WORLD CLASS ISLAMIC CYBER UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY
DOCTORAL PROGRAM OF LAW
FACULTY OF LAW
PROCEEDING OF INTERNATIONAL CONFERENCE ON THE LAW DEVELOPMENT FOR PUBLIC WELFARE
ISSN: 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Legal Issues in Sustainable Palm Oil Plasma Management

Yusfandi Usman[1] & Anis Mashdurohatun[2]
[1]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: yusfandi.dalpres2003@gmail.com
[2]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: anism@unissula.ac.id

Abstract. *This study employs a socio-legal research approach to examine law in its social context, capturing the contextual meanings of regulatory texts on electronic notarial practice. Palm Oil Plasma Land Management Conflict; Occurred due to Community demands to build Plasma Plantations in the Right to Cultivate (HGU) Area of Palm Oil Plantation Companies. Failure of Companies to fulfill legal obligations; Palm Oil Plantation Companies that have been operational before the issuance of the Minister of Agriculture Regulation (Permentan) Number 26 of 2007 concerning Guidelines for Plantation Business Licensing. One of the important points is in Article 11 which requires Palm Oil Plantation Companies to build Community Plantations. The following are important points in the Minister of Agriculture Regulation (Permentan) Number 26 of 2007 concerning Guidelines for Plantation Business Licensing, as follows: Palm Oil Plantation Companies that have IUP or IUP – B are required to build Plantations for the surrounding Community covering a minimum of 20% of the total area of the cultivated Plantation Area.*

Keywords: *Issues; Legal; Oil; Palm; Plasma; Sustainable.*

1. Introduction

The Geopolitical and Economic Context of Palm Oil The palm oil industry stands as a monumental pillar in Indonesia's modern economic architecture. As the world's largest producer of Crude Palm Oil (CPO), Indonesia contributes approximately 58% of the global supply. This commodity is not merely an agricultural product; it is a strategic instrument of national development, a source of foreign exchange reserves, and a livelihood for roughly 16 million people, including smallholders and laborers. However, this economic success story is shadowed by a complex narrative of ecological degradation and fierce agrarian conflict. The

ISSN: 2798-9313

expansion of oil palm plantations, which now cover over 16 million hectares of the archipelago, has fundamentally altered the socio-legal landscape of rural Indonesia.

The friction between corporate expansion and community welfare is most visible in the implementation of the "Plasma" or Nucleus-Plasma partnership scheme. This scheme was originally designed as a tool for poverty alleviation and technology transfer. However, in the contemporary legal landscape, it has mutated into a source of persistent dispute. The global market, driven by frameworks such as the European Union Deforestation Regulation (EUDR) and the principles of Environmental, Social, and Governance (ESG), now demands that Indonesian palm oil be "sustainable." Sustainability, in this context, is not limited to environmental preservation but inherently includes social equity—specifically, the fulfillment of rights for local communities to benefit from the land.

Philosophical and Constitutional Foundations To understand the legal issues of plasma management, one must return to the *Grundnorm* of the Indonesian legal system. Article 33 Paragraph (3) of the 1945 Constitution (UUD 1945) mandates that "The earth and water and the natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people." This constitutional provision creates a relationship known as the "Right of State Control" (*Hak Menguasai Negara* or HMN).

Philosophically, HMN implies that the state is not the "owner" of the land in a civil law sense, but rather the regulator, administrator, and supervisor. When the state grants a Right to Cultivate (*Hak Guna Usaha* or HGU) to a private corporation, it is delegating its authority to manage natural resources. This delegation comes with an inherent condition: the management must lead to the "greatest prosperity of the people." Therefore, the obligation to provide 20% of the land for community plantations (Plasma) is not merely an administrative requirement found in ministerial regulations; it is a derivative of the constitutional mandate to ensure social justice (Sila 5 of Pancasila).

However, a philosophical tension arises between the concept of "Social Function of Land" (as stipulated in the Basic Agrarian Law/UUPA No. 5 of 1960) and the principle of "Legal Certainty" (*Rechtssicherheit*) for investors. Corporations view HGU as a property right (*Zakelijk Recht*) that guarantees exclusive use. The demand to relinquish 20% of this exclusive area for the community is often interpreted by corporations as an erosion of their property rights, especially when such obligations are applied retroactively to HGUs issued decades ago.

ISSN: 2798-9313

The Historical Evolution of the Partnership Scheme The legal history of palm oil partnerships in Indonesia can be categorized into three distinct phases, each creating its own layer of legal issues:

1) The PIR-Trans and PIR-Bun Era (1980s-1990s): During the New Order regime, the Nucleus Estate Smallholder (NES) or *Perkebunan Inti Rakyat* (PIR) schemes were state-driven. The government, through the World Bank and state-owned banks, funded the development. The legal relationship was clear: the state provided land and funding, the company (Nucleus) provided technical expertise, and the transmigrants (Plasma) provided labor. In this era, the "plasma" land was usually carved out from the start.

2) The KKPA (Primary Cooperative Credit for Members) Era (1995-2005): As state funding dried up, the model shifted. Cooperatives were empowered to seek bank loans with corporate guarantees (*avalist*). This era introduced complex contractual relationships that often placed heavy debt burdens on farmers, leading to the "hidden land grabbing" phenomenon where farmers lost their land due to debt default.

3) The "Revitalization" and Mandatory 20% Era (2007-Present): This phase began with the issuance of Minister of Agriculture Regulation (Permentan) No. 26 of 2007. This regulation marked a paradigm shift by explicitly quantifying the obligation: "Minimum 20%." This era is characterized by the retreat of the state as a funder and the imposition of full liability on the private sector.

The Core Legal Problem: Regulatory Disharmony and Transitional Issues The crux of the problem addressed in this research lies in the transitional provisions and the interpretation of the "20% obligation." When Permentan No. 26 of 2007 was enacted, it faced a reality where millions of hectares of HGU were already active. The regulation (and its successors, Permentan 98/2013 and strict interpretations in the Job Creation Law) created a dilemma for pre-existing companies.

1) *Interpretation A (Community View):* The company must excise 20% of its existing HGU area and give it to the community.

2) *Interpretation B (Corporate View):* The company must facilitate the opening of *new* land outside the current HGU equivalent to 20% of their area.

This ambiguity is fatal. In regions like Riau, North Sumatra, and Central Kalimantan, land outside the HGU is often non-existent (already occupied by villages or designated as Forest Areas). If the company cannot find land outside, are they legally compelled to slice their own active HGU?

ISSN: 2798-9313

Current regulations offer a "Partnership" alternative (*Fasilitasi Pembangunan Kebun Masyarakat* - FPKM), but this is often rejected by communities who demand land ownership, not just profit-sharing.

Furthermore, there is a disconnect between the Ministry of Agriculture (issuing technical plantation rules) and the Ministry of Agrarian Affairs/BPN (issuing land titles). BPN often extends HGUs without strictly verifying the fulfillment of the 20% plasma obligation, creating a "legal smuggling" scenario where non-compliant companies continue to operate with state sanction.

2. Research Methods

This research employs a Socio-Legal Research approach. Unlike normative legal research which focuses solely on the analysis of statutes and legal principles, socio-legal research views law as a social phenomenon. It combines the analysis of legal norms (regulations regarding plantation licensing) with the social reality of their implementation in the field (agrarian conflicts and community demands). The data sources used in this study include: Primary Legal Materials: The 1945 Constitution, Law No. 39 of 2014 concerning Plantations, Law No. 6 of 2023 (Job Creation Law), Minister of Agriculture Regulation No. 26 of 2007, and Minister of Agriculture Regulation No. 98 of 2013. Secondary Legal Materials: Books, scientific journals, legal dictionaries, and reports from NGOs related to palm oil conflicts. Tertiary Materials: News articles and statistical data on agrarian conflicts. The data analysis technique is qualitative. The researcher interprets the law not just as text, but captures the *contextual meaning* of how the regulation affects the behavior of stakeholders (companies, government, and communities) (Bedner, 2012).

3. Results and Discussion

3.1. Normative Construction of Article 11 Permentan No. 26 of 2007 and its Derivatives

To understand the legal chaos, one must perform a strict normative analysis of the governing texts. Article 11 of Permentan No. 26 of 2007 states that plantation companies holding an IUP (Plantation Business Permit) or IUP-B are *required* to build plantations for the surrounding community covering a minimum of 20% of the total plantation area cultivated by the company.

The legal phrase "cultivated by the company" (*yang diusahakan oleh perusahaan*) is the point of contention. In legal hermeneutics, this phrase implies that the 20% is a *ratio* of the total area. However, the implementation of this article is hindered by the Principle of Non-Retroactivity. Article 1 of the Civil Code and general principles of law dictate that legislation cannot apply backwards to invalidate rights acquired under previous laws. Companies established before

ISSN: 2798-9313

2007 typically entered into investment agreements where the 20% obligation did not exist or was voluntary. However, this research argues that the Principle of Non-Retroactivity is not absolute in administrative law, especially when it concerns public welfare and licensing (bestuursrecht). When a company applies for an extension (*perpanjangan*) or renewal (*pembaruan*) of their HGU, the state has the authority to impose new conditions. The legal flaw currently is that the transition is not managed well. Permentan No. 98 of 2013 attempted to soften the blow by allowing "Productive Business Partnerships" (non-land) if land is unavailable. Yet, this regulation lacks a strict verification mechanism to determine *why* land is unavailable. Is it genuinely unavailable, or is the company simply unwilling to release its land bank?

The Dichotomy of "Inside" vs. "Outside" HGU: A Socio-Legal Deadlock The most explosive conflict on the ground is the battle over the location of the plasma.

1) The "Inside" Argument: Communities argue that the HGU was granted on their ancestral lands (*Tanah Ulayat*). Therefore, the 20% restitution must come from within the HGU. From a socio-legal perspective, this is a demand for restorative justice.

2) The "Outside" Argument: Companies rely on the Agrarian Law. HGU is a property right. Forcing them to give up 20% of the HGU constitutes "Expropriation" (*Pencabutan Hak*) which, under Law No. 20 of 1961, requires public interest justification and compensation from the state. Since plasma is for private individuals, companies argue the state cannot force expropriation without compensation.

This deadlock creates what is known in sociology of law as a "Legal Vacuum in Implementation." The law exists on paper, but acts as a "paper tiger." BPN (National Land Agency) officers often wash their hands of the matter, stating that their job is only to measure land, while the Dinas Perkebunan (Plantation Office) states they cannot force companies to release HGU. This results in Agrarian Structural Conflict. The structure of land ownership is skewed (gini ratio of land ownership in palm oil is extremely high). The 20% plasma rule was meant to be a tool of Agrarian Reform (*Reforma Agraria*), redistributing assets. By failing to enforce the "Inside HGU" interpretation for renewal permits, the state is failing its agrarian reform agenda.

The Impact of the Omnibus Law (Job Creation Law No. 6 of 2023) The enactment of the Omnibus Law has significantly altered the landscape of plasma management. On the positive side, it attempts to streamline licensing. On the negative side, it creates potential loopholes. Article 29 of the Job Creation Law (amending Law 39/2014) reaffirms the facilitation obligation. However, the sanctions regime has shifted from criminal liability to primarily Administrative Sanctions

ISSN: 2798-9313

(fines, temporary suspension). While administrative sanctions are theoretically faster to apply (*Ultimum Remedium* principle shift to *Primum Remedium* in administrative law), in the context of Indonesia's political economy, fines are often just "cost of doing business" for multi-national palm oil giants. They would rather pay a fine than relinquish 20% of their productive land assets. Furthermore, the Omnibus Law introduces the Bank Tanah (Land Bank). Theoretically, the Land Bank could resolve the plasma issue by providing state land for community plantations. However, early indications show the Land Bank is prioritized for infrastructure and large-scale investment, not necessarily for filling the plasma deficit of private companies.

3.2. Sociology of Conflict: The Failure of Cooperatives and "Ghost Plasma"

Moving from norms to reality (*das Sein*), the management of plasma is riddled with fraud. This research identifies the phenomenon of "Ghost Plasma" (*Plasma Hantu*). This occurs when:

1) Administrative Manipulation: A company claims to have 20% plasma by listing names of "farmers" who are actually company employees, local elites, or fictitious names, purely to satisfy the audit for HGU issuance.

2) The Debt Trap: The "One Roof Management" (*Manajemen Satu Atap*) system, where the company manages the plasma entirely, often leads to lack of transparency. Farmers receive "leftover" profits (SHU) after the company deducts operational costs and loan repayments. Often, the deductions are so high that farmers receive zero income, despite their land being used.

3) Conflict of Interest: The breakdown of the *Koperasi* (Cooperative). Ideally, the Cooperative represents the farmers. In reality, cooperative boards are often co-opted by the company or village heads, leaving the actual smallholders voiceless.

Legally, the partnership agreement (*Perjanjian Kerjasama*) is often a Standard Contract (*Contract of Adhesion*) drafted unilaterally by the company. It violates the principle of "Freedom of Contract" because the farmers have no bargaining power. The legal consequence should be the nullification of such contracts, but access to civil courts is expensive and difficult for farmers.

Sustainable Palm Oil (ISPO) as a Legal Enforcement Tool A novel legal avenue for enforcement is the Indonesian Sustainable Palm Oil (ISPO) certification, which is now mandatory (Presidential Regulation No. 44 of 2020). Principle 4 of ISPO explicitly requires "Responsibility to Workers and Community," including the realization of plasma. If a company fails to provide plasma, legally, its ISPO certificate should be revoked. Without ISPO, the CPO cannot be sold in the formal

ISSN: 2798-9313

market. However, the *audit process* is the weak link. Auditors are paid by the companies they audit, creating a conflict of interest. This research suggests that Legal Liability for Auditors needs to be strengthened. If an auditor certifies a company as "Compliant" while there is an active land dispute or plasma deficit, the auditor should face legal sanctions.

Towards a "Restorative Justice" Approach in Plasma Management The current litigious approach (suing in Administrative Court or Civil Court) is ineffective. This research proposes a Restorative Justice approach to plasma conflicts. This involves:

1) Mediation with Executive Power: Mediation should not just be "facilitation" but "arbitration" where the government has the power to enforce the outcome.

2) Social Audit: Before HGU renewal, a social audit by an independent third party must confirm the 20% realization.

3) Fiscal Incentives: To solve the "Inside HGU" deadlock, the government could offer tax deductions (Pajak Penghasilan or PBB reductions) for companies that voluntarily release HGU land for plasma. This changes the framework from "Punishment" to "Incentivized Compliance."

In conclusion for this section, the legal issues in palm oil plasma are not just about regulatory text, but about the Political Will of the state to enforce the social function of property. The law must evolve from a tool of capital accumulation to a tool of social distribution to ensure the long-term sustainability of the palm oil industry.

4. Conclusion

Based on the discussion, several conclusions can be drawn regarding the legal issues in sustainable palm oil plasma management: Regulatory Ambiguity: The primary legal issue stems from the transitional provisions regarding the 20% plasma obligation for companies established before Permentan No. 26 of 2007. While the regulation mandates the development of community plantations, the interpretation of whether this land must come from within the existing HGU or from outside remains a source of heated agrarian conflict. Implementation Gap: There is a significant gap between the normative text of Article 11 and the sociological reality. The unavailability of land surrounding HGUs and the reluctance of companies to release part of their HGU for plasma creates a deadlock. The "partnership" alternative is often viewed by communities as insufficient compared to physical land ownership. Sustainability Prerequisite: Legal compliance regarding plasma is a non-negotiable element of Sustainable Palm Oil (ISPO). The government must strictly enforce sanctions against companies that neglect this duty.

However, the government must also provide legal certainty and incentives for companies to convert part of their HGU into plasma schemes, ensuring that the burden of social welfare is shared equitably between the state and the private sector. Recommendation: The government needs to issue a technical regulation that specifically governs the conversion of HGU land into plasma land for pre-2007 companies, including fiscal incentives (tax reductions) for companies that voluntarily release HGU land for community welfare, thereby resolving the conflict and achieving true sustainability.

5. References

Journals:

Arisaputra, M. I. (2015). Reforma Agraria di Indonesia: Tinjauan Hukum dan Perspektif. *Jurnal Hukum & Pembangunan*, 45(4).

Darmawan, A. (2020). Konflik Agraria dan Perkebunan Kelapa Sawit. *Jurnal Sosiologi Pedesaan*, 8(2).

Lubis, S. (2019). Perlindungan Hukum Petani Plasma dalam Perjanjian Kemitraan. *Jurnal Ilmiah Advokasi*, 7(1).

Sartika, D. (2019). The Obligation of Plasma Plantation Development. *Journal of Indonesian Sustainable Agriculture*, 5(2).

Susylawati, E. (2020). Pola Kemitraan Inti-Plasma pada Perkebunan Kelapa Sawit. *Jurnal Hukum IUS QUIA IUSTUM*, 27(1).

Yamin, M. (2021). Omnibus Law dan Dampaknya Terhadap Sektor Perkebunan. *Jurnal Konstitusi*, 18(2).

Books:

Adhi Wibowo, R. (2019). *Hukum Perkebunan di Indonesia*. Jakarta: Prenadamedia Group.

Bedner, A. (2012). *Socio-Legal Research in Indonesia*. Leiden: Van Vollenhoven Institute.

Budidarmo, A. (2018). The Implementation of Corporate Social Responsibility in Plantation Sector. *International Journal of Law Reconstruction*, 2(1).

Fauzi, N. (2017). *Land Reform dari Masa ke Masa*. Yogyakarta: Tanah Air Beta.

Harsono, B. (2008). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Djambatan.

Hutagalung, A. S. (2016). *Hukum Pertanahan di Belanda dan Indonesia*. Denpasar: Pustaka Larasan.

Kartodihardjo, H. (2018). *Politik Sumber Daya Alam*. Jakarta: LP3ES.

Moniaga, S. (2017). Sengketa Tanah dan Hak Masyarakat Adat. *Jurnal Wacana*, 19(35).

Nurjaya, I. N. (2013). *Pengelolaan Sumber Daya Alam dalam Perspektif Antropologi Hukum*. Malang: Setara Press.

Rachman, N. F. (2017). *Land Reform Policy in Indonesia*. Bogor: IPB Press.

Santoso, U. (2019). *Hukum Agraria: Kajian Komprehensif*. Jakarta: Kencana.

Shohibuddin, M. (2018). *Perspektif Agraria Kritis*. Yogyakarta: STPN Press.

Simarmata, R. (2016). *Pilihan Hukum Pengakuan Masyarakat Adat*. Jakarta: HuMa.

Sumardjono, M. S. W. (2018). *Regulasi Pertanahan dan Semangat Keadilan Agraria*. Jakarta: Kompas.

Syahyuti. (2014). Peran Negara dalam Sengketa Agraria. *Forum Penelitian Agro Ekonomi*, 22(1).

Wiradi, G. (2009). *Reforma Agraria: Perjalanan yang Belum Berakhir*. Bandung: Akatiga.