

Analysis of Conflicting Regulations concerning the Food Estate Program and Customary Land in Accordance to Indonesian Customary Law Principles

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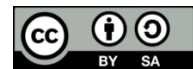
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ABSTRACT

As a *rechstaat*, Indonesia has human rights and a law protection guarantee that is regulated in the Constitution of the Republic of Indonesia (UUD 1945). To ensure the protection of the law and human rights, it is necessary to have a legal basis that regulates these matters, including customary rights. The regulations of customary rights are regulated in Article 18B paragraph 2 of the UUD 1945, Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles, Law Number 39 of 2014 concerning Plantation, and Law Number 6 of 2023 concerning Job Creation. However, there is a problem in the social field, as happened in Central Kalimantan Province that customary land was turned into a 600-hectare cassava plantation food estate program without involving Dayak indigenous people from planning to implementation. Moreover, Dayak indigenous people do not get any benefits from the food estate program. These reasons are that there are a few legal problems that contradict the food estate program and customary rights.

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1. INTRODUCTION

As a *rechstaat*, Indonesia has human rights and a law protection guarantee that is regulated in the Constitution of the Republic of Indonesia (UUD 1945).

To ensure the protection of the law and human rights, it is necessary to have a legal basis that regulates these matters, including customary rights. The highest legal basis of customary rights is regulated in Article 18B paragraph 2 of the UUD 1945 that states:

"The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law."

Additionally, the regulation of customary rights that is related customary land is regulated in Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles, Law Number 39 of 2014 concerning Plantation, and Law Number 6 of 2023 concerning Job Creation.

However, there is problem in the society field as happened in Central Kalimantan Province that customary land was turned into a 600-hectare cassava plantation food estate program without involving Dayak indigenous people from planning to implementation. Moreover, Dayak indigenous people do not gain any benefits from the food estate program. Then, there are few legal problems that contradict between food estate program and customary rights which will be explained in depth in the results and discussion section.

Therefore, the author is very interested in researching with the title "Analysis of Conflicting Regulations concerning the Food Estate Program and Customary Land in Accordance to Indonesian Customary Law Principles".

From the background that has been written, the problem formulations are the following:

1. Are the provisions of the food estate program in Central Kalimantan according to Indonesian customary law principles?
2. How is the solution to the contradiction between the provisions of the food estate program and customary rights?

From these problem formulations, it can be identified that the research aims are the following:

1. Study and analyse whether the provisions of the food estate program in Central Kalimantan are in accordance with Indonesian customary law principles.
2. Study and analyze the solution to the contradiction between the provisions of the food estate program and customary rights.

2. LITERATURE REVIEW

2.1 Food Estate Program

According to Article 1 Number 3 of the Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land, food estate program is relating to sustainable food agricultural land that means: *"Sustainable Food Agricultural Land is a field of agricultural land that is established to be protected and consistently developed in order to produce main food for national food independence, stability, and national food sovereignty."*

Meanwhile, a more specific definition of food estate is listed in Article 1 Number 10 of the Minister of Environment and Forestry Regulation Number 24 of 2020 concerning the Provision of Forest Areas for Food Estate Development that:

"Food Estate is a large-scale food business that is a series of activities that are carried out to utilize natural resources through human efforts by utilizing capital, technology, and other resources to produce food products to fulfil human needs integrally includes food crops, horticultures, plantations, livestock, and fisheries in a forest area."

Meanwhile, the definition of food estate according to Koerniatmanto is a large-scale business that utilizes natural resources and technology to produce food products.

From all the definitions, it can be concluded that food estate is a large-scale

business that utilizes natural resources through human resources and technology to fulfil national food independence, safety, and sovereignty.

Food estate program is very important for long-term economic development because the world could be plagued by economic crises, war, and pandemics such as the COVID-19 Pandemic in 2019-2022. Therefore, the food estate program is a main pillar for national economic growth and reducing the impact of all force majeure because the majority of human life depends on the agriculture, plantations, horticulture, livestock, and fisheries sectors. Without these sectors, humans cannot live.

2.2 Land as a Customary Right

According to Article 1 Number 4 of the Law Number 39 of 2014 concerning Plantation is listed that:

“Land is the surface of the earth, both in the form of land and water, covered within certain limits as long as its use and utilization are directly related to the surface of the earth, including the space above and within the body of the earth.”

This definition is also consistent with the Law Number 5 of 1960 where land is the part of earth according to Article 1 Paragraph 4 of the Law Number 5 of 1960.

Meanwhile, according to Article 1 Number 5 of the Law Number 39 of 2014 concerning Plantation that:

“Customary rights are the authority of customary law societies to regulate communally the utilization of land, territory, and natural resources in the territory of the customary law communities, that are the source of live and livelihood.”

Land cannot be separated from customary rights that are owned by indigenous people because according to Catharina Dewi Wulansari that human is born from the land, build home and farm on the land, and die back to the land. Therefore, customary land has magical and religious characteristics.

2.3 Indonesian Customary Law Principles

According to Sulastriyono and Sandra Dini Febri Aristya, customary law principles are including:

- a. Transparency principle
This principle explains that if there is a case, traditional wedding, or traditional ceremony, it must be witnessed by the neighbors.
- b. Cash principle
This principle explains that transactions involving objects must be paid in full on the same day;
- c. Concrete principle
This principle explains that customary law is real.
- d. Family principle
This principle explains that all activities are carried out communally.
- e. Appropriateness principle
Dispute settlement must be done carefully to avoid conflict.
- f. Equality principle
This principle relates to fairness.
- g. Horizontal separation principle
Buildings and land are not necessarily the same owner.

3. METHODS

The research method that is used is normative juridical. The definition of normative juridical research method is research that analyzes the interrelationship between *das sollen* (something that is required and expected by law) and *das sein* (events that happened in fact). The reason for using the normative juridical research method because the research is more focused on the problem of positive Indonesian laws. Therefore, the kind of normative juridical research method that is used is a research based in synchronization, both vertically and horizontally from the laws.

4. RESULTS AND DISCUSSION

Before knowing whether the provisions regarding plantation and food estate program are in accordance with the principles of Indonesian customary law, the provisions regarding plantations must first be verified with the principles of Indonesian customary law below:

Table 4.1 Testing Conformity between Law Number 39 of 2014 concerning Plantation and Law Number 6 of 2023 concerning Job Creation with the Principles of Indonesian Customary Law

The Principles of Indonesian Customary Law	Law Number 39 of 2014 concerning Plantation <i>juncto</i> Law Number 6 of 2023 concerning Job Creation	V or X
Transparency principle	Transparency principle has been fulfilled in the Law Number 39 of 2014 concerning Plantation because according to Article 100 of the Law Number 39 of 2014 that from the development of plantation that is implemented by the Central Government and Local Government involves stakeholders.	V
Cash principle	Cash principle has been fulfilled in the Law Number 39 of 2014 concerning Plantation because according to Article 100 of the Law Number 39 of 2014 that societies involvement in plantation implementation is also done in payment.	V
Concrete principle	Concrete principle has been fulfilled in the Law Number 6 of 2023 concerning Job Creation because the Law Number 6 of 2023 is recognized the existence of customary law as regulated in the Article 17 of the Law Number 6 of 2023 concerning Job Creation.	V
Family principle	Family principle has been fulfilled in the Law Number 39 of 2014 concerning Plantation because according to Article 100 Paragraph 3 that any disputes settlement can be done communally.	V
Appropriateness principle	Appropriateness principle has unfulfilled in the Law Number 6 of 2023 concerning Job Creation because the prohibition of government regarding plantation enterprise permit that contradicts to the regulations has	X

	been deleted in the Article 50 of the Law Number 6 of 2023.	
Equality principle	Equality principle has unfulfilled in the Law Number 6 of 2023 concerning Job Creation because the prohibition of government regarding plantation enterprise permit that contradicts to the regulations has been deleted in the Article 50 of the Law Number 6 of 2023.	X
Horizontal separation principle	Horizontal separation principle has been fulfilled in the Law Law Number 6 of 2023 concerning Job Creation because according to Article 17 of the Law Law Number 6 of 2023 that the issuance on customary land is not a ownership right, but a plantation business license.	V

From the results of the verification above, it can be concluded that the provisions regarding plantations are not in accordance with the principle of balance and the appropriateness, thus causing abuse of rights especially customary rights.

After testing the Plantation Law, the Minister of Environment and Forestry Regulation Number 24 of 2020 concerning the Provision of Forest Areas for Food Estate Development is also tested below:

Table 4.2 Testing Conformity between Law Number 39 of 2014 concerning Plantation and Law Number 6 of 2023 concerning Job Creation with the Principles of Indonesian Customary Law

The Principles of Indonesian Customary Law	The Minister of Environment and Forestry Regulation Number 24 of 2020 concerning the Provision of Forest Areas for Food Estate Development	V or X
Transparency principle	Transparency principle has unfulfilled in the Minister of Environment and Forestry Regulation Number 24 of 2020 because there is no specific provision regarding this principle.	X
Cash principle	Cash principle has unfulfilled in the Minister of Environment and Forestry Regulation Number 24 of 2020 because there is no specific provision regarding this principle.	X

Concrete principle	Concrete principle has unfulfilled in the Minister of Environment and Forestry Regulation Number 24 of 2020 because there is no specific provision regarding this principle.	X
Family principle	Family principle has unfulfilled in the Minister of Environment and Forestry Regulation Number 24 of 2020 because there is no specific provision regarding this principle.	X
Appropriateness principle	Appropriateness principle has unfulfilled in the Minister of Environment and Forestry Regulation Number 24 of 2020 because there is no specific provision regarding this principle.	X
Equality principle	Equality principle has unfulfilled in the Minister of Environment and Forestry Regulation Number 24 of 2020 because there is no specific provision regarding this principle.	X
Horizontal separation principle	Horizontal separation principle has unfulfilled in the Minister of Environment and Forestry Regulation Number 24 of 2020 because there is no specific provision regarding this principle.	X

From the results of the verification above, it can be concluded that the Minister of Environment and Forestry Regulation Number 24 of 2020 concerning the Provision of Forest Areas for Food Estate Development is not in accordance with all Indonesian customary law principles. Therefore, with the conflict with the principles of Indonesian customary law, it becomes difficult for indigenous peoples to fulfill their needs and are not protected by law.

From the problems that have been tested above, the solutions to the conflict between provisions of the Plantation, food

estate program, and customary rights are the following:

- a. The formation of regulations and implementation regarding the food estate program must involve all stakeholders.
- b. Indonesians must conduct a judicial review of the provisions regarding plantations and food estate programs that are not in accordance with the principles of Indonesian customary law.

5. CONCLUSION

Based on the previous description, it can be concluded that:





1. The provisions regarding plantations are not in accordance with the principle of balance and the appropriateness, thus causing abuse of rights especially customary rights. Then, the Minister of Environment and Forestry Regulation Number 24 of 2020 concerning the Provision of Forest Areas for Food Estate Development is not in accordance with all Indonesian customary law principles, thus with the conflict with the principles of Indonesian customary law, it becomes difficult for indigenous peoples to fulfill their needs and are not protected by law.
2. The solutions to the conflict between provisions of the Plantation, food estate program, and customary rights are the following:
 - a. The formation of regulations and implementation regarding the food estate program must involve all stakeholders.
 - b. Indonesians must conduct a judicial review of the provisions regarding plantations and food estate programs that are not in accordance with the principles of Indonesian customary law.

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