

**THE EFFORT TO RESOLVE LAND DISPUTES OVER FORMER LAND OF
CULTIVATION RIGHT IN JENGGALU VILLAGE, SELUMA REGENCY,
BENGKULU PROVINCE**

Rian Putranto (Universitas Bengkulu)

Edra Satmaidi (Universitas Bengkulu)

Herawan Sauni (Universitas Bengkulu)

Corresponding Author : rianputrantoo@gmail.com

ABSTRACT

The dispute over the former land of cultivation rights (further will be abbreviated and referred as *HGU*) on behalf of Sahabudin is an area of 65 hectares known to have been controlled by the community, and it is known that he has 29 Ownership Certificates (further will be abbreviated and referred d as *SHM*), and 2 Land Certificates (further will be abbreviated and referred as *SKT*) belonging to the community, and the ex-*HGU* land is distributed by agreement. In the regulations, it is clear that the ex-*HGU* land is returned to the state, and it is clear that the land can no longer be used for other activities. Juridically and conceptually, problems related to the object of land use rights that come from land rights do not seem to experience problems and are legally justified as long as the process of relinquishing land rights is based on applicable regulations. However, if the procedure for relinquishing land rights is not carried out properly according to the law, it will trigger a conflict between the original right holder and the holder candidate of the cultivation right or the holder of the cultivation right . Based on the experience in several areas, including in Bengkulu Province, the cause of conflict between communities and plantation companies that use land rights facilities, is due to the dispute over ownership of land rights, especially related to compensation for land and growing crops on land that has been released in past times. The objectives of this research are: (1). To determine and describe the factors that cause the authorization of former land of *HGU* in Jenggalu Village, Seluma Regency, Bengkulu. (2). To identify and describe the efforts to resolve disputes over former land of *HGU* in Jenggalu Village, Seluma Regency, Bengkulu. The method of this research is empirical methods, data analysis was carried out in a qualitative juridical manner. The results of the study explained that: (1). The factors causing the dispute over the authorization of former land of *HGU* in Jenggalu Village, Seluma Regency, Bengkulu Province are the agreement on the distribution of land with Cultivation Rights, Expiration of Cultivation Rights and the issuance of *SHM* and *SKT* on *HGU* lands. (2). Efforts to resolve land disputes with ex-*HGU* in Jenggalu Village, Seluma Regency, Bengkulu Province are: efforts to settle out of court through the Regional Leadership Coordination Forum (Further will be referred as *Forkopimda*) meeting and the Land Office and efforts through civil lawsuits at the Tais District Court.

Keywords: Settlement, Dispute, Former land of *HGU*.

A. INRODUCTION

1. Background of The Research

Cultivation right (*HGU*) is a primary land right that has specifications. In the explanation of the Republic of Indonesia Constitution Number 5 of 1960 concerning Basic Agrarian Regulations, it has been automatically recognized that these Cultivation Rights are new rights to meet the needs of modern society and are only given to new rights to meet the needs of the community modern and only given to lands which are directly controlled by the State¹. Then the abolition of cultivation right causes the land to be owned by the state.

One of the problems that attracts the attention of the entire community is the number of land disputes and conflicts. Land disputes and conflicts still occur in a number of areas in Indonesia, including Bengkulu Province. The majority of these land disputes are land with the status of former Cultivation Rights (*HGU*).

The resolution of land conflicts requires caution and seriousness from all parties, especially the authorities, due to the the variety and the large number of conflicts. Because if you are not careful, it will likely lead to more serious conflicts

and even the emergence of new conflicts in society².

Cultivation rights are rights to cultivate land which is directly controlled by the State for a maximum period of 25 years and can be extended for another 25 years. The government must be really careful in giving the cultivation rights to a company, because there is a possibility that the company is not able to manage the land properly, which in the end the land is abandoned. Not only that, the granting of cultivation rights (*HGU*) is not done carefully, it is possible that the land with a large area will only be used as an object of speculation, not utilized according to the purpose for which the land is used.³

If the government is not careful in granting the cultivation rights (*HGU*), then in the future it will cause various problems, as a result of the granting of the cultivation rights *HGU* that is not carried out in accordance with applicable procedures or because of the lack of accuracy of the party who gave the cultivation rights (*HGU*).

² Herawan Sauni, *Konflik Penguasaan Tanah Perkebunan, UBELAJ, Volume 1 Number 1, Oktober 2016*, accessed from: University Of Bengkulu Law Journal, 2016 - ejournal.unib.ac.id, on January 1st, 2021.

³ Tiara Zulfa Primaningtyas, Accessed from: <https://dspace.uui.ac.id/bitstream/handle/123456789/6841/05.1%20bab%201.pdf?sequence=5&isAllowed=y>, on January 1st, 2021.

¹ *Ibid.* Page 110.

There are several examples of disputes that occur in the community. One of them is the cultivation rights (*HGU*) disputes that arose in Jenggalu Village, Sukaraja District, Seluma Regency, Bengkulu Province.

The Seluma Regional Government, the Seluma Regional People's Representative Assembly (Further will be referred as *DPRD*) together with the Seluma *Forkopimda* elements, held a meeting in the Seluma Regent's Meeting room to resolve the dispute over the former land of cultivation rights (*HGU*) on behalf of Sahabudin on October 15th, 2020, a 65 hectare land which is known to have been controlled by the community, and is known to have owned land of 29 Ownership Certificates (*SHM*), and 2 Land Certificates (*SKT*) belonging to the community. Most of those who own the land are residents from outside in Jenggalu Village, Sukaraja District, Seluma Regency. The ex- *HGU* land can be distributed by agreement. In the regulations, it is clear that the ex-*HGU* land is returned to the state, and it is clear that the land can no longer have other activities⁴.

The dispute over the former land of *HGU* occurred because the issuance of

SHM and *SKT* on *HGU* land belonging to the departed Sahabuddin, occurred under the hands and did not comply with regulations, and the process took place in 2005. The disputed *HGU* land area of 65 hectares is also known to have been controlled by the community, and it is known that they have 29 Ownership Certificates (*SHM*), and 2 Land Information Certificates (*SKT*) belonging to the community. In addition, this dispute also involves the community in Jenggalu Village, Sukaraja District, Seluma Regency because the village community demands the *HGU* which has been expired to be distributed to the community in Jenggalu Village, Sukaraja District, Seluma Regency.

Juridically and conceptually, problems related to the object of *HGU* that come from land rights do not seem to experience problems and are legally justified as long as the process of relinquishing land rights is based on applicable regulations. However, if the procedure is not carried out correctly according to the law, it will trigger a conflict between the original right holder and the holder candidate of the cultivation right or the holder of the cultivation right. Based on the experience in several areas, including in Bengkulu Province, the cause of conflict between communities and plantation companies that use land rights

⁴ [www.ewarta.co, BPN Seluma Terbitkan Sertifikat di Lahan HGU](https://www.ewarta.co/bpn-seluma-terbitkan-sertifikat-di-lahan-hgu), accessed from; <https://www.ewarta.co/bpn-seluma-terbitkan-sertifikat-di-lahan-hgu>, on January 1st, 2021.

facilities, is due to the dispute over ownership of land rights, especially related to compensation for land and growing crops on land that has been released in past times⁵.

2. Identification of The Problem

Based on the background mentioned above, the identification in this study is as follows:

1. What are the factors that cause the tenure dispute over former land of cultivation rights (*HGU*) in Jenggalu Village, Seluma Regency, Bengkulu Province?
2. How are the efforts to resolve land disputes over former land of cultivation rights (*HGU*) in Jenggalu Village, Seluma Regency, Bengkulu Province?

B. RESEARCH METHOD

1. Research Type

The type of this research is descriptive. A descriptive study, intended to provide data that is as accurate as possible about humans, conditions or other symptoms.

2. Research Kind

The kind of this research is empirical law research. This empirical research belongs to the law

effectiveness research which is law research that intends to examine the effectiveness of a statutory regulation⁶. According to Ronny Hanitijo Soemitro, explaining empirical law research, namely “law research that obtains primary data and secondary data”⁷. According to Soerjono Soekanto, empirical law research, namely research by trying to see how the parties involved are responsive and consistent in using the relevant rules.⁸

Based on the explanation above, the purpose of this empirical law research is to describe and analyze what factors causing tenure disputes over the former land of cultivation right (*HGU*) in Seluma Regency, Bengkulu Province, and how to resolve disputes over former land of cultivation right (*HGU*) in Seluma Regency, Bengkulu Province.

3. Research Location

This research was conducted in accordance with the title of the study and the formulation of the problem, so this research was conducted in the Law area of Seluma Regency, this place was chosen because there had been a dispute

⁵ Herawan Sauni, *Konflik Penguasaan Tanah Perkebunan, UBELAJ, Volume 1 Number 1, October 2016*, accessed from: University Of Bengkulu Law Journal, 2016 - ejournal.unib.ac.id, on January 1st, 2021.

⁶ Ade Saptomo, *Pokok-Pokok Metodologi Penelitian Hukum Empiris Murni*, Universitas Trisakti Publisher, Jakarta. 2009, Page. 42.

⁷ Ronny Hanitijo Soemitro, *Metode Penelitian Hukum*, Ghalia Indonesia, Jakarta, 1990, Page.52.

⁸ Soerjono Soekanto, *Ringkasan Metodologi Penelitian Hukum Empiris*, Ind-Hil-Co, Jakarta, 1990, Page. 9.

over the former land of cultivation right (*HGU*).

4. Data Source

There are two sources of data that the author uses in this study, namely primary and secondary data.

5. Sampling Technique

In determining the sample, this study used purposive, the sample is determined in advance based on consideration of the informant's ability by considering the skills and position that can represent the research population. Based on these criteria, the informants in this study are:

1. The head of section (Further will be referred and abbreviated as KASI) handling problems and controlling land at the Seluma Regency National Land Office, Bengkulu Province.
2. The Head of the Law Division of the Seluma Regency Regional Government
3. The Head of Jenggalu Village, Bengkulu Province.
4. 2 (two) people who were involved in the Seluma Regency *HGU* dispute,

namely: the plaintiff and the defendant.

6. Data Collection Technique

The data collection procedure used in this study was interviews.

7. Data Processing Technique

All the data were selected on the basis of reliability (honesty) and validity (validity). Incomplete data that cannot be accounted for are dropped and those that can be completed will be re-examined on the respondents. The data obtained both primary and secondary data are grouped and classified according to the subject matter, then researched and re-examined whether or not all questions have been answered or relevant to the questions and answers. The data that has been obtained will be processed with the stages of editing (to edit means to correct). This is to examine the data that has been obtained to ensure whether it can be accounted for in accordance with reality.⁹

8. Data Analysis Technique

Data analysis (analyzing) is “the process of deciphering data in the form of good and correct sentences.”¹⁰ The analytical method used in this thesis

⁹ Rony Hanitijo Soemitro, *Metode Penelitian Hukum*, Ghalia Indonesia, Jakarta, 1990, Page. 81.

¹⁰ *Ibid*, Page. 59.

research is a qualitative analysis method carried out by means of inductive-deductive thinking or vice versa. "The inductive method is carried out by drawing conclusions from specific data to general data, while the deductive method is carried out by drawing conclusions from general data to specific data."¹¹ After the data is analyzed one by one, then it is arranged systematically, so that it can answer the problems presented in the form of a thesis.

C. RESULT AND DISCUSSION

1. The factors that cause the tenure dispute over cultivation rights (HGU) disputes in Jenggalu Village, Seluma Regency, Bengkulu Province

One of the problems that attracts the attention of the community is the number of disputes and land conflicts. Land disputes and conflicts still occur in a number of areas in Indonesia, including Bengkulu Province. The majority of these land disputes are land with the status of former Cultivation Rights (HGU).

The right to control the State in issuing the *HGU*, so when the *HGU*

ends, it becomes the property of the State. If within the period of time the cultivation right is not released or transferred, it is nullified by law and the land becomes State land. However, in reality, in the district, for the management of the *HGU*, a certificate of ownership rights has been issued on the *HGU* land.

An interview with Joni Midarling (The head village of Jenggalu) explained that Sahabudin (the Defendant's husband) had been cultivating by obtaining a cultivation right because around 1972 the land was still a large forest and the surrounding community did not have a job, so the husband of the defendant did the cultivation and employed residents around the *HGU* land. In 1994, there were only 2 (two) certificates of HGU each land covers an area of 65 hectares and owned by *PT Jenggalu Permai* covering an area of 150 hectares. After Drs. Sahabudin died in 2003, the land was controlled by his wife, namely the defendant and residents who worked on the land were no longer allowed by the defendant. In 2002, there were 5 (five) residents who worked on it. The defendant was reported to the police as perpetrators of land destruction and

¹¹ Soerjono Soekanto, *Op.Cit.*, Page. 5.

finally tried in Manna District Court and sentenced. The people are; Bacok Ibrahim, Sujarwo, Syahwan Efendi, and Darlan. Their actions were against the law in accordance with the Manna District Court Decision which already has permanent law force in case Number; 09/Pld.B/2002/PN.Mn dated on April 27th, 2002.

Interviews with **Sujarno** and **Sugeng Waluyo**, that initially in 1972 the Bengkulu Provincial Government gave permission to open a plantation land. So in 1976, Sahabudin received a recommendation from the leader of the Andalas clan to clear the clan's land at the location between the Selawa Bridge to the Jenggalu River. After cleaning and felling, the next cleaning was carried out by local residents, consisting of residents of Jenggalu Village, Bugis Community and Mekar Sari Hamlet Residents. In 1994, there were 2 (two) land use rights certificates, each owned by Sahabuddin with an area of 65 hectares and those belonging to PT Jenggalu Permai with an area of 150 hectares.

An interview with **Dadang Kosasi** (Head of General Administration of the Seluma

District Regional Secretary) explained that the area of the *HGU* is 65 *Ha*, with proof of ownership on behalf of Sahabuddin and the validity period of the *HGU* is 25 years from June 8th 1993 and ending on December 31st 2018, the current condition of the *HGU* is not extended, for the proof of *HGU* ownership based on certificate Number: 07.03.08.022.00006.

2. The efforts to resolve land disputes over former land of cultivation rights (*HGU*) in Jenggalu Village, Seluma Regency, Bengkulu Province

The Tais District Court decision dated on April 25th, 2019 Number: 1/PdtG/2019/PN Tais page 29 also stated that the *HGU* status in Sahabuddin's name was returned to state-owned land. The result of the dispute resolution has been the Tais District Court decision on April 25th, 2019 Number: 1/Pdt.G/2019/Tais District Court. As for the results of the final decision Number: 1/Pdt.G/2019/Tais District Court that;

1. Rejecting the claim for provision from the Plaintiffs in its entirety;

2. Rejecting the Defendant's exception in its entirety;
3. Rejecting the Plaintiff's claim in its entirety;
4. Sentencing the Plaintiffs to pay the entire cost of this case jointly and severally in the amount of Rp. 3,016,000.00 (three million and sixteen thousand rupiah)

Based on the statements of the parties (plaintiffs and defendants), statements of witnesses and documentary evidence in the form of *HGU* No. 08/JGL, it is known that the object of the lawsuit is part of the 65 Hectare State Land which was granted a Cultivation Right to the holder of Drs. Sahabudin whose rights expired on December 31st, 2018 and based on the facts of the trial in the decision Number: 1/PdtG/2009/PN Tais against the *HGU* rights were not renewed.

As for the settlement of former land of cultivation rights (*HGU*) dispute that occurred in Jenggalu Village, Seluma Regency, Bengkulu Province, which was carried out through litigation,

namely, filing a civil lawsuit at the Tais District Court where the plaintiff was Mekar Sari Hamlet, Jenggalu Village, Sukaraja District, Seluma Regency consisting of Sujarwo, Sugeng Waluyo, Supian, confronting the defendant Hakimah, the wife of a former *HGU* holder. Based on the decision of the Tais District Court dated April 25th, 2019 Number: 1/Pdt.G/2019/PN Tais page 29, it was stated that the *HGU* land of Sahabuddin was returned to State-owned land. Because at the time the lawsuit was filed by the plaintiffs, the object of the dispute was in power or had returned to the state property, where legally the defendant or her husband Drs. Sahabudin (The departed) is no longer in control or has no right to control the land object of the dispute/claim, so that the defendant has no right and cannot take law action to own or transfer control of rights or transfer of land rights to the object of the lawsuit in the form of the State land and is not entitled to transfer to the plaintiffs and members of the groups they represent.

The efforts to resolve the dispute over the former land of cultivation right (*HGU*) that occurred in Jenggalu Village, Seluma Regency,

Bengkulu Province which was carried out by non-litigation (outside the Court) by means of deliberation for the *Forkopimda* of Seluma Regency & the Seluma Regency National Land Agency (Referred as *BPN*), as for the conclusions of the Minutes of the Coordination Meeting related to the Discussion ex.*HGU* on behalf of Sahabuddin in Jenggalu Village, Sukaraja District, October 15th 2020 as follows:

- a. Based on the decision of the Tais District Court dated April 25th, 2019 Number: 1/Pdt.G/2019/PN Tais page 29, it was stated that the *HGU* land of Sahabuddin was returned to State-owned land.
- b. Re-measurement and installation of stakes involving the Village Government and the Jenggalu Community.
- c. The Seluma Regent will issue a Circular regarding the termination of activities and land clearing ex. *HGU* on behalf of Sahabuddin in Jenggalu Village
- d. It is appealed to the brothers/sisters of cultivators and managers of

*HGU*s. Sahabuddin (The late) for:

1. Stopping activities and clearing land Ex. *HGU* on behalf of Sahabuddin in Jenggalu Village, Sukaraja District, Seluma Regency.
2. For residents who cultivate and manage the land of ex.*HGU* on behalf of Sahabuddin (The departed) who does not accept this decision is welcome to take law action.
3. If you do not carry out this appeal, if there is a law problem in the field, it will be handed over to the authorities.

The efforts to handle land disputes determined based on applicable regulations consist of several bodies or institutions authorized to resolve them, namely:

First, the court (litigation), namely the General Court and the State Administrative Court (Further will be referred an abbreviated as *TUN*) as stipulated in Law Number 48 of 2009 concerning Judicial Power.

Second, outside the Court (Non-Litigation), the settlement can be done through - Mediation, Arbitration as stipulated in Law Number 30 of 2009 concerning Arbitration. The authority of the land agency as stipulated in Presidential Decree 26/1988 *jo.* Presidential Decree No. 10 of 2006, the settlement is through alternative dispute resolution. The authority of the Regional Government is in accordance with Presidential Decree 34 of 2003 as well as Regulation of the Head of the National Land Agency Number 3 of 2011 concerning Management, Assessment and Handling of Land Cases and Regulation of the Head of the National Land Agency Number 12 of 2013 concerning Land Examination and Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 concerning Settlement of Land Cases. Settlement is through the Special Path, by means of the Ad Team. Hoc. BPN – Polri in accordance with the MoU between BPN and Polri, SKB No, 10/SKB/XII/2010-B/31/XII/2010 dated December 3rd, 2010 regarding Dispute Investigations if there were indications of a crime.

Agencies that have the authority to settle disputes in the land sector include the Regional Government, namely based on Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector, that the settlement of HGU disputes is carried out by the Regency/City and Provincial Governments.

D. CLOSING

1. Conclusion

- a. The factors that cause the tenure dispute over cultivation rights (*HGU*) disputes in Jenggalu Village, Seluma Regency, Bengkulu Province namely;
 1. Agreement on the distribution of Land Cultivation Right
 2. The Validity period of Cultivation Right
 3. Issuance of *SHM* and *SKT* on *HGU* land.
- b. The efforts to resolve land disputes over former land of cultivation rights (*HGU*) in Jenggalu Village, Seluma Regency, Bengkulu Province namely:
 1. Efforts to settle outside the court through the *Forkopimda* meeting and the Tais District Land Office.

2. Efforts through a civil lawsuit at the Tais District Court.

2. Suggestion

- a. The Seluma Regency Land Office should be more professional in issuing land certificates so that there is no issuance of certificates with Administrative Law Defects.
- b. To the residents involved in the dispute, they should obey the results of the Tais District Court decision dated April 25th, 2019 Number: 1/Pdt.G/2019/PN Tais page 29, it is stated that the *HGU* land of Sahabuddin is returned to state-owned land, and re-measures and installs the stakes involving the Village Government and the Jenggalu Community, and a Circular regarding the termination of activities and land clearing ex. *HGU* on behalf of Sahabuddin in Jenggalu Village.

Ronny Hanitijo Soemitro, *Metode Penelitian Hukum*, Ghalia Indonesia, Jakarta, 1990.

Soerjono Soekanto, *Ringkasan Metodologi Penelitian Hukum Empiris*, Ind-Hil-Co, Jakarta, 1990.

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www.ewartaco.co, *BPN Seluma Terbitkan Sertifikat di Lahan HGU*, accessed from; <https://www.ewartaco.co/bpn-seluma-terbitkan-sertifikat-di-lahan-hgu>, on January 1st, 2021.

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