



Dewi Tjandraningsih<sup>1</sup>

## LEGALITY OF LAND LEASE AGREEMENTS BETWEEN STATE-OWNED ENTERPRISES AND INDIVIDUALS

### Abstrak

Penelitian ini bertujuan untuk mengetahui status hukum tanah garapan menurut peraturan di Indonesia, keabsahan perjanjian sewa tanah antara PT. PP dan perseorangan, serta akibat hukum yang timbul dari perjanjian sewa menyewa antara PT. PP dan individu. Penelitian menggunakan pendekatan normatif-empiris dengan teknik pengumpulan data meliputi penelitian lapangan dan penelitian kepustakaan. Metode analisis yang digunakan adalah analisis deskriptif kualitatif. Hasil penelitian menunjukkan: (1) Status tanah garapan tetap menjadi tanah negara kecuali telah diterbitkan surat keputusan pemberian hak oleh pejabat yang berwenang. Dengan demikian, tanah garapan tetap tergolong tanah negara dan tidak bebas. (2) Dasar hukum pertimbangan hakim terhadap objek sewa tanah garapan meliputi Surat Pemberitahuan Pajak Bumi dan Bangunan, sertifikat tanah garapan, dan keterangan saksi. Hasilnya, majelis hakim memutuskan perjanjian sewa menyewa tersebut sah dan mengikat. Namun sertifikat tanah garapan atau hak garapan yang melekat pada penggarapnya tidak dianggap sebagai hak menurut Undang-Undang Pokok Agraria (UUPA), sehingga tidak dapat disewakan atau dijadikan obyek perjanjian sewa-menyewa. Penggarap juga melanggar prinsip Nemo Plus Juris karena menyewakan lahan garapan kepada PT. hal. (3) Akibat hukumnya antara lain perjanjian sewa menyewa menjadi sah dan mengikat, PT. Penolakan PP untuk mengembalikan lokasi lahan garapan kepada penggarap dianggap wanprestasi, dan membebankan biaya kepada PT. PP untuk kasus ini. Namun, karena perjanjian sewa-menyewa tidak memenuhi syarat-syarat subyektif dan obyektif suatu perjanjian, maka perjanjian itu dapat dianggap tidak sah dan batal demi hukum.

**Kata Kunci** : Perjanjian, Sewa, Lahan Garapan.

### Abstract

This research aims to examine the legal status of cultivated land according to the regulations in Indonesia, the legality of the land lease agreement between PT. PP and an individual, and the legal consequences arising from the lease agreement between PT. PP and the individual. The research uses a normative-empirical approach with data collection techniques including field research and library research. The analysis method applied is descriptive qualitative analysis. The research findings show: (1) The status of cultivated land remains that of state land unless a decree granting rights has been issued by the competent authority. Thus, cultivated land remains classified as state land and is not free. (2) The legal basis for the judge's consideration of the cultivated land lease object includes the Land and Building Tax Notification, the certificate of cultivated land, and witness statements. As a result, the panel of judges ruled that the lease agreement was valid and binding. However, the certificate of cultivated land or the cultivation right attached to the cultivator is not considered a right under the Basic Agrarian Law (UUPA), and thus cannot be leased or used as an object in a lease agreement. The cultivator also violated the principle of Nemo Plus Juris, as they leased the cultivated land to PT. PP. (3) The legal consequences include the lease agreement being valid and binding, PT. PP's refusal to return the cultivated land location to the cultivator being considered a breach of contract, and the imposition of costs on PT. PP for the case. However, since the lease agreement did not meet the subjective and objective requirements of a contract, it can be deemed invalid and void by law.

**Keywords**: Agreement, Lease, Cultivated Land.

<sup>1</sup> Master of Law, Postgraduate Program, Islamic University Syekh Yusuf, Tangerang, Indonesia  
 Email: dtjandraningsih@unis.ac.id

## INTRODUCTION

The legal protection of land ownership is clearly regulated in the 1945 Constitution, Article 28H, paragraph (4), which states, “Everyone has the right to own private property, and such property shall not be arbitrarily taken by anyone,” referring to ownership protection. Furthermore, Law No. 5 of 1960 on the Basic Agrarian Law (UUPA) also governs this. Article 6 of the UUPA asserts that “all land rights must have a social function.” Although private ownership of land is recognized, such ownership has a social meaning, requiring consideration of the interests of others and allowing the land to be used for public purposes. Therefore, private land ownership can be revoked if the land is allocated for public development.

Land serves a social function, as stated in Article 6 of Law No. 5 of 1960, which notes that “every land right must serve a social function.” The social function of land can be viewed from several perspectives: 1). Economic Aspects: The social function of land in economic terms can be observed through rights such as Building Rights (HGB), Business Rights (HGU), and Management Rights (HPL), which contribute economically. 2). Social Aspects: Socially, land serves functions such as providing space for Green Open Areas (RTH), playgrounds, football fields, sports facilities, and community meeting halls.

In studying issues related to land, including its status, the Basic Agrarian Law (UUPA) and its regulations categorize land in Indonesia as either state land or land with rights. According to Soemardjono, national land law recognizes three types of land based on their status: state land, land with rights, and communal land. Under the principle of state control, all land in Indonesia is considered state land, including land with rights.

However, for clarity, land with rights is referred to as state land in a narrow sense, while state land refers to land controlled directly by the state. According to Government Regulation No. 8 of 1953 on the Control of State Land, state land in a narrow sense refers to land not subject to rights, while state land in a broad sense refers to land under state control. Harsono further interprets land with rights as land controlled individually through primary rights such as ownership, HGU, HGB, and usage rights. He extends this to include other rights over land governed by customary law. Thus, land with rights is not limited to the types regulated by statutory law but also includes land governed by customary law.

State land encompasses various categories, including wakaf land, communal land, and forest land. It also includes leftover land that does not fall under any of the aforementioned categories. Such leftover lands are often referred to as land directly controlled by the state.

The status of cultivated land, however, is not clearly defined in the national land law. According to the UUPA, cultivated land is not considered ownership. The regulation defines cultivated land as land that is either subject to rights or not, and that is worked and used by others, with or without the agreement of the rightful party. Such lease agreements can have legal consequences. For example, in the case of Rusdin and A. Jayanti, they were investigated by the South Sulawesi and West Sulawesi High Prosecutor's Office. The office considered that the cultivated land remained under state control, and they viewed the actions of the individuals involved as commercializing state land, a matter deemed similar to corruption. The prosecutor's office then pursued legal action, with the suspects facing charges for their involvement in the cultivation land lease. Furthermore, the issue expanded to include Muh. Sabri, an assistant to the Makassar City Government, accused of misusing his authority to facilitate the lease agreement on behalf of the Makassar City Government.

## METHOD

This research is a normative-empirical legal study, which takes a sociological approach to understanding law as a social institution. In this context, law is not seen as an autonomous normative phenomenon but as a tool for social institutions that are practically interconnected with other social variables. To examine the legal certainty of land lease agreements between state-owned enterprises (BUMN, specifically PT. PP) and individuals, the researcher employs the following approaches:

- a. Normative Approach: This approach involves reviewing laws and regulations in the field of land, particularly to assess their legal certainty.

- b. Sociological Legal Approach: An empirical approach is used to gather social reality information from the practice of land lease agreements, particularly those involving land claimed as "state-owned land," between two individuals and BUMN (PT. PP).

#### **Data Sources**

This research aims to obtain and collect both primary (main) and secondary (supporting/complementary) data:

- a. Primary Data: This includes binding legal materials, such as the 1945 Constitution of Indonesia, both before and after amendments, and regulations related to the research issue.
- b. Secondary Data: This consists of materials that provide further explanations regarding the primary legal materials, including existing research results, journals from constitutional law scholars and economists, expert opinions (informants), and other scholarly works relevant to the study, with consideration for their validity and reliability.
- c. Tertiary Data: This includes supplementary legal materials, such as materials that provide guidance or explanations regarding primary and secondary legal materials, including interviews.

#### **Data Collection Techniques**

The research is conducted in two stages: the collection of legal materials and the analysis of these materials as a whole. The first stage involves classifying the collected legal materials based on the core issues being discussed. These legal materials will then be processed and thoroughly analyzed to provide a comprehensive understanding of the legal issues under investigation. Both primary and secondary legal materials, once systematically synchronized, will be further analyzed based on existing legal theories to formulate scientific conclusions that address the legal issues discussed.

#### **Data Analysis**

The collected primary and secondary data will be analyzed qualitatively, aiming to describe the legal aspects of the land lease agreement between BUMN and individuals in this study. This analysis also seeks to promote legal order in land law, particularly concerning land tenure rights.

### **RESULTS AND DISCUSSION**

#### **Legal Status of Cultivated Land Based on Applicable Regulations in Indonesia**

The practice of cultivating land has existed since before the enactment of the Basic Agrarian Law (UUPA), but it is not easy to position cultivated land and cultivation rights within the national land law framework. The UUPA addresses cultivated land; however, cultivation rights are not regulated in the law because these rights do not constitute land ownership. Although the UUPA does not provide detailed regulation regarding cultivation rights, the land reform policy concerning land ownership and control, particularly agricultural land, has opened a new pathway for cultivation rights and cultivated agricultural land.

One of the land reform programs is the land redistribution program, which is primarily implemented to achieve the equitable distribution of land ownership among farmers. The emergence of cultivated land aligns with the goals of land reform in Indonesia, which are as follows: a. Achieving a fair distribution of the resources necessary for farmers' livelihoods, especially land, to ensure a balanced distribution of production outcomes; b. Implementing the principle of "land for the cultivators."

To realize these land reform objectives, the government enacted Law No. 56/PRP/1960, later amended to Law No. 1/1961, which set limits on the maximum and minimum areas of agricultural land that an individual could control. As mentioned earlier, several regulations have attempted to regulate cultivated land. Among them is the regulation on the Land Cultivation Permit (SIM) issued as part of the land reform process. Previously, cultivated land was regulated under Government Regulation (PP) 224/1961 regarding the implementation of land distribution and compensation. However, the definition of cultivated land was only formalized later through an evolving process. Initially, cultivated land was simply understood as the use or management of state-owned land by individuals or groups without legal authorization.

In pursuit of a cohesive and integrated national land policy and system, and the implementation of the MPR Decree No. XI/MPR/2001 on Agrarian Reform and Natural Resource Management, Presidential Decree No. 34 of 2003 was established. This decree grants authority to local governments (regencies/cities) to:

- a. Issue location permits;
- b. Organize land procurement for development;
- c. Resolve disputes over cultivated land;
- d. Address compensation and land compensation for development;
- e. Determine subjects and objects of land redistribution and compensation for excess land and absentee land;
- f. Resolve issues regarding customary land;
- g. Manage and resolve issues regarding vacant land;
- h. Grant permission for land clearance;
- i. Plan land use at the regency/city level.

The National Land Agency (BPN), as the institution responsible for land regulations, subsequently issued Decision No. 2 of 2003 concerning norms and standards for the government's land authority mechanisms, which local governments must implement. Furthermore, the definition of cultivated land in the regulations has since been expanded. According to the National Land Agency Chief's Decision No. 2 of 2003, issued on August 28, 2003, cultivated land is land that has or has not been encumbered with a legal right and is worked or used by another party, either with or without the agreement of the rightful owner, and with or without a specific duration. This definition differs from the previous one for the following reasons: (i) cultivation can occur on either state land or land with legal ownership; (ii) cultivation can occur with or without permission; and (iii) cultivation can take place with or without a specific time frame.

According to an interview with Adi Natsir, Head of the Subsection for the Determination and Empowerment of Community Land Rights, he stated: "Essentially, cultivated land is state-owned land. There is no such thing as buying or renting cultivated land. However, cultivated land can be transferred to another party with compensation or assistance to the former cultivator, and its legal status can be upgraded to ownership." Similarly, Manai Sopian, Head of the Makassar City Land Office, mentioned: "Cultivated land is state-owned land. Permission is granted to cultivators to utilize or continuously cultivate the land, and its status can be upgraded to ownership."

In the regulation, the granting of compensation to cultivators of state-owned land must meet the following requirements:

- a. The land being cultivated is not a government or regional government asset;
- b. The land is cultivated directly by the cultivator
- c. There is evidence of cultivation from the Regent/Mayor for areas larger than 2 hectares but no more than 10 hectares, or from the sub-district head if the area is no more than 2 hectares, issued before 1999.

Alternatively, there can be a statement of land cultivation issued by the cultivator and acknowledged by the Camat, with considerations from the village head (Lurah), which should include the following:

- a. The cultivator uses, occupies, works, and/or controls the state land;
- b. The land is not in dispute;
- c. The statement is verified by two witnesses from the local community with no family ties to the cultivator up to the second degree, either vertically or horizontally; and
- d. It is proven by tax payments in the cultivator's name for at least five consecutive years.

In West Java Province, there are also regulations related to cultivated land, specifically Governor Regulation No. 32 of 2013 concerning the Guidelines for Land Acquisition Preparation for Public Interest Development. This regulation includes provisions for parties who control state land in good faith, such as individuals, legal entities, social organizations, religious bodies, or government agencies, who physically control, use, benefit from, and maintain state land for a certain period. The control of state land must be proven with a cultivation permit for land clearing.

According to the regulations above, cultivated land refers to land directly worked by the cultivator, with evidence from local government authorities (e.g., the Regent/Mayor for areas larger than 2 hectares but no more than 10 hectares, or the Camat for areas of 2 hectares or less). Additionally, there must be a cultivation statement from the cultivator, acknowledged by the Camat with considerations from the Lurah as outlined above. Therefore, any party wishing to

control or use state land must obtain a cultivation permit from the local government to clear the land.

Based on the Minister of Agrarian Affairs Decree dated August 22, 1961, No. 509/KA regarding government control over parts of land exceeding the maximum allowable area, and Government Regulation No. 22 of 1961 dated September 19, 1961, concerning land division and compensation, cultivators can be granted permission to cultivate under specific conditions. In both regulations, the validity period for the cultivation permit is two years from the issuance date. If the conditions are met at the end of the term, the cultivator may be granted rights to the land, reducing the potential for land disputes.

Cultivated land is land directly controlled by the state, occupied and worked by the community for a significant period for their livelihood, such as farming or building a house, without permission from the state or its authorities, specifically the land office. Typically, after the land is occupied and cultivated by the community, physical control documents for the cultivated land may include:

- a. A statement of land control issued by the village head (Lurah) where the land is located.
- b. A certificate from the local sub-district head (Camat) regarding physical control of the cultivated land by the community member who occupies it.

In essence, cultivated land cannot be bought, sold, or leased as it is still state-owned. However, its physical control can be transferred to another party through a statement of relinquishing control, with compensation, either privately or acknowledged by the village head (Lurah) or Camat. Cultivated land with documentation of physical control from the government authorities can serve as authentic evidence for registering land rights at the local land office to obtain official ownership from the state through the land office.

The procedure for registering leased land as private property follows the same process as the initial land registration, as outlined in Article 12 of Government Regulation No. 24/1997, which includes:

- a. Collection and processing of physical data;
- b. Proof of rights and its registration;
- c. Issuance of certificates;
- d. Presentation of physical and legal data;
- e. Submission of the general list and documents.

Before proceeding with the procedure through the National Land Agency (BPN), it is important to ensure that the land's designated use aligns with the regional spatial planning through the local village office, sub-district office, or district office. In cases where the leased land is not yet registered under any rights, it must first be verified through the village office or local sub-district office to confirm that the land has not been registered by any other individual or legal entity.

#### **Legality of Lease Agreements on Cultivated Land Between SOEs (PT, PP) and Individuals**

According to Subekti, a contract is an agreement between two parties to carry out a specific action. Written agreements are referred to as contracts. Furthermore, Article 1313 of the Indonesian Civil Code (KUHPerdara) states that a contract is an act in which one or more persons bind themselves to one or more other persons. A contract cannot be formed without mutual consent between both parties, where the agreement is marked by unconditional acceptance of an offer.

A contract made under Article 1338 of the KUHPerdara holds binding force, as it constitutes law for the parties involved. For the agreement to be binding, it must be made legally according to applicable laws. A valid contract must meet the legal requirements specified by law to be recognized as legally binding. According to Article 1320 of the KUHPerdara, there are four essential conditions for a valid contract:

- a. Agreement between the parties involved;
- b. Legal capacity to enter into a contract;
- c. A definite subject matter; and
- d. A lawful cause.

These four conditions can be summarized as agreement, capacity, definite subject, and lawful cause. All four conditions must be met for a contract to be valid. If one or more conditions are not met, the contract is considered invalid. The lease agreement, regulated under

Articles 1548 to 1600 of the Civil Code, defines a lease as an agreement where one party commits to providing enjoyment of a property to another party for a specified time and at an agreed price, which the latter party agrees to pay.

Based on this definition, a lease involves two parties: the lessor and the lessee. The lessor is obligated to provide the property for the lessee's enjoyment, while the lessee is obliged to pay the agreed rental price. Unlike in a sale agreement, where ownership is transferred, a lease only provides the right to use the property.

The essential elements of a lease are the property, price, and a specified duration. Similar to a sale agreement, a lease is a consensual contract, formed based on mutual consent between the parties, each binding themselves to the other. The key difference from a sale agreement is that in a lease, the property is not transferred to the lessee's ownership, but only its use is granted. The lease involves the transfer of control over the property, not ownership.

Like sales agreements and other contracts, leases are considered consensual contracts, meaning they are binding once the essential terms, such as the property and services, are agreed upon. This means that if what one party wants is also desired by the other party, and they mutually agree on the terms, the lease agreement is considered to have been established.

The issue being investigated concerns the legality of a land lease agreement between a State-Owned Enterprise (BUMN) and an individual. This issue arose in Makassar City, where two residents, Andi Jayanti and Rusdin, became involved in a legal dispute due to a lease agreement concerning land they claimed as state-owned. They entered into the lease agreement with PT. PP, a state-owned company.

According to data obtained from the South Sulawesi High Prosecutor's Office, the case began in 2003 when Rusdin and A. Jayanti Ramli requested the Makassar City Government to issue a Certificate of Land Use Rights (SK) for cultivated land in Buloa Village, Tallo District, Makassar City. In the same year, the Makassar City Government, through the Tallo District Head, issued a land use certificate to A. Jayanti Ramli for 19,999 square meters (19,999 m<sup>2</sup>) of cultivated land, which he claimed to have been cultivating since 2001. The land is located in RT 001, RW 003 of Buloa Village, Tallo District. The land use certificate was issued on September 9, 2003, signed by the Village Head and the District Head of Tallo. Rusdin was also issued a Certificate of Land Use Rights (SK) for 19,995 square meters (19,995 m<sup>2</sup>) of cultivated land, which he claimed to have been cultivating since 2000. The land is also located in RT 001, RW 003 of Buloa Village, Tallo District, and the certificate was issued on the same date, September 9, 2003.

On July 31, 2015, in Makassar, A. Jayanti and Rusdin entered into a lease agreement for the cultivated land with PT. PP. PT. PP was the contractor appointed by PT. Pelindo IV Makassar to work on the Makassar New Port (MNP) development project. The leased land included a combined area of 39,994 square meters (39,994 m<sup>2</sup>) of cultivated land claimed by A. Jayanti and Rusdin. PT. PP required access to the land for the MNP development project located in the Buloa beach area, Tallo District, Makassar City, with a project budget of IDR 340 billion allocated by PT. Pelindo IV Makassar. PT. PP was the implementing contractor for this national strategic project under the Sea Toll Road initiative announced by President Jokowi on June 10, 2015. PT. Pelindo IV sent a letter to the Makassar City Government to notify them of the planned access road to the MNP site. The lease agreement was valid for one year, from July 31, 2015, to July 31, 2016, with the possibility of extension based on mutual agreement. The rent was agreed at IDR 500,000,000 (five hundred million rupiah), excluding final tax for the lease term.

This case was registered and ruled on by the Makassar District Court under Civil Case No. 13/Pdt.G/2017/PN.Mks, with the plaintiffs being the land cultivators and the defendant being PT. PP. In the civil case, the cultivators entered into a lease agreement with PT. PP for the cultivated land, with PT. PP needing the land for its Makassar New Port project. The land was to be used as a storage area for construction materials needed for the project, which led PT. PP to negotiate a lease with the cultivators.

Following this, PT. PP and the cultivators reached an agreement to lease the land for IDR 500,000,000 (five hundred million rupiah) from July 31, 2015, to July 31, 2016, as stated in the lease agreement. The lease agreement outlined the rights and obligations of both parties, including penalties if any party failed to meet their obligations. One of PT. PP's responsibilities

was to notify the cultivators at least 14 days before the agreement's expiration regarding the lease extension.

However, PT. PP failed to fulfill this obligation, leading the cultivators to send a legal notice through their attorney, demanding a fine of IDR 15,000,000 (fifteen million rupiah) per day for the delay and the return of the leased land at the end of the agreement. PT. PP responded to the notice, stating that they intended to extend the lease. In return, the cultivators, through their attorney, demanded the fine for the delay, which amounted to IDR 465,000,000 (four hundred sixty-five million rupiah) for the 31-day delay (from July 18, 2016, to August 18, 2016). Since PT. PP did not return the land at the end of the lease but continued to use it, they were required to pay an additional rent of IDR 41,666,666 (forty-one million six hundred sixty-six thousand six hundred sixty-six rupiah), as stipulated in the lease agreement.

In the Civil Decision No. 13/Pdt.G/2017/PN.Mks, the panel of judges ruled that the lease agreement for cultivated land, in this case, the land between the cultivator and PT. PP, is valid and legally binding. The judges concluded that the provisions for the validity of the agreement under Article 1320 of the Indonesian Civil Code were met after reviewing the evidence in the agreement. The parties involved had made mutual commitments by creating, signing, and executing the lease agreement for the cultivated land, with clauses outlined in the agreement concerning the rights and obligations of the parties. Therefore, the panel of judges found that the mutual consent to bind themselves met the requirement for the validity of the agreement.

Furthermore, regarding the clause of competence to make the agreement, the lease agreement clearly states that Rusdin and A. Jayanti Ramli, as the cultivators, are the first party, and PT. PP is the second party. Both parties signed the agreement knowingly and voluntarily, fulfilling the clause of competence to enter into a contract.

Regarding the clause concerning a specific subject matter, the content of the agreement between the parties included provisions on the lease of cultivated land, such as the land's location, size, condition, the lease duration, rental price, payment method, the rights and obligations of the parties, sanctions, the deadline for vacating the land, and restrictions. Therefore, the clause regarding a specific subject matter was also fulfilled in the agreement.

Regarding the legal cause, another essential requirement for the validity of the agreement, the object of the lease—the cultivated land owned by the cultivators—is clearly identified and supported by evidence confirming the existence of the lease object. The panel of judges concluded that the legal cause for the agreement was satisfied. Hence, the lease agreement for the cultivated land between the cultivators and PT. PP is valid and legally binding.

The judges considered the leased cultivated land based on evidence presented in court, including copies of the STTS (Notification of Tax Due) for the land and copies of the Cultivated Land Certificate in the name of the cultivators. Additionally, testimony from witness Ambo Tuwo Rahman, a former village head, indicated that “since 2003, there has been utilization and control of the leased land by the cultivators.” The panel of judges found that since 2006, the land had been registered as an object of property tax under the names of Rusdin and A. Jayanti Ramli. Under Government Regulation No. 8 of 1953, land that has been continuously cultivated and occupied by an individual (without being abandoned) and possessed in good faith with local government authorization, as in the case of the cultivators, cannot be considered as unencumbered state land. Such land is subject to private property rights, and the state must recognize and protect the property rights of the cultivators. Therefore, the cultivators hold the rights to the land under the lease agreement.

Regarding PT. PP's objection that the lease object is not fully the cultivators' land but rather state-owned land with part belonging to Herling Wijaya, the panel of judges concluded that any claims of ownership by other parties must be proven separately. The defendant's continued possession of the land does not negate the clauses in the lease agreement.

This study will focus solely on examining the legality of the lease agreement for the cultivated land between the cultivators and PT. PP based on contract theory. According to Article 1320 of the Indonesian Civil Code, the requirements for a valid contract are as follows:

- a. Mutual consent: The parties involved must agree on the terms of the contract freely, without coercion, error, or fraud.
- b. Competence: The parties must have the legal capacity to enter into the contract and must have the right and authority to make the agreement.

- c. A specific subject matter: The contract must concern a specific object.
- d. A lawful cause: The contract's content and purpose must not contradict the law, public morals, or public order.

In relation to the lease agreement for the cultivated land, when referring to Article 1320 of the Civil Code, PT. PP raised the argument that points 1 and 2 are subjective requirements, relating to the parties involved in the contract, while points 3 and 4 are objective requirements, concerning the subject matter of the contract. If the subjective requirements are not met, one party has the right to request the contract's cancellation. The party who can request cancellation is the one who lacks legal capacity or gave consent under duress. If the objective requirements are not met, the contract is considered void, meaning that the agreement never existed and no obligations were created.

The land lease agreement between PT. PP and the cultivator only meets the requirement of "concerning a specific matter," while the conditions for "agreement or consent to the contract without coercion, mistake, or fraud," "competence," and "a lawful purpose" were not fulfilled, based on the facts presented by PT. PP during the trial as follows:

1. The 39,994 m<sup>2</sup> of land leased by Rusdin/A. Jayanti Ramli contains elements of fraud (bedsorg) because not all the land specified in the agreement was legally theirs.
2. Herling Wijaya also claimed partial ownership of the land based on SHM No. 370/Tallo GS 0090/1977 with an area of 11,728 m<sup>2</sup> and SHM No. M.495/Tallo GS 9177/1995 with an area of 649 m<sup>2</sup>, both issued by the National Land Agency (BPN).
3. The land leased by PT. PP from Rusdin and A. Jayanti Ramli between 2003 and 2006, according to data from the Makassar City Land Office and satellite imagery, includes some areas still registered as sea.

According to the analysis of the researcher based on the requirements for the validity of agreements under Article 1320 of the Civil Code, the contract between PT. PP and the cultivator does not meet the subjective and objective requirements. The unfulfilled subjective requirement is "competence," as one of the parties to the agreement (the cultivator) did not have the right or authority to enter into the agreement because the land object of the lease includes land that is partly state-owned and partly registered in the name of Herling Wijaya. The cultivators treated the land as if it were their own by leasing it to PT. PP, which contradicts the law on agreements, meaning the contract can be annulled.

The unfulfilled objective requirement is "a lawful purpose," because, in fact, the land subject to the lease (39,994 m<sup>2</sup>) was not entirely owned by the cultivators; part of it belonged to Herling Wijaya. According to Article 1337 of the Civil Code, a cause is unlawful if prohibited by law or contrary to decency or public order. Therefore, the contract is void by law.

Based on the researcher's analysis, the land lease agreement is invalid and void by law. The cultivators, Rusdin and A. Jayanti, are residents of Makassar City but do not live in the Tallo Subdistrict (the location of the land). This violates the provisions of Article 3 of Government Regulation No. 224 of 1961 on the Implementation of Land Division and Compensation, which requires that landowners residing outside the subdistrict where the land is located must transfer their land rights to someone living in that subdistrict within six months, or move to the subdistrict where the land is located. If the landowner moves away for two consecutive years, they must transfer the property rights to someone residing in that subdistrict. This indicates a violation in the issuance of the cultivation land certificate by the Tallo Subdistrict Head on September 9, 2003, as the land was not obtained in good faith. The Subdistrict Head should have verified whether the applicant lived in the subdistrict and the intended use of the land.

According to expert legal testimony presented by the plaintiff in Civil Decision No. 13/Pdt.G/2017/PN.Mks, under Government Regulation No. 8 of 1953 on State Land Control, land that has legal rights attached to it (such as those granted by local authorities like the village head, district head, or mayor) cannot be classified as free state land. If the land is continuously used and maintained by an individual who has paid taxes on it, the state (government) cannot simply revoke the person's rights to the land, as they have established a legal relationship with it.

According to the principle of *Nemo Plus Juris*, a person cannot transfer rights beyond those they possess. This principle aims to protect the rightful holder of the title, allowing them to reclaim their rights, regardless of the name in which they are registered. The cultivators violated



this principle by leasing the state land (cultivated land) to PT. PP, a state-owned enterprise. The land was only leased to them with permission, and they had no right to transfer ownership.

In Constitutional Court Decision No. 87/PUU-XI/2013, the court granted the request of 11 NGOs challenging Law No. 19 of 2013 on the Protection and Empowerment of Farmers. According to Justice Hamdan Zoelva, the distribution of state land for farming should prioritize farmers who do not already own land, not those who are financially strong and already possess land. Regarding the cultivators, Rusdin and A. Jayanti, who were previously known to be employees of a private company, PT. Jujur Jaya Sakti, owned by Soedirjo Aliman, it can be concluded that they were not entitled to the cultivation land certificate, and their land certificate should be revoked, as they were not farmers as intended in the Constitutional Court decision.

#### **Legal Consequences Arising from the Lease Agreement of Cultivated Land Between BUMN (PT. PP) and Individuals**

Legal consequences refer to the outcomes resulting from legal events. A legal event occurs due to a legal act, and such an act may establish a legal relationship. Therefore, legal consequences can be understood as the effects that arise from a legal act and/or legal relationship. More specifically, according to Syarifin, legal consequences are all the effects that arise from legal acts carried out by legal subjects towards legal objects, or other consequences resulting from certain events that the law has determined or considers as legal consequences.

To determine whether a legal consequence has occurred, the following factors need to be considered:

- a. The existence of a legal act performed by a legal subject towards a legal object, or a specific consequence from an act that is regulated by law;
- b. The occurrence of an act that directly interacts with the exercise of rights and obligations as stipulated by law (statutes).

In the issue discussed in this study, the legal consequences arising from a legal act, namely the lease agreement of cultivated land between PT. PP and an individual (the cultivator), have been addressed in the previous discussion regarding the legality of the lease agreement. This issue was concluded by the panel of judges in Civil Case Decision No. 13/Pdt.G/2017/PN.Mks, which determined that the lease agreement was valid and legally binding. Therefore, the panel of judges recognized the agreement as a legal source for both parties, which must be adhered to.

In the case, the plaintiff, the cultivator, filed a lawsuit to the Makassar District Court because the defendant, PT. PP, did not fulfill its obligations (breach of contract) as stipulated in the lease agreement. PT. PP's obligation that was not fulfilled was to notify the cultivator (whether they would extend the lease agreement or not) at least 14 days before the agreement's expiration. Subsequently, the cultivator sent a formal notice to PT. PP, which included a demand for PT. PP to pay a fine of IDR 15,000,000 per day of delay, as agreed upon in the contract. PT. PP responded to the notice by stating that it still needed to use the leased land for the Makassar New Port project and would soon extend the lease agreement. However, before the lease agreement ended, PT. PP learned that the cultivated land leased by the cultivator was not entirely under their control, as part of the land was owned by Herling Wijaya, as evidenced by the Certificate of Land Ownership (SHM) in Herling Wijaya's name and a statement from the Makassar City Land Office. PT. PP argued that the agreement was void due to failure to meet the objective requirements as stipulated in Article 1320 of the Civil Code.

However, the defendant's objection was not accepted by the panel of judges. In their decision, the judges stated the following:

- a. The lease agreement for the cultivated land dated July 31, 2015, between the cultivator and PT. PP is deemed legally valid and binding;
- b. The actions of the defendant (PT. PP) in continuing to control/use the land and refusing to return it to the plaintiffs (the cultivators) as stipulated in Article 8 paragraph (2) letter d of the agreement constitute a breach of contract;
- c. The defendant (PT. PP) is ordered to return the land to the plaintiffs (the cultivators) in an empty and intact condition;
- d. The defendant (PT. PP) is ordered to pay the court fees, which have been determined to amount to IDR 486,000 (four hundred eighty-six thousand rupiahs).

According to the ruling by the court panel above, the main issue raised by the researcher is that the decisions made are the legal consequences arising from the lease agreement of the cultivated land between PT. PP and the cultivator. In this case, the agreement is valid and legally binding, PT. PP's action of refusing to return the land to the cultivator is considered a

breach of contract, and PT. PP is required to pay the legal costs based on the Civil Case Decision No. 13/Pdt.G/2017/PN.Mks.

However, in PT. PP's exception, the lease agreement between the cultivator and PT. PP, when associated with Article 1320 of the Civil Code, which governs the requirements for the validity of a contract—namely, mutual consent, capacity, a specific object, and a lawful cause—reveals that the lease agreement fails to meet the conditions for a valid contract under Article 1320 of the Civil Code. Specifically, the condition "a specific object" is not met, and the other conditions, such as mutual agreement without coercion, mistake, or fraud, capacity, and a lawful cause, were not fulfilled. Therefore, the agreement could be considered null and void.

According to Article 1328 of the Civil Code, fraud is a ground for invalidating an agreement when the fraud used by one party is such that it is clear that the other party would not have entered into the agreement without it. Fraud cannot merely be assumed; it must be proven. In relation to the agreement between PT. PP and the cultivator, the contract could be annulled due to fraud related to the leased property. The cultivator did not have the authority to lease the land, as some of it was state-owned and some was privately owned by Herling Wijaya, as evidenced by the land title certificate (SHM) in Herling Wijaya's name. The cultivators treated it as their own and leased it to PT. PP, without PT. PP being aware of this fact.

Based on the analysis of the legal validity of the lease agreement previously discussed, the researcher disagrees with the Civil Case Decision No. 13/Pdt.G/2017/PN.Mks, which states that the lease agreement between PT. PP (a state-owned enterprise) and the cultivator is valid and legally binding. The researcher agrees with PT. PP's stance in the decision, which should have resulted in the contract being annulled due to failure to meet the subjective and objective requirements under Article 1320 of the Civil Code and the fraud related to the leased property, as evidenced by PT. PP.

In the course of this case, PT. PP appealed the Civil Case Decision No. 13/Pdt.G/2017/PN.Mks to the High Court. An appeal is a legal recourse taken when one party is dissatisfied with a decision of the District Court. According to Law No. 4/2004 on Amendments to the Basic Law on Judicial Power and Law No. 20/1947 on Appeal Procedures, an appeal must be filed with the clerk of the District Court that made the ruling (Article 7 of Law No. 20/1947).

Another consequence arising from the lease agreement above is the criminal case involving Soedirjo Aliman (alias Jen Tang). According to Salahuddin, Head of the Legal Information Section of the South Sulawesi and West Sulawesi High Prosecutor's Office, the criminal act attributed to the suspect carries a maximum prison sentence of 20 years. The charge is in accordance with Article 2 of Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption Crimes, in conjunction with Article 55, paragraph (1), subparagraph 1 of the Penal Code. The suspect is also charged under Article 3 or Article 4 of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes. He is accused of being involved with two other suspects, Rusdin and Jayanti, in unlawfully occupying state-owned land and treating it as their own. As a result, PT. PP, the executor of the Makassar New Port Project (MNP), was forced to spend Rp 500 million for land rental costs.

## CONCLUSION

### Conclusion

- a. The status of cultivated land on state-owned land remains classified as state land, which is not freely available, unless a decree granting rights is issued by the authorized official to an individual in a legally recognized manner.
- b. The judge's reasoning regarding the land lease agreement relied on the Land and Building Tax Notification Letter, the certificate of cultivated land in the name of the cultivator, and witness testimony from Ambo Tuwo, who explained that as of 2003, the cultivator had already started utilizing and controlling the leased land. Based on this, the court ruled that the lease agreement was valid and legally binding. However, according to the researcher's analysis, the certificate of cultivated land in the cultivator's name, or the cultivator's rights to work the land, is not a right under the Basic Agrarian Law (UUPA), but merely permission to cultivate the land as intended. Therefore, this cannot be leased

or used as the subject of a lease agreement, and the cultivator violated the Nemo Plus Juris principle by leasing state-owned land to PT. PP.

- c. In Civil Case Decision No. 13/Pdt.G/2017/PN.Mks, the resulting legal consequence was that the land lease agreement was deemed valid and legally binding, while PT. PP's refusal to hand over the land to the cultivator was considered a breach of contract. PT. PP was ordered to pay court fees. However, in reality, the land lease agreement did not meet the subjective and objective requirements of a valid contract, meaning it was legally invalid and void. Additionally, another legal consequence arose, as a corruption case was filed against the cultivator, who was sentenced to one year in prison by the court.

#### **Suggestion**

- a. The government should establish specific regulations regarding the status of cultivated land on state-owned land to reduce disputes and provide legal certainty regarding such land.
- b. The government should consider establishing a land judiciary institution to handle land disputes more effectively and efficiently.
- c. Judges are encouraged to exercise more caution and diligence when making decisions to avoid legal imbalances and to ensure fair legal certainty.

#### **REFERENCES**

- Ahmadi Miru, *Contract Law and Contract Planning*, PT RajaGrafindo Persada, Depok, 2018.
- Ahmadi Miru and Sakka Pati, *Agreement Law (Explanation of Named Agreement Clauses in BW)*, UPT Unhas Press, Makassar, 2019.
- Atikunto, *Research Procedures*, PT Rineka Cipta, Jakarta, 2019.
- Apriliani Putri Suhardini, *Notary Accountability for Unlawful Acts in the Drafting of Authentic Deeds*, Jurnal Akta, UNISULA, 2018, Vol. 5, No. 2.
- Bachtiar and Tono Sumarna, *Assignment of Civil Liability to Regional Heads Due to Default by Department Heads*, Jurnal Yudisial, August 2018, Vol. 11, No. 2.
- Crusto, *Unconscious Classism*, 2017, Entity Equality for Sole Proprietorships, Journal of Constitutional Law, Vol. 11/2, USA, 2009, cited in UGM Faculty of Law, Business Entity Study, Yogyakarta: Universitas Gadjah Mada.
- Dewi Kurnia Putri and Amin Purnawan, *Comparison of Paid and Unpaid Sale and Purchase Binding Agreements*, Jurnal Akta, UNISSULA, 2017, Vol. 4, No. 4.
- Diah Imaniah, et al., *Civil Accountability and Legal Protection for Notaries Regarding Drafted Deeds*, Jurnal Notarius, Diponegoro University, 2020, Vol. 3, No. 1.
- Fauzia Tiffany Dinnar, *Drafting Absolute Power Deeds as a Follow-Up to Sale and Purchase Binding Agreements on Land Rights Before a Notary*, Thesis, Islamic University of Indonesia, 2017.
- H.R. Otje Salman S, *Legal Philosophy (Development & Dynamics of Issues)*, PT Refika Aditama, Bandung, 2016.
- Irwansyah, *Legal Research (Methods and Practical Writing of Articles)*, Mirra Buana Media, Yogyakarta, 2021.
- Lendrawati and Shelly Sonyatan, *Dissolution of Limited Liability Companies Based on General Meeting of Shareholders (GMS) Decisions in Indonesia and Australia*, 2014.
- Niken Oetari Probawat, Abunawas Abunawas, Resi Pranacitra, *Legal Analysis of Limited Liability Company Dissolution and Bankruptcy Regulations*.
- Priscila Patricia Yosephin, *Legal Analysis of the Dissolution of Non-Operating Limited Liability Companies (Study of Supreme Court Decision No. 1618 K/Pdt/2016 and Constitutional Court Decision No. 63/PUU-XVI/2018)*.
- Livia Cindy Arelia, *Abuse of Authority to Sell in Sale and Purchase Binding Agreements (PPJB) by Power Holders (Case Study: Supreme Court Decision No. 1846/K/Pdt/2017)*, Jurnal Hukum Adigama, Tarumanegara University, 2019, Vol. 2, No. 1.
- Muhammad Faiz Aziz and Nunuk Febriananingsih, *Establishing Individual Limited Liability Companies for Micro and Small Enterprises Through the Draft Job Creation Law*, Jurnal Rechtsvinding: National Law Development Media, 2020, Vol. 9, No. 1.
- Mukti Fajar and Yulianto Achmad, *Dualism of Normative and Empirical Legal Research*, Pustaka Belajar, Jakarta, 2017.

- Munir Fuady, *Contract Law (From the Perspective of Business Law)*, Citra Aditya Bakti, Bandung.
- M. Luthfan Hadi Darus, *Notarial Law and Notary Office Responsibilities*, Islamic University of Indonesia, Yogyakarta, 2017.
- M. Yahya Harahap, *Civil Procedural Law on Lawsuits, Hearings, Seizure, Evidence, and Court Decisions*, Sinar Grafika, Jakarta, 2016.
- Mario Julyano and Aditya Yuli Sulistyawan, *Understanding the Principle of Legal Certainty Through the Constitution and Positivism Legal Reasoning*, Jurnal Crepido, Diponegoro University, July 2019, Vol. 1, No. 1.
- Muhammad Edo Afrian, *Selling Authority as an Alternative Solution to Non-Performing Credit Disputes in Sukajadi Subdistrict, Pekanbaru City*, JOM Faculty of Law, 2016, Vol. 3, No. 2.
- Peiter Latumenten, *Fundamentals of Drafting Authentic Power of Attorney Deeds with Examples of Independent and Accessory Deeds*, Faculty of Law Publishing Agency, Universitas Indonesia, Depok, 2018.
- Peter Mahmud Marzuki, *Legal Research (Revised Edition)*, Prenada Media Group, Jakarta, 2016.
- Ria Trisnomurti, *Notaries & Techniques for Drafting Notarial Deeds*, Pustaka Pena Press, Makassar, 2019.
- Nola L.F., *The Position of Consumers in Bankruptcy*, Jurnal Negara Hukum, 2017, Vol. 8, No. 2.
- Paula Listyana, *Limited Liability Company Responsibility in Liquidation*.
- Riyan P, *Effectiveness of Criminal Law*, [digilib.unila.ac.id](http://digilib.unila.ac.id).
- Ronald Saija and Kadek Agus Sudiarawan, *Legal Protection for Bankrupt Debtor Companies During the Covid-19 Pandemic*, Batulis Civil Law Review, 2021, Vol. 2, No. 1.
- Ruth Yohana Siburian, Etty Susilowati, and Budi Ispriyarso, *Curator's Responsibility to Fulfill State Rights Over Tax Debt in Limited Liability Company Bankruptcy*, Diponegoro Law Journal, 2017, Vol. 6, No. 1.
- Rafif, W., *The Authority of the District Attorney in Dissolving Limited Liability Companies According to the Law (Case Study: PT Harapan Indah Jaya)*, Journal of Judicial Review, 2020.
- Rifky Anggatiastara Cipta, et al., *Sale and Purchase Binding Agreements Before the Land Deed Official Act Is Drafted*, Jurnal Notarius, Diponegoro University, 2020, Vol. 13, No. 2.
- Ufuk Robert Wibowo, *Notary Accountability When an Authentic Deed Degrades to a Private Deed*, Jurnal Humani (Law and Civil Society), Semarang University, 2020, Vol. 10, No. 1.
- Y. Sari Murti Widiyastuti, *Principles of Civil Liability*, Cahaya Atma Pustaka, Yogyakarta, 2020.
- Y. Sogar Simamora, *Contract Law: Principles of Government Procurement Contracts in Indonesia*, LaksBang PRESSindo, Surabaya, 2017.
- Zainal Asikin, *Civil Procedural Law in Indonesia*, Prenada Media Group, Jakarta, 2018.