



Transparency in the Plantation Sector: Access to Cultivation Rights Title Documents

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Abstract

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This empirical legal research analyzes the implementation of the principle of transparency by the National Land Agency regarding access to cultivation rights title documents in the plantation sector, conducted at the Office of the National Land Agency in Gorontalo District, Gorontalo Province, Indonesia. The findings reveal that the Agency has not effectively implemented the transparency principle as mandated by the Supreme Court in Decision No. 121 K/TUN/2017, primarily because it classifies cultivation right title documents as confidential. This classification leads to the conclusion that public disclosure would violate corporate privacy provisions and applicable regulations. Additionally, the Agency's adherence to professionalism and existing regulations further hinders the accessibility of these documents, highlighting significant challenges in achieving transparency within land governance in the plantation sector.

A. Introduction

Land holds significance in human existence¹, as its utilization encompasses nearly all aspects of life. It is essential for constructing housing, serves as a source of income in agriculture, plantation, and animal husbandry, and is even required for burial purposes. Given that almost all human needs are intrinsically linked to land, it is evident that land significantly influences human life. In the context of Indonesia, the pivotal role of land in the lives of its people and in national development is anchored in the principles of

¹ Li, Tania Murray. "What is land? Assembling a resource for global investment." *Transactions of the institute of British Geographers* 39, no. 4 (2014): 589-602.

sustainable development.² Consequently, regulations concerning land possession, ownership, and use must focus on ensuring order in land law, effective land administration, appropriate land utilization, and environmental sustainability, all aimed at achieving legal certainty in the land sector.³

In 1960, the government enacted Act No. 5 of 1960 concerning Basic Regulations and Principles of Agrarian Affairs (*UUPA*) to govern land possession, ownership, and utilization. This legislation serves as a tool for fostering prosperity, happiness, and justice, while simultaneously addressing the dualism in land law and establishing legal certainty regarding land rights for the Indonesian populace. Legal certainty concerning land rights, particularly in relation to possession and control, facilitates clarity regarding the identity of individuals or legal entities holding land rights, as well as specifics regarding location, boundaries, and extent. This clarity is especially significant for regional development planning and supervision of land possession and utilization.

A fundamental step towards achieving legal certainty is land registration, which involves the systematic collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data concerning land parcels. The National Land Agency (*BPN*), as the governmental body responsible for land affairs, maintains all physical and juridical data acquired through land registration. For stakeholders requiring information about a land object, the National Land Agency provides transparent access to relevant data. This commitment to open land registration ensures that the community can access accurate physical and juridical information at any time.

In the current reform era, the emphasis on transparency has become increasingly urgent for the Indonesian government to implement good and accountable governance.⁴ To fulfill this aspiration, it is essential to foster openness and transparency in managing sectors that serve the public interest. However, as public access to information expands, government agencies in

² Winata, Muhammad Reza, and Erlina Maria Christin Sinaga. "Transparansi Hak Guna Usaha Mendukung Redistribusi Lahan Berdasarkan Hak Konstitusional Mendapatkan Informasi." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 3 (2019): 421.

³ Sutedi, A. (2018). *Peralihan Hak Atas Tanah dan Pendaftarannya*. Sinar Grafika, Jakarta. p. 112.; Ali, A., and Heryani, W. (2012). *Menjelajahi Kajian Empiris Terhadap hukum*, Prenadamedia Group, Jakarta, p. 31

⁴ Zamil, Yusuf Saepul. "Pengendalian Pemberian Hak Guna Usaha atas Tanah sebagai Upaya Pencegahan Kerusakan Hutan karena Perambahan Kawasan Hutan yang Dilakukan oleh Perkebunan." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 2, no. 2 (2015): 332-350.

the land sector are inevitably under scrutiny, facing demands for greater transparency regarding land-related information.⁵

A notable case highlighting this issue is the lawsuit filed by Forest Watch Indonesia (FWI) against the National Land Agency, culminating in a Supreme Court decision on March 6, 2017 (No. 121/K/TUN/2017). In this ruling, the Supreme Court mandated the National Land Agency to disclose data pertaining to the Cultivation Right Title (*HGU*), which remained valid until 2016. The data in question pertained to regions in Central Kalimantan, East Kalimantan, West Kalimantan, South Kalimantan, and North Kalimantan⁶, and included critical information such as the name of the *HGU* holder, location, area size, type of commodity, and a mapped representation of the *HGU* area, complete with geographic coordinates.⁷

Despite the Supreme Court's directive to make the Cultivation Right Title documents accessible to the public, compliance from the relevant authorities has been lacking. The National Land Agency has asserted that the decision is unacceptable, claiming it conflicts with existing regulations governing land matters. This situation poses a significant issue, particularly if it continues without resolution, leading to a lack of legal certainty. This paper examines the implementation of the principle of transparency by the National Land Agency concerning the Cultivation Right Title documents, noting that the current efforts have not been fully optimized.

This research employs an empirical legal methodology utilizing both conceptual and case approaches.⁸ It was conducted in Gorontalo, Gorontalo Province, Indonesia, specifically focusing on the Office of the National Land Agency in Gorontalo District. This district is significant due to its oil palm plantations, which fall under the National Land Agency's jurisdiction for issuing Cultivation Right Titles (*HGU*), particularly within the plantation sector.

The data collected for this study comprises both primary and secondary sources, which are analyzed qualitatively. The findings are presented descriptively, detailing and elucidating the implementation of the principle of transparency in the supervision of plantation development.⁹

⁵ Ashari, Budi, Aminuddin Ilmar, and A. Suriyaman Mustari Pide, (2018). *Fungsi Komisi Informasi dalam Mendukung Proses Informasi Pertanahan Di Kota Makassar*. Amanna Gappa Vol. 26 No. 1: 39.

⁶ Forest Watch Indonesia, <http://fwi.or.id/publikasi/mendesak-pemerintah-untuk-menjalankan-putusan-ma-tentang-keterbukaam-informasi-hgu/>. Accessed on 2 May 2019.

⁷ Decision of the Supreme Court No. 121 K/TUN/2017.

⁸ Butarbutar, Elisabeth Nurhaini. 2018. "*Metode Penelitian Hukum (Langkah-Langkah Untuk Menemukan Kebenaran Dalam Ilmu Hukum)*." Bandung: Refika, p. 95

⁹ Sugiyono, 2011. *Metode Penelitian Kombinasi (Mixed Methods)*. Alfabeta, Bandung. p. 297

A novel aspect of this research is its analysis of how the Gorontalo District National Land Agency fulfills the principle of openness regarding the Cultivation Rights documents, as stipulated in the Supreme Court Ruling No. 121 K/TUN/2017. Notably, the Cultivation Rights documents are not accessible to the public due to their confidential nature, which protects company privacy and prevents unauthorized disclosure.

B. Discussion

1. Principles of Transparency into Access of the Cultivation Right Title Document in Plantation Sector: Challenges and Obstacles

The National Land Agency's decision to disclose information related to the Cultivation Right Title documents remains in effect, despite the Supreme Court's directive in decision No. 121 K/TUN/2017, which ordered the Agency to promptly release detailed information regarding the Cultivation Right Title. This includes the holder's name, location, area size, type of commodity, and a map with coordinate points, particularly for palm oil cultivation rights valid until 2016 in Central Kalimantan, West Kalimantan, East Kalimantan, South Kalimantan, and North Kalimantan. The Supreme Court's ruling emphasized that the Cultivation Right Title documents constitute a type of public information that must be accessible at all times.¹⁰

However, despite data compiled by the Land Matrix project, understanding the landscape of large-scale land acquisitions remains challenging. Each land transaction possesses unique characteristics, complicating the overall analysis. Additionally, there exists a significant lack of transparency in land governance, particularly concerning planning and decision-making processes, contractual agreements, and issues surrounding community involvement and compensation.¹¹

The objections raised by Forest Watch Indonesia (FWI) in response to the National Land Agency, as referenced in the Supreme Court decision No. 121 K/TUN/2017, highlight that the Cultivation Right Title documents, as declared by the judge, should be classified as non-exempt public information. Supporting this perspective, Wahidin Lukun, a representative of the Information Commission, endorsed the Supreme Court's ruling, asserting that the Cultivation Right Title documents should be published as they fall within the public domain. He contended that transparency regarding these documents could benefit both the community and the National Land Agency by facilitating access to crucial information.¹²

¹⁰ Rahmi, Elita. 2010. *Hukum Pertanahan dalam Sistem Hukum Indonesia*. Bandung: Unpad Press, p. 25.

¹¹ Anseeuw, Ward, Mathieu Boche, Thomas Breu, Markus Giger, Jann Lay, Peter Messerli, and Kerstin Nolte. "Transnational land deals for agriculture in the Global South." *Analytical report based on the Land Matrix database 1* (2012), p. 9.

¹² Interview with Wahidin Lukun as Coordinator of the Information Dispute Resolution Section at the Information Commission in Gorontalo Province, 31 January 2020.

Based on interviews with representatives of Forest Watch Indonesia (FWI), several reasons and considerations have been put forth regarding the necessity of making the Cultivation Right Title publicly accessible.¹³ First, the Cultivation Right Title pertains to state land¹⁴, which is fundamentally linked to the public interest. The state's control over land is a manifestation of the mandate entrusted by the people of Indonesia, reflecting the right to state control. Second, the Cultivation Right Title is awarded to Indonesian citizens and legal entities that fulfill specific regulatory requirements. These obligations are closely tied to public interests, thus granting the public the right to know and access information necessary to ensure the protection of these interests.

The evidence suggests that the National Land Agency has yet to implement the Supreme Court's directive as outlined in decision No. 121 K/TUN/2017. An investigation by the author on the National Land Agency's website (www.atrbpn.go.id) reveals that, when selecting an area in Gorontalo District, land plots designated with a dark green color indicate registration under the Cultivation Right Title, while those marked in yellow represent ownership rights (see Figure 1). Upon examining a land plot categorized under the Cultivation Right Title, the author found that no accessible public information was available regarding the holder's name, location, area size, type of commodity, or a map of the Cultivation Right Title with coordinates. Instead, the available information was limited to the area, identification number of the field, the type of right, and its intended uses. This lack of transparency highlights the need for greater compliance with the Supreme Court ruling and public access to critical land information

¹³ Interview with Agung Ady Setyawan as campaign staff of FWI on 21 January 2020

¹⁴ Andreas, Ricco, Luthfi Kalbu Adi, and Sri Sulastuti. "The Effect of Colonialism on Implementation of Agrarian Reform in Indonesia." *Fiat Justisia: Jurnal Ilmu Hukum* 13, no. 2 (2019): 101-114.



Figure 1. Map of land plots

- : Freehold title
- : Cultivation right title

Source: Ministry of Agrarian and Spatial Planning, 2020.

The National Land Agency operates as a legal entity with the authority to register land and disseminate documents and archives related to land management (acting as the archive creator). In fulfilling its responsibilities, the Agency is endowed with exclusive rights by law to restrict access to the published archives. According to Abdillah Mallo, the disclosure of the Cultivation Right Title documents may infringe upon corporate privacy and adversely affect the holders of these titles. Such disclosure is closely tied to protecting interests against unfair business competition, safeguarding Indonesia's natural resources categorized as confidential, and preventing the revelation of sensitive personal data. This perspective aligns with provisions outlined in the Archives Act and the Freedom of Information Act (KIP Act). Specifically, Article 6, in conjunction with Article 17, letters d and i of the KIP Act, underscores the importance of balancing transparency with the protection of certain confidential information.

Article 6 of KIP Act:

- (1) *Public bodies can refuse to provide exempt information following the statutory provisions.*
- (2) *Public bodies can refuse to provide information publicly if it does not follow the statutory provisions.*
- (3) *Public information that cannot be provided by a public agency, as referred to in paragraph (1) are:*
 - a. *Information that can endanger the country;*

- b. *Information relating to the interests of business protection from unfair business competition;*
- c. *Information relating to personal rights;*
- d. *Information relating to confidentiality of office; and/or*
- e. *The requested public information has not been mastered or documented.*

Article 17 of KIP Act letters d and j affirm:

Every public agency must open access for every public information requester to obtain public information, except (d) public information which if opened; (j) provided to the public information requester can reveal Indonesia natural wealth and information that may not be disclosed under the Act.

The aforementioned regulations serve as the foundation for the National Land Agency's decision to withhold access to the Cultivation Right Title documents, a position that receives support from several plantation companies, including PT. Pabrik Gula Gorontalo and PT. Argo Artha Surya. Interviews with Idrak Daud from PT. Pabrik Gula Gorontalo and Amir Gani from PT. Argo Artha Surya reveal their objections to public access to the Cultivation Right Title documents, citing concerns that such disclosure could harm their companies.¹⁵ They argue that the release of these documents would compromise corporate privacy, as competitors would gain access to sensitive information, particularly regarding the location, area size, and mapping coordinates of the Cultivation Right Title.¹⁶

While physical and juridical data concerning land—such as registration maps, land registers, land certificates, and land books—provide rights-related information accessible to interested parties¹⁷, the list of names associated with land ownership is intended solely for specific government agencies in the execution of their duties. This list does not pertain to land information but rather identifies individuals or legal entities holding land rights, which government agencies require to perform their responsibilities effectively.¹⁸

Although the National Land Agency possesses the authority to register Cultivation Right Title lands and maintain all relevant documentation, this does not imply an obligation to publicly disclose all such documents.¹⁹ Access to information regarding physical and legal data is contingent upon submitting a written request and obtaining approval from the minister or an authorized

¹⁵ Interview with Amir Gani as Public Relations of PT. Argo Artha Surya on 20 January 2020.

¹⁶ Interview with Idrak Daud as Public Relations of PT. Pabrik Gula Gorontalo on 20 January 2020.

¹⁷ Suhariningsih. (2011). Kebijakan Pertanahan pada Era Otonomi Daerah di Bidang Hak Guna Usaha Perkebunan. *The Journal of Mimbar Hukum – Faculty of Law, Gadjah Mada University*, 23(2), 263-274.

¹⁸ Elucidation of Article 34 paragraph (2) PP No. 24 of 1997 concerning Land Registration.

¹⁹ Putri, Andi Wika, Farida Patittingi, and A. Suriyaman Mustari Pide. "Legal Protection of Indigenous Communities on Cultivation Rights Title in Bulukumba Regency." *International Journal of Multicultural and Multireligious Understanding* 7, no. 1 (2020): 548-555.

official, specifically the Information Officer. This process underscores the careful balance that must be maintained between transparency and the protection of corporate and individual privacy rights.

If the Cultivation Right Title documents are made publicly accessible, it would conflict with existing legal provisions. Thus, the National Land Agency's decision to restrict access to this information is not a reflection of reluctance to be transparent, but rather a compliance with applicable laws. Access to information concerning physical and juridical data is typically permitted only in the context of disputes, legal cases, or conflicts.²⁰ The National Land Agency has enhanced access to land information by placing information desk officers at each land office; however, access to Cultivation Right Title documents remains limited as they are generally not authorized by the Public Information Disclosure Officer (*PPID*) to be released, except in situations involving disputes or conflicts.

The stance of several companies opposing the public disclosure of the Cultivation Right Title documents is influenced by concerns over potential unfair business competition among plantation operators. According to Article 6, paragraph (1), letter b of the *KIP* Act, such information should be excluded from public access. Nevertheless, this raises questions about the necessity of keeping the Cultivation Right Title documents confidential. Wahidin Lukun, representing the KIP, has countered the argument for confidentiality, asserting that disclosing the Cultivation Right Title information would not infringe upon corporate privacy.

Considering the arguments based on existing legal provisions and the need to protect the interests of the holders of the Cultivation Right Title, the National Land Agency's position to withhold access appears justified. The author contends that while the disclosure of Cultivation Right Title documents is essential in an era emphasizing public information transparency²¹, the Agency's refusal to release these documents must also take into account the legitimate interests that require protection, including the right to privacy of all legal subjects involved. This balance is crucial to ensure that the rights and interests of all parties are respected while fostering transparency and accountability in land governance.

C. Conclusion

The principle of transparency regarding the Cultivation Right Title documents has not been adequately implemented by the National Land Agency, contrary to the directives established by the Supreme Court in decision No. 121 K/TUN/2017. The National Land Agency considers the

²⁰ Interview with Abdillah Mallo as Head of the Land Procurement and Control Section at the Office of ATR/BPN Gorontalo, 21 January 2020.

²¹ Karjoko, Lego. "Setting of Plantation Land Area Limitation Based on Social Function Principles of Land Cultivation Rights To Realize Social Welfare-Promoting Plantation." *Jurnal Dinamika Hukum* 17, no. 1 (2017): 1-7.

Cultivation Right Title documents to be confidential, and their public disclosure is perceived as a violation of corporate privacy provisions and existing regulations. Consequently, while certain information related to the Cultivation Right Title—such as the identification number of the land plot, type of rights, type of use, and other general data—can be made available to the public on the National Land Agency's official website, full disclosure of these documents is contingent upon the occurrence of a conflict or dispute. In such cases, interested parties must submit a formal application and obtain approval from the Head of the National Land Agency.

The implementation of transparency principles by the National Land Agency concerning access to Cultivation Right Title documents in the plantation sector has proven ineffective. This inefficacy is largely influenced by the professionalism of the National Land Agency, which adheres strictly to applicable regulations in carrying out its responsibilities. Furthermore, efforts to optimize the principle of transparency through a consequence test have not been successful, as evidenced by the Central Information Commission's Decision No. 057/XII/KIP-PS-MA/2015, dated July 22, 2016, which annulled the consequence test previously conducted. This highlights the ongoing challenges in achieving meaningful transparency in land governance, particularly concerning the management of sensitive information like the Cultivation Right Title documents.

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