

## LEGAL PROTECTION FOR LANDOWNERS IN FOREST AREAS UTILIZED FOR PLANTATION ACTIVITIES (CASE STUDY: SUPREME COURT DECISION NUMBER 2929 K/PDT/2017)

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### ABSTRACT

*Land ownership that has been legally recognized is entitled to legal certainty and protection. However, there is an issue where landowners do not receive legal protection as reflected in Supreme Court Decision Number 2929 K/Pdt/2017. The purpose of this study is to examine the application of legal rules for landowners in forest areas and the legal protection afforded to landowners in forest areas used for plantations, based on the judicial considerations in Supreme Court Decision Number 2929 K/Pdt/2017. This article employs normative legal research methods with a statutory and case approach. The research questions addressed in this article are the application of legal rules for landowners in forest areas and the legal protection of landowners in forest areas used for plantations, based on the judicial considerations in Supreme Court Decision Number 2929 K/Pdt/2017. The study concludes that Presidential Regulation No. 88 of 2017 serves as a reference for the application of legal rules for landowners in forest areas. Furthermore, the case in Supreme Court Decision Number 2929 K/Pdt/2017 did not take into account the fact that the Respondent in Cassation conducted business activities without holding a Right to Cultivate (HGU), resulting in losses for the landowners. Landowners should be granted legal protection, as the Respondent in Cassation lacked an HGU, which clearly violates legal provisions.*

**KEYWORDS** Legal Protection, Landowners, Forest Areas



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### INTRODUCTION

Land has an important role in Indonesia, both for the state and the people. The Constitution has explained the importance of land as stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The right to control

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granted by the 1945 Constitution to the state is not for the sake of the state itself but is used for the greatest prosperity of the people (Doly, 2017). The state has the authority to control land rights in the territory of Indonesia. This means that the state has the authority to regulate, plan and control control and ownership of land rights (Sari, 2021).

Article 4 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) explains that on the basis of control rights the state can determine various types of land rights, which are granted and owned by individuals or legal entities. To realize the state's right to control land, the state (government) in exercising its authority must be based on applicable laws and regulations.

The state's regulatory authority is limited, both by the constitution and its relevance to the goals to be achieved, and supervision of the state's role by society is carried out through the possibility of participating in the decision-making process, openness/transparency in the policy-making process, and the granting of rights. to obtain information on land issues. The state still has limitations in exercising its authority.

In the UUPA, regulations regarding land control rights contain a series of authorities, obligations and prohibitions. Control of this land can be obtained by the state because of the state's authority to regulate land so that it can provide benefits for the welfare of the community. Land control by the state is interpreted as the state's authority to regulate the allocation and use of the land, so that it can provide maximum benefits for the welfare of the community at large (Arba, 2021).

Furthermore, land rights must have proof of ownership. Land ownership is proven by a certificate, so the land has legal proof. The motivation for legally owning land is to obtain clear legal certainty (Rohman & Sugiyono, 2022). Proof of ownership is referred to as written evidence in the form of a land title certificate. This evidence is called written evidence in the form of a land title certificate. A certificate as proof of title, is issued for the benefit of the relevant rights holder, in accordance with the physical data contained in the measurement letter and the juridical data that has been registered in the land book.

Before getting a certificate, registration of land rights needs to be done first. Registration of land rights is carried out to provide legal certainty and for rights holders. Legal certainty includes certainty about the person or legal entity that has rights. This is also called certainty regarding the subject of rights and certainty regarding the location, boundaries and area of land which is also called legal certainty regarding the object of rights.

Land owners who have registered their land will receive guaranteed legal protection as stated in Article 19 paragraph (1) of the UUPA. The purpose of land registration is in accordance with the provisions in Article 3 of Government Regulation Number 24 of 1997 concerning Land Registration (PP No. 24 of 1997). Thus, land owners have legal rights to land, including land in forest areas.

Problems with land owners in forest areas are addressed with regulations referred to in Article 4 paragraph (1) of Presidential Regulation Number 88 of 2017 concerning Settlement of Land Tenure in Forest Areas (Presidential Decree No. 88 of 2017). Every person needs protection and legal certainty of their land rights with the aim of obtaining protection and guarantees of legal certainty of their land rights

(Mulyani et al., 2023). In reality, there is still a problem of legal protection for land owners in forest areas in the case of Supreme Court Decision Number 2929 K/Pdt/2017.

In this decision, the Petitioner for Cassation is BENHUR as the legal owner of land with a length of 1,000 meters and a width of 400 meters or an area of  $\pm 40$  hectares located in the Mirah Kalanaman Village area, Katingan Tengah District, Katingan Regency, Central Kalimantan Province, strengthened by the existence of a Statement Letter Land dated February 7 2009. Meanwhile, the Cassation Respondent is PT Nabatindo Karya Utama (PT NKU).

The Cassation Petitioner in his lawsuit argued that the use of his land still has forest area status with the function of a Convertible Production Forest (HPK) area and a Production Forest (HP) function. The Cassation Respondent has planted oil palm on most of the land belonging to the Cassation Petitioner without having an HGU.

The fact is that the Cassation Respondent does not have proof of land rights or what is known as cultivation rights (HGU) in its operations since 2005. This fact is based on the Decree of the Regent of East Kotawaringin Number: 803/460.42, dated 15 August 2005 concerning the Granting of Location Permits for Needs for Palm Oil Plantation Development PT Partnership Pattern. Nabatindo Karya Utama in Tumbang Kuling Village, Cempaga Hulu District, East Kotawaringin Regency, Central Kalimantan Province covering an area of  $\pm 11,000$  hectares.

The Petitioner for Cassation submitted reasons at the cassation level that the Palangka Raya High Court Decision Number: 3/PDT/2017/PT.PLK, dated March 30 2017, has clearly revealed errors in the application of the law, violations of applicable provisions, and negligence in fulfilling the requirements - conditions required by statutory regulations. The Cassation Petitioner, at the appeal level, asked the Panel of Judges at the High Court to pay attention to the fact that the written evidence or letters submitted by the Cassation Respondent did not contain evidence of HGU.

The Supreme Court is of the opinion that the grounds for cassation cannot be justified because the Panel of Judges' considerations in the Palangka Raya High Court decision did not apply the law and/or statute incorrectly. In Supreme Court Decision Number 2929 K/Pdt/2017, the Cassation Respondent was not sentenced, while the Cassation Petitioner was sentenced to pay court costs and his cassation petition was rejected.

Based on the background, there is still uncertainty regarding legal protection for land owners in forest areas used for plantations. Thus, this journal will discuss the application of legal regulations for land owners in forest areas and the legal protection of land owners in forest areas used for plantations based on the judge's considerations in Supreme Court Decision Number 2929 K/Pdt/2017.

## RESEARCH METHODS

This type of research is a type of normative legal research. Normative legal research is legal research that uses primary legal materials and secondary legal materials. Legal research carried out by examining library materials or secondary

data can be said to be normative legal research or library legal research (Fajar & Achmad, 2019).

This type of research uses data collection by means of literature study or library research. Literature studies can be carried out by studying statutory regulations, books, journals, research results, newspapers, the internet, scientific magazines, and statistics from official agencies/institutions and documents (Marzuki & Sh, 2020). Next, data analysis techniques are carried out in this way content analysis. The writing technique used in this research is descriptive writing technique, namely explaining in detail and systematically the problem solving. Data was analyzed qualitatively by connecting statutory regulations with expert opinions and theories to answer problems.

## RESULT AND DISCUSSION

The results of this research show that the state can grant land rights to individuals and legal entities. Land rights that can be granted by the state are explained in Article 16 paragraph (1) of the UUPA. Land rights that have been granted give rise to ownership of the land. There are several lands where land rights are not granted, one of which is forest areas. However, there are exceptions for land owners whose land is in forest areas. This is explained in Presidential Decree no. 88 of 2017. Presidential Decree no. 88 of 2017 was implemented to resolve land control, especially in forest areas. Implementation of Presidential Decree no. 88 of 2017 for land owners provides legal certainty regarding their land rights.

The results of this research also show that the judge's considerations in Supreme Court Decision Number 2929 K/Pdt/2017 regarding land owners in forest areas still do not receive legal protection. The land owner as referred to in the decision is the Cassation Petitioner whose grounds for cassation were rejected regarding the Cassation Respondent not having HGU in carrying out his business activities. The respondent, as a company in the plantation sector, must have an HGU because the location permit covers more than 25 hectares. HGU is granted when the land area reaches more than 25 hectares as stipulated in the UUPA. However, this was not taken into consideration by the judge so that the Cassation Respondent was not sentenced to pay the case at the cassation level.

### a. Application of Legal Rules for Land Owners in Forest Areas

In terms of land ownership, the conception of national land law states that land throughout Indonesia belongs to the Indonesian nation, which is also a symbol of unity for the integrity of the nation and state, therefore it cannot be bought and sold or traded, and must not be used as an object of control that causes disintegration of the nation (Amir, 2019). The state has the right to control with several kinds of authority. This is stated in Article 2 paragraph (2) of the UUPA which states that: "The State's right to control as referred to in paragraph (1) of this article gives authority to: a. regulate and administer the allocation, use, supply and maintenance of the earth, water and space; b. determine and regulate legal relationships between people and earth, water and space, c. determine and regulate legal relations between people and legal acts concerning earth, water and space."

On the basis of the State's right to control as intended in Article 2, it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people, either alone or together with other people and bodies. legal entity (Napang, 2021). These types of land rights have been explained in Article 16 paragraph (1) of the UUPA, which reads: "The land rights as referred to in article 4 paragraph (1) are: a. property rights, b. right of use, c. right of use-building, d. right of use, e. rental rights, f. the right to open land, g. the right to harvest forest products, h. other rights that are not included in the above rights that will be determined by law as well as rights that are temporary in nature as mentioned in article 53."

In the principle of "state control", in the relationship between the state and society, society cannot be subordinated in position to the state, because the state actually receives power from society to regulate the allocation, supply and use of land, as well as legal relations and legal actions with land (Baetal et al., 2021). The state gives authority to the government to regulate land whose benefits are for the community.

Control by the state over land includes control of forests. Forests have the potential to be developed into other things. Forests are plains of land that can be developed for purposes outside of forestry such as tourism. The forest referred to in Article 1 paragraph (2) of Law Number 41 of 1999 concerning Forestry (Forestry Law), namely: "Forest is an ecosystem unit in the form of an expanse of land containing biological natural resources dominated by trees in a natural environment, which one from the other cannot be separated."

The control of forests by the state gives authority to the government to (a) organize and manage everything related to forests, forest areas, and forest products; (b) establish the status of certain regions as forest areas or forest areas as non-forest areas; and (c) regulate and establish legal relationships between people and forests, as well as regulate legal acts regarding forestry (Redi, 2015). In this case, the government is given authority regarding forests, which are also called forest areas. Forest areas are forested or non-forested areas that have been designated as forests (Labatjo & Sucipto, 2020).

Land rights cannot be in forest areas because they prevent negative impacts from these areas. Forest areas where there is land ownership means that the forest will not be preserved. This means that the land will be managed by the land owner, not the state. Land, which was previously viewed from a social perspective, which included the scope of customary law, customary rights and social functions, is now starting to be viewed from an economic perspective, so it is appropriate for the United Nations to indicate that currently the land issue is no longer a social issue but has developed into an issue economy.

The land problem that occurs in forest areas is the existence of rights to the land of communities in forest areas. In practice, granting land rights experiences many obstacles, both in terms of registration of rights and the status of the land occupied by the community, especially people who live on land claimed to be a forest area, which experiences significant obstacles in terms of registration of rights (Pide & Nur, 2022). This is a problem for land owners in forest areas. The government overcomes this problem by implementing the rule of law. The legal

regulations for dealing with land owners in forest areas are Presidential Decree no. 88 of 2017.

Based on Article 2 of Presidential Decree no. 88 of 2017, it is explained that: "The government shall settle land control in forest areas controlled and utilized by Parties." This article explains that the government will resolve land control if the party has controlled and utilized the land in the forest area.

It is explained further in Article 4 paragraph (1) of Presidential Decree no. 88 of 2017, that: "Land control as intended in Article 2 must meet the following criteria: a. the land parcel has been physically controlled by the Party in good faith and openly; b. the land plot is not contested; and c. the land plot is recognized and confirmed by the customary law community or the head of the village/sub-district concerned and is confirmed by the testimony of a trustworthy person." Land owners whose plots of land comply with the criteria in this article will still control their land.

Land can be controlled or utilized by the owner before being designated as a forest area as stated in Article 4 paragraph (2) of Presidential Decree No. 88 of 2017, which states that: "Land control in forest areas as intended in Article 2 consists of: a. plots of land that have been controlled and utilized and/or have been given rights over them before the plot of land was designated as a forest area; or b. plot of land controlled and utilized after the plot of land is designated as a forest area." In this case, the party in question is explained in Article 6 paragraph (1) of Presidential Decree no. 88 of 2017, that: "Parties as in Article 2 include: individuals; agency; social/religious bodies; customary law community."

Settlement for land that has been controlled and utilized must follow the pattern regulated in Presidential Decree No. 88 of 2017. This is explained in Article 8 of Presidential Decree no. 88 of 2017, namely:

"(1) The settlement pattern for land areas that are controlled and utilized after the land areas are designated as forest areas in the form of: a. remove the land area in the forest area by changing the boundary of the forest area; b. exchange forest areas; c. providing access to forest management through social forestry programs; or d. do resettlement.

(2) The settlement pattern as intended in paragraph (1) takes into account: a. the area of forest that must be maintained is at least 30% (thirty percent) of the area of river basins, islands and/or provinces; and b. the main function of forest areas."

This settlement pattern is a reference for land owners whose land is in forest areas. With the solution regulated in Presidential Decree no. 88 of 2017, land owners can regain rights to their land.

#### b. Legal Protection of Land Owners in Forest Areas Used for Plantations based on Judges' Considerations in Supreme Court Decision Number 2929 K/Pdt/2017

Paying attention to the phenomenon of land conflicts, especially plantation land, in addition to many new problems, there are also many old, latent problems that have reappeared. Land conflicts related to plantations are contained in the Supreme Court Decision Number 2929 K/Pdt/2017. Based on Supreme Court Decision Number 2929 K/Pdt/2017, the Cassation Petitioner argued in his lawsuit that the Cassation Respondent had utilized his land which had forest area status.

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The reason for the Petitioner for Cassation is that the Panel of Judges at the Palangka Raya High Court is pleased to pay attention to the fact that from all the written evidence/letters submitted by the Respondent for Cassation there is absolutely no HGU, but in its operation since 2005 until now the Respondent for Cassation has carried out land clearing, planting oil palm on land, even harvesting thousands of hectares of oil palm without having HGU.

The judge's considerations in the decision are the reasons for the cassation regarding the results of evidence which are in the nature of appreciation regarding a fact, which cannot be considered in the examination at the cassation level, because the examination at the cassation level only concerns errors in the application of the law, violations of applicable law, negligence. in fulfilling the requirements required by statutory regulations which threatens such negligence with the cancellation of the relevant decision or if the court does not have authority or exceeds the limits of its authority. Therefore, the cassation petition from the Cassation Petitioner is rejected and the Cassation Petitioner is on the losing side, the Cassation Petitioner is sentenced to pay the court costs at the cassation level as stated in the Supreme Court Decision Number 2929 K/Pdt/2017.

The Respondent of Cassation is a company in the plantation sector. Business activities in the plantation sector have a legal basis stated in Law Number 39 of 2014 concerning Plantations (Plantation Law). This law regulates parties who are called plantation business actors. Plantation business actors are planters and/or companies that run businesses in the plantation sector.

Land rights granted to plantation businesses are an implementation of the state's authority to control and are also the state's authority as the authority of the Indonesian people to regulate and administer the allocation, use, supply and maintenance of earth, water and space (Yunantha & Gultom, 2024). In running a business in the plantation sector, there are land rights that need to be owned, one of which is HGU. Regarding plantation companies carrying out their business, clear legal certainty is obtained by having an HGU. HGU is granted for land with an area of at least 5 hectares. If the land for which the HGU is applied for has an area of 25 hectares or more then it must use appropriate capital investment and good company techniques (Kafrawi et al., 2022).

Based on Supreme Court Decision Number 2929 K/Pdt/2017, it is known that the Cassation Respondent runs a business in the plantation sector by granting a location permit covering an area of  $\pm$  11,000 hectares. HGU has land area provisions as regulated in Article 28 paragraph (2) UUPA which reads: "Utilization rights are granted on land whose area is at least 5 hectares, with the stipulation that if the area is 25 hectares or more, appropriate capital investment and techniques must be used. good company, in line with the times." HGU is used one way for oil palm plantations, considering that plantation business activities require very large areas of land (Carolina et al., 2022).

Apart from having a location permit, the Cassation Respondent also has a plantation business permit. This is based on evidence, namely the East Kotawaringin Regent's Permit Number: 525.26/678/XI/EKBANG/2005, dated 28 November 2005. The Cassation Respondent only has a location permit and a plantation business permit, so the regulations in the Plantation Law are not applied.

Based on Article 58 paragraph (1) of the Plantation Law, it is explained that: "Plantation companies that have a Plantation Business Permit or Plantation Business Permit for cultivation are obliged to facilitate the development of local community gardens for a minimum of 20% (twenty percent) of the total area of the plantation area. managed by the Plantation Company." Further explanation in Article 58 paragraph (3) of the Plantation Law, is that: "The obligation to facilitate development as referred to in paragraph (1) must be carried out within a maximum period of 3 (three) years after the right to cultivate is granted."

The Cassation Respondent did not carry out the obligation to facilitate development as regulated in the Plantation Law because he did not have an HGU. The Cassation Respondent, while carrying out plantation business activities, did not apply the provisions of the UUPA and the Plantation Law. This is known because they only have a location permit and a plantation business permit to carry out their business activities without having an HGU.

HGU that is not owned by the Cassation Respondent was not considered by the judge in Supreme Court Decision Number 2929 K/Pdt/2017. This results in land owners not getting legal protection. Legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings. Legal protection for land owners is related to justice in the application of the law.

The Cassation Petitioner as the land owner did not receive legal protection because the judge did not consider the absence of HGU evidence from the Cassation Respondent. The difference between land rights and other rights is property rights. Property rights are an inviolable right because they are the strongest and most complete. With the strongest and fullest meaning underlying its differences with business use rights, building use rights, use rights and other rights, this is what shows among land rights the strongest and fullest rights in property rights (Adrian Sutedi, 2023). This is also in accordance with the explanation in Article 20 paragraph (1) of the UUPA, that: "Ownership rights are hereditary, strongest and fullest rights that people can have over land, bearing in mind the provisions in article 6."

Even though the Cassation Petitioner is considered the land owner, the Cassation Petitioner is on the losing side in Supreme Court Decision Number 2929 K/Pdt/2017. Thus, the Cassation Applicant is sentenced to pay the court costs at this cassation level.

## CONCLUSION

Implementation of legal regulations for land owners in forest areas by referring to Presidential Decree no. 88 of 2017. Presidential Decree no. 88 of 2017 regulates matters relating to forest areas, including issues of land rights in forest areas. It also determines land plots both before and after being designated as forest areas. Meanwhile, the case contained in Supreme Court Decision Number 2929 K/Pdt/2017 does not yet provide legal protection for land owners in forest areas used for plantations. The judge in this decision rejected the Cassation Petitioner's reasons and did not consider the HGU which the Cassation Respondent did not own

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while carrying out his business activities in the plantation sector. This is detrimental to the land owner because his land is still being used by the Cassation Respondent for plantations.

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