

## THE WEAKNESSES OF LANDING SYSTEM FOR LAND FOR PLANTATION COMPANIES IN THE FRAMEWORK OF FOREIGN INVESTMENT IN INDONESIA

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### ABSTRACT

*This research is based on the phenomenon of the existence of weaknesses in regulation related to cultivation rights system for Plantation Company in the framework of foreign investment in Indonesia. The aim of this study is to analyze and find the weaknesses that can be found in the cultivation rights system for plantation companies in the context of foreign investment in Indonesia. This study is also aimed to analyze and find the weaknesses contained in regulations related to the cultivation rights system for plantation companies in the context of foreign investment in Indonesia. The results of this study indicate the existence of weakness incultivation rights system for plantation companies in the framework of foreign investment in Indonesia in the form of: (a) the existence of multi interpretation of the provisions in UUPA (Basic Agrarian Law); (b) the number of legal loopholes for legal avoidance or legal smuggling; (c) there is disharmony that is the existence of UUPA is not a main thing anymore for the Law in the field of land, forestry, plantation, investment and local government; (d) land title acquisition procedures for plantation companies in the framework of long, complex, and too short-term investments provided in meeting the requirements.*

Keywords: Weaknesses. Landing System for Land, Plantation Companies, Foreign Investment

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### A. INTRODUCTION

Land has an important meaning in a country, which is a major supporting factor for the life and welfare of its people.<sup>1</sup> The function of the land is not only limited to the needs of residence, but also a place to grow social, political, and cultural development of a person and a community.<sup>2</sup> The utterance "*sadumukbatuksanyaribumiditohitekaningpati*" (Javanese Proverb) signifies how precious the value of the land. The relationship between humans and the land is not uncommon for complex problems not only in developing countries, but also in developed countries such as Sweden, the Netherlands, the United States, Japan, South Korea and the People's Republic of China.<sup>3</sup>

The relationship between humans and the land is not often caused complicated problems as described above, requiring a regulatory system that can solve complicated problems, so in the Indonesian state's constitution the laws governing land are a very important part.<sup>4</sup>

Various regulations related to cultivation rights system for plantation companies in the framework of foreign investment in Indonesia have existed since the colonial era until today. Various regulations related to cultivation rights system for plantation companies in the framework of foreign investment in Indonesia have existed since the colonial era to the present.

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<sup>1</sup>Maria S.W. Sumardjono, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Kompas, Jakarta, 2001, pg. 9.

<sup>2</sup>Winahyu Herwiningsih, *Hak Menguasai Negara Atas Tanah*, Total media and FH UII, Yogyakarta, 2009, pg 1.

<sup>3</sup>Dianto Bachriadi, *Revormasi Agraria: Pembaharuan Politik Sengketa dan Agenda Pembaruan Agraria di Indonesia*, FE UII, Jakarta, 1997, pg. 28-29.

<sup>4</sup>Singgih Praptodihardjo, *Sendi-sendi Hukum Tanah di Indonesia*, Tjetakan ketiga, Jajasan Pembangunan, Djakarta, 1953, pg. 5.

In the context of regulating the cultivation rights system for plantation companies in the context of foreign investment, it is necessary to review the existence of the cultivation rights system for the plantation company, to see the various weaknesses contained in the regulation of the land control system.

The arrangement of cultivation rights system for plantation companies in the framework of foreign investment in Indonesia which will be reviewed again related to the existing arrangements since the colonial government up to the present time, covering: (a) rental system (*landrente*); (b) agricultural land concession contracting system or *landbouwconcessie*; (c) long-term rental system (*erfpachtright*); and (d) the system of cultivation rights (HGU).

The regulation of cultivation rights system for plantation companies as mentioned above will be seen from the choice of legal paradigm and philosophical aspects underlying the creation of legal arrangements so that the weaknesses can be found.

Based on the description above, then the problem can be formulated with this question, what are the weaknesses that can be found in cultivation rights system for plantation companies in the framework of foreign investment in Indonesia?

The purpose of this study is to analyze and find the weaknesses contained in regulations related to the cultivation rights system for plantation companies in the context of foreign investment in Indonesia.

## B. RESEARCH METHODOLOGY

This research is normative legal research. The object of his research is the weakness of cultivation rights system for plantation companies in the framework of foreign investment in Indonesia.

This study uses secondary data sources, including primary legal materials, secondary legal materials and tertiary legal materials.

This research uses several approaches. First, statute approach that is an approach that examines regulations relating to the weakness of the cultivation rights system for plantation companies in the context of foreign investment in Indonesia.

Second, this research uses legal history approach with these following reasons<sup>5</sup>; (a) the law not only changes in space and location, but also in time and time trajectories; (b) legal norms are often only understandable through legal history; (c) the notion of legal history is essentially an important entry for junior jurists to recognize culture and public order; and (d) the law is laid in its historical development and fully recognized as a historical phenomenon.

## C. FINDINGS AND DISCUSSION

### 1. Rental System (*Landrente*)

The underlying paradigm of the legal arrangement of the rental system (*landrente*) during the East Indies period of 1602-1871 was inseparable from the economic and political interests of the East Indies colonizers aimed at obtaining cheap land, plantation labor and became a marketing area for European industrialization at the time.

Referring to the results of historical studies, there are several legal product characters that have been held by the Dutch colonial government in this period is to have characteristics including: (a) legal products are provided to open the door as wide as possible to the entry of special investment flows for investors / the Dutch state (the period of conservative political enactment); (b) in order to attract investors, the Dutch colonial government has sought to provide strong legal guarantees of land ownership or cultivation rights of agricultural land (for plantation) offered to *onderneming* entrepreneurs, irrespective of agrarian rights of local people; and (c) in order to provide strong legal guarantees the Dutch colonial government entered into agreements with the sultans / kings (which resulted in the emergence of tracts) and or by means of a conquest by force of arms which would give birth to a sovereignty over the colonies the. By utilizing the principle of *domein* theory (*domeinverklairing*), then all the lands in the territory of the kingdom that has been denied by the Dutch colonial government and or has been made agreements with the sultans or head of the local area finally regarded as the domain of the country or land *eigendom* of the East Indies.

Based on the description above, it can be concluded that the choice of paradigm which underlying the legal arrangement of *landrentesystem* which has been enacted during the Dutch East Indies period in Indonesia in the

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<sup>5</sup>John Gilissen, Frits Gorle dan Freddy Tengker, *Sejarah Hukum : Suatu Pengantar*, Refika Aditama, Bandung, 2005, hlm 1.

period of 1602-1871 is very detrimental to the interests of the Indonesian people in general and the Indonesian people in particular, because in principle the application of agrarian law policy is none other than to gain the greatest advantage for the Netherlands only and in practice has suffered the people of Indonesia in general, and this action is done by the Dutch colonial government in order to obtain the land and cheap labor in the greatest exploitation activity (opening of large plantations). Based on that, the choice of such paradigm is contrary to the spirit and spirit of the development of Indonesia's national land legal system as reflected in the *UUPA* so that the choice of such legal paradigm should be shunned or excluded from the development of Indonesia's national land law system in the future.

From the philosophical aspect, it can be explained that the legal conception that underlies the legal arrangement for the *landrente* system applied to the Dutch colonial government based on western law, which is philosophically patterned individualistic-liberalist. According to this concept of western law the highest right is situated on the right of the state *eigendom*.

In relation to the *landrente* system, the status of the state or government of the Dutch East Indies at that time was sovereign or as the owner of the land in all the Dutch East Indies territories (which became the domain of the state), which the Dutch East Indies government subsequently leased the land to private and local farmers (indigenous Indonesians). Whereas these local peasants have in fact controlled and or possessed the lands that became the object of the lease (*landrente*), long before the Dutch East Indies government occupied the land by force of arms and or by agreement with the Sultan or King who has power at local area.

In practice, the rental relations applied to the Dutch and Dutch East Indies administrations above, did not take into account the existence of the local agrarian rights, or in other words had robbed the local people of agrarian rights. When viewed from the intent and purpose, that the enactment of the law of the Company and the Law of the West in the Indonesian colony at that time was based on merchant politics or in the pursuit of maximum profits, carried out through a massive exploitation of the land- existing land, regardless of the agrarian rights of indigenous Indonesians and the welfare of workers who are actually from among indigenous Indonesians.

Based on the description above, it can be concluded that the legal arrangement of the *landrente* system is contradictory to the philosophy or legal conception embraced by the Indonesian customary law (*communalistic - religious*) and in practice the legal products held by the Dutch colonial government are clearly very detrimental to the interests Indonesian nation and very miserable the people of Indonesia in general.

## 2. Contracting System of Agricultural land Concession or *Landbouwconcessie*

The paradigm underlying the legal arrangement of the agricultural land concession system is not much different from the paradigm underlying the legal arrangement of the *landrente* system that had been applied in Indonesia by the Dutch East Indies government before the agricultural land concession system was enacted, based on merchant politics, not apart from the economic interests of the Dutch East Indies government who always wanted to obtain cheap land and labor (plantation labor), and make the land of colonies as a marketing place for the industrialization of Europe at that time there, so as to obtain profits as much as possible for Netherlands.

Referring to the trade politics, the law and policy products in the land affairs imposed in its colonies are endeavored to attract the interest of foreign investors from the Netherlands itself (businessmen *onderneming*), and other European countries, as well as the East Foreign in order exploit the lands in their colonies, to be planted with the crops that are needed and sell in the international market at that time (in the form of small and large plantations).

If it is viewed from the philosophical aspect, the legal conception underlying the concession system is based on two distinct and contradictory conceptions or legal philosophies, i.e. between "Western Land Law" is based on liberal individualistic and indigenous beliefs that are communalistic religious.

BoediHarsono<sup>6</sup>, has explained that the philosophy or conception of the Law of the Land of the West is the individualistic-liberal conception that stems from the right of individuals who are free to try to meet their individual needs to achieve the highest prosperity. The highest land title is a Private Property called the *Eigendom* Right. Land throughout the territory of the state is subdivided into the lands of individual *Eigendom* Rights and civil law bodies, as well as the State *Eigendom* Rights lands. Other rights of ownership are rooted in the individual *Eigendom's* Rights and the country's *Eigendom* Rights. The law of the land that applies to western law is generally written law, even pursued that has been codified in the law books.

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<sup>6</sup>Boedi Harsono, *op.cit.*, pg. 184.

In addition to the European civil law, in the Dutch East Indies colony has also been enacted the customary law of indigenous Indonesians. Communalistic-religious style that influenced by feudal (royal law). This concept is closer to the philosophy / conception of state land law that embraces *anglosaxon*.

Referring to the choice of legal paradigm and legal philosophy / conception underlying the law product of the Dutch East Indies government above, it will affect or have implications for the characteristics of some legal products of land held in the framework of the development of plantation business in the Dutch East Indies at that time, this is during the enactment of the agricultural land concession contracting system that placed in East Sumatra.

The basic principles of some legal products held at the time include: (a) agricultural land concession contracts based on Western Law, in principle legal relationships that are born are categorized as civil law relationships; and (b) agricultural land concessions are also based on indigenous feudal Indigenous Land Law (valid *domein* theory), then existing legal relations are civil and public relations.

Based on the existence of the two conceptions of the land law, it has greatly influenced the contract of agricultural concessions that were born or created, including: (a) a contract of agricultural land concession involving three parties, namely the Dutch *ordeneming* businessman, the sultan and the highest official of the Dutch East Indies government and / local officials of the Dutch East Indies government; (b) The *ordeneming* entrepreneur shall be a land applicant who shall serve as a place for the development of the existing plantation business; (c) The Sultan / King is domiciled as the land owner to be the object of the land concession contract (based on the principle of *domein* theory); (d) The Government of the Dutch East Indies is domiciled as a ruler of the existing government in the territory of the colonies, in which the object of land concession contract is located.

In a more in-depth review, the agricultural land concession contract system, in fact, does not provide enough legal certainty; this can be proved by two different views on the legal status of the holder of the agricultural land concession contract at that time. First, looking at the concessions made by the Indonesian authorities with the approval of the highest official of the Dutch East Indies, the Resident is not creating the legal entitlement (*jus in rem*), but only having a "personal right" or *jus personalissima*. Secondly, the group which considers that the concession is the right of legal entity (*jus in rem*), states: (a) the timing of the concession in an indirectly controlled territory, as rent provided in direct-dominated areas is 75 years; (b) the same concession rights are exploited "unused land".

From the substantial aspect of the arrangement, in the practice of operationalization of this contracting system of agricultural land concessions, there is a vertical disharmony, i.e. the existence of *AgrarischBesluit* has defeated *Agrarisch wet*, whereas in the order of the existing laws in the Netherlands the position of *Agrarisch wet* is higher than the *AgrarischBesluit*.

### 3. Long-term Rental System (*Erfpacht Right*)

In principle, the paradigm underlying the legal arrangement of long-term rent system (*erfpacht* right) is not much different from the paradigm underlying the legal arrangement of *landrente* system and agricultural land concession contract ever applied in Indonesia. before this long-term lease system was introduced which was based solely on the trade politics of the Dutch East Indies government, to protect the economic and political interests of the Dutch East Indies government to obtain cheap land and labor (plantation labor), and to make colonies as a marketing place for profit sharing industrialization of Europe, in order to achieve a financial advantage as much as possible for the Dutch state.

Referring to the juridical philosophical approach, it is fundamentally the legal conception that has been used as the basis for the formulation of the law which regulates the right of *erfpacht* system is an individual-liberalistic concept of western law. This can be traced from the process of creating the rights of *erfpacht* itself is derived from individual rights (*eigendom* rights), whether derived from the right of state *eigendom* as well as individual *eigendom* rights. As it is known, that in the concept of western (individual-liberalistic) law, the right of *eigendom* is the highest cultivation rights within a country.<sup>7</sup> It can be interpreted that the legal relationship between state and land is based on individual property rights (*eigendom* rights). In the state *eigendom*, the state in this case is not as the ruler and the right of the state is solely a civil right, equal to the right of individual *eigendom*.

The basic principles contained in some legal products governing the rights of *erfpacht* system, including the relationship of the state with the land is inseparable from the principle of *domein* theory. By utilizing the principle of

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<sup>7</sup>Olan Sitorus dan Dayat Limbong, *Pengadaan Tanah Untuk Kepentingan Umum*, Mitra Kebijakan Tanah Indonesia, Yogyakarta, 2004,pg. 28.

*domein* theory (*domeinverklairing*), then all the land in the territory of the kingdom that has been denied by the Dutch colonial government and or has been made an agreement with the sultan / head of the local area finally regarded as the domain of the country or land *eigendom* of the Dutch East Indies.

According to Maassen en Hans<sup>8</sup>, the function of the agrarian politics of this *domein* statement includes: (a) the link between the rights of the son of the man and the western right because the government is the owner of the land, after being freed from customary rights can be granted western rights (*eigendom*, *erfpacht*, *opstal* and other material based on BW); (b) may grant *bumiputra* land rights based on *Gouvernementbesluit* December 9, 1933 Number 8, *Stadblad*481 which regulates the petition and disposal of the son of the earth, whereas in Chapter 16 the regulation regulates the rights of *erfelijkindividueelgebruiksrecht* to be converted to *agrariancheigendom*).

Meanwhile, the legal aspect of the creation or granting process of *erfpacht* rights is a civil law relationship. Since the legal relationship between the state and the right holder of *erfpacht* is of a civil nature, so in the operationalization of this right of *erfpacht*, the status of the state is merely a subject of civil law. The authority possessed by the right holders of *erfpacht* is almost similar to the authority possessed by the holder of the *eigendom* rights (absolute ownership), i.e. the right holder of *erfpacht* is to have full independence over the existing land.<sup>9</sup> *Erfpacht* rights do not recognize the social function, as it is known in the UUPA.

#### 4. System of Cultivation rights (HGU)

UUPA's philosophy is contained in Chapter 33 Article (3) of the 1945 Constitution aims to achieve social justice for all communities. In its implementation in Indonesia, it turns out that various policies decided to not be able to protect the rights of the people, which happened on the contrary, UUPA increasingly provide opportunities or convenience to those who have political access with all its impact. On the contrary, the capitalist-minded group is of the opinion that the UUPA is less responsive to anticipate the flow of foreign investment because the UUPA needs to be revised. The idea of granting HGU and HGB for 100 years or giving property rights to foreigners and foreign legal entities is a resonance of capitalist group thinking.

If it is viewed from the aspect of the practice of giving HGU for companies in plantations in Indonesia has gained a lot of protests from the public because the Dutch Law is a continental European heritage based on individualistic understanding has shifted *communal relegious*.

Regarding to orientation and objectives, as well as the application of the principles contained in the UUPA, there are several disadvantages, as follows: (a) from the historical aspect, the use of renting system, the contract of agricultural land concessions, and the long-term rent (*erfpacht* rights) imposed by the Dutch East Indies government are contrary to the spirit and spirit of the Indonesian national legal system (UUPA); (b) the land concession contracts only give birth to individual rights (*persoonlijk*) and not just in brakes (legal entitlements); (c) in order to protect the interests of the occupation and to attract investors, the Netherlands Indies government has changed the land acquisition system for plantation companies from the *landrente* system and concession contracts into long-term leases (rights *erfpacht*) as opposed to the spirit and spirit of UUPA.

The regulation on the extent of the Cultivation rights System that can be granted is known from the provisions of Chapter 28 of UUPA which reads:

- (1) Cultivation rights is the right to work on land directly controlled by the State, within the period referred to in Chapter 29, for agricultural, fishery or livestock enterprises.
- (2) Cultivation rights shall be granted to a land of at least 5 hectares, provided that if the breadth of 25 hectares or more shall use proper capital investment and good corporate techniques, in accordance with the times.
- (3) Cultivation rights may be transferring and transferred to another party.

Furthermore, if we look at the explanatory section of Chapter by UUPA, then in the explanation of Chapter 28 of UUPA is already explained that "This right is a special right to cultivate land that is not his own for agricultural, fishery and livestock companies. The difference with the cultivation rights is that it can only be granted for such purposes and upon the land of an area of at least 5 hectares. Cultivation rights use may be transferring and transferred to another party and may be encumbered with the rights of the estate.

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<sup>8</sup>Massen en Hans, in AP. Parlindungan, *op.cit.*,pg. 60.

<sup>9</sup>Bermawi, *Ibid.* pg. 61.

Based on the above description, it can be concluded that there are no clear and firm restrictions on the permitted area of HGU land, this is subject to government approval. This HGU is an exemption from the provision of large land ownership *latifundia* (*grootgrondbezitter*) as set forth in Chapter 7 of UUPA, stated "not to harm the public interest, the possession and control of the land beyond the limits shall not be permitted". Since there is no maximum land that can be applied for, it will create an opportunity for the applicant to do a monopoly of cultivation rights of HGU in a particular area, so this will also have some negative implications.

The timing of the HGU is stipulated in Chapter 29 of the UUPA, which reads:

- (1) The cultivation rights shall be granted for a maximum period of 25 years.
- (2) For companies requiring longer periods of time may be granted the cultivation rights for a maximum period of 35 years.
- (3) At the request of the right holder and in view of the circumstances of his company the period referred to in article 1 and 2 of this chapter may be extended to a maximum of 25 years.

Furthermore, if we look at the explanatory section of chapter by chapter of the UUPA, then in the explanation of Chapter 29 it is described as follows: "According to the nature and purpose of the right to a business is a time-limited right. The 25 or 35 year term with the possibility of extending by 25 years is considered long enough for the purposes of the exploitation of long-lived crops, the determination of the 35-year timeframe for example to remember on oil palm crops".

Referring to the above description, it is clear for the first time the specified time period is 25 years or 35 years depending on the decree of HGU grant. However, the HGU will run 25 years plus 25 years or 35 years plus 25 years to 50 years or 60 years.

The regulation of legal subject which can have the Cultivation Rights is known from the provision of Chapter 30 of UUPA which reads:

- (1) Who can have the cultivation rights is:
  - a. Indonesian citizens
  - b. A legal entity established under Indonesian law and domiciled in Indonesia.
- (2) Any person or legal entity that has the cultivation rights and no longer fulfills the requirements referred to in paragraph (1) of this Article within a period of one year shall release or transfer that right to another eligible party. This provision shall also apply to the party who obtains the right to operate, if he does not fulfill the requirement. If the said tenure is not released or transferred within such period of time, the right is waived due to law, provided that the rights of the other party will be ignored, in accordance with the provisions stipulated by a Government Regulation.

According to AP Parlindungan, chapter 30 of UUPA above, the "subjects" of cultivation rights are in principle to adopt a strict "national principle", meaning only citizens or Indonesian legal entities. This principle is the basic principle of UUPA, so that if the concerned is no longer a citizen must relinquish his rights to the citizens of Indonesia within one year, otherwise his rights will be erased due to law even though the rights of the third person remain respected (e.g. still in the bond of mortgages and etc.).<sup>10</sup> In Chapter 30 Article (2) of the UUPA has been explained that if it is no longer Indonesian citizen within one year must give his right to Indonesian citizen with the threat of the death of his right.

In relation to Chapter 30 of the UUPA, Effendi Perangin, asserting that in contrast to proprietary, the subject of HGU does not have to be a single citizen. An Indonesian citizen with dual nationality may own land with HGU. There is no distinction between indigenous citizens and foreign descendants.<sup>11</sup>

In Chapter 14 Law Number 1 of 1962, it has been affirmed that for the purposes of foreign capital companies can be granted land with cultivation rights, Building Rights Title and Use Rights according to prevailing laws and regulations. In the elucidation of Chapter 14 of this Law, it is stated that the opening of the possibility to grant land to foreign capital companies rather than to Right to Use, but also to HGB and HGU, is an affirmation of what is stipulated in Chapter 55 Article (2) of the UUPA, "National Development Planning". Furthermore, in Chapter 3 of Law Number 1 of 1962, it is also stated that the foreign capital company must be executed wholly or

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<sup>10</sup>AP. Parlindungan, *Ibid.*, pg. 59.

<sup>11</sup>Effendi Perangin, *Hukum Agraria Indonesia - suatu Telaah Dari Sudut Pandang Praktisi Hukum*, CV Rajawali, Jakarta, 1986, pg. 263.



partly in Indonesia as a unity of the company and is a legal entity under Indonesian law and domiciled in Indonesia.

With the enactment of Law Number 1 of 1967, it is clear that in the future, the Cultivation Rights may be granted to the eligible legal bodies mentioned in Chapter 30 Article (1), regardless of whether the capital is national or a mixture of national and foreign. This principle shall be deemed to apply also to foreign legal entities.

HGU may be transferring or transferred to another party (Chapter 28 UUPA) if it is provided that the citizenship of those receiving the right, as well as the HGU can be made with Mortgage or Mortgage Rights (Chapter 33 UUPA).<sup>12</sup> The principle of nationality is different from the provisions of the Right of *Erpacht* where the subject may be domiciled in Indonesia or in the Netherlands.<sup>13</sup>

If it is carefully observed that the provisions contained in Chapter 30 of UUPA are having legal loopholes that can be abused by foreign investors to engage in a legal smuggling in order to profitably gain the maximum exploitation on existing plantation land.

The legal gap referred to herein is related to the "domicile" or "legal standing" of a person or legal entity entitled to apply for a cultivation rights under the UUPA. As having described above that according to UUPA a legal entity that is "not established" under Indonesian law or "not domiciled" in Indonesia, is not allowed to have a cultivation rights, even though it has a representative in Indonesia.

Under this provision, this foreign investor intends to establish a legal entity under Indonesian law and shall have legal domicile in Indonesia. However, based on the current legal provisions in Indonesia, these foreign investors can still do most of their business operations in Indonesia only and some of the main business operations are done in their home countries.

The regulation of the HGU can be determined from the provisions of Chapter 31 of UUPA, which reads; "Cultivation right is due to the Government's determination". When considering the elucidation of Chapter by Chapter from the UUPA, then in the explanation of Chapter 31 this is not found an explanation.

The HGU transfer arrangements can be known from the provisions of Chapter 32 of the UUPA:

- (1) Cultivation right, including the terms of its grant, as well as any transitional and abolition of such rights shall be registered in accordance with the provisions referred to in chapter 19.
- (2) The registration referred in article 1 shall be a strong evidentiary instrument of the transition and abolition of the right to operate, except in the case that the right is waived as the time period expires.

Furthermore, in the explanation section by chapters of UUPA, then in the explanation of chapter 32 it is stated already described in the General Explanation (number IV) which reads: The basis for legal certainty.

Seeing the contents of the provisions of chapter 32 of the UUPA can be concluded that the nature of HGU is different from Right to Use, because this HGU is able to be transferring and transferred to other parties and can be used as security of debt by the holder.

The regulation on the occurrence of HGU can be known from the provisions of chapter 33 of UUPA which reads; "The cultivation right can be used as a debt guarantee with burden of mortgage". Furthermore, in the explanation section by chapter of UUPA, then in the explanation of chapter 33 this is not found an explanation.

Referring to the above description, it indicates a legal loophole that actually a foreign legal entity that has obtained HGU is not including a legal entity that has big capital as required by law, so in reality it only utilizes loan capital from Indonesian banking, do not want this is not to attract foreign capital to Indonesia as intended intention to withdraw foreign investors to want to invest their capital in Indonesia, especially in the plantation sector.

HGU is deleted because the expired time period is obvious, because the right is granted unlimited. But, of course, in accordance with chapter 29 of the UUPA, the right can be renewed.

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<sup>12</sup>AP. Parlindungan, *ibid.*, pg. 58.

<sup>13</sup>AP. Parlindungan, *ibid.*, pg. 59.

The incompleteness of certain conditions can be used as an excuse to stop or cancel the concerned HGU. HGUs for large plantation companies may be canceled, if 3 consecutive years of compulsory annual money are not paid, if not carried out properly or if their rights are transferred or their company is handed over to other parties for more than one year.

The cancellation of the HGU due to the non-fulfillment of such conditions constitutes a sanction. Therefore, there is no compensation. The land becomes state land, free from all third party rights that burden it. In chapter 34 Sub-Article e of the UUPA it has been mentioned that HGU is abolished because it is abandoned. But the Government finds it difficult to revoke the HGU holders who have abandoned the land that has been granted rights to him. Because the revocation procedure is too complicated and requires many requirements, and involves many agencies.

Resistance from the HGU holders over some HGU revocations, whereas in reality, HGU holders have indeed abandoned the existing HGU land, and in court it was won. This experience certainly proves that it is not easy to apply strict sanctions for violations committed by HGU holders.

From the aspect of harmonization has occurred disharmony in the UUPA because UUPA is no longer a parent for other laws in the field of land, for example with the birth of the Basic Forest Law and Plantation Basic Law.

In addition, there are administrative flaws in the form of land acquisition procedures for plantation companies in the framework of long, complex, and too short-term investments in terms of meeting the requirements. Given such a procedure, eventually in practice it will encourage bribery to the local bureaucracy (collusion, corruption, and nepotism).

There are several factors in the supervision aspect of several government agencies, among others: (a) overlapping the duties and authorities of several government agencies; (b) the existence of certain incentives (bribes) that have been received by the apparatus of a particular government agency that ought to exercise oversight; (c) lack of knowledge of the government apparatus that supervises, loses smartly with HGU holders; (d) lack of coordination among government agencies having supervisory duties on the management and operation of HGU; and (e) the absence of strict legal sanctions in the UUPA and some of its implementing regulations. It cannot be imposed for violations of obligations that should be fulfilled by the HGU Holder.

Some of the implications that arise as a result of some of the weaknesses of legal arrangements as described previously include: (a) the absence of legal certainty about the legal institutions authorized to resolve agrarian disputes / conflicts related to the system of land cultivation for plantation companies in order foreign investment in Indonesia; (b) the incurrence of overlapping authority between several agencies or authorized agencies in the arrangement, management and control of the acquisition and operation of land rights for plantation companies in the context of foreign investment in Indonesia; (c) the fertility of existing KKN culture; (d) the emergence of land speculation and monopoly of land tenure HGU; (e) the emergence of legal avoidance measures, the use of legal loopholes or legal smuggling; (f) the appearance of a violation of the legal arrangements made by the HGU holders.

#### D. Conclusion

Based on the description above, it can be concluded that the weaknesses found in the legal arrangement of land tenure system for plantation companies in the framework of investment in Indonesia are as follows:

1. The underlying paradigm of the creation of legal arrangements, philosophy or legal conceptions underlying the rule of law, and the basic principles embodied in some legal products governing the use of leasing systems, agricultural land concessions contracts, and long-term rent (*erfpacht* rights) imposed by the Dutch East Indies government is at odds with the spirit and spirit of the Indonesian national legal system (UUPA). This is because all of that cannot be separated from the economic and political interests of the Dutch East Indies colonizers aimed at obtaining cheap land, cheap labor (plantation labor) and a marketing area for the industrialization of Europe at that time. The philosophy or legal conception underlying the rule of law imposed during the Dutch colonial government was based on western law, which was philosophically patterned individualistic-liberalist;
2. In the era of the HGU regime, there has actually been a shift from the direction of communal relegius to individual liberalistic. In practice, the weakness arises when viewed from: (a) the existence of multiple interpretations of the provisions in the UUPA; (b) the number of legal loopholes for legal avoidance or legal smuggling; (c) there is disharmony i.e. the existence of UUPA is not a parent anymore for the Law in the field of land, forestry, plantation, investment and local government; (d) the administrative side, the weaknesses found are in the form of land acquisition procedures for plantation companies in the framework of long, complex, and too short-term investments provided in meeting the requirements.



These weaknesses have various implications, including: (a) the number of agrarian conflicts that arise; (b) overlap of authority among agencies and sectoral egos; (c) the fertility of existing KKN culture; (d) the emergence of land speculation and monopoly of land tenure HGU; (e) the emergence of legal avoidance measures, the use of legal loopholes, or legal smuggling; and (f) the emergence of violations of legal arrangements by HGU holders.

#### E. Suggestions

Referring to some of the weaknesses found in the legal arrangements regarding land tenure systems for plantation companies in the context of foreign investment in Indonesia, it is necessary to take steps to improve:

- a. The need for legal protection or protection of the state's interest from speculative actions committed by unlawful / malicious HGU holders
- b. The need for legal protection or protection of the state interest from monopolistic acts committed by HGU holders derived from large capital investors / large investors;
- c. The need for legal protection or protection of customary community land and community lands from acts of invasions that are often committed by HGU holders (plantation companies); and
- d. The need for legal protection or protection of environmental sustainability from environmental damage caused by the provision of HGU for plantation companies.

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