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Ratio Legis Decision the Constitutional Court Number 122/Puu-Xiii/2015 Related Testing the Act of Number 39 2014 about Plantation

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Abstract
Constitutional rights are inherent rights of every citizen to obtain protection, equality of position before the law, decent life, and welfare. With regard to earth, water and other natural wealth, it has been regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia. Welfare can be realized by the treatment of government policies on the state of the country itself. Building a law is not an easy and or simple job as imagined, because good laws and regulations must meet the standards of justice, rule of law and utility in balance. In realizing one of the objectives of the Indonesian State Government, namely to realize public welfare, the government needs to develop the potential of natural wealth in Indonesia.
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1. Introduction

Plantations are one of the important sectors that contribute greatly to Indonesia's economic development. Therefore it needs to be managed, managed, protected and used in a planned, open, integrated, professional and responsible manner to improve the welfare of the people, nation and state. Because of the importance of the plantation sector, the government and Parliament often provide incentives to plantation companies by making regulations that take into account the interests of the company, and are removed from the side of community rights. The House of Representatives stated that the revision of the Plantation Law was to avoid potential land conflicts between farmers and planters, but substantially what the House announced was different from the facts that appeared in the field.

If traced from its roots, large-scale agrarian conflict arises when a region is included in the concession in the form of rights (for example, HGU) or concession permits. The provision of HGU (Plantation) that is not selective also gives a wide opportunity for abandoning the land when the HGU recipient does not use it as perakukaknya. According to Law No. 5 of 1960 concerning Basic Agrarian Principles Article 28 paragraph (1) states:

"The right to use business is the right to cultivate land that is directly controlled by the state, within the period as referred to in article 29 for agricultural, fishery and livestock companies"

The reintegration of the criminalization article adds to the list of problems that arise as a result of the adoption of Law Number 39 of 2014 concerning Plantation (Plantation Law). The Indonesian House of Representatives stated that the Plantation Law was established to avoid potential land conflicts between farmers and plantation companies. However, substantially what was stated by the DPR was different from the facts that appeared in the field. For example, the determination of a farmer from Aceh Tamiang, M. Nur, as a suspect by the Aceh Regional Police when disputing with an oil palm plantation company PT. Rapala with Law Number 39 of 2014 concerning Plantation Article 55 letter a, letter c, letter d jo. Article 107 letter a, letter c, letter d.

Another provision that is considered problematic in Law Number 39 Year 2014 is Article 12 Paragraph (1) which states;

1. Constitutional Court Decision Number 55 / PUU-VIII / 2010 concerning Testing of Law Number 18 of 2004 concerning Plantation against the 1945 Constitution of the Republic of Indonesia.

"In the event that the land needed for a Plantation Business is a Customary Right Land of a Customary Law Community, the Plantation Business Actor must conduct a consultation with the Customary Law Community holding the Right to Communal Rights to obtain approval regarding the surrender of land and compensation."

This article is deemed to have given inequality between the Customary Law Community and the Plantation Business Entity (Company). Provisions for "conducting deliberations to obtain land approval and compensation" do not provide a choice for the community other than to surrender their land.

Especially with the use of the term "rewards" which increasingly shows the weak position of the

community if faced with the company. Rewards in the Large Dictionary of Indonesian Language means wages or gifts as a service recipient, the amount is determined by the giver. This is of course contrary to the guarantee of legal certainty and respect for the Customary Law Community as stipulated in the 1945 Constitution of the Republic of Indonesia Article 28D Paragraph (1) and Article 18B Paragraph (2).

The politics of national land law development of important legal arrangements has taken place regarding indigenous peoples and their rights, with the inclusion of a special article on the issue of recognition and respect for customary law community units in the 1945 Republic of Indonesia National Constitution resulting from the second amendment in 2000. Article 18B Paragraph (2) "The State recognizes and respects customary law community units and their traditional rights insofar as they are alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia regulated in law".

Article 28I Paragraph (3): "Cultural identity and rights of traditional communities are respected in accordance with the development of the times and civilizations". (1945 Constitution Second Amendment (Year 2000)). International Diforum This dynamics was aimed at the occurrence of several developments / advances including the establishment of the UN Permanent Forum on Indigenous Issues in 2000 and the adoption of the Draft Declaration on the Right of Indigenous Peoples by the Human Rights Council on June 26, 2006.

Hazairin expressed his opinion on this issue in one of his writings "with the UUPA of 1960 which also aimed at unification revoking customary law regarding land and water by replacing it with modern patterned agrarian law as the only land law in Indonesia, because it is also colonial and agrarian law the land law in book II KUH (Perdata) was revoked "

In contrast to the above view, Sudirman Kartohadiprodjo stated that the Basic Agrarian Law would be compiled based on customary law, but in fact the thought used to compile it was a thought that was contrary to the rationale of customary law.

> 2. Results of Systematic STPN Research, Bureaucratic Reform, Conflict Resolution and Redistribution of Land for the greatest benefit of the People's Welfare, Yogyakarta, Center for Research and Community Service, First print, 2013, page, vii-xi.

Sudargo Gautama argued about this issue if faced with the issue of customary law often arise doubts about what is actually the law and what is the actual content of the customary law. It is true that there is no denying what Van Vallenhoven and Ter Haar argued that in this case the doubt of the law was not caused by the customary law but because the law enforcer himself lacked knowledge about this customary law. But Sudargo Gautama said, it might also be undeniable that doubts about the contents of customary law which are also colorful and different for each legal environment (rechtskring) are due to the fact that this customary law is an unwritten law. With the enactment of this BAL, unwritten customary law is stated as a law that applies to the earth and water space (Article 5). This means that some of the rights that were previously regulated by unwritten law (ie rights under the customary legal system) are now no longer contained in the written law. The unwritten customary law also affects at least uncertainty. Even though the UUPA maker itself expressly stated as one of the main objectives of the basic regulation that legal uncertainty must be eliminated.

This research is categorized as normative legal research, namely the process of legal research conducted to produce arguments, theories, and new concepts to answer legal issues by reviewing and analyzing the provisions of laws and other legal materials.

The method used to discuss the problems in this study is to use the method: Statute Approach, the conceptual approach moves from the views and doctrines that develop in legal science. The historical approach is carried out to examine the development of land arrangements in the plantation sector. This study used primary legal materials and secondary legal materials, the 1945 Constitution of the Republic of Indonesia, Law R.I. Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 41 of 1999 concerning Forestry, Law Number 39 of 2014 concerning Plantation, Government Regulation Number 40 of 1996 concerning HGU, HGB, and Right to Use (Article 9- 18). Academic Script of Law No. 39 of 2014 concerning Plantation. Secondary legal materials, such as results of research, scientific journals, results of seminars or other scientific meetings. The analysis is carried out according to the analysis or interpretation or interpretation of the law as stated by Philipus M. Hadjon.

Based on the background description of the above problems, the discussion of Regulating Customary Rights in the Development of Law in Indonesia, can be formulated with the first legal issues. Is the basis behind the emergence of requests for judicial review of the Constitution in the Decision of the Constitutional Court Number 122 / PUU-XIII / 2015 is the practice of implementing norms? Second What is the basis of legal interpretation used by the Constitutional Court in deciding the case material test Number: 122 / PUU-XIII / 2015?

2. Discussion

1. The basis behind the emergence of the petition for testing the plantation law is the Constitution in the decision

of the Constitutional Court Number 122 / PUU-XII / 2015, namely, "Three garden farmers namely M. Nur, AJ. Dahlan, and Theresia Yes tested the material of Law No. 39 of 2014 concerning Plantation (Plantation Law) to the Constitutional Court. The articles in question by the applicants include the sentence of conviction that can be used to criminalize the people around the plantation site. The applicants are domiciled in the plantation area and own land within the plantation. The applicants often quarrel with local plantation companies regarding land management and their rights as citizens are potentially violated due to the existence of the Plantation Law.

3. Hazairin, A review of Indonesian Customary Law in the Present, in fifty years of Indonesian legal education, FH. UI, Jakarta 1974, p. 146
4. Sudirman Kartodiprodjo, Several National Law Notes, Bina Cipta Bandung, 1971

At the inaugural session of Case No. 122 / PUU-XIII / 2015 which was held on Thursday (10/15), the applicants represented by attorneys who were members of the Peasant Advocacy Team conveyed the points of the petition. The applicant's attorney explained the articles to be tested from UUNo.39 of 2014 concerning Plantation. The articles to be tested are Article 12 Paragraph (1), Article 55 letter a, letter c, and letter d and Article 107 letter a, letter c, and letter d.

Law Number 39 of 2014 concerning Plantation Article 12 Paragraph (1) Contrary to the Certainty of the Law of the NRI Constitution Article 28D Paragraph (1) states:

"Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law".

That legal certainty and equal treatment before the law is one of the main characteristics of the rule of law or the rule of law as stated in the 1945 Constitution of the Republic of Indonesia Article 1 Paragraph (3) which states that the State of Indonesia is a legal state, where legal certainty is a prerequisite cannot be eliminated.

The principles of establishing a fair law according to Lon Fuller in his book (Legal morality), including:

a. The law must be made in such a way that it can be understood by ordinary people.
b. Rules may not conflict with each other
c. In law there must be firmness. The law cannot change every time, so that everyone no longer orientates activities to him
d. There must be consistency between the rules as announced with actual implementation.

According to Gustav Radbruch, the ideals (idee des Rechts) institutionalized in a form of legal state, must fulfill three general principles, namely purposiveness-benefit (zweckmassigkeit), justice justice (Gerechtigkeit), and legal certainty (Rechtssicherheit). These three elements must be contained in the law, both the law and the judge's decision, proportionally or balanced, not to let one of the elements not be accommodated, or one dominates the other.

According to Radbruch's explanation to make a truly proportional law, it is actually very difficult, because the legal ideals with one another basically have conflicting values - contradictions (antonyms), for example between certainty and justice. Therefore the law that applies in a legal community must be a balance of various antonyms, such as the forulation between legal certainty, benefit, and justice.

5. Peter Mahmud Marzuki, Legal Research, (Kencana Penada Media Group, 2005) p.95.

These conflicting and contradictory provisions (antonyms) which are still in force, often result in legal uncertainty for everyone. Such uncertainty will result in legal chaos and is very vulnerable to abuse and arbitrary enforcement. The prec- tices of punishment differ from one case to another, as a result of the vagueness of Law No. 39 of 2014 concerning Plantation Article 12 Paragraph (1) clearly causing legal uncertainty and disruption of justice.

Article 12 Paragraph (1) The plantation law is formulated vaguely vaguely and with multiple interpretations regarding deliberation to obtain approval regarding the surrender of land and compensation "as a legal agreement. So that it has the potential to be misused by the authorities and plantation companies in interpreting it so that it has the potential and factually creates uncertainty about the law violating the rights of the applicants.

Another provision that is considered problematic in Law Number 39 Year 2014 is Article 12 Paragraph (1) which states;

"In the event that the land needed for a Plantation Business is a Customary Right Land of a Customary Law Community, the Plantation Business Actor must conduct a consultation with the Customary Law Community holding the Right to Communal Rights to obtain approval regarding the surrender of land and compensation."

This article is deemed to have given inequality between the Customary Law Community and the Plantation Business Entity (Company). Provisions for "conducting deliberations to obtain land approval and compensation" do not provide a choice for the community other than to surrender their land. Especially with the use of the term "rewards" which increasingly shows the weak position of the community if faced with the company. Rewards in the Large Dictionary of Indonesian Language means wages or gifts as a service recipient, the amount is determined by the giver. This is of course contrary to the guarantee of legal certainty and respect for the

Customary Law Community as stipulated in the 1945 Constitution of the Republic of Indonesia Article 28D Paragraph (1) and Article 18B Paragraph (2).

If in land acquisition (for plantations) a dispute arises between the land owner and the plantation businessman, this dispute is a civil, not criminal (criminalization) domain. This is further emphasized by the articles in Law Number 39 Year 2015 which contain criminal threats related to the control of plantation land originating from customary rights or customary rights of indigenous peoples to be categorized as criminalization of civil relations. Legal recognition of customary law communities has been brightly lit both in the constitution, UUPA (Law No. 5 of 1960) and in various other laws.

If Law Number 39 Year 2014 Article is a replica of Law Number 18 Year 2004 Article 21, then Article 55 can be said to be formally flawed because it denies the decision of the previous Constitutional Court. The problems arising from the Plantation Law as described above, form the basis for three garden farmers, namely M. Nur, AJ. Dahlan, and Theresia Yes submitted a request for a judicial review of the Law of Shrimp Number. 39 of 2014 concerning Plantation to the Constitutional Court on August 28, 2015. The petition to test the Plantation Law Case Number 122 / PUU-XIII / 2015 is the last hope for farmers and indigenous peoples to protect themselves and their families from the arbitrariness of the authorities and companies. They hope that the Constitutional Court, which functions as a "guardian of constituency rights", is able to safeguard the rights of peasant communities and indigenous peoples as constitutional rights and legal rights of every citizen. They hope the Panel of Judges of the Constitutional Court.

The applicants sued Law Number 39 of 2014 concerning Plantation Article 12 Paragraph (1) which regulates the matter of approval to obtain indigenous peoples' land for plantation business. There is a position of inequality between customary law communities and companies. The community is only directed to get approval, there is no provision for customary law communities if they refuse. Especially with the existence of phrase rewards, surrender of land and compensation. With the provision of benefits, it further explains the inequality of the position of indigenous peoples who have customary rights. Because the definition of reward is when someone does a job, he will get a reward.

Then what is tested by the applicant is Law Number 39 of 2014 concerning Plantation Article 55 letter a, letter c, and letter d and Article 107 letter a, letter c, and letter d. This article, according to the researcher, is a replication article of Law Number 18 Year 2004 concerning Plantations Article 21 and Article 47 which the Constitutional Court has canceled. The previous Plantation Law also regulated criminal articles or articles that could be used to ensnare farmers or indigenous people when dealing with plantation companies. The Petitioner considers Article considered to be contrary to the constitution for violating the rights of indigenous peoples. Then also violated the provisions of the right to security for the community, the right to be free from fear, and the right to develop themselves to fulfill the basic needs of life as stipulated in the 1945 Constitution of the Republic of Indonesia Article 28C Paragraph (1) and Article 28G Paragraph (1).

Gustav Radbruch stated certainty as one of the objectives of the law. In the order of people's lives it is closely related to certainty in law. Legal certainty is in accordance with normative conditions, both provisions and decisions of judges. In this case, the context of the actual case is that farmers and local communities live and develop around plantation companies. Land that has been occupied for a long time, it turns out when a plantation company is present, community lands are claimed to be plantation areas. The land was evicted and taken over arbitrarily, without negotiations and without compensation.

A social welfare state is a system of countries that actively provides political, economic and humanitarian assistance programs to its citizens. Social welfare state. When people try to fight for their land rights, the plantation company with its "legal" shield argues that anyone who violates the provisions on the prohibition of acts of damaging the garden or its assets which can result in disruption of plantation business, will be arrested and convicted. Which matter is regulated in Law No. 39 of 2014 concerning Plantation Article 55 and Article 107.

2. The basis of the legal interpretation used by the Constitutional Court in deciding the case material test Number: 122 / PUU-XIII / 2015 Article 55 of Law No. 39/2014 concerning Plantation states the following:

"Everyone is illegally prohibited:

a. work on, use, occupy, and / or control plantation land;
b. work, use, occupy and / or control community land or Customary Rights Land of the Customary Law Community with a view to Plantation Business;
c. cutting down plants in the plantation area or;
d. harvest and / or collect results "

Article 107 of Law No. 39 of 2014 concerning the Plantation reads as follows:

"Everyone is illegally who:

a. work on, use, occupy, and / or control plantation land;
b. work, use, occupy and / or control community land or Customary Rights Land of the Customary Law Community with a view to Plantation Business;

c. cutting down plants in the plantation area or;
d. harvest and / or collect plantation produce
e. as referred to in Article 55, shall be subject to a maximum imprisonment of 4 (four) years or a maximum fine of Rp. 4,000,000,000 (four billion rupiah) "

Specifically the application for testing Article 55 letters a, c, d and Article 107 a, c, d, Law No. 39 of 2014 concerning Plantation contains related to the phrase "everyone". The phrase is formulated in a vague, unclear and detailed manner regarding acts that are qualified as a criminal act, and their understanding is too broad and complicated. Thus, every effort and effort made by "everyone" in defending and fighting for their land rights can be qualified as an act "to take actions that result in damage to the garden and / or other assets, use of plantation land without permission and / or other actions that cause disturbance plantation business. "The phrase can be interpreted openly and widely by the authorities and plantation companies, as has been experienced by the four farmers who became applicants for testing at this Constitutional Court. In his petition, four farmers considered that Law Number 39 Year 2014 concerning Plantation Article 55 and Article 107 had contradicted the 1945 Constitution of the Republic of Indonesia NRI Article 1 Paragraph (3) concerning the Principle of the State of Law; The Principle of Legal Certainty guaranteed by the 1945 Constitution of the Indonesian Republic of Indonesia Article 28 D Paragraph (1). In addition, the two Articles have also limited the right of citizens to develop themselves, and the loss of security for the people around the plantation area as guaranteed by the 1945 Constitution of the Republic of Indonesia Article 28 C Paragraph (1), Article 28 G Paragraph (1) and 18 B Paragraph (2).

Principles for Establishing Legislation Regulations.

That the legal principle as a basis or guideline for the formation of law, the principle of legislation is also a basis or guideline for the establishment of legislation. This is as said by A. Hamid S Attamimi who said that the principle of the formation of legislation is good as a legal principle that provides guidance and guidance for pouring out the contents of regulations, in the form and arrangement that is appropriate, appropriate and uses the method, and follows predetermined processes and procedures.

Regarding the principle of good regulation formation, Van der Vlies in his book entitled "Het Wetsbegrip en Beginselen van Beboorlijke Regelgiving" divides the principles of the formation of good rules into two types of principles, namely:

1. Formal principles

> 6. Yuliandri, Principles for Establishing Good Laws and Regulations: The idea of establishing a Sustainable Law, Jakarta, PT Raja Grafindo Persada, 2009, p.23

In the formal principle in the formulation of legislation includes five types of principles, namely:

a. The principle of purpose is clear (beginsel van duidelijke doelstelling)
b. The right organ or institution principle (beginsel van het juiste orgaan)
c. The principle of the need for regulation (het noodzakelijkheids beginsel)
d. Principles can be implemented (het beginsel van uitvoerbaarheid)
e. Consensus principle (het beginsel van consensusu)

2. "Material principles

Material principles in the formation of legislation include five types, namely:

a. The principle of terminology and systematics is correct (het beginsel van dueddelijke terminology en duedelijke systematik);
b. The principle of being controlled (het beginsel van de kenbaarheid);
c. The principle of equal treatment in law (het rechtsgelij kheidbeginsel)
d. Principle of legal certainty (het rechtszekerbeidsbeginsel)
e. The principle of law enforcement is in accordance with individual circumstances (het beginsel van de individuele rechtsbedeling)

3. In an effort to find and determine the will of the legislator, there is a method or method of interpreting legislation, namely:

a. Grammatical Interpretation (taatkundige interpretatie) is the interpretation of terminology or words, the order of sentences in the context of the language used by lawmakers in formulating certain laws and regulations.
b. Historical interpretation (historishe interpretatie), namely the interpretation carried out on the contents of a statutory regulation by reviewing the historical background of the formation or occurrence of the relevant legislation. Historical interpretation is divided into interpretations according to the history of the Act (wet historische interpretatie) and interpretation according to legal history (rechts historische interpretatie).
c. Systematic interpretation (systematishe interpretatie), namely the interpretation of one or more laws and

regulations, by investigating a particular system contained in a legal system in the framework of discovering general legal principles that can be applied in a particular legal problem. Systematic interpretation is an interpretation that connects article one to another article in the relevant law or other legislation or reads the explanation of the law so that it understands its meaning.

d. Sociological (teleological) interpretation, in line with Prof. L.J.Van Apeldoorn's view, then one of the main tasks of a legal expert is to adjust the laws and regulations with concrete things that exist in the community.
e. Authentic interpretation, namely the interpretation of words, terms or definitions in the laws and regulations that have been previously set by the legislators themselves
f. Interpretation of a contrario is interpretation by opposing the understanding between the questions faced with the problems set out in a clause of the law.
g. Extensive interpretation is that the interpreter extends the meaning of words in the rules so that an event can be included
h. A restrictive interpretation is interpretation by limiting the meaning of words in the rules.
i. Interpretation of comparisons namely comparative interpretation by comparing agas explanations found clarity of a statutory provision.

Article 12 Paragraph (1) which states that: In the event that the land needed is the land of ulayat rights, the customary law community of the plantation business actor must conduct a consultation with the customary law community of the customary rights holder to obtain approval regarding the surrender of land and compensation. "

So according to researchers the word rewards in the article are not in accordance with Law Number 12 of 2011 concerning the Establishment of Legislation, namely Article 6 Paragraph (1) which regulates that the principles contained in the material contained in the laws and regulations, namely the principle of Order and Legal certainty is that every material content of legislation must be able to create order in society through guaranteeing legal certainty.

The word rewards in Article 12 Paragraph (1) are not in accordance with the principles of legislation which form the basis or guideline for the formulation of legislation, namely the principles of terminology and systematics, meaning that legislation must be compiled in a correct system so that it can be understood and known by both by the people who are required to obey the law. In addition, it must also use diction and terms that are easily understood by any community, so that there is no distortion of meaning and interpretation (sentence translation).

So according to the author the word ‘compensation must be replaced with the word" compensation "so that it can be understood and well known by the wider community. The meaning of compensation is the replacement of money or goods to someone who feels aggrieved because their property is taken and used for plantation purposes. the definition of compensation has become a legal concept, where the public or someone can ask for compensation to the state or parties that have brought or resulted in losses.

Legislation Ratio Law No. 39 of 2014 In 12 (1) it was estimated that it would not be until at least some people get a law. This needs to be said more than in the world with the Law and planning the Law on Protection of Law, which is actually like in the DPR. The Acting Actor does not want the law to be finished even though the law will be destroyed and the life and the next generation will be lost in the future. Likewise with 55 Law No. 39/2014. This When this was 55 of Law No. 39/2014 this affected many people who worked on plantations which did not only occur, even if it does, it doesn't even provide protection to the planters, and it seems that when it comes to the gardeners, it is said that when I wasn't in it, it was even worse. Because this is used as a fuel to have a filter and a selection that only people who are working can do it. But when this is done, it will be the law of the jungle, so that this actually protects planters.

The Plantation Law was born with the awareness that plantation security was seen as urgent due to the rampant acts of looting, theft and cultivation of plantation land. this is the result of a coordination meeting that discussed the handling of integrated security of plantation companies.

> 7. One derivative of plantation crops products, namely Permentan No. 26/2007 concerning plantation business licensing states that companies in one province can control 100,000 ha (not groups) meaning that in a group of companies (one business management and control) can control more than 100,000 ha and companies may divide land ownership by 20% from those held. The area of oil palm plantations in Central Kalimantan is 1 million, only 5% belongs to the community. This is clearly different from the general explanation of Law No. 18 of 2004 concerning Plantation paragraph 7 concerning guaranteeing ownership, control, use and fair use of land.

The Indonesian government considers the establishment of a plantation law as the legal basis for developing plantations and for realizing the welfare of the people in Indonesia. So that the organization of plantations is in line with the mandate and soul of the 1945 Constitution of the Indonesian Republic of Indonesia Article 33

Paragraph (3). Besides that, the plantation business also proved to be quite bearable and withstood the storm of recession and the monetary crisis that hit the Indonesian economy. For this reason, plantations need to be organized, managed, protected and utilized in a planned, open, integrated, professional and responsible manner to improve the economy of the people, nation and state.

Unfortunately, the Plantation Law substantially still opens up space for the preservation of the massive exploitation of entrepreneurs against the people and plantation land, as well as the creation of people's dependence on planters (investors). This is because the orientation of plantation development is still in the form of large gardens, leading to a concentration of excessive land use rights by large plantation companies. Most of the business use rights owned by planters gradually displace the existence of indigenous people or farmers who are around or inside plantation land. As a result, indigenous people or farmers no longer have access to what they control or lose their land.

Besides that there is conditional recognition of indigenous peoples whose land is needed for plantation land, where the customary law community is only recognized if in reality (the community) still exists, a clause that is very contrary to the provisions of the Constitution of the Republic of Indonesia 1945 Constitution, which clearly acknowledging the unconditional existence of these indigenous peoples. This recognition is actually also intended solely for the interests of the plantation businessman, namely obtaining or facilitating the extension of the right to use the plantation land. so it is not for the benefit of indigenous peoples.

For the Indonesian government, the Plantation Law is very strategic and has an important role in national development, because it is expected to increase prosperity and prosperity of the people, also must provide equal benefits and opportunities for the people of Indonesia. Thus plantation development will be able to create harmonious and mutually beneficial relationships between plantation business actors, the surrounding community, and other stakeholders or stakeholders as well as the creation of integrated management of upstream and downstream side plantations. Plantation business is strong enough to withstand the storm of recession and the monetary crisis that hit the Indonesian economy, for which plantations need to be organized, managed, protected and utilized in a planned, integrated, professional and responsible manner to improve the economy of the people, nation and country.

To enhance the strategic role of plantation development and at the same time provide direction, guidance and control tools, plantation planning is based on national development plans, regional spatial plans, potential and performance of plantation development and the development of internal and external strategic environments, science and technology, social culture, environment, market and regional aspirations and continue to uphold the needs of the nation.

Every plantation business actor must have a plantation business permit. one of the conditions for obtaining a plantation business permit. one condition for obtaining such plantation business licenses is the availability of land which begins with the granting of location permits, the granting of land rights to plantation businesses must continue to pay attention to the customary rights of indigenous peoples as long as they are in reality and do not conflict with higher law and national interests.

In order to guarantee the ownership, control, use and fair use of land, it is necessary to stipulate the regulation of the maximum and minimum extent of land use for plantation business, transfer of land rights can increase fragmentation is prohibited. Plantation business is carried out by individuals, legal entities which include cooperatives and limited liability companies both state and private. In the implementation of legal entities must be able to synergize with the community around the plantation in managing business that is mutually beneficial, appreciative, strengthening and dependent.

Guaranteed recognition and respect for indigenous peoples' units along with their traditional rights, as outlined in the 1945 Constitution of the Republic of Indonesia Article 18B Paragraph (2) and stated in the decision of the Constitutional Court have been violated by the provisions of the Law on Plantation Article 12 Paragraph (1). The provisions of the Act pay attention to the weakness of the position of indigenous peoples with the use of the term reward. This law does not explain the definition of compensation.

Referring to the Large Indonesian Language Dictionary, the rewards are defined as (i) wages as avenger, services (ii) replies (in the form of praise, punishment etc.) for the actions taken. Then positively the term is a reward in the form of a gift or gift that is determined in law, while a negative meaning is a reward in the form of burden or suffering specified in the law.

Whereas the construction of legal relations between customary law communities and plantation business actors is related to the transfer or transfer of material rights that have economic value. Rewards or prizes are more impressed on unilateral giving. The type or amount determined by the party giving compensation in this case is the plantation business actor.

That the provisions of the Law on Plantation Article 12 Paragraph (2) also clearly violate the contents of the United Nations Declaration on the Right of Indigenous Peoples (UNDRIP). The UN Declaration decides minimum standards for the survival, dignity and welfare of indigenous peoples throughout the world. Although it is not legally binding, it affirms the rights contained in international human rights agreements for indigenous

peoples.

UNDRIP states that indigenous peoples have rights to land, territory and resources. The state must provide legal recognition and protection of these lands, territories and resources by respecting the customs and traditions of their land tenure systems. The state must establish and implement, together with the associated indigenous peoples, an open and transparent process to recognize and resolve disputes over land, territories and resources.

Furthermore, indigenous peoples as stated by the UNDRIP have the right to provide Free, Prior and Informed Consent (FPIC) for the following matters: a) Activities that cause forced eviction or transfer from their land or territory. b) changes in the applicable legislation or the stipulation of applicable regulations or laws or regulations or new regulations or laws that affect them. c) Projects that have an impact on their land and territory, especially those related to the development, use or exploitation of minerals, water or other resources. d) storage or disposal of toxic or dangerous objects on their land or territory.

That accordingly, the provisions of the law Article 12 Paragraph (1) reflect unequal treatment, injustice. Legal uncertainty, and being discriminatory towards the applicants, especially Petitioner III because with this provision every action conducts deliberations between plantation business actors and customary law communities of customary rights holders as a condition for obtaining approval regarding the surrender of land and compensation by being interpreted and arbitrarily qualified by the authorities and companies. Whereas demanding a right both individually and collectively is guaranteed by various laws including the 1945 Constitution of the Republic of Indonesia, so that it violates the guarantee of legal certainty as stipulated in the 1945 Constitution of the Republic of Indonesia Article 42D Paragraph (1).

PP No. 40 of 1996 clearly states that:

"In the case of land that will be granted with the Right to Use the business there are plants and or buildings belonging to another party whose existence is based on the basis of legitimate rights, the owner of the building and plant is given compensation imposed on the holder of the new Business Use Rights".

PP No. 40 of 1996 clearly states that for land granted business use rights must be free from the interests of other parties. So if the land has been controlled and owned as customary land or communal land by the surrounding community, the entrepreneur as the owner of the right to use the business must provide compensation, not in the form of compensation. Article 12 Paragraph (1) which is formulated vaguely is what triggers conflicts that occur around the land of giving HGU. And the conflict is increasingly widespread and sustainable such as fire in the husk, which will be enlarged if provoked by certain parties or if there are new programs from plantation companies that hold the right to cultivate the community immediately ignited to claim compensation for their land, this event continues sustainable without a solution.

During the discussion, the Plantation Bill also included the issue of indigenous peoples' rights as a matter that must be discussed. However, the construction of indigenous peoples built in the Plantation Bill is related to compensation. Not giving rights to indigenous people to be able to decide to accept or reject the plantation business that they want to do in the territory of indigenous peoples. Which then reflected in the provisions of the Law on Plantation Article 12 Paragraph (1) states that

"In the event that the land needed for plantation business is the land of ulayat rights, the customary law community of the plantation business actor must conduct a consultation with the customary law community of the customary rights holder to obtain an agreement regarding the surrender of land and compensation."

This provision can be read as a condition for approval or permission from indigenous peoples to use their land. However in practice, this Article is interpreted as only requiring approval of the amount of compensation, not permission for the surrender of land, and if the agreement is not reached, the land can still be taken over "in the interest of the state". Concerns like this have prompted a request to legally review the Plantation Law. In a report to the CERD Committee (Committee for the Elimination of All Forms of Racial Discrimination) 30 July-1 August 2007 conducted by the Border Palm Oil Advocacy Team stated that the Plantation Law failed to provide meaningful protection for indigenous peoples. The announcement of the Plantation Law was welcomed with deep concern for indigenous peoples and civil society in Indonesia, because it was seen as an effort to continue inadequate treatment of indigenous peoples' rights and clearly exacerbated these shortcomings. Especially, the law requires that only the interests of indigenous peoples need to be considered, not respected, the requirement that rights have been "recognized" remain, and exceptions to national interests that are preferred continue to deny the rights of indigenous peoples.

III. CONCLUSION

The Basic Agrarian Law (UUPA) is based on customary law but in reality many take great steps towards the abolition of indigenous property rights. The reason is of course that all land must be subject to the provisions of national interests and the objectives of national unity, even though it still permits administrative policies in accordance with local customary law, the LoGA clearly denies customary rights, namely creating a land law that is common to all countries. As a result, many cause conflicts about customary land rights which are guided by unwritten customary law and state interests based on written law. Thus the customary law of the customary law

community even though in reality is still present, it will not be recognized if there are other interests with written (positive) law.

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