : Suatu Pengantar*, Refika Aditama, Bandung, 2005.
- Maria S.W. Sumardjono, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Kompas, Jakarta, 2001.
- Muchsin, *Hukum Agraria Indonesia dalam Perspektif Sejarah*, Bandung Refika Aditama, 2007.
- R. Roestandi Ardiwilaga, *Hukum Agraria Dalam Teori Dan Praktek*, Cetakan Ke 2, N.V. Masa Baru, Bandung, 1962.
- Sartono Kartodirdjo, *Politik Multikulturalime Menggugat Realitas Kebangsaan*, 1972.
- Sayogo, in Karl J. Pelzer, *Sengketa Agraria : Pengusaha Perkebunan Melawan Petani*, Pustaka Sinar Harapan, Jakarta, 1991.
- Sholih Mui'in, *Penyelesaian Sengketa Hak Atas Tanah Perkebunan Dengan Cara Litigasi Dan Non Litigasi*, Prestasi Pustaka, 2010.
- Singgih Praptodihardjo, *Sendi-sendi Hukum Tanah di Indonesia*, Tjetakan ketiga, Jajasan Pembangunan, Djakarta, 1953.
- Sodiki, H Achmad Sodiki, 2000, *Empat Puluh Tahun Masalah Dasar Hukum Agraria*, Pidato Pengukuhan Guru Besar, 17 Juni 2000.
- Sudargo Gautama, *Masalah Agraria*, Alumni, Bandung, 1973
- Urip Santoso, *Hukum Agraria & Hak-hak Atas Tanah*, Kencana, Jakarta, First Ed., Print.2, 2005.
- Winahyu Erwiningsih, *Hak Menguasai Negara Atas Tanah*, Total media dan FH UII, Yogyakarta, 2009.

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