

# Land Acquisition for Oil Palm in Perspective Living Environment

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## ABSTRACT

Procurement of land is any activity to gain ground through the transfer of rights over land or by way of assignment or waiver of land by giving compensation to those entitled. In the process of land acquisition for oil palm plantations should first pay attention to the status of land available, namely whether the State Land, Land Rights and Land Rights Management. Then Palm Oil Plantation Company will acquire land must also consider the procedure for acquisition of land provided by the National Land Law, namely the project, its location and status of the land available. In the process of the procurement or acquisition of land is often in trouble. Community (adat) is still difficult to let go of their land rights because they are emotionally already have very close ties with the land or is a physically and mentally already feel at one with the land. Because they believe that the soil has the power that control so that should not be released so saja. Selain it, all activities will be community centered on the ground because the ground work, whether it's farming, gardening, doing cultural activities or religious. Core, land is part integral to the activities of life, even that is not land that have emotional ties (religio-magical) with the public but also to water and forest. Because the procurement of land for oil palm plantations should consider the rights on land that has been attached to the land which is owned by indigenous peoples. After the acquisition of land in accordance with the Location Permit, the plantation companies can apply for leasehold to the National Land Agency Region with the requirements specified. Once your application is accepted HGU, Planters' the company can conduct business estates must go through a deliberation to reach an agreement, either on the agreement, the delivery of land to those who require or regarding compensation which is the right holder of the rights over the land to receive it. In the process of deliberation there must be agreement between the parties (the plantation companies and holders of land rights), an agreement on the handover of land and an agreement on compensation or damages. The parties' agreement is interpreted as hear each other, give each other and accept each other opinions in a peaceful atmosphere, without pressure and coercion where rights holders are willing to relinquish their land rights and the buyer / employers are willing also to compensate for the waiver of the land. This agreement continues on a shared understanding of the waiver of land and rewards. The rewards n understood as the form and amount of damages.

**KEYWORDS:** Land Acquisition Oil palm plantation Living environment

## A. Background

Land law in Indonesia comes in Article 33 paragraph (3) of the Act of 1945 which states that: "the earth, water, and natural riches contained therein controlled by the State to be used for the greatest prosperity of the people". This article became the basis of the authority of the State to control the entire plot of land in the region is related to the Earth Indonesia. Hal, water and wealth contained in it is a fundamental part of the welfare of the people, because it has to be controlled by the State and used for public welfare. This article also simultaneously laying the basis of the authority of the State to regulate the entire allotment of land in the territory of the Republic of Indonesia.

State authority is then implemented in the Basic Agrarian Law (BAL). It is strictly speaking in Article 2 of the BAL which outlines the main points of authority Negara. Seluruh land in the territory of the Republic of Indonesia controlled by the State, which by BAL-called Right to Control Country.

The purpose of the rights of control of the country is to achieve as much as besarkemakmuran people, in the sense of happiness, prosperity and independence in society and State laws Indonesia yangmerdeka sovereign, just and prosperous. By article 2 BAL, according to the concept of BAL, "controlled" by the State does not mean "owned", but the right which authorizes the State to master as it. (Article 2 ayat (3) Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok- Pokok Agraria.)

The authority of the State which is based on the State's right to control the purely public namely, the authority to govern (regulatory authority) and not physically control the land and use the land as the authority holding the titles are "private". (Budi Harsono, 2007).

One State authority is to regulate the legal relationship between the persons or legal entities with the earth, water and air space is article 11 paragraph (1) BAL.

This Article provides setting legal relationship between the person / legal entity with the land and the authority arising from the legal relationship itubertujuan to attain the greatest welfare of the people and should prevent domination over the life and work of others that exceed the limit in the business areas of agrarian case which is contrary to the principle of social justice that is humane. Additionally, in the explanation said that

Article sets forth the principle of the protection of the economically weak, meaning that there should be no distinction based on layers of people, for example, differences in legal purposes town folk and rural folk, also the people whose economy is strong and people are weak economy.

In connection with the legal relationship between the person / legal entity and the land above, Article 12 paragraph (1) BAL said that "All the joint ventures in the field of agrarian based on a common interest in the framework of the national interest, in the form of cooperatives or other forms of mutual assistance more . "Then, in paragraph 2 gives the possibility of holding a" joint venture "between the State and the Private Sector in the agrarian field. What is meant by "other parties" it is the local government, private entrepreneurs or private national capital with a "domestic capital" progressive (explanation of UUPA).

The government has the authority to regulate the efforts in the field of agriculture, thus elevating the production and prosperity of the people as well as guarantee for any Indonesian citizens living in accordance with the degree of human dignity, both for myself maupunkeluarganya. Dengan Governments are obliged to prevent their organizations and businesses -usaha individuals in the agrarian field of private monopolies (article 13 paragraph 2 of the BAL). Not only private businesses, but also the efforts of the Government of the monopoly should be prevented from banyak. Oleh because it hurts the efforts of the Government monopolistic could only be held with the Law (Article 13 paragraph 3 of the BAL).

In an effort to implement the authority of the State in the field of agriculture, the need for suatupencanaan ( "planning") regarding the allocation, use and persediaanbumi, water and space for the various interests of the people's living danNegara: General Plan ( "National planning") covering the entire wilayahIndonesia, which then broken down into specific plans ( "regional planning") of each of the areas (article 14). With adanyaplanning that the use of the land can be made up of guided danteratur can bring benefits for the greater Negaradan people, it is affirmed in Article 14 paragraph (1) BAL.

Based on this article, States through the general plan inventory planning, allocation and use of land. One was the general planning of land adalahuntuk promote the purposes of agricultural production, livestock and perikanan. Akan but given the pattern of the State's economy depends not only on agriculture padaproduksi, then besides that planning needs to consider the interests of industry and pertambangan. Perencanaan was not only intended to provide a ground untukpertanian, animal husbandry, fisheries, industry and mining, but also aimed at the ratification moving it forward. Because Local Government regulations pertaining to policies in the area of land must be made within the framework of the general plan made by central government Pusat and the discretion of the Centre.

In addition in Article 15 BAL emphasizes ground maintenance. In the explanation of this article says that: "... it is reasonable that the land should be maintained well, in order to increase fertility and prevent damage. Liabilities preserve this land not only be borne by the owner or right holder in question, but also a burden on any person, legal entity or institution which has a legal relationship with the land. "

Given the national policy in the area of land above, plantation developments should also pay attention to the basics of the law so as not to conflict with the ultimate goal in the land sector, namely prosperity, justice and happiness for the people of the plantation wholly. The development very likely be developed considering the Indonesian nation known as agrarian nation, because the majority of the Indonesian population is a community of farmers and heavily dependent on agriculture or plantation.

One type is the oil palm plantation. In Indonesia, oil palm plantations are spread unevenly in some areas. Plantings are still concentrated in Sumatra and Kalimantan, with extension into Sulawesi and Papua in recent years. Indonesia is currently the largest producer of palm oil, beating Malaysia, Thailand, and some other agricultural countries.

In the last 5 years, the development of oil palm plantations in Indonesia reaches 5 million hectares of potential that is reserved 19.7 million hectares, or much broader compared to Malaysia's remaining 4.6 million hectares. This increase is very worrying because it will increase the need for land and certainly would urge the lands rights already controlled by the community. (Dicky Setiawan: 2014)

With the increasing demand for land on the one hand, many conflicts that arise with communities around the plantations on the other. According to Sawit Watch: "The acquisition of land is not easy. Moreover, the issue of anti oil fast enough. A number of environmental NGOs and indigenous people often oppose land clearing for palm oil plantations. The reason, oil was rated as plants that damage the ecosystem, voracious water, and causes a decrease in land productivity. Oil can also cause silting of the river. "

Each year the public conflicts with the owners of oil palm plantations is increasing. Data from Sawit Watch, since the last 30 years has recorded 1,753 cases of conflict between plantation owners with communities around the plantations, because people feel that their rights have been taken away. So of palm oil plantations in Indonesia about 7.3 million hectares, 1.3 million hectares of oil palm plantations in conflict.

In addition to the frequent occurrence of conflicts between employers and penduduk where the estate is located, where oil palm plantation companies are still many problems. Plantation Business activities are

generally carried out in rural areas in accordance with its designation, meaning the land acquisition will interact directly with the rights already held by customary law communities, such as communal land.

Act Plantations stated thus: "In the case of land that is required is a land of communal land of the people of Customary Law which in reality is still there, ahead of entitlements referred to in paragraph (1), the applicant Party shall conduct deliberations with the customary law communities holders of customary rights and residents holding the titles concerned, to obtain an agreement on the delivery of land, and the reward. "

Consultation with communities of indigenous customary rights holders and the holders of land rights of citizens are not always followed by titling tanah. After deliberation to reach an agreement must be followed by the provision of indemnity and surrender rights to land and land into state land. Then the buyer to apply for the right to land on the State to acquire land rights, whether it Properties, leasehold, Hak Guna Bangunan or Right of Use.

In connection with the provision of land for plantation, notably the granting of land needed for plantation, the minimum or maximum area of land designated by the relevant minister and the administration of their rights by the relevant public as well. Article 10 paragraph (1) states: "The use of land for plantation, the maximum area and spacious minimum set by the Ministry, while granting land rights stipulated by the relevant authorities in the land sector." In determining the maximum area and minimum area, the Minister referring to the type of plant, the availability of suitable land in agro-climate, capital, plant capacity, population density, the pattern of business development, geographical conditions and technological developments.

After acquiring the land, namely the leasehold have a term set by the legislation. Plantation Act states that:

1. "The right to attempt to plantation given by a maximum period of 35 (thirty five) years.
2. The period referred to in paragraph (1), at the request of the rights holder is given an extension of a maximum period of 25 (twenty five) years by the competent authority in the land sector, if the offender plantation business is concerned in the judgment of the Minister, meets all obligations and implement farm management in accordance with the technical provisions set.
3. After the extension period referred to in paragraph (2) ends, at the request of the former holders of the rights granted to the new venture, with the time periods specified in paragraph (1) and the minimum requirements as set forth in paragraph (2). "

However, in the course of the management of leasehold may be revoked, if the assessment made relevant ministers to find things that are not in accordance with the specified requirements, stated in Article 12 of Law No. 18 of 2004. In addition to not implementing the terms in order granting rights and the abandonment of the land during the 3 (three) years in a row, the right to cultivate also be eliminated due to other causes, as stipulated in the legislation in the land sector, among others:

- a. expiration of the period specified in the decision to grant or extension of their rights;
- b. released voluntarily by the rights holder before the term ends;
- c. deprived;
- d. the land is destroyed;
- e. canceled his rights by a competent authority before the term ends because (a) non-fulfillment of obligations of rights holders and / or violation of conditions / terms of the decree granting / extension of their rights, and (b) a court decision that has legal effect face;
- f. the subject of rights are not eligible anymore.

As a guideline in determining policy in the field of plantation, set dal; am local level legislation, concretely at the provincial level that will be expressed in the form of Regional district regulations. The point is that the legal procedure to be followed is the reserve land / soil, location permits, business licenses and leasehold estates. The plantation company which will acquire provisioning land / soil, location permits, business licenses and leasehold estates must apply to the competent authorities are equipped with the requirements or completeness of the material. ( Just for example, it is arranged for example in the provision of Article 4 West Kalimantan Governor Regulation No. 34 Year 2007 on Guidelines Peizinan Plantation Sector Enterprises in West Kalimantan)

Backup purposes land / soil is to give an opportunity to the plantation companies to conduct surveys or penelitan. Izin given location aims to facilitate the plantation companies to acquire land needed in the framework of investment that serves as the transfer of rights and permission to use the land for purposes of the processing industry plantation. Plantation Business Permit granted aims to provide assurance to the plantation companies to do business cultivation of plantation and plantation product processing industry. While the leasehold granted aim to get legal guarantee rights to land cultivated plantation company in accordance with the land use designation. ( It can also dicermti, for example in Article 6 of Regulation West Kalimantan Governor Number 34 Year 2007 on Guidelines Peizinan Plantation Sector Enterprises in West Kalimantan). Presumably the procurement of land for

oil palm plantations can be understood as an environmental management efforts which sought the government and local communities based on local wisdom.

### **B. Land Acquisition Process For Palm Oil**

Regional policies in terms of land acquisition in the beginning can be seen from the angle of Law No. 22 Year 1999 on Regional Government, with regard to the areas of government that must be implemented by the district and the city, namely the land sector. It has been mandated in article 14 of the BAL on the general plan inventory, allocation and use of land that is in harmony with the policy of the center in the land sector, that validation rules Local Government relating to the policy in the area of land must be carried out within the framework of the general plan made by the Central Government and accordance with the policy of the Centre. ,

Thus, land acquisition / acquisition of land is the responsibility of county and city governments. The responsibility of District / City Government is asserted in the decision of the President Number 34 Year 2003 on National Policy on Land Affairs which handed Sembilan Government authorities in the area of land to the district / city, which is as follows:

- 1) The provision of location permits.
- 2) The acquisition of land for development purposes.
- 3) Completion of arable land dispute.
- 4) Completion of the problem of indemnity and compensation of land for development.
- 5) The subject and object of land redistribution and land restitution and land absente maximum advantages.
- 6) Determination and problem resolution communal land (tanah adat).
- 7) Utilization and problem resolution wasteland.
- 8) granting permission to open ground.
- 9) Land use planning districts / cities.

In business management in the field of agrarian / land, local authorities have to consider what is mandated by the BAL. Article 12 paragraph (1) BAL said that "All the joint ventures in the field of agrarian based on a common interest in the framework of the national interest, in the form of cooperatives or other forms of mutual assistance others." Then, in paragraph 2 gives the possibility of holding an "effort shared "between the State and the Private Sector in the agrarian field. What is meant by "other parties" it is the local government, private entrepreneurs or private national capital with a "domestic capital" progressive. In this regard, Ketapang District Government has worked with the private sector in investments for processing businesses in the area of oil palm plantations.

The government also has the authority to regulate the efforts in the field of agriculture, thus elevating the production and prosperity of the people as well as guarantee for any Indonesian citizens living in accordance with the degree of human dignity, either for themselves or keluarganya. Dengan Governments are obliged to prevent their organizations and the efforts of individuals in the field of agrarian private monopolies (article 13 paragraph 2 of the BAL). Not only private enterprises, but also the efforts of the Government of the monopoly should be prevented from many. therefore it hurts the efforts of the Government monopolistic could only be held by law (article 13 paragraph 3 of the BAL).

Government policies must and ideally is to invite investors to develop oil palm plantations is widespread, with the aim of improving local opinion and creating jobs for the community. But the reality speaks another that oil palm plantations in fact only be profitable for the investors, not the welfare of society and local communities still live in poverty level.

With more and more investors in the oil palm plantations, should be coupled denganserangkaian laws on licensing and development of plantation business with the partnership. Regulations on the Regional level raises the possibility for investors to expand or expansion in this field should consider perkebunan. Hal BAL mandate of maintenance of the land (Article 15 BAL). In the explanation of this article emphasizes that: "... it is reasonable that the land should be maintained well, in order to increase fertility and prevent damage. Liabilities preserve this land not only be borne by the owner or right holder in question, but also a burden on any person, legal entity or institution which has a legal relationship with the land. "

In fact, the oil palm planters did not consider the damage to the land and businesses in plantation lingkungan. Karena solely keuntungan. Maka do not be surprised to find many conflicts that arise between plantation companies and local communities and non-governmental (NGO) .According Sawit Watch: "The acquisition of land is not easy. Moreover, the issue of anti oil fast enough. A number of environmental NGOs and indigenous people often oppose land clearing for palm oil plantations. The reason, oil was rated as plants that damage the ecosystem, voracious water, and causes a decrease in land productivity. Oil can also cause silting of the river. "

The expansion of plantations in the area of oil palm plantation expansion means also in the process of land acquisition. The Land Acquisition Process is a series of activities to hold the land by giving compensation to the release or transfer their land, buildings, plants, and objects associated with the land. According to the Decree of the State Minister of Agrarian / Head of National Land Agency, Procurement of land is "any activity to gain ground through the transfer of rights over land or by way of assignment or waiver of land with compensation payment to the beneficiary." (Mudakir Iskandarsyah: 2007).

Meanwhile, according to the Directorate General of Agricultural Circular Letter No. 12/108/1975 which states that land acquisition is meant by "Any act which is directly or indirectly obtain legal relationship that exists between the rights holder / control over land by giving compensation to the eligible / holding the titles". (Irene Sihombing: 2009)

In the process of land acquisition for plantations in general and specifically for oil palm plantation business must pay attention to the status of the land available. The status of land available generally is State Land, Land Rights and Land Management Rights.

In each district throughout Indonesia, the general status of the land is state land, forest and a small part is public land (tanah adat). Against the State land can be done by submitting an application to the State and will obtain rights to land primer, namely Properties, leasehold, Broking and Right of Use. Filing the petition must be in accordance with the interests of the pemohon. Dalam this case the petitioner is a plantation company incorporated Limited Liability then in accordance with its objectives, the rights of the requested more suitable is leasehold.

Based on the National Land Law, granting leasehold more qualified to be a plantation, because HGU devoted to agriculture in a broad sense. This is confirmed by Article 9 of Law No. 18 of 2004 on Plantations that "In respect of the plantation business, to businesses estates in accordance with their interests can be given rights over land needed for plantation in the form of property rights, the right to cultivate, right to build, and / or use rights in accordance with the regulations legislation."

Of forest areas, the companies will have to perform the transfer function of the forest from conversion forest (HPK) or Ordinary Production Forest (HPB) to Production Areas (APL) by making a request to the Minister. To land the right to do with the sale and purchase, exchange or any other way and should take into account: whether the holder of the rights to the land are willing to transfer their land rights, if the holder of the rights to the land are willing to: whether the potential rights holders are eligible or not, and the right holder is not willing surrender or transfer their land rights.

Palm Oil Company will acquire the land shall also consider the procedure for acquisition of land provided by the National Land Law, namely:

- a) The project, which is what the developed / constructed on land acquired. In this case the available land will be used for business activities (business) of oil palm plantations.
- b) location, the land where / location of the project concerned. Oil palm plantation companies must pay attention to what the General Spatial Plan (Spatial Plan) or General Spatial Plan Area (RUTRD) Province. Oil palm plantation companies also must beg Principle Permit and Permit Area (Regulation of the State Minister of Agrarian / Head of National Land Agency No. 2/1999 On the Location Permit) to the Regent Ketapang.
- c) status of land available, namely in terms of physical and juridical terms. The plantation company must analyze physical data and juridical parcels offered or will be obtained based on document ownership.

After considering the procedure for the acquisition or procurement of land for oil palm plantations, further plantation companies (employers) can obtain information about the land reserved for plantations at the Regent and information about the rights that already exist on the ground. Companies that require land for the purposes of the implementation of plantation efforts should first apply for landing location / provisioning of such land to Regent with a copy to the Chief of the Land Office, Head Plantation, and Head of Forestry Regional Level II Ketapang to attach a record / photocopy of the deed companies that have been approved by the Minister of Justice and human rights.

### **C. Follow-up to the Liberation of Land Acquisition and Land Rights Existence**

In obtaining the landing location / backup locations, the Head of the Land Office to coordinate with relevant agencies and non-forest areas stoke, called Production Area (APL). Then Regent issue the directives applicable locations 6 to 12 months (each district is different). According to a decree landing locations, companies can conduct site surveys of land that will be used plantations and if appropriate location of the land that is directed to the development of palm oil companies can submit Principle Permit and Permit Area for the acquisition of land. However a site survey of land by the company should already include consultation with the public holders of land rights proposed location, which includes four aspects:



- a) Distribution of information about the planned investment will be carried out, the scope of its impact and plans for land acquisition as well as a means of solving problems relating to the acquisition of the property;
- b) provision for holding the titles to obtain an explanation of the investment plan and find alternative solutions to the problems identified;
- c) collection of information directly from the public to obtain social and environmental data required;
- d) Public participation in the form of proposals on alternative forms and the amount of compensation in land acquisition in the implementation of the location permit. "

Basic acquisition of land for Oil Palm is the location permits. Article 1 point 1 Regulation of the Minister of Agrarian / Head of BPN said that the Location Permit is a permit granted to the company to acquire the land necessary in order to apply capital investment as a permission assignment, and to use the land for purposes of its investment business. Location permit has also become one of the requirements in the acquisition of Plantation Business License (IUP) that "plantations apply in writing to the regent to include requirements Location permit from regents / mayors, accompanied by a map of the prospective location with a scale of 1: 100,000 or 1: 50.000. "

Land may be designated in the License Area is a land that according to the Spatial Plan (RTRW) that applies intended for use according to the investment plan which will be implemented by the company according to investment agreements that have.

Location permits shall be submitted to the National Land Agency and signed by the Regent after coordination with the Regional Development Planning Agency (Bappeda) relating to the Regional Spatial Plan (RTRD). Permission location can be given to companies that have received investment approval according to applicable regulations to obtain land with an area of particular so if the company manages to free the entire area is designated, the control over land by the company and other companies which is a group of companies with no more than a predetermined area. The Plantation Business cultivated in the form of large estates can be given leasehold:

1) Commodities cane:

- 1 Province: 60,000 Ha
- All Indonesia: 150,000 Ha

2) Other commodities:

- 1 Province: 20,000 Ha
- All Indonesia: 100,000 Ha

Giving leasehold for oil palm plantations are categorized in other commodities, ie 20 thousand hectares to each province and throughout Indonesia 100 thousand hectares. This setting is often different from the reality on the ground that the acquisition of land sometimes exceed what has been set.

Article 5 of the Regulation of the Minister of Agrarian / Head of BPN say that the location permits set a time period Permit Area, namely:

- 1) Location Permit covering up to 25 hectares: 1 (one) year;
- 2) Permit Area of more than 25 hectares s / d 50 Ha: 2 (two) years;
- 3) Permit Area of more than 50 ha: 3 (three) years.

Acquisition of land by holders of Location Permit should be completed within a period of Lokasi. Dengan Permit Location Permit, the investor is entitled to free land belonging masyarakat. Selama predetermined time period, at least 50% of land had to be freed. If during that period, investors are only able to free less than half the land area, the location permits will be revoked. As affirmed in article 5, paragraph (3): "If the land acquisition can not be completed role in term of location permits, including the extension of the land acquisition can not be carried by permit holders The location and the plots that have been obtained to do the following actions:

- a) Is used to implement the investment plan with the adjustment of the construction area, with the provision that if necessary they can be executed acquisition of land so acquired plots of land which is a unity field;
- b) Released to the company or other qualified parties. "

In the acquisition of plantation land, plantation companies have to deal directly with the public holding the titles with emphasis on deliberation to reach a consensus. This principle is the main reference in the procurement of land before the transfer of land rights. Deliberation here contains a process of mutual understanding and mutual understanding between the planters with the public holding the titles of compensation in accordance with the base price set by the regent / district. This consultation can be done repeatedly to achieve a proper understanding and should not be protracted that can hurt and hamper the implementation of the development. This was affirmed in the Decree of the State Minister of Agrarian / Head of Land No. 21 of 1994 on Procedures for the Acquisition of Land for Investment in the Company:

"Acquisition of the land to do with the conditions as follows:

- a) Acquisition of land can be carried out directly between the company and the owner or holder of land rights by way of consultation on the basis of consensus;
- b) Acquisition of land can be made by way of transfer of rights over land or through the delivery or release of land rights followed by administration of rights;
- c) Acquisition of land by way of transfer of rights carried out if the land in question already has the land rights of the same kind of land rights are required by the company, and if the company concerned will, then the land rights may also be released and can then be petitioned for the return of their accordance with the provisions of this decision;
- d) Acquisition of land through surrender or relinquishment of rights is done if the land required belongs to property or other rights that are not in accordance with the type of rights required by the company to run its business, with the proviso that if necessary is a land with building rights, then if companies concerned wills, land acquisition can be done through the transfer of rights by changing the land rights into building rights according to the provisions of this decision. "

The principles other that must be considered in the acquisition of land is there should be no coercion, diinclove productive land and compensation for destroyed crops. Indemnity basis for all types of plants that grow on a piece of land affected by land acquisition is a decree, which is essentially that for the implementation of the compensation for crops affected development activities managed by Private Party, or Party government with emphasis on deliberation. "

In the acquisition of land, the company has picked Permit Area, facilitated by:

- 1) At the village level by the Implementation Unit (SATLAK) formed by Head and chaired by the chief.
- 2) At the district level by the Unit Officer (task force) established by the Regents and chaired by the Head.
- 3) At the local level by the Planning Team Plantation Development District (TP3K) chaired by the Regent.

Local authorities are responsible for forming a task force for the acquisition of land in the the implementing units district (Tim Supervision and Development of Plantation Regency / TP3K), districts (Task Force) and village (Satlak). The task force generally involve the membership of the military, police and local government as well as the village head and Indigenous leaders. Task force members each supported financially through a monthly payment from the company that aims to get the land for plantations. Satlak village usually consists of five members of the local community, including village chiefs, traditional leaders and other influential figures who effectively became a liaison between the company and community or public relations and conduct "negotiations" with the landowners / land. (Martua Sirait: 2009).

Plantation Business activities carried out in the interior generally interact directly with the rights already held by customary law communities, such as communal land. Communal land is common property owned by indigenous peoples. The binding force between the community and the land can not be evidenced by a certificate or a certificate of land but only emotional connection people solely to the land. This relationship exists naturally and legal relationships that started since they opened the forest. Then the land was inherited the entire family. (Stepanus Djuweng dan Wolas Krenak: 1995).

But nowadays customary law communities gradually become extinct and the legal relationship to the land together is lost. However, family relations / individuals who control and use of that land is still tied so strongly that grew an ongoing relationships or hereditary to the land.

National Land Law still recognizes and respects the public land where customary law, although in fact in some places is not there. Act plantations stated thus: "In the case of land that is required is a land of communal land of the people of Customary Law which in reality is still there, ahead of entitlements referred to in paragraph (1), the applicant party shall conduct deliberations with the customary law communities holders of customary rights and residents holding the titles concerned, to obtain an agreement on the delivery of land, and the reward. "

But this Land Rights in reality they must meet the following elements:

- a) the public is still in the form of community (rechtsgemeinschaft);
- b) there is institutional in the form of customs authorities;
- c) there is a clear area of customary law;
- d) there are institutions and legal instruments, in particular customary justice is still adhered to; and
- e) there is confirmation by the customs regulations.

Consultation with communities of indigenous customary rights holders and the holders of land rights of citizens are not always followed by titling tanah. Artinya after deliberation to reach an agreement must be followed by the provision of indemnity and surrender rights to land and land into state land. Then the buyers or employers to apply for rights to the land to the State to acquire land rights, whether it Properties, leasehold, Hak Guna Bangunan or Right of Use. (Maria SW Sumardjono: 2005)

The procedure for land acquisition can be done through the process of buying and selling, waiver, rights application, exchange and disposal of land accompanied by recognition. The process generally according to Pahan Iyung to do so:

- a) Sale and purchase if the prospective assignee qualified to be the subject of land rights acquired and the existing land sertipikatnya. Sale and purchase is done through the Land Deed Official (PPAT).
- b) waiver in front of PPAT, the Head of Notary PPAT or if the land is not registered and / or customary land. Publishing rights to land like this will be done after the announcement ends.
- c) Through a rights application if the land is controlled by the State. In this case, the land must be free of arable or more mastery over the land.
- d) Through the exchange if the land is owned by government agencies after obtaining approval from the Minister of Finance.
- e) Release of land with payment delivery form of recognition in terms of the land is communal land, along the fact that customary rights are still there.

Companies that have obtained permit location of Regents and once completed the acquisition of land which had been released, it can immediately apply Hak Guna Usaha (HGU). This concession is given aiming to get a legal guarantee rights to land cultivated plantation company in accordance with the land use designation. In accordance with the Regulation of the National Land Agency No. 3 1993 Article 5, HGU petition submitted to the Head Office of the Provincial Land Office with attached photocopy of the following:

- 1) Permit Area.
- 2) Evidence of land acquisition.
- 3) Tax ID with proof of repayment of the United Nations.
- 4) Images of the ground situation cadastral measurement results by the Land Office Local.
- 5) The identity of the applicant (certificate of incorporation).
- 6) the release of forest land decree of the Minister of Forestry in the case of land acquired from forest conversion.

Against this concession application, the Head of the Regional Office of the National Land Agency conduct inspections and make the investigation report. BPN then the province issued a decree granting the concession covering an area of no more than 200 hectares in accordance with the name of the applicant. If the land area of over 200 hectares, the Head of the Provincial Land Office submit the application for the concession to the Head of BPN at the latest within 10 working days from the preparation of the Minutes of the Land Inspection in order to obtain a decision granting the right.

If the terms are complete, the Head of BPN issued a decree HGU. For companies foreign / domestic investment, granting a decree granting the concession directly to the right with a copy to all the relevant agencies. HGU certificate will be issued by the Head of the District Land Office based on a decree has been issued HGU Head of BPN.

According to the Law of Plantation, Article 11 paragraph (2), (3), the term of the concession granting a maximum of 35 years and can be extended for 25 years. After the period of the concession and its extension expired, the holders of land rights may be granted renewal of the concession on the same soil.

Note that in the whole process of land acquisition for plantations is often not run smoothly. In this case, there are some problems which sometimes will hamper the process of land acquisition events, namely:

- a) The population is very difficult to leave the location of the land, which caused the population have long inhabited the location and in the inner and outer already feel at one with the land.
- b) The trouble reaching an agreement on compensation, because between the planters and residents alike maintain that the magnitude of the price of land will be used as compensation.
- c) The existence of a third party that often disrupt the event of land acquisition. For example a group of people from another location or group Governmental Organization (NGO) to intervene by influencing the public to seek redress is high enough.

According to the authors, one of the causes of the conflict is the lack of open government in the socialization plan plantation development policies so that public understanding of the development in the plantations, especially oil palm plantations is inadequate so that people do not feel involved in the entire development process.

#### **D. Application of Principles for Achieving Consensus Deliberation between plantation companies and Land Rights Holders**



That the land as a gift of God Almighty is a natural resource that is invaluable, and the main source of prosperity for the people Indonesia. Pasal 33 paragraph (3) of the Constitution of 1945 states that "Earth, Water and Wealth that is therein controlled by the State and used for -great prosperity of the people." this article shows that the land is the source of wealth and has an important role in the welfare and happiness of society.

Land by BAL interpreted as the earth's surface (Article 1, paragraph 4 BAL) expanded into the body of the earth that are underneath and water as well as space on it is required to cater for every activity of human life, be it for the purpose of residence (homestead), means of transportation land (clan), the place trying to (work), a place for recreation (like) as well as for places of worship, education and so forth (complement). Moreover, the land has an emotional relationship with a man, not only to meet the needs of all activities of human life but also time matipun need the land as a resting place.

Given the ground was so important for the whole of life and human activities, the soil should be controlled by the State and used for the greatest prosperity of the people. Article 2 (1) BAL, which reads: "The earth, water and air space, including the natural resources contained in it at the highest levels controlled by the State, as the organization of the power of the people." The state in this case acts as a subject which has the highest authority against all the interests of the land that aims to prosperity of the people. The land in all regions of Indonesia is controlled by the State, owned by the people of Indonesia and the authority to regulate the allocation and use of the land (Article 2 (2) BAL).

Based on the State's Rights, the State has the authority to regulate the legal relationship between natural or legal persons on the ground, by giving rights to land that can be held and used. BAL provides a wide range of land rights as a legal basis for the possession and use land needed. For example, to build houses and small-scale agriculture (in the village) for Indonesian nationals are provided properties, agricultural activities in the broad sense is provided leasehold, efforts in the field of non-agricultural supplied Broking and right of use, and to build for the benefit of provided common ground with management rights and status can also right to use. Thus the possession and use of land by anyone for any purpose should be a cornerstone of their rights.

However, Article 6 BAL states that: "All the land rights with social functions". This means, that the land rights existing in a person, it can not be justified, that the land would be used (or not used) solely for their own interests, especially if it causes damage to the community. Land use must be adapted to the circumstances and nature rather than rights that benefit both the well being and happiness have one or useful for the society and the State.

Therefore, the land not only serves for land rights holders, but also for all Indonesian people, with the consequence that the use right of a land plot must also consider the interests of masyarakat. Setiap people prosecuted in the possession and use of land in a reasonable and responsible. The social function does not mean interest seseorangterdesak by the interests of society or the State, and between the duakepentingan should be balanced.

According to Achmad Rusyaidi H: "Land rights existing in one can not be justified, if the land would be used (or not used) solely for their own interests, but must also consider the public interest. The provision does not mean that private interests will be driven entirely by the public interest. Public interest and private interests should offset each other, until finally achieved the ultimate goal of prosperity, justice and happiness of the people entirely. That is the purpose of the BAL. "

Given the importance of soil thus for human life and social function attached to the ground then in the process of procurement or acquisition of land must pay attention to the principles which form the basis of acquisition. Azas musyawah to reach an agreement is one principle that is dominant in the procurement process or land acquisition. This became the basis for the legal protection of tenure and land rights holders. Boedi Harsono said that "under normal circumstances, is required by anyone, for any purpose (also for projects of common interest) of land dihaki one must go through a deliberation to reach an agreement, either on the agreement, the delivery of land to those who require or about return which is the right of the holder of the rights over the land in question to accept it. "

Deliberation is one of the basic principles of the Indonesian state that sets it apart from other countries. Deliberation listed in the fourth principle of Pancasila. Deliberation basically an understanding or an agreement between the parties disagree so that all those who disagree can find a single decision. According to Article 1 point 10 of Presidential Decree No. 36 of 2005 is: "Deliberation is the activity that contains the process of mutual listening, giving and mutual acceptance of opinion, as well as a desire to reach an agreement on the form and amount of compensation and other issues related to land acquisition activities on a voluntary basis and equality between parties who have land, buildings, plants and other objects related to the ground with those who need land. "

The principle of further deliberations Maria S.W. Sumardjono stated that consultations should take place without pressure (voluntary) and conducted between parties domiciled in parallel ( " mutual ") spoke. So do not distinguish the status of the parties, but all of them the same status (or equivalent).

Within indigenous communities, according to the terms Syafruddin Kalo: "contains an understanding that the primary contents as an act someone along with others to formulate a joint opinion of the round to a problem faced by a society. From the discussion always comes to life for the bersangkutan. Unsur essential in these deliberations is the unity of all establishments adopt the opinion that the will of the citizens in dalamnya. Kehendak every citizen is an integral part of the unity tersebut. Hasil the opinion of the deliberations is their collective agreement . "

Then this principle is implicit in Article 1338 paragraph (3) of the Civil Code and Article 1320 paragraph (1) of the Civil Code. All activities waiver and all aspects of the law, such as compensation, resettlement and restoration of socio-economic conditions, the law must be made by agreement between the parties requiring the land and land rights holders. This agreement will be based on the consent of both parties without any element of force, fraud and kehilafan and done with baik. Apabila faith in the implementation of the agreement was carried out of the element kehilafan, coercion and deception then the deal may be canceled.

Decree of the State Minister of Agrarian / Head of National Land Agency Number 21 of 1994, "Acquisition of land can be carried out directly between the company and the owner or holder of land rights by way of consultation on the basis of consensus." In terms of land acquisition by a private party, then means that is done is through the sale, exchange, or other means agreed upon by the parties concerned, which can be done directly between the interested parties (eg: between plantation companies and right holders) with the redress of large losses or the type specified in the deliberations.

Similarly in the case of land that is required is a land of communal land of the people of Customary Law which in reality is still there, ahead of entitlements, rights applicants shall conduct deliberations with the customary law communities holders of customary rights and citizens rights holders over the land, to obtain agreement on handover land, and return.

From the above legal basis is very clear that the core of the principle of consensus is the agreement between the parties (the plantation companies and holders of land rights), an agreement on the handover of land and an agreement on compensation or damages. The parties' agreement is interpreted as hear each other, give each other and accept each other opinions in a peaceful atmosphere, without pressure and coercion where rights holders are willing to relinquish their land rights and the buyer / employers are willing also to compensate for the waiver of land continues tersebut. Kesepakatan on a shared understanding of the waiver of land and imbalannya. Imbalan understood as the form and amount of damages.

In the acquisition of plantation land, plantation companies have to deal directly with the public holding the titles with emphasis on deliberation to reach a consensus. This principle is the main reference in the procurement of land before the transfer of land rights. Deliberation here contains a process of mutual understanding and mutual understanding between the planters with the public holding the titles of compensation in accordance with the base price set by the regent / district. This consultation can be done repeatedly to achieve a proper understanding and should not be protracted that can hurt and hamper the implementation of the development.

In general, the acquisition of land the company already pocketed Permit Area, deliberation facilitated by:

- 1) At the level of the village by the Implementation Unit (SATLAK) formed by Head and chaired by the chief.
- 2) At the district level by the Unit Officer (task force) established by the Regents and chaired by the Head.
- 3) At the local level by the Planning Team Plantation Development District (TP3K) chaired by the Regent.

Mediation composition formed by the government, almost all members come from the government. According Iyung Pahan, "such an arrangement is very doubtful impartiality, let alone one of the parties who facilitated this team is a government agency that in fact is an element of the government." In fact, according Martua T Sirait, "The task force generally involve the membership of the military, police and local government and village heads and Indigenous leaders. "

By involving the military and police will cause the deliberation become unbalanced and in this case the holders of land rights are definitely under pressure. Therefore, in the process of land acquisition problems often occur because of the lack of willingness of holders of land rights to release the land, if released because of fear or under threat. Procurement of land must uphold the principle of equality between plantation companies and holders of land rights as a pillar utama. Musyawarah in order to land acquisition should take place in a balanced and domiciled in parallel.

The first step can be done in musyawah is holding approaches by providing detailed explanations concerning the procedures for land acquisition, land use after being released, and the amount of compensation will be given. As for giving these explanations are:

- 1) The developer / planters that requires the location of the land, which describes the planned use of land to be acquired location, the reason for choosing the location of the land and the amount of compensation to be awarded.

- 2) The government officials closest to the location of land to be acquired, the district or the local village chief.
- 3) The Land Office that describes in detail the process procedures of land acquisition.
- 4) Citizens in this case represented by the Chairman of RT or RW.

But are often faced with various problems that hinder the process of consultation between plantation companies and holders of land rights are:

- a) The population is very difficult to leave the location of the land, which caused the population have long inhabited the location and in the inner and outer already feel at one with the land.
- b) The trouble reaching an agreement on compensation, because between the planters and residents alike maintain that the magnitude of the price of land will be used as compensation.
- c) The existence of a third party that often disrupt the event of land acquisition. For example a group of people from another location or group Governmental Organization (NGO) to intervene by influencing the public to seek redress is high enough.

Faced with this reality, the deliberation in land acquisition often face obstacles, even failure. During this being the most sensitive components and cause problems is a matter of agreement form and amount of compensation between plantation companies and holders of land rights. Because the discussion about the form and amount of compensation is often a long process and protracted due to the absence of common ground disepakai by the parties concerned. Moreover, according to Paul Sinlaeloe: "landowners in general are still many who do not fully understand the rules of law. They rarely involved from the beginning by the land acquisition committee, so that even if they receive compensation value is set by the government, it does not mean is based on a voluntary basis, but for fear. "

Thus, in the process of deliberation should provide a thorough understanding to the people whose land would be used as oil palm plantation project, the form and amount of damages. Form of compensation offered should not only replace lost physical harm, but also have to calculate the intangible losses, such as socio-economic recovery of communities affected plantation project / development.

Usually the form of compensation offered is rewarded in the form of money, resettlement, exchange and participation in modal. Kalau deliberation on compensation is not reached, the determination is based on the Tax Object Selling Value (NJOP). However, the way this is done when the discussion about the form and amount of compensation to deal with the impasse. Demikianj also in such circumstances there should be assessment teams are able to consider about the price of land and socio-economic situation of the people affected plantations.

## E. Conclusion

Based on the foregoing description, that basically means any land acquisition to acquire the land through the transfer of rights over land or by way of assignment or waiver of land by giving compensation to those entitled. In the process of land acquisition for oil palm plantations should first pay attention to the status of land available, namely whether the State Land, Land Rights and Land Rights Management. Then Palm Oil Plantation Company will acquire land must also consider the procedure for acquisition of land provided by the National Land Law, namely the project, its location and status of the land available.

In the acquisition of land for plantation companies were facilitated by a team formed by the Regent. The team consists of Implementation Units (SATLAK) chaired by the Village Head, Unit Officer (SATGAS) chaired by Head, and the Planning Team Plantation Development District (TP3K) chaired by the Regent. The team is working with plantation companies and as well as a mediation consultation with the community in the provision of land or land acquisition.

In the process of the procurement or acquisition of land is often in trouble. Community (adat) is still difficult to let go of their land rights because they are emotionally already have very close ties with the land or is a physically and mentally already feel at one with the land. Because they believe that the soil has the power that control so that should not be released just like that. Other than, all activities will be community centered on the ground because the ground work, whether it's farming, gardening, doing cultural activities or religious. core, land is part integral to the activities of life, even that is not land that have emotional ties (religio-magical) with the public but also to water and hutan. Karena the procurement of land for oil palm plantations should consider the rights on land that has been attached to the land which is owned by indigenous peoples.

After the acquisition of land in accordance with the Location Permit, the plantation companies can apply for leasehold to the National Land Agency Region with the requirements specified. Once your application is accepted HGU, Planters then the company may engage in plantation business. Dadlam this relationship, basically tenure and land use by anyone for any purpose should be a cornerstone of their rights. And under normal circumstances, is required by anyone, for any purpose (also for projects of common interest) of land

rights one must go through a deliberation to reach an agreement, either on the agreement, the delivery of land to those who require or regarding compensation which is right holders of rights over the land to receive it.

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