

## **The Projection of the Former Land of Pt Usaha Semesta Jaya's Use of Land in Relation to the Scope of his Research with Community Claims**

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**Abstract:** The purpose of this study is: To Describe the Land Status of the Former Business Use Rights of PT Usaha Semesta Jaya in Nagan Raya Regency, and to map the projection of the former land of PT Usaha Semesta Jaya's use of land in relation to the scope of his research with community claims. The research method is empirical juridical using secondary data sourced from primary, secondary and tertiary legal materials. The results of the study found the remaining land status of the extension of the business use rights of PT Usaha Semesta Jaya in Nagan Raya District which does not extend its use rights automatically the right to the land becomes state land. PT Usaha Semesta Jaya as a former right holder must keep the land concerned before the next recipient or land user is determined. As long as the building is still needed and other objects that are on the ground to the former holder of rights are given compensation in the form of money. Reimbursement and compensation is borne by the recipient of the following rights or land user, or in the case that the former land use rights are intended for public purposes, the said compensation or compensation shall be borne by the relevant Government agency. The projection of the former land use of PT Usaha Semesta Jaya in relation to the community's claim that there is an ex-extended area of ex-HGU must be submitted to the Aceh Provincial Government to regulate, control, own, use and use the land after obtaining an asset release permit from the competent Minister. Until now there has been no asset release permit from the authorized Minister so that the Governor cannot be distributed to the rightful community.

**Keywords:** Land Status, Former Land Use Rights for Land Projection, Business Use Rights, Community claims.

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### **I. FOREWORD**

Indonesia is a country based on law (*rechtsstaat*), not based on mere power (*machtsstaat*).<sup>1</sup>This statement is explicitly stated in Article 1 paragraph (3) of the 1945 Constitution, this shows that Indonesia is a legal state. As a legal state, Indonesia accepts law as a norm to create order, security, justice and prosperity for citizens. His country. The consequence of it all is that the law binds every action taken by Indonesian citizens. Therefore, the law worked the way provide clues about the behavior and therefore also the legal form of the norm. Laws in the form of norms are known as legal norms, where the law attaches itself to the community as the place where the law works.

In the Aceh government law the formulation of this HGU is contained in article 28. If it is linked to the formulation of the HGU with the intent, purpose and basic principles contained in the Aceh government law it is impressed that this HGU will truly become a tool to achieve the goals and ideals of Indonesia's independence in achieving prosperity, happiness and justice for the people and nation of Indonesia as expected. But if the General Explanation of the Aceh low government in number II (3) is further explored, it turns out it can cause dilemma problems.

Business use rights are granted for the first time in a maximum of 35 years and can be extended for a maximum of 25 years. After the period of extension expires to the right holder can be granted renewal of the same land rights (Article 8 PP 40 Year 1996 Juncto Article 29 UUPA)

The consequence of the privileged position of the HGU in the Aceh Government law has caused an imbalance between the Customary Law Community on one side and the HGU holder on the other because they were forced to surrender their communal land on the grounds of accelerated development. The HGU which was

originally expected to be a catalyst for accelerated development and prosperity has shifted its function to become a tool to legalize seizure of people's land, especially customary land to be used as plantation land which only benefits a handful of people who obtain concessions on HGU. Still according to the hypothesis of the researchers, there is no general public or individual citizens who have obtained the HGU as referred to in article 30 paragraph (1) a, even though article 28 paragraph (2) as stated above, expressly states that the HGU submitted by individuals do not have to have proper capital investment and good company techniques, as the concessions granted to companies are estimated to have amounted to millions of hectares.

If the permit (concession) given to HGU holders has caused new problems and ongoing tensions with the community because of the justice and prosperity that they hope has turned into tyranny and misery because of the HGU, then surely the stakeholders need to find a solution that becomes the point meeting between the community and HGU holders so that there is no need for ideas or ideas to review the Aceh government law because the Aceh government law is considered to be the best law made by the Indonesian legislature.

Nagan Raya Regency Is an Expansion of West Aceh Regency occurred on July 22, 2002 which consisted of 10 222 Village Districts. The regency's economic sector moves from plantation business, especially oil palm, oil palm plantation land in Nagan Raya which has active and sustainable production of 64,387 hectares with production reaching 24 tons / hectare. It is very possible for Nagan Raya to become a center for palm oil production, because in Aceh Province only Nagan Raya has the potential and oil palm land is so large. The number of plantation companies based on HGU in Nagan One of them is PT Usaha Semesta Jaya.<sup>2</sup>

Based on Decree Number 10 / HGU / BPN / 1991 dated March 13, 1991 the government granted the Right of Cultivation to PT Perkebunan Usaha Semesta Jaya with a land area of 3,014 hectares as an oil palm plantation business, until the end of the rights on December 31, 2015. And then on May 12, 2016 based on the Decree Number: 22 / HGU / KEM-ART / BPN / 2016 the extension of the HGU to the land was 1,595.5 hectares consisting of several villages including BlangAraGampong village, KruengKulu, BlangPreh,Bantan, BlangMuling, and AluePeusaja, for land that has been extended by the use of business rights where the boundary mark has fulfilled the Minister of Agrarian Regulation / Head Number 3 of 1997.<sup>3</sup>

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<sup>1</sup> C.S.T Kansil, Introduction to Indonesian Law and Law, Cet 8th, BalaiPustaka, Jakarta, 1989, p. 346

<sup>2</sup> H. Said Azman, SH as Assistant to Government and People's Welfare Interview on 17 September 2018

At the same time around 1991, the community occupied the land as a plantation site.<sup>4</sup> People who inhabit the land of ex-usufructuary rights feel that physical control has not provided strong legal protection without being accompanied by juridical control, therefore appropriate policies are needed from the government so that there is no imbalance of control over land.

Against the remaining land extension of the Cultivation Right, an area of 1,418.5 hectares has been controlled by the state in this case the Government of Nagan Raya.<sup>5</sup> but in reality some of the land is cultivated by certain communities. One of them is An. Mr. Abidin as land cultivator in the area of business use rights (HGU) Number: 01 of 1991 registered with PT Usaha Semesta Jaya and An. Bapak Anwar as a land cultivator in the area of business use rights (HGU) Number: 01 of 1991 registered with PT Usaha Semesta Jaya . So here the PT conducts a Bolster Exchange on land within the HGU area and then swaps it into lands outside the Cultivation Right (HGU) in Ex. Business Use Rights (HGU). And for the land that has been carried out the swap, some of them have Ownership Certificates (SHM) available for Land Ex. The Right to Use the Business and there have also sold the Land to the Third Party and the Sale and Purchase Deed (AJB) has been made for the Land.<sup>6</sup> However, after the exchange was made, the land in the name of Mr. Anwar had been worked on by another party without a clear right.

Therefore, it is very interesting to study both *das dassollenand das sein*( law in book and law in action ), namely concerning the Land Status of the Former Business Use Rights of PT Usaha Semesta Jaya in Nagan Raya Regency. In the sense of achieving the objectives of Land Status Based on the rules of the Law and reality that occur in society today.

From the description above, the formulation of the problem discussed is

1. What is the status of the remaining land extension of the business use rights of PT Usaha Semesta Jaya in Nagan Raya Regency?
2. What is the projection of the land used by PT Usaha Semesta Jaya in relation to the claims of the community?
3. How far is the role of the Government in resolving the Conflict in cultivating the remaining land, the extension of the PT Usaha Semesta Jaya's Cultivation Rights?

The problems are discussed, clicking use empirical legal research (Empirical juridical), the research is used to analyze the law is seen as society patterned behavior in public life are always interacting and relating in the community aspects.<sup>7</sup> This research method refers to written regulations or other legal materials that are

secondary in nature, to see how the implementation / implementation is carried out by interview, namely the parties involved in the problem to be examined, namely the Former Land Status of Business Use Rights PT Usaha Semesta Jaya in Nagan Raya Regency.

## II. DISCUSSION

### a. Remaining Land Status Extension of Business Use Rights of PT Usaha Semesta Jaya in Nagan Raya Regency

PT Usaha Semesta Jaya is located in three sub-districts included in the area, namely Kecamatan Seunagan Timur, Seunagan and Suka Makmue. PT Usaha Semesta is part of PT Fajar Baizury & Brother's is one of the private companies with palm oil industry commodities, with business scope such as the development of palm oil plantations, and palm oil extraction.

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<sup>3</sup> Maijuni As an employee of PT Usaha Semesta Jaya interview on September 3, 2018

<sup>4</sup> Anwar as the Cultivator of the interview on September 22, 2018

<sup>5</sup> Sabri as an employee of the Nagan Raya Land Office interviewed on September 7, 2018

<sup>6</sup> Saleh As an employee of PT Usaha Semesta Jayaw Interview on 04 September 2018

<sup>7</sup> Saleh As an employee of PT Usaha Semesta Jayaw Interview on September 4, 2018

Before the Right to Cultivate PT Universe Jaya Business was located in the area there were former erfpach rights land which was initially controlled by the Dutch but after Indonesia gained independence, the land was controlled by the State which would then be presented by the government to regulate the management and utilization of land in accordance with the mandate of BAL Number 5 of 1960 Based on Decree Number 10 / HGU / BPN / 1991 dated March 13, 1991 the government granted the Right of Cultivation to PT Perkebunan Usaha Semesta Jaya with a land area of 3,014 hectares as an oil palm plantation business, until the end of the rights on December 31, 2015. And then on May 12, 2016 based on Decree Number: 22 / HGU / KEM-ART / BPN / 2016 the extension of the HGU to the land was 1,595.5 hectares consisting of several villages including Blang Ara Gampong village, Krueng Kulu, Blang Preh, Bantan, Blang Muling, and Alue Peusaja, on land carried out p extension of business use rights where the boundary mark has fulfilled the Minister of Agrarian Regulation / Head Number 3 of 1997.<sup>8</sup>

PT FAJAR BAIZURY & BROTHER'S is one of the private companies with palm oil industry commodities, with business scope such as the development of palm oil plantations, palm oil extraction, tenants of development equipment services, shipping and sea transportation, and trade. The company is located in Cimbereng Village, Kuala District, Nagan Raya District.

The scope of the business is are:

1. Development
2. Palm Oil Plantation
3. Palm Oil Milling
4. Rental / Development Equipment services
5. Shipping & Sea Transportation
6. Trading.

PT Fajar Baizuri & Brother's HGU with an area of 9,311.0862 Ha is located in Rambong Village, Kuala District, Nagan Raya Regency with the coordinates of its boundaries in Cot Rambong Village, Alue Bata and Padang Ceuko, Kuala District. This is like the PT Fajar Baizuri & Brother's HGU Certificate Number 6 dated November 20, 1991.

The area of business use rights is based on HGU No. 6 of 1991 covering an area of 9,311.0862 Ha, consisting of:

1. 4,355.09 Ha located in Kuala, Kuala Pesisir and Tadu Raya Districts
2. 4,956.00 Ha located in Tripa Makmur District

For information, the first HGU certificate owned by PT Fajar Baizury & Brother's in 1991 and also the 1st substitution certificate dated May 16, 2007 issued by the Land Office of the Nagan Raya Regency permanent object in Rambong Village, Kuala District, Nagan Raya Regency, where land adat Cot Mee, which covers an area of ± 300 Ha, is not included.

Against the remaining land the extension of the Cultivation Right covering an area of 1,418.5 hectares has been controlled by the state in this case the Government of Nagan Raya<sup>9</sup> However, in reality, some of the land was cultivated by certain Communities Number of Land based on Decree Number 10 / HGU / BPN / 1991 dated March 13, 1991 with a land area of 3,014 hectares ended December 31, 2015. The extension on May 12, 2016 was based on Decree Number: 22 / HGU / KEM-ART / BPN / 2016 with an area of 1,595.5 hectares.

Where the remaining land with an area of 1,418.5 hectares has been partially claimed by the community on the grounds that the community has been working on land before 1991.

Related Remaining Land Status Extension of Business Use Rights of PT Usaha Semesta Jaya in Nagan Raya Regency the determination of land rights can be processed right if submitted by the owner by attaching requirements of both a sign of identity and on their rights shows the legal relationship between the applicant and his land. Then after it has been proven that there is a legal relationship or control over the land owned by the applicant, for this reason the government as the ruler who has the right to control state land to regulate and determine legal relations between the person or legal entity with the land performs its duties in formalizing legal relations by giving rights to land as evidenced by the issuance of a decision to grant his rights.<sup>10</sup>

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<sup>8</sup> Maijuni As an employee of PT Usaha Semesta Jaya interview on September 3, 2018

<sup>9</sup> Sabri as an employee of the Nagan Raya Land Office interviewed on September 7, 2018

Procedurally granting rights to land connected with Government Regulation No. 24 of 1997 Article 14:

1. For the purposes of collecting and processing physical data measurement and mapping activities are carried out.
2. The measurement and mapping activities as referred to in paragraph (1) include:
  - a. Making registration base map;
  - b. Determination of boundaries of plots of land;
  - c. Measuring and mapping land parcels and making registration maps;
  - d. Making land register;
  - e. Making a measuring letter.<sup>11</sup>

Especially for business use rights there are additional requirements in the framework of granting or stipulating land rights, namely in the form of:

1. Short-term and long-term land concession plans (specifically in Aceh Province) are required if the right to use the business for agriculture must get a recommendation from the Plantation Office, if the right to use the business for fisheries, then it must get a recommendation from the Fisheries Service for livestock, a recommendation from the Livestock Service Office must be obtained.
2. Location permit or land use appointment permit or land reserve permit in accordance with the Regional Spatial Plan.
3. Approval of Domestic Investment (PMDN) or Foreign Investment (PMA) or a letter of approval from the President for certain Foreign Investment or principle approval letters from the Technical Department for non-PMDN or PMA.
4. Requirements that indicate the feasibility / benefice of the company in managing the Right to Cultivate for land with an area of more than 25 Ha in accordance with Article 28 of the BAL:
  - a. Business use rights are the right to cultivate land that is controlled directly by the State, within the period as referred to in Article 29, for agricultural, fishery or livestock companies.
  - b. Cultivation rights are granted for land with an area of at least 5 hectares, provided that if an area of 25 hectares or more must use appropriate capital investment and good company techniques, in accordance with the times.
  - c. Business use rights can be transferred and transferred to other parties.<sup>12</sup>

The procedure for granting / stipulating the land rights, begins with the submission of the relevant application to the Head of the Regency / City Land Office (Especially for business use rights submitted through the Head of the Regional Office of the National Land Agency) after completing all the necessary requirements, then the following activities are carried out:

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<sup>10</sup> Bachtia Effendie, Land Registration in Indonesia and its Implementation Regulations, Alumni, Bandung, 1983, p. 95.

<sup>11</sup> A.P. Parlindungan, Land Registration in Indonesia, CV. MandarMaju, Bandung, 1999., p. 91

<sup>12</sup> Engel Brecht, Association of Laws and Regulations of the Republic of Indonesia, Intermedia, Jakarta, 1989, p. 1591

1. Cadastral measurements of land requested by measuring officers from the National Land Agency at a certain cost based on the area of land requested. The measurement is in accordance with its authority, namely up to an area of 10 Ha by the Land Office, covering an area of 10-1000 Ha by the Regional Office of the National Land Agency and more than 1000 Ha by the National Land Agency of the Republic of Indonesia.

2. The application file is examined and examined by juridical data and physical data by the "A" Land Examination Committee (for Property Rights, Building Use Rights, Use Rights and Management Rights) and

"B" Land Inspection Committee, (for Right to Cultivate) the result in the form of Minutes of Land Inspection Committee.

3. If the application file has fulfilled the requirements and has been issued a Minutes of Land Inspection Committee, then a Decree is issued concerning the Determination / awarding of its Rights by the authorized official. The Decree on the Determination / Granting of the Right is conveyed to the applicant.

4. Decree concerning Determination / Granting of the Right is registered at the local Land Office and by the Land Office a Land certificate is issued according to the type of rights to be subsequently handed over to the recipient of the right concerned.

Regarding the formal provisions governing the procedure for stipulating / granting land rights, there are rules that stipulate the certainty of requirements, time of completion and the amount of costs as outlined in the Head of National Land Agency Number 1 of 2010 concerning Standard Operational Service Arrangement (SPOPP). Certainty requirements have been described above, the certainty of completion time is posted on the notice board at the Land Office and the certainty of costs has been confirmed in Government Regulation Number 13 of 2010.

For business use rights that will apply for an extension must fulfill the requirements as stipulated in Article 9 of Government Regulation Number 40 of 1996:

1. The right to use the business can be extended at the request of the rights holder, if it fulfills the requirements:

a. The land is still well cultivated in accordance with the circumstances, nature and purpose of the granting of the rights;

b. The conditions for granting these rights are met properly by the rights holders; and

c. Rights holders still fulfill the requirements as rights holders.

2. Business usufructuary can be renewed at the request of the rights holder, if it meets the requirements:

a. The land is still well cultivated in accordance with the circumstances, nature and purpose of the granting of the rights;

b. The conditions for granting these rights are met properly by the rights holders;

c. Rights holders still fulfill the requirements as rights holders.

Furthermore, it is regulated in Article 10 of Government Regulation Number 40 of 1996:

1. Requests for renewal of the right to use the business or renewal shall be submitted no later than two years before the expiration of the term of the right to use the business.

2. The renewal or renewal of business rights is recorded in the land book at the Land Office.

3. Provisions regarding procedures for applying for renewal rights or renewal of business rights and their requirements are further regulated by a Presidential Decree.<sup>13</sup>

Furthermore, the application for extension must also comply with an orderly maintenance of land and the environment. This is an order from the Basic Agrarian Law as stipulated in Article 15 states: Maintaining the land, including increasing its fertility and preventing damage is the obligation of each person, legal entity or institution that has legal relations with that land, taking into account those who economically weak.<sup>14</sup>

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<sup>13</sup> KartiniMuljadi, et al, Land Rights, Kencana, Jakarta, 2008, p. 15

<sup>14</sup> BoediHarsono, Indonesian Agrarian Law, Djambat, Jakarta, 1991, p. 9

This means that the Article requires that even though Development brings positive changes but it may not cause public unrest. Development that does not cause public unrest is only development whose benefits are felt for the benefit of many people. Then in Article 12 paragraph (1) letter e Government Regulation Number 40 of 1996 also states that the obligation of business rights holders must maintain soil fertility, prevent damage to natural resources, and preserve environmental capabilities in accordance with applicable laws and regulations.<sup>15</sup>

This is in accordance with what is required by Law Number 40 of 2007 concerning Limited Liability Companies which are included in Chapter V concerning social and environmental responsibilities mentioned in Article 74 paragraph (1) stating that the Company which carries out its business activities in the field of and / or is related to natural resources must carry out social and environmental responsibilities.<sup>16</sup> Then if the request turns out to be rejected by the government, the holder of the right to use the business must comply with what is stated in Article 18 of Government Regulation No. 40 of 1996:

1. If the right to use the business is deleted and not renewed or renewed, the former right holder is obliged to dismantle the buildings and objects on top of it and surrender the land and plants that are above the former land rights of the business to the State within the time limit set by Minister.

2. If the building, plants and objects as referred to in paragraph (1) are still needed to carry out or restore the exploitation of their land, then the former right holder is given compensation in the form and amount regulated further by a Presidential Decree.

3. The demolition of buildings and objects as referred to in paragraph (1) shall be carried out at the expense of the former holder of the right to use the business.
4. If the ex-holder of the right to use the business is negligent in fulfilling the obligations referred to in paragraph (3), the building and objects that are on the land of ex-use rights are dismantled by the Government at the expense of the ex-rights holder.<sup>17</sup>

In analyzing the problems related remaining land status extension of business use rights of p PT Usaha Semesta Jaya in Nagan Raya regency it is in the giving or the determination of the rights it needs thought was guided by Article 34 and Article 40 of the BAL, and Article 17, Article 18 Article 35, Article 36, Article 37 PP No. 40 of 1996 concerning the abolition of HGU and HGB, as well as Presidential Decree 32 of 1979. Based on this, the important points that need to be regulated are former state land rights whose expiration date. At least the important points considered are as follows.<sup>18</sup>

1. For HGUs, the maximum period is 35 years and can be extended for 25 years. And can be renewed 25 or 35 years ( $35 + 25 + 25 = 85$  years or  $35 + 25 + 35 = 95$  years). The formulation of the term, the first priority right is still given to the former right holder, insofar as it is not for the public interest or social interest and as long as the HGU is used properly according to the designation and use and in accordance with the laws and regulations.
2. For the public interest or a social interest that is not valid for a period of time, the land rights can be revoked at any time as a breaker of civil law relations between the subject of the rights and the land;
3. If land rights are not renewed or not renewed, the rights to the land automatically become state land, the former right holder must keep the land in question before the next recipient or land user is determined. As long as the building is still needed and other objects that are on the ground to the former holder of rights are given compensation in the form of money. Reimbursement and compensation shall be borne by the recipient of the following rights or land user, or in the case of the former land use rights for the purpose of the public interest, the said replacement or compensation shall be borne by the relevant Government agency;

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<sup>15</sup> Compilation of Agrarian Law, Legislation Series, Library of Yustisia, Yogyakarta, 2010, p. 553

<sup>16</sup> Law of Limited Liability Company Number 40 of 2007, (Yogyakarta: Graha Ilmu), p. 47

<sup>17</sup> Compilation of Agrarian Law, Legislation Series, Library of Yustisia, Yogyakarta, 2010, p. 555

<sup>18</sup> Dian Aries Mujiburohman, "Problems in Regulating Former State Land Rights that Have Ended", *Bhumi* Vol. 2 No. 2 November 2016, p. 12-1

4. To prevent the concentration / monopoly of land both by the private sector and the government, it is also considered about agrarian reform / land redistribution for those who do not own land.

Based on the description above, remaining land status extension of business use rights of PT Usaha Semesta Jaya in Nagan Raya Regency are not extent expired its leasehold rights to the land automatically becomes state land. PT Usaha Semesta Jaya as a former right holder must keep the land concerned before the next recipient or land user is determined. As long as the building is still needed and other objects that are on the ground to the former holder of rights are given compensation in the form of money. Reimbursement and compensation is borne by the recipient of the following rights or land user, or in the case that the former land use rights are intended for public purposes, the said compensation or compensation shall be borne by the relevant Government agency.

The consequences of the abolition of business use rights for former holders of business use rights are regulated in Article 18 of Government Regulation Number 40 of 1996, namely:<sup>19</sup>

1. If the Right to Cultivate removes and is not renewed or renewed, the former right-holder must dismantle the buildings and objects on it and surrender the land and plants that are above the former Land Use Right to the State within the time limit stipulated by State Minister for Agrarian Affairs / Head of BPN .
2. If the buildings, plants and objects mentioned above are needed to carry out or restore the exploitation of their land, then the ex-rights holders are given compensation, the form and amount of which are further regulated by a Presidential Decree .
3. The demolition of buildings and objects on land for Cultivation Rights is carried out at the expense of former holders of Business Use Rights, but in practice there is a difference between Private HGU and BUMN.
4. If the former holder of the Right to Cultivate is negligent in fulfilling these obligations, then the buildings and objects that are on the land of the former Cultivation Right are dismantled by the government at the expense of the former holders of the Right to Cultivate.

<sup>19</sup> Urip Santoso, *Registration and Transition of Land Rights*, Kencana, Jakarta, 2011, p. 105

<sup>20</sup> Eddy Ruchiyat, *National Petranahan Politics until Reform Order*, Alumni, Bandung, 2006, p. 46.

Steps or procedures regarding approval of the Guna Usaha rights permit, namely.<sup>20</sup>

1. Submitting a letter of application addressed to the State Minister of Agrarian Affairs / Head of the National Land Agency which is then conveyed through the Head of the Provincial Land Agency Office regarding the application for permission to release Business Use Rights which will be followed up immediately by the Minister of Agrarian Affairs / Head of the National Land Agency
2. After considering the juridical aspects and recommendations from the lower apparatus, the Minister will thus decide and give the release of the Right to Cultivate the Business which is then accompanied by various terms and conditions as follows:
  - a. Immediately after receipt of a decision from the Head of the Provincial Office of the National Land Agency, the applicant is required to make a Letter of Release before the Head of the Regency Land Office by showing proof of payment of taxes on the transfer of land from the old owner to the new owner.
  - b. The former plantation land will then be used as a replacement land area for the forest area that has been submitted to the applicant
3. Affirming ex-plantation land, starting from the date of release of this right as land directly controlled by the State and then handed over / given to the Ministry of Forestry cqPerhutani Public Corporation as a forest area,
4. Instructs the Head of the Regency Land Office to:
  - a. Eliminate from the land book and the general list of administration of registration of the right to use the business from the former right holder and then record it as a business directly controlled by the State / as a forest area
  - b. Report to the State Minister of Agrarian Affairs / Head of the National Land Agency about the implementation of the release of letters and deletion from the land book and a general list of administration of land registration for the right to use the business and a copy of the report submitted to the Head of the Provincial Office of the National Land Agency.

Basically, 300 hectares of land use rights are controlled by PT USJ and 1,100 hectares are controlled by the community. 300 hectares are controlled because there is oil palm, 150 hectares are handled by PT USJ, and 150 hectares are not given permission by regent. The conflict location is 150 hectares, and not the whole. Related to this problem will be discussed in the next chapter.

#### **B. The projection of the land used by PT Usaha Semesta Jaya in relation to the claims of the community**

When cases of agrarian disputes have developed into conflict, various forms of violence have become tools to eliminate other parties' claims to land and the accompanying natural wealth.<sup>21</sup>

The number of claims in land disputes arises with various modes including:

1. There is a claim which states that the control of land by PT Usaha Semesta Jaya exceeds the actual area.
2. This area has become a struggle for good land between individuals and groups and between groups with a variety of purposes, there is only to grow crops for food needs alone, there are those who make the location of residence and place of business, but there are also those who speculate by expecting compensation at a later time.
3. The claims that speculate on land documents include:
  - a. Claims that the former concession land is a right that must be returned to the concessionaire even though in the Basic Agrarian Law the problem has been resolved.
  - b. The emergence of obsolete letters submitted as the basis of these claims contradicts historical logic, because these problems have been resolved in the past before the extension of PT Usaha Semesta Jayang HGU where 300 hectares of land use rights were controlled by PT USJ and 1,100 hectares controlled by the community. 300 hectares were controlled because oil palm was already available, 150 hectares were handled by PT USJ, and 150 hectares were not given permission by Regent.

As previously explained, the total area of HGU Land of PT Usaha Semesta Jaya (USJ) is 3014 hectares, then the extension is 1600 hectares and the one that is not extended is 1400 hectares. With respect to land that is not renewed, all of them are compensated for loss. 300 hectares of HGU released were controlled by PT USJ and 1,100 hectares were controlled by the community. 300 hectares of controlled because there is oil, 150 hectares in the care of PT USJ, 150 hectares Others were not given permission by regent constitutes that became the conflict is not the whole 150 hectares .

There is a letter of exchange of land from the land in the HGU of land outside the HGU carried out by the tenants with the PT USJ. The exchange conflict is that the land outside the HGU has been claimed by the third party. Regarding the land outside the HGU, there is already a Property Rights Certificate (SHM), and

someone who has made AJB (Sale and Purchase Act) is traded to third parties. For example, in the village of AluePeusaja there are 300 hectares outside the status HGU, there are now people who have exchanged, there are already existing certificates. The exchange of about 800 hectares from BlangMuling village to Paya village. Meanwhile, 200 hectares already have certificates there involved in 3 village heads in that case the Paya location was approximately 150 hectares already bound together. Then there was no land outside the HGU in the village of the perumpak but there were villagers in the suakpeureubong who carried out activities on the former HGU land on the grounds that there was land inside the HGU.

According to PP number 40 of 1990 concerning Cultivation Rights and Basic Agrarian Law number 5 of 1960 article 30 letter a, namely HGU land which has ended the HGU being controlled by the State. State Land is land controlled by a State where the State has the right to regulate its use. And for this land, in this case the local government has not yet divided or has not yet followed up on the land.

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<sup>21</sup> NoerFauzi, *Testifying For Agrarian Reform from Local Demands To Global Trends*, Yogyakarta: INSIST Press Printing, 2003, p. 70

On the basis of Law Number 29 of 1956, the Minister of Agrarian Affairs and Agriculture has the authority to take actions so that plantation lands that have very important functions in the country's economy are well-cultivated.<sup>22</sup> In Law No. 29 of 1956 it has been determined that holders of *Erffpachtrights*, *Eigendomrights* and other material rights that have sought back their plantation companies, must do everything necessary to start or continue the business of the plantation company concerned feasible, according to the provisions held by the Minister of Agriculture.

The Minister of Agriculture sets a time limit in which rights holders who have not fulfilled their obligations are given the right opportunities. If the right holder has not fulfilled his obligations, then at the discretion of the Minister of Agriculture *Erffpacht's* right to the relevant plantation land can be canceled by the Minister of Agrarian Affairs. *Erffpacht's* rights can also be canceled, if according to the Minister of Agriculture and the Minister of Agrarian considerations the attitudes and actions of the rights holders during the intended time indicate that the rights holders do not intend to revoke the plantation company whose *Erffpachtrights* are canceled into State land, free of all rights the rights of third parties to burden him. Likewise for plants and buildings that are on the ground by former rights holders, which according to the decree of the Minister of Agriculture are needed to carry out or restore proper business, controlled by the State. Excluded throughout the building - the building and the plants are young and have not been enough to free the result by the former holder of the right, then the State authority must be accompanied by compensation.<sup>23</sup>

The projection of the land used by PT Usaha Semesta Jaya in terms of community claims, priority scale and the implementation of the transfer of land rights in Nagan Raya Regency, are:

### **1. Law Number 18 Year 2004 concerning Plantation**

The earth, water and natural resources contained in it are a gift from God that is intended for countless Indonesians. One of the results of natural wealth that is expected to be able to contribute to the improvement of people's welfare and increase in local revenue is the development and development of plantations. Plantation is a superior commodity in sustaining the development of Indonesia's national economy, both from the point of view of the income of the State and from the point of view of the welfare of society as a whole, by opening up very wide open employment opportunities. In the dictum weighing Law Number 18 Year 2004 concerning Plantations stated that in order to realize equitable welfare and prosperity of the people, plantations need to be guaranteed sustainability and enhanced functions and roles and plantations as a form of natural resource management need to be carried out in a planned, professional manner and responsible.

In the construction of plantations, the foundation rests on the most basic foundation or principle of plantation management which is based on the principle of benefit and the principle of integration. In Article 2 of Act Number 18 of 2004 it is stated that plantations are carried out based on the principle of benefit and are sustainable, integrated, together, open and just. What is meant by the principle of sustainability and sustainability here is that the implementation of plantations must be able to increase the prosperity and welfare of the people by striving to preserve the environment and pay attention to socio-cultural conditions. What is meant by the principle of integration is the operation of plantations must be carried out by combining the subsystems of production, processing and marketing of plantation products. The principle of togetherness is that in every plantation operation, implementing partnerships openly so that intertwining and interdependence are established synergistically among plantation business actors. Likewise what is meant by the principle of openness and principle of justice, the principle of openness is that the implementation of plantations is carried out by paying attention to the aspirations of the community and supported by information services that can be accessed by the community. The principle of justice so that in every plantation operation must provide



opportunities with its capabilities and the implementation of plantations must be carried out with due regard to national interests, between regions, between regions, between sectors and between plantation business actors.

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<sup>22</sup> UripSantoso, *Agrarian Law and Land Rights*, Kencana, Jakarta, 2005, p.40

<sup>23</sup> BoediHarsono, *Op.Cit.*, p. 108

To maintain the preservation of environmental functions and deal with their damage, after obtaining a plantation business license, plantation companies must implement measures namely environmental impact analysis or environmental management efforts and / or analysis and management of environmental risks and monitor their application. And every plantation company that has obtained a plantation business permit but does not apply an analysis of environmental impacts or environmental management efforts and environmental monitoring efforts, its business license is revoked.<sup>24</sup>

## **2. Law Number 5 of 1960 concerning the Basic Agrarian Law and Government Regulation Number 40 of 1996 concerning Business Use Rights**

So far, Aceh government law is a legal basis in the land sector, which is considered still relevant to the times and is able to accommodate various land affairs. Although the Aceh government law has been 38 years but there are still many implementing regulations that have not been made so far so that the populist vision and mission of the Aceh government law does not materialize.<sup>25</sup>

According to Article 28 paragraph (1) Right to Use Business the right to cultivate land which is directly controlled by the State. The origin of land for cultivation rights based on Article 4 of PP No. 40 of 1996 is state land, the right of land must be released or handed over by the rights holder by giving compensation by the prospective holder of business rights and subsequently submitting a request for the right of cultivation to the Land Agency National. But if the land comes from a forest area, then the land must be issued as a forest area. Business Use Rights must occur with the determination of the government. In Article 31 of the Basic Agrarian Law in conjunction with Article 6 and Article 7 of Government Regulation Number 40 of 1996, the Right to Cultivate occurs through an application to grant the Right to Cultivate by the applicant to the National Land Agency. And if the letter of requirements specified in the application is fulfilled, the National Land Agency issues Decree on the Granting of Rights (SKPH).

This SKPH must be registered with the local Regency / City Land Office to be recorded in the Land Book and issued a certificate as proof of his rights. Right to Cultivate has a period of the first time for a maximum of 35 years and can be extended for a maximum period of 25 years (Article 29UUPA). Likewise, in Article 8 of Government Regulation Number 40 of 1996 regulates the period of business use rights for the first time at the latest 35 years, extended for a maximum of 25 years and renewed for a maximum of 35 years.

The application for the extension of the period or renewal of the Business Use Rights is submitted no later than two years before the expiration of the period of said Business Use Right. Extension or renewal of Business Use Rights is recorded in the Land Book at the local Regency / City Land Office.

Based on Article 14 of Government Regulation Number 40 of 1996, holders of Business Use Rights have the right to control and use the land granted with the Right to Cultivate to carry out business in agriculture, plantations, fisheries and or livestock. Mastery and use of water resources and other natural resources on land for use of business rights by holders of business use rights can only be done to support the business of business use rights in view of the provisions of applicable legislation and the interests of the surrounding community.<sup>26</sup>

In Article 28 paragraph (3) UUPA Article 16 PP Number 40 of 1996 that Business Use Rights can be transferred and transferred to other parties who fulfill the requirements as holders of Business Use Rights. The transferred form can be in the form of buying and selling, exchanging, grants, participation in company capital which must be proven by the deed of a special Land Deed Maker (PPAT) appointed by the Head of the National Land Agency. The special Land Deed Making Officer (PPAT) appointed by the Head of the National Land Agency is regulated in Article 1 number 3 PP Number 370 of 1998 concerning Position Regulations for Land Deed Officials who are appointed by the National Land Agency to carry out their PPAT assignments. Certain PPATs are specific to the implementation of certain government programs or tasks, while the transfer of Business Use Rights due to the auction must be proven by the Minutes of Bidding made from the Auction Office. The Right to Cultivate can be transferred by means of inheritance and must be proven by the existence of a will or a certificate as an heir made by an authorized official, a certificate of death for the holder of a Business Use Right made by an authorized official with proof of identity of the heirs and certificates Business Use Rights concerned.

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<sup>24</sup> Supriadi, *Indonesian Forestry Law and Plantation Law*, SinarGrafika, Jakarta, 2010, pp. 544 – 562

<sup>25</sup> BrahmanaAdhie and HasanBasriNataMenggala, Land Reform Empowerment of Land Rights Viewed From Legal Aspects, Social, Political, Economic, Defense, Technical, Religion and Culture, MandarMaju, Bandung, 2002, p. 19

<sup>26</sup> UripSantoso, op.cit., P. 102

The transfer of Business Use Rights must be registered with the local Regency / City Land Office to be recorded in the Land Book and a name change in the certificate from the holder of the old Business Right to the holder of the new Cultivation Right is carried out. 116 factors that cause the removal of the Right to Cultivate and resulting in the land being State-land stipulated in Article 17 of Government Regulation Number 40 of 1996. Further provisions regarding the abolition of business use rights are regulated by its Presidential Decree, but until now the Presidential Decree has not been made.

### **3. Law Number 26 of 2007 concerning Spatial Planning**

In the Spatial Law, spatial planning includes planning and patterns of spatial use which include:<sup>27</sup>

- 1) Land Use
- 2) Water Use
- 3) Air use and
- 4) Use of other natural resources.

Law No. 24 of 1992 concerning Spatial Planning, as a basis for spatial planning so far, has basically provided a considerable contribution in realizing spatial order so that almost all regional governments have regional spatial plans. In line with developments in the life of the nation and state, some considerations that the decline in the quality of space in most regions demands that there be a change in regulation in Law Number 24 of 1992.

Some developments in the life of the nation and state include:

- 1) National and international situations that demand the enforcement of the principles of integration, sustainability, democracy and justice in the run of good spatial planning.
- 2) Implementation of regional autonomy policies that provide greater authority to local governments in the implementation of spatial regulations so that the implementation of these authorities needs to be regulated in order to maintain harmony and integration between regions and
- 3) Increasing awareness and understanding of the community towards spatial planning that requires regulation, guidance, implementation and supervision of spatial planning to be in line with developments occurring in the community.

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<sup>27</sup> Mohammad Hatta, National Land Law in the Perspective of the Unitary State, Eternal Media, Yogyakarta, 2009, p. 220

To adjust these developments and anticipate the complexity of the development of problems in Spatial Planning, it is necessary to establish Law Number 24 of 1992 concerning Spatial Planning with the new Spatial Planning Law, so that the issuance / issuance of Law Number 26 of 2007. There are also the objectives of spatial planning in Article 3 of the Law on spatial Planning that the implementation of the stylist a n space aims to create national spatial safe, comfortable, productive and sustainable based archipelago and national Security with:

- 1) The realization of harmony between the natural environment and the artificial environment;
- 2) The realization of integration in the use of natural resources and artificial resources by paying attention to human resources;
- 3) The realization of protection of space functions and prevention of negative impacts on the environment due to the use of space.

The duties and authorities of the Government in the spatial planning process according to Article 7 of the Spatial Planning Law, the Government's tasks in the context of Spatial Planning include:

- 1) State Pen held arrange space for the greatest prosperity of the people
- 2) In carrying out this task, the State grants authority to administer Spatial Planning to the Government and Regional Government
- 3) The implementation of Spatial Planning is carried out while respecting the rights of the appropriate person while respecting the rights of the people in accordance with the provisions of the legislation.

### **III. CONCLUSION**

The conclusions from this study are based on the descriptions in the previous chapters:

1. The remaining land status is the extension of the Cultivation Right of PT Usaha Semesta Jaya in Nagan Raya District which does not extend to the Right to Cultivate, the right to the land becomes state land. PT

Usaha Semesta Jaya as a former right holder must keep the land concerned before the next recipient or land user is determined. As long as the building is still needed and other objects that are on the ground to the former holder of rights are given compensation in the form of money. Reimbursement and compensation is borne by the recipient of the following rights or land user, or in the case that the former land use rights are intended for public purposes, the said compensation or compensation shall be borne by the relevant Government agency.

2. The projection of the former land use of PT Usaha Semesta Jaya in relation to the community's claim that there is an ex-extended area of ex-HGU must be submitted to the Aceh Provincial Government to regulate, control, own, use and use the land after obtaining an asset release permit from the competent Minister. Up to now there is no i z in the disposition of assets of the Minister authorized so that the governor cannot be distributed to the public is entitled.

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