



# ANALYSIS OF LEGAL SCIENCE'S VIEWS ON THE OBLIGATION OF COMMUNITY GARDEN DEVELOPMENT (PLASMA GARDEN) IN PLANTATION COMPANIES AS A MANDATE OF THE PRINCIPAL AGRARIAN LAW

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## Abstract

*The obligation to provide plasma plantations is also one of the requirements for obtaining land rights in the form of Cultivation Rights (HGU) by the Company, as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 7 of 2017 concerning Regulations and Procedures for Determining Cultivation Rights, which in Article 40 letter (k) and Article 41 states: "One of the obligations of HGU Holders is to Facilitate the development of local community gardens of at least 20% (twenty percent) of the land area The HGU application for the surrounding community is in the form of a partnership (plasma) in accordance with the business activity permit from the competent technical agency, and the application for partnership (plasma) land rights is submitted simultaneously with the company's HGU application." To achieve one of the goals of the Republic of Indonesia as stated in paragraph IV of the preamble to the 1945 Constitution of the Republic of Indonesia, namely to advance general welfare, the abundance of palm oil production must be utilized as much as possible for national development strategies, this is carried out from various functions related to economics, ecology and socio-culture. Regulations related to the obligation to facilitate the development of plasma plantations have been amended through Law no. 11 of 2020 concerning Job Creation as amended by Government Regulation in Lieu of Law No. 2 of 2022 which was promulgated through Law no. 6 of 2023 has been adjusted and regulated in more detail in its derivative regulations, namely Government Regulation no. 26 of 2021 concerning the Implementation of the Agricultural Sector and Minister of Agriculture Regulation No. 18 of 2021 concerning Facilitation of the Development of Gardens in Surrounding Communities.*

**Keywords:** *Legal Analysis, Plasma Plantations, Plantation Companies, UUPA*

## A. INTRODUCTION

Indonesia is a country that is rich in natural resources and has high biodiversity. Forests, mountains, rice fields and oceans down to the bowels of the earth store various kinds of natural wealth, both renewable and non-renewable. As a third world country, it is not surprising that until now Indonesia's income still depends on the results obtained from managing natural resources as capital and the main milestone to support economic growth in carrying out development financing throughout Indonesia. One of the foreign exchange contributors to the state treasury is the plantation sector. One type of plant that is a mainstay commodity in the plantation industry in Indonesia is oil palm (*Elaeis Guineensis* Jacq).

Development solutions in the plantation sector are able to meet all needs and support their potential. Activities in the plantation sector require large areas of land, so that this plantation business is in the agrarian law category of using land rights using the Right to Cultivate (HGU) pattern. According to Article 28 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), what is meant by HGU is the right to cultivate land that is directly controlled by the state, within the period as stated in Article 29, for agricultural companies, fisheries, or animal husbandry. Government Regulation Number

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40 of 1996 (hereinafter referred to as PP Number 40 of 1996) concerning HGU, HGB and Land Use Rights adds to the benefits of plantation companies.

Business operation Plantations are regulated in Law Number 39 of 2014 concerning Plantations (hereinafter referred to as the Plantation Law). In the Plantation Law there are regulations that regulate the obligation of plantation companies to facilitate the development of gardens in surrounding communities, namely a minimum of 20% (twenty percent) of the total area of plantations cultivated by the company. This is contained in Article 58 paragraph (1) of the Plantation Law which states that: Plantation companies that have a Plantation Business Permit (IUP) or Plantation Business Permit for Cultivation (IUP-B) must facilitate the development of community gardens covering an area of twenty percent of the total plantation area cultivated by the Plantation Company.

The obligation to provide plasma plantations is also one of the requirements for obtaining land rights in the form of Cultivation Rights (HGU) by the Company, as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 7 of 2017 concerning Regulations and Procedures for Determining Cultivation Rights, which in Article 40 letter (k) and Article 41 states: "One of the obligations of the HGU Holder is: k. Facilitate the development of local community gardens of at least 20% (twenty percent) of the land area requested for HGU for the surrounding community in the form of a partnership (plasma) in accordance with the business activity permit from the competent technical agency, and the application for rights to the partnership (plasma) land submitted simultaneously with the company's HGU application."

It can be concluded that community plantation areas (plasma plantations) will also have their rights applied for by HGU holders. In other words, the Plasma HGU application must coincide with the HGU of the Company (HGU Holder). In line with this, Law no. 39 of 2014 concerning Plantations also regulates the use of community land or community customary land for plantation activities, including oil palm plantations, as stipulated in Article 55 letter (b), which reads: "Every person is unlawfully prohibited from: b. working on, using, occupying and/or controlling community land or customary law community customary land for the purpose of plantation business."

On the basis of Article 55 letter b of Law no. 39 of 2014 concerning Plantations, oil palm plantation companies are obliged by law to submit and comply with all provisions of laws and regulations regarding plantation businesses, including but not limited to the Regulation of the Minister of Agriculture of the Republic of Indonesia No. 98/Permentan/OT.140/9/2013 concerning Guidelines for Plantation Business Licensing and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 7 of 2017 concerning Regulations and Procedures for Determining Business Use Rights. The obligation to develop community plantation areas (plasma) is regulated in these provisions. There are several problems faced by oil palm plantation companies in implementing these provisions.

## **B. Formulation of the problem**

1. Why are there plantation companies that do not carry out their obligations to develop local community gardens (plasma plantations) in plantation companies based on statutory regulations in resolving agrarian conflicts in the development of community plantations (plasma plantations)?
2. What is the impact on plantation companies that do not carry out their obligations in developing local community gardens (plasma plantations) with plantation companies?
3. What is the analysis of legal science's views on the obligations of plasma plantation development to the community?

## **C. DISCUSSION**

### **1. Overview of Plasma Gardens**

On the basis of Article 55 letter b of Law no. 39 of 2014 concerning Plantations, oil palm plantation companies are obliged by law to submit and comply with all provisions of laws and regulations regarding plantation businesses, including but not limited to the Regulation of the Minister of Agriculture of the Republic of Indonesia No. 98/Permentan/OT.140/9/2013 concerning Guidelines for Plantation Business Licensing and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 7 of 2017 concerning Regulations and Procedures for Determining Business Use Rights. The obligation to develop community plantation areas (plasma) is regulated in these provisions. There are several problems faced by oil palm plantation companies in implementing these provisions.

Regulations related to the obligation to facilitate the development of plasma plantations have been amended through Law No. 11 of 2020 concerning Job Creation as amended by Government Regulation in Lieu of Law No. 2 of 2022 which was promulgated through Law No. 6 of 2023 has been adjusted and regulated in more detail in its derivative regulations, namely Government Regulation no. 26 of 2021 concerning the Implementation of the Agricultural Sector and Minister of Agriculture Regulation No. 18 of 2021 concerning Facilitation of the Development of Gardens in Surrounding Communities. With this arrangement, it is hoped that it can provide a sense of justice for the community and legal certainty for plantation companies so that the investment climate runs safely and smoothly.

As for the comparison of the provisions on the obligation to facilitate the development of plasma plantations in Law no. 39 of 2014 concerning Plantations and Law No. 11 of 2020 concerning Job Creation as amended by Government Regulation in Lieu of Law No. 2 of 2022 which was promulgated through Law No. 6 of 2023 are as follows: Article 58 of Plantation Law No. . 39 of 2014 and Law no. 11 of 2020 Paragraph (1) Plantation companies that have plantation business permits or plantation business permits for cultivation are obliged to facilitate the development of local community gardens at a minimum of 20% of the total area of the plantation cultivated by the Plantation Company. Paragraph (2) Facilitate the development of community gardens as referred to in paragraph (1) can be carried out through credit patterns, profit sharing, or other agreed forms of funding in accordance with the provisions of statutory regulations. Paragraph (3): The obligation to facilitate plantation development as referred to in paragraph (1) must be carried out within a period of no later than 3 (three) years after the right to cultivate is granted. Paragraph (4): Facilitation of community garden development as referred to in paragraph (1) must be reported to the central government and regional governments in accordance with their authority.

### **2. Impact on Plantation Companies That Do Not Carry Out Their Obligations in Building Surrounding Community Gardens (Plasma Gardens) in Plantation Companies**

#### **a. The Impact of Plantation Businesses on the Regional Economy**

One of the goals of development is to improve the standard of living and welfare of the community. This development is carried out by utilizing natural resources as raw materials and humans as actors in development activities, so that there are consequences that occur, namely changes to the environment. The aim of

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plantation development is to increase people's income, increase state revenues and foreign exchange, provide employment opportunities, increase productivity, added value and competitiveness; meeting domestic consumption and industrial raw material needs; and optimize sustainable management of natural resources.

In Indonesia, the agricultural sector is still relied on for national development and can encourage the currently developing industrial sector. Agricultural development is expected to make a real contribution to development and society. Economic development activities are a continuous process with the ultimate goal of improving community welfare. Therefore, development strategies must be able to spur economic growth and improve the quality of human resources because development always develops in line with developments in society and science. Agriculture is still the basis of life for society which is dominated by two subsectors, namely food crops and plantations.

**b. The Impact of Plantation Businesses on Communities Around Plantations**

Community welfare can be interpreted as the condition of fulfilling the material, spiritual and social needs of citizens so that they can live a decent life and are able to develop themselves, so that they can carry out their social functions. The measure of the level of well-being can be assessed from the ability of individuals or groups in their efforts to meet their material and spiritual needs. We can relate material needs to income which will fulfill the needs for clothing, shelter, food and health. Spiritual needs can be related to education, security and peaceful life.

Palm oil companies are intended to create jobs, expand employment opportunities and business opportunities, so palm oil companies have a strategic meaning, namely they are expected to increase people's income, improve community welfare and support a balanced economic structure. The establishment of this palm oil company was to support the economy in the surrounding area. In the Indonesian economy, palm oil plays a strategic role because of its bright prospects as a source of foreign exchange. Apart from that, *Argoindustri* is a branch of industry that has bright prospects in the future. This is supported by the existence of natural and human resources as well as the availability of quite large market opportunities both at home and abroad.

One of the goals of developing industrial agriculture in Indonesia is to increase company productivity and add value to its productivity. The increase in added value of a commodity is achieved through the processing process from raw form to semi-finished goods and finished goods. Some of the agro-industrial developments that have been carried out by the government in promoting oil palm plantations in South Kalimantan province include the desire to build a palm oil factory agro-industrial company.

**3. Solutions in Completing Community Garden Development (Plasma Gardens)**

Legal protection is an effort to fulfill rights and also provide assistance with the aim of providing a sense of security to parties who witness or experience problems in an event. Legal protection can arise through various circumstances, namely compensation, medical assistance, legal and etc. Legal expert *Satjipto Raharjo* stated that the meaning of legal protection is to provide guarantees regarding human rights that are injured by other parties and that protection is the right to have by everyone so that these people can freely use all the rights granted by law. So, with legal protection, the welfare of the people is also guaranteed, besides that it can also realize the goal of the state, namely to achieve general welfare.

In accordance with Minister of Agriculture Regulation Number 26 of 2007 concerning Guidelines for Plantation Business Licensing, article 23 paragraph (2) as a formal requirement which incorporates the principle of consensuality contained in article

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1338 of Book III of the Civil Code. With these formal requirements, the creation of a partnership agreement should be formed in a written agreement even though the agreement has been spoken by the parties. But in Ministerial Regulation Number 26 of 2007 concerning Guidelines for Plantation Business Licensing article 23 paragraph (2) contains an element of weakness, namely, there is no specific explanation regarding the partnership agreement made by the parties which must be made in the form of a Notarial deed or made under hand. Regarding the interests of the parties, namely that an agreement can provide strong and binding certainty and protection, it would be better if a plasma core partnership agreement was made in the form of a notarial deed. Rudianto S. Sinaga explained in more depth regarding the two main benefits if a partnership agreement is made in the form of an authentic deed and before a notary, namely, as follows:

If a partnership agreement is made in the form of a notarial deed, then there will automatically be supervision provided by a third party with the aim of ensuring that the agreement between the two parties can run as it should in accordance with applicable legal provisions. Considering that one of the parties in a partnership is a party who is considered limited in understanding legal issues and how to resolve problems due to the minimal level or quality of education received by one of the parties. If a partnership agreement is written down in the form of a notarial deed, it will be able to change the nature of the legal capacity itself, namely what was originally an agreement that had evidence that could be said to be imperfect, becomes an agreement that has strong validation.

## **D. CLOSING**

### **1. Conclusion**

- 1) Business operation Plantations are regulated in Law Number 39 of 2014 concerning Plantations (hereinafter referred to as the Plantation Law). In the Plantation Law there are regulations that regulate the obligation of plantation companies to facilitate the development of gardens in surrounding communities, namely a minimum of 20% (twenty percent) of the total area of plantations cultivated by the company. This is contained in Article 58 paragraph (1) of the Plantation Law.
- 2) There are still many companies that ignore the Minister of Agriculture's Regulation on plasma plantations, so that the community protests against the companies through the local government. This is where the role of local government is really needed to be able to mediate in problems that occur between oil palm plantation companies and communities around oil palm plantations who feel that their rights have not been fulfilled. In a partnership agreement between the Company and the Community, the occurrence of a conflict is unavoidable.
- 3) The partnership pattern is carried out by large, established entrepreneurs who have a social responsibility to empower small businesses to develop into strong and independent entrepreneurs. Encourage and develop partnership business cooperation accompanied by cooperative relationships with a sense of corporate social responsibility to provide guidance and guidance to small business owners so that they are expected to grow and develop as strong and independent economic components.

### **2. Suggestion**

- 1) To Palm Oil Plantation Companies To provide obligations to plantation companies to facilitate the development of plantations in surrounding communities, namely a minimum of 20% (twenty percent) of the total area of plantations cultivated by the company. This is contained in Article 58 paragraph (1) of the Plantation Law.

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- 2) The Government should impose strict sanctions on palm oil companies that do not provide plantations to the community as regulated in the Law, the aim of which is to create prosperity for the community around the community plantations.
- 3) The public should be aware of the distribution of plasma plantations, the aim of which is to improve people's lives and are expected to be able to manage them as well as possible.

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