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Position of Physical Land Tenure Certificate (Sporadic) Above Cultivation Rights

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Abstract
This research aims to assess the position of Cultivation Rights above Cultivation Rights (HGU), where it will be known whether it is possible to have Cultivation Rights in other parties' HGU areas. This is important to know, because many HGU lands are controlled by other parties for various reasons (one reason is that the land is the right to cultivate the local community). To strengthen this reason, a physical possession letter was shown which was signed by the local Village Head (Keuchik), which contained information that the land came from cultivated land (Hak Garap). In this discussion, one case of usurpation or control of HGU land by another party is used, namely HGU No. 1 of 1995 in the name of PT. Ambya Putra. One of the irregularities that occurred in this case was the appearance of a letter of physical control (Sporadik) over a plot of land he obtained from cultivated land (Hak Garap) on July 8 2020 and signed by the Village Head (Keuchik). Even though on the land there is already HGU No. 1 of 1995 which lasts until 8 November 2025.

Keywords: Physical Control of Land, Cultivation Rights, Sporadic

Introduction

In the Basic Agrarian Law (Law No. 5 of 1960) and abbreviated as UUPA, Cultivation Rights (HGU) are regulated from Article 28 to Article 34 of the UUPA. According to Article 28 paragraphs (1) and (2) and Article 29 UUPA, HGU is granted on land controlled directly by the State (state land) to be cultivated for agricultural, fishing or livestock companies, for a maximum period of 25 years or 35 years. Then, if the term in question has expired or expired, the HGU can still be extended for a period of 25 years if the right holder still needs it. The land area that can be granted for HGB is at least 5 hectares (5 hectares or more). Furthermore, Article 30 paragraph (1) of the UUPA states that HGU can be owned or given to Indonesian citizens and Indonesian legal entities. What is meant by an Indonesian legal entity is a legal entity whose establishment is carried out according to Indonesian law and whose domicile is within the territory of Indonesia.

HGU can be granted on state land, especially land that is included in the production forest category, in which case the status of the land is transferred from production forest to state land. With its status as state land, only then can the HGU be granted.[1] The granting of HGU must also be in accordance with applicable laws and regulations, namely for agricultural, fishing or livestock companies. What is meant by production forest is a forest area that has the function of fulfilling production needs obtained from forest products with the aim of obtaining economic benefits, while still paying attention to environmental conditions and maintaining environmental sustainability of the forest area.[2]

HGU is one of the land rights that must be registered as intended in Article 19 UUPA. This is clearly stated in Article 32 of the UUPA which states that the conditions for granting HGU, then the transfer and deletion of HGU must be registered. The

[1] Rumah.com, HGU Adalah Hak Guna Usaha, Berikut Penjelasan Lengkapnya!, https://www.rumah.com/panduan-properti/hgu-adalah-69503, accessed September 23, 2023.

[2] Ekawati, Pengertian Hutan Produksi Menurut Para Ahli, dalam https://lindungihutan.com/blog/hutan-produksi/#rb-apa-itu-hutan-produksi, accessed September 20, 2023.

purpose of registration is intended to provide legal certainty for HGU and legal protection for HGU holders or owners. In connection with the abolition of HGU, one of them is due to the end of the HGU period, where after the period ends the land returns to state land. This is understandable because HGU occurs on land controlled directly by the state (namely state land).

Obtaining legal certainty regarding HGU and also legal protection for HGU holders, because by registering HGU the rights holder will be given proof of rights called or known as a certificate. This certificate is strong evidence of ownership of land rights, because the certificate is an authentic deed made by an authorized official based on applicable laws.

So that legal protection for land rights holders and legal certainty regarding land rights is a mandate of the UUPA and PP No. 24 of 1997.[3] This is obtained by having proof of rights given to the rights holder (including HGU) in the form of a land rights certificate (HGU Certificate).

HGU registration must also be carried out when a transfer of HGU occurs, where the registration itself will be a strong means of proof regarding the transfer and deletion of HGU. However, if the HGU is deleted because the term has expired, then the deletion of the HGU in question is not required to be registered. This can be understood because the HGU certificate itself has stated the term of the HGU and how long the HGU will last. Naturally, if the term exceeds the intended period, then it is clear that the HGU is no longer the right of the HGU holder as stated in the certificate. HGU. Thus, on the contrary, it can be said that as long as the HGU period has not expired, the HGU has not been deleted and is still under control or is still the right of the HGU holder.

In connection with the control of HGU as described above, as long as the HGU certificate is still in the control or rights of the HGU holder (in the sense that the HGU has never been transferred to another party and the period of control is still within the time period stated in the HGU certificate), then no there is any party that can interfere with the control of the HGU. This is what PP No.24 of 1997 says is a form of legal protection for rights holders. Likewise, the HGU certificate provides legal certainty for the rights holder.

However, sometimes HGU which is still under the control of the right holder, has never been transferred to any party and the term has not yet expired, is immediately seized or controlled by another party. One example is the usurpation of the HGU control of PT. Ambya Putra owned by CF with HGU Certificate No. 1 of 1995 dated 09 November 1995, which will later end the HGU on 8 November 2025. The usurpation of the HGU was carried out by cultivating the HGU land by the community, one of among them is FZ. In this case, FZ controls or invades the HGU land on the grounds that the land is land with the status of Cultivating Rights and FZ has a legal basis in the form of a Certificate of Physical Tenure (Sporadic) on the basis of Garapan land (Hak Garap) signed by the Village Head (Keuchik) Rambong Village (Gampong), Kuala Pesisir District, Nagan Raya Regency. On the basis of the Certificate of Physical Control (Hak Garap), FZ also felled wood on land within the PT Ambya Putra area. This was done by ordering another person, namely SM, to take the wood from the area.

As a result of FZ's actions in controlling or grabbing PT. Ambiya Putra's HGU land belonging to CF, finally SM, as the person ordered by FZ to take wood in the PT. Ambiya Putra HGU area or area, was arrested by the police and taken to the Nagan Raya Police for questioning. Then, in its development, SM was named a suspect on charges of stealing wood (as regulated in Article 362 of the Criminal Code) in the HGU area of PT. Ambya Putra owned by CF. Meanwhile, SM believes that he cannot be accused of stealing wood in the PT Ambiya Putra HGU area, because SM did not take the wood by stealing, but because he was told to do so by the owner of the land, namely FZ. FZ does not control the land without reason or without documents, but FZ has a letter in the form of a certificate of physical control of the land (sporadic) which originates from cultivated land (right to cultivate) since 2020, where previously the land was cultivated land from FZ which is proven by a letter of physical control of the land dated 8 July 2020, which states that the land comes from cultivated land (Hak Garap) since 2020. The cultivated land in question is land that is utilized or used for farming or land that is used for growing plants. Just plants.[4]

Based on this description, it would be interesting to conduct an assessment of the position of physical land ownership certificates (sporadic) above the HGU, where it will be known whether it is possible to have Cultivation Rights in other parties' HGU areas. This is important to know, because many HGU lands are controlled by other parties for various reasons (one of which is because the land is cultivated land (Hak Garap) which they have worked on several years ago.

Research Method

Even though the data used in this research is empirical data or field data that occurs in society, this type of research still uses a normative juridical research type. This is because field data is only used as a basis for discussion and analysis in assessing the position of cultivation rights above HGU. Meanwhile, an in-depth discussion to answer the problems raised above still refers to and is guided by the applicable laws and regulations and doctrines put forward by legal experts relevant to this problem. Thus, the research approach used in this legal research is the Statute Approach, in this case by conducting a study of statutory regulations that are relevant to the issues discussed. Apart from that, it is also carried out through a case approach, so that it is clear later how norms or legal rules are implemented in society.

Result and Discussion

1. Position Case

On April 4 2021 at around 17.30 WIB, the CNR reporter/complainant (son of the CF HGU holder PT. Ambiya Putra) was at that time in Meulaboh on his way back to his home in Gampong Cot Rambong, Kuala Pesisir District, Nagan Raya Regency, suddenly witness SGO

[3] Della Rafiqa Utari, Suhaimi, Pendaftaran Tanah Yang Dikuasai Oleh Tempat-Tempat Ibadah Umat Islam Di Kecamatan Kuta Alam Banda Aceh, Syiah Kuala Law Journal, Vol.4(3) Desember 2020, pp. 310-322.

[4] Kamaluddamairi Usman, Penolakan Perpanjangan Hak Guna Bangunan Di Atas Hak Pengelolaan (Studi Putusan Mahkamah Agung Nomor 1343/K/Pdt/2021), *Tesis*, pada Program Studi Magister Kenotariatan, FH USK, Banda Aceh, 2023, hlm. 21.

contacted him. the reporter via cellphone said "Mother, there is someone on your land taking and removing wood, did you order it and there is a perpetrator here", then the reporter answered "I did not order the wood to be taken out, the person is just detained first, wait for me to come", brother SGO answered "yes ma'am". Then after the complainant arrived home, the complainant and ALT's brother went to the TKP on PT. Ambiya Putra Land. Upon arrival at the crime scene, the reporter saw SGO with brother JKM and brother ALT (all three were arresting witnesses) who then took the person suspected of committing the wood theft to the Nagan Raya Police together with the reporter CNR.

Then, after conducting investigations and investigations, it was concluded that it was true that the alleged crime of wood theft had occurred which was reported by CNR. The theft occurred regarding goods in the form of wood that had been split into rings 5x10x5 cm totaling 4 (four) sticks (BB which was taken to the Police). The person who took the wood was SM who first asked FZ for permission on the land. Based on the wood measurement letter issued by the environment and forestry service, UPTD, region IV forest management unit, the price for 4 (four) sticks of wood is IDR. 200,000; (two hundred thousand rupiah), the current obstacle is that the reporter and the reported claim that the land belongs to them, where the reporter and the reported both admit that they have a certificate for the land (HGU vs SPORADIK). The reporter admitted that the land was in Cot Rambong village, Kuala Coast sub-district, Nagan Raya district, while the reported party admitted that the land was in Padang Panjang village, Kuala Coast sub-district, Nagan Raya district. After investigators checked the crime scene together with the Nagan Raya Land Office, witnesses, the reporter and the reported party, it turned out that according to the letter issued by the Land Office, the crime scene of the theft occurred on PT HGU land. Ambya Putra is led by CF (CNR's biological mother), so investigators have raised the status of the case to investigation and have sent the case files to the Public Prosecutor.

Thus, in terms of the actions carried out by the reported party (reported SM) it is included in a criminal act. Judging from the action perspective, the reported party has committed the act of taking goods in the form of wood that has been split into 4 (four) 5x10x5 rings. The wood taken is partly or wholly owned by someone else, namely CF as the owner of the HGU PT Ambiya Putra. The wood was taken with the intention of possessing it unlawfully, meaning that it was not legally owned through a valid legal act, such as through buying and selling, giving by the owner and so on.

Returning to the status of ownership of the land because in fact each party has the right to the land and also witness SA as Keuchik of Padang Panyang Village, Kuala Pesisir District and Witness MR as Head of Village (Keuchik Gampong) Cot Rambong, Kuala Pesisir District, Nagan Raya Regency who explained that the land at the location where the incident occurred is a customary forest belonging to Padang Panyang Village and Cot Rambong Village which is still a dense forest filled with mixed jungle trees and needs to be considered. The testimony of Witness MR as the Keuchik of Gampong Cot Rambung can be understood, there are at least 2 reasons why the Keuchik of Gampong Cot Rambong gave such a statement:

a. As a defense for SM and FZ, residents of his village who are currently dealing with the police, where SM is accused of stealing wood on the PT. Ambiya Putra HGU land owned by CF or CNR's biological mother as the reporter for the wood theft. Meanwhile, according to SM, he did not commit wood theft, because he took the wood on FZ's land and had asked for permission from FZ. As land belonging to FZ, this is proven by a physical land control letter (Sporadik) dated July 8 2020.
b. As a strengthening of the physical land control letter (Sporadik) dated July 8 2020 which was signed by MR himself as Village Head (Keuchik Gampong) Cot Rambong. So it is understandable that it is impossible for SM to give another opinion, unless it has to. If MR provides information that is not as stated above, then MR is denying the physical land control letter (Sporadic) dated July 8 2020 which MR himself has signed.

Meanwhile, based on Article 7 paragraph (4) PP Number 20 of 2021 concerning Controlling Abandoned Areas and Land, it states that "HGU Land becomes an object for controlling Abandoned Land if it is intentionally not cultivated, not used, and/or not utilized starting from 2 (two) Year since the issuance of Rights". Because of this, the people considered the land to be abandoned land and became their cultivation land, and because of that the Keuchik dared to sign a letter of physical control of the cultivated land (Hak Garap).

On that basis, FZ took control of PT Ambiya Putra's HGU land and ordered SM to take wood from that land.

2. Position of Cultivation Rights above HGU

If we examine HGU No. 1 in the name of PT. Ambya Putra belonging to CF dated 9 November 1995, which later the HGU expired on 8 November 2025, while the Reported Letter was a Sporadic Letter dated 8 July 2020 and the Sporadic was obtained from Arable Land since 2020. In this case, the land granted for HGU in 1995 was state land, namely land controlled directly by the state and this is in accordance with Article 28 paragraph (1) UUPA which, among other things, states that HGU is a right given to land controlled directly by the state (state land) to be cultivated for agricultural, livestock and fisheries purposes, with a maximum period of 25 years. If the company in question requires a longer period of time (not just 25 years), then it can be given a maximum period of 35 years, and even then it is still possible to extend it again if the period expires, namely a maximum of 25 years and the extension is granted. at the request of the rights holder. In fact, if the time period has expired and has expired, the rights holder can still renew the rights to the HGU land.[5]

So it is impossible for FZ to control or own the land, especially since it has the status of Cultivated land (not Ownership), because in 2020 the land still has HGU status and will end on November 8 2025. And even if the HGU ends, there is still a possibility that the HGU extended for a period of 25 years, namely until 2050. So if FZ says the land is his land, and SM takes wood on land owned by FZ, why hasn't FZ filed an objection to the National Land Agency since 1995 or filed a lawsuit with the court that says the land

[5] Fhamila Mur Ambika, Pelaksanaan Perpanjangan Hak Guna Bangunan Yang Telah Habis Masa Berlakunya Berdasarkan Peraturan Pemerintah Nomor 40 Tahun 1996 Di Kabupaten Sleman, *Jurnal Hukum Atmajaya*, Vol. 1 No.1, 2017.

is his land. Why is it only now that FZ has said that it is his cultivated land and FZ has a letter of physical control over the plot of land originating from the cultivated land which was also signed by the Keuchik of Gampong Cot Rambong, Kuala Pesisir District, Nagan Raya Regency.

Furthermore, looking at Article 7 paragraph (4) PP No. 20 of 2021 concerning Controlling Abandoned Areas and Land, it can be explained that if within a period of 2 years from the issuance or granting of the right (HGU), the HGU is not utilized and/or not cultivated. and/or is not used in accordance with the intent and purpose of issuing the HGU,[6] then the HGU becomes one of the objects of controlling abandoned land. The purpose of the PP is so that land rights granted to rights holders can be cultivated, exploited, used and maintained as well as possible, in order to achieve the welfare of the rights holders and the welfare of society in general. [7] This can also be understood because land abandonment can result in the obstruction of several government programs in implementing development, disruption of national economic resilience, vulnerability to food security, and the closing of access to farming communities to control and cultivate land, thus conflicting with the values of justice in society.[8]

Even though HGU as intended above is one of the objects for controlling abandoned land, PP No. 20 of 2021 in practice is not yet effective. According to the provisions of PP No.20 of 2021, a parcel of private land that is intentionally not cultivated, not utilized and/or not used, does not automatically and easily become abandoned land/area, resulting in the termination of the HGU holder's legal relationship with the land. However, through a process of stages that takes a long time (Article 14 and Article 22 PP No. 20 of 2021) and the process is regulated in Articles 15 to Article 30 PP No. 20 of 2021). Even in Article 21 PP no. 20 of 2021 emphasizes that in the final stage the determination of Abandoned Areas is carried out by the Minister, namely the Minister of Agrarian Affairs and Spatial Planning/Head of BPN RI. So until now there has been no determination by the Minister that the land is abandoned land/area, so it is impossible for the land to be the defendant's Arable Land in 2020. Even if the land/area has been designated by the Minister as abandoned land/area, land/area This land cannot automatically become arable land or land owned by the surrounding community, but rather the land becomes state land (Article 30 paragraph (3) PP No. 20 of 2021). If the land is an area, it will become a Land Bank asset or be transferred to another party through a transparent and competitive mechanism, namely through an open auction process (Article 20 paragraph (3) and Elucidation of Article 20 paragraph (3) PP No. 20 of the Year 2021).

Thus, it is not reasonable if the land is said to be Arable Land which is controlled or owned by FZ, because the Sporadik does not have a strong legal basis in terms of land law. If land rights (including HGU) are not cultivated within a period of 2 (two) years from the issuance of the rights (Article 7 paragraph (4) PP Number 20 of 2021), the land can be said to be land (HGU) that is indicated as abandoned and is included in the control stage abandoned land, the first stage of which is evaluation of abandoned land. However, to become an abandoned HGU you have to go through a long process as described above. If through this process it has been determined to be an abandoned HGU, then the legal relationship between the HGU holder and the HGU land is terminated and the land reverts to State Land (land controlled directly by the state), because the HGU is basically granted on state land (land controlled directly by country) in accordance with the provisions of Article 28 paragraph (1) UUPA. However, regarding this HGU, the steps to designate it as abandoned land (HGU) have never been carried out by BPN, so that until now there has been no determination by the Minister of Agrarian Affairs and Spatial Planning/Head of BPN RI that the HGU is abandoned land (HGU). Resulting in the land returning to State Land (land controlled directly by the state). Thus, as long as there is no determination from the Minister of Agrarian Affairs and Spatial Planning/Head of BPN RI that the land (HGU) is an abandoned HGU, then legally the HGU belongs to CF's PT Ambya Putra and the legal relationship between CF and the HGU still exists (the legal relationship has not been terminated).

Furthermore, regarding the authority to grant new rights to other parties, for example granting cultivation rights to FZ, it can be explained that HGU is granted on state land (land controlled directly by the state). In this case, the HGU Owner/Holder (CF) himself is not authorized or does not have the authority to issue a new basis of rights (such as a Sporadic Letter), moreover other parties/persons including the Government itself do not have the authority to issue a new basis of rights. However, if the HGU is transferred to another party, this is permissible, for example by granting it or selling it to another party. This is in accordance with the provisions of Article 28 paragraph (3) of the UUPA which states: "HGU can be transferred and transferred to another party". Issuing a new right is different from transferring it to another party (transfer of rights/transfer of HGU), where in issuing a new right, the old right (previous right, namely HGU) is erased and becomes a new right (such as Ownership Rights). Meanwhile, HGU only has the right to cultivate land on land directly controlled by the state for a period of 25 to 35 years. After that period ends, the HGU is extinguished and the land returns to state land (land controlled directly by the state). If the HGU is transferred to another party (gifted or sold), then the expiry period for the HGU remains following the HGU that has been transferred, for example the Cut Fatimah HGU ends on November 28 2025, then the HGU is gifted/sold to another party, then the HGU still ends on November 28 2025. This is different from issuing a new basis of rights, where in issuing a new basis of rights, the previous HGU is erased and new rights arise (such as Ownership Rights), whose control is passed down from generation to generation without any limit/time period. However, it must be remembered that no one has the authority to issue new rights over other people's HGU.

Conclusion

HGU No. 1 in the name of PT. Ambya Putra belonging to CF on November 9 1995 which was granted for 30 years,

[6] Suhaimi, Herawati, Mujibussalim, Penertiban Terhadap Hak Milik Atas Tanah Yang Terindikasi Terlantar Di Kota Banda Aceh, *Syiah Kuala Law Journal*, Vol.1(1), April 2017, pp. 287-300.

[7] Penjelasan Umum atas PP No. 20 Tahun 2021 Penertiban Kawasan dan Tanah Telantar.

[8] Rahmadanni, Tinjauan Yuridis Terhadap Tanah Terlantar di Provinsi Aceh, Tesis Program Studi Magister Ilmu Hukum, Universitas Syiah Kuala, Banda Aceh, 2013, hlm. 5.

the rights (HGU) will end on November 8 2025. Meanwhile, FZ is the party suspected of carrying out land grabbing and claims the land as his land. Has a physical possession letter (Sporadik) dated July 8 2020 and the Sporadik was obtained from Land Arables since 2020. Apart from FZ, SM was also involved in this case, even dealing with the police for taking wood from PT Ambya Putra's HGU land. HGU is granted by an authorized official, has been registered and has a certificate. As is known, a certificate is the strongest and most authentic evidence in proving ownership of land rights, so that the HGU has legal certainty and the HGU owner will receive legal protection. Therefore, legally the HGU belongs to CF's PT Ambya Putra and the legal relationship between CF and the HGU still exists (the legal relationship has not been broken). Furthermore, regarding the authority to grant new rights to other parties, for example granting cultivation rights to FZ, it can be explained that HGU is granted on state land (land controlled directly by the state). In this case, the HGU Owner/Holder (CF) himself is not authorized or does not have the authority to issue a new basis of rights (such as a Sporadic Letter), moreover other parties/persons including the Government itself do not have the authority to issue a new basis of rights. HGU only has the right to cultivate land on land directly controlled by the state for a period of 25 to 35 years. After that period ends, the HGU is extinguished and the land returns to state land (land controlled directly by the state). Thus, the right to cultivate as described in the case above, legally does not have any legality, so that the physical (sporadic) letter of possession dated 28 July 2020 held by FZ does not have any legal force, even though it was signed by the local Gampong Keuchik. Meanwhile, SM, as the party that took the wood from PT. Ambiya Putra's HGU land, could be criminally prosecuted for taking part in taking goods that were partly or wholly owned by someone else in order to own them in a way that violates the rights.

Suggestion

It is hoped that HGU holders will be able to cultivate, work on and/or utilize their HGU in accordance with the purpose for which they were granted the HGU. So that it does not create a desire or desire from other parties to use, cultivate and even control it unlawfully. Not cultivating, not carrying out and/or not taking advantage of the rights that have been given is an act that is wasteful and indicates abandonment, and even goes against the principles of the social function of land rights and the values of justice in society.

The community or members of the community are also expected to be careful in claiming that the land has no owner or no one controls it. Investigate first and make sure who and what rights are on the land, so that it does not cause legal problems in the future. To make it easier to find out who, what rights and to what extent a person holds rights to land, it would be better to contact the local Land Office, which in this case is the Nagan Raya Land Office.

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