

## LEGAL CERTAINTY OF LAND GRANTS OF EX-USE RIGHTS ACCORDING TO LAW NUMBER 5 OF 1960 AND THE THEORY OF MILK AL-DAULAH

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### Abstract

This study examines the legal uncertainty regarding the management of land previously under the Right to Cultivate (HGU) granted to PT Cemerlang Abadi in Babahrot District, Aceh, which presents a significant issue. Although the land has been utilised by around a thousand households for agricultural purposes, the government has not provided official certificates as legal proof of ownership. The slow administrative process and land redistribution by the Aceh government and the Southwest Aceh District Government contradict the principle of legal certainty as stipulated in Law No. 5 of 1960 on Basic Agrarian Regulations (UUPA). From an Islamic legal perspective, the land in question is a public asset that must be managed for the welfare of the people. This uncertainty poses potential social, economic, and legal risks, including future disputes. Therefore, concrete steps are needed, such as expediting data collection, issuing certificates, and providing legal education to the public. Addressing this issue would reflect social justice and the government's commitment to implementing fair and sustainable agrarian principles.

**Keywords:** Legal Certainty, Former Right to Cultivate (HGU) Land, Farmer

### Abstrak

Penelitian ini mengkaji ketidakpastian hukum terkait pengelolaan tanah yang sebelumnya berada di bawah Hak Guna Usaha (HGU) yang diberikan kepada PT Cemerlang Abadi di Kecamatan Babahrot, Aceh, yang menimbulkan masalah yang signifikan. Meskipun tanah tersebut telah dimanfaatkan oleh sekitar seribu rumah tangga untuk keperluan pertanian, pemerintah belum menerbitkan sertifikat resmi sebagai bukti hukum kepemilikan. Proses administratif yang lambat dan redistribusi tanah oleh Pemerintah Aceh dan Pemerintah Kabupaten Aceh Selatan bertentangan dengan prinsip kepastian hukum yang diatur dalam Undang-Undang Nomor 5 Tahun 1960 tentang Undang-Undang Pokok Agraria (UUPA). Dari perspektif hukum Islam, tanah yang bersangkutan merupakan aset publik yang harus dikelola untuk kesejahteraan masyarakat. Ketidakpastian ini menimbulkan risiko sosial, ekonomi, dan hukum, termasuk sengketa di masa depan. Oleh karena itu,

langkah-langkah konkret diperlukan, seperti mempercepat pengumpulan data, menerbitkan sertifikat, dan memberikan pendidikan hukum kepada masyarakat. Penanganan masalah ini akan mencerminkan keadilan sosial dan komitmen pemerintah dalam menerapkan prinsip-prinsip agraria yang adil dan berkelanjutan.

**Kata kunci:** Kepastian Hukum, Hak Guna Lahan (HGU) Bekas, Petani

## INTRODUCTION

Land Grant (Hibah Lahan Ex Hak Guna Usaha or HGU) is the granting of ex-use right land to other parties, such as communities, organisations, or institutions, by the holder of authority over the land. This grant process often occurs after the HGU expires, and the land reverts to state land.<sup>1</sup> In this context, the government or authorities can transfer or grant the land to communities in need, including farmers.<sup>2</sup> In the context of *Milk ad-Daulah* (state ownership) in Islamic law, ex HGU land grants can be analysed as a form of state asset management for the benefit of society. *Milk ad-Daulah* refers to ownership held by the state for the public interest, not for private gain or certain groups.<sup>3</sup>

Farmers in Babahrot Sub-district, Southwest Aceh District, are farmers who utilise land that is ex-use right as agricultural land. Article 28 of Law No. 5/1960 on Agrarian Principles explains that hak guna usaha is the right to manage land directly owned by the state. This right is granted for agricultural, fishery, or livestock activities within a certain period of time as stipulated in Article 29. Business use rights are granted for land with a minimum area of 5 hectares. However, if the land area reaches 25 hectares or more, the beneficiary must show sufficient capital investment and apply good agricultural techniques in accordance with the times. In addition, a hak guna usaha can be transferred to another party.

Based on empirical facts obtained by the author, the former HGU land that has been released by PT Cemerlang Abadi to the community still does not

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<sup>1</sup> Hadisiswati, Indri. "Legal certainty and legal protection of land rights." *Ahkam: Journal of Islamic Law* 2.1 (2014): 118-146.

<sup>2</sup> Adhipermana, I. G. A. N. K., Wijaya, K. K. A., & Suryani, L. P. (2022). Land Tenure Arrangements of Former Cultivation Rights in Agrarian Reform. *Journal of Legal Analogy*, 4(3), 328-332.

<sup>3</sup> Tarisa, Rizkia. *The Responsibility of Aceh Irrigation Department for Technical Irrigation Networks in the Perspective of Milk Al-Daulah (A Study in Krueng Barona Jaya District)*. Diss. UIN AR-RANIRY, 2021.

have an official certificate from the government. Although the community has filed a lawsuit against the government for giving permission to work on the land without issuing a certificate, until now the request has not been fulfilled.<sup>4</sup> Although PT Cemerlang Abadi has released around 2,669.18 hectares of land for community use, neither the Aceh nor Abdya governments have taken any concrete steps to organise the use of the land. The community relies heavily on the land to make a living as a source of income. The land is utilised for agriculture which provides enough income for their daily needs. Although the land is said to be granted, the community has not received any official papers or land certificates. This uncertainty has led to anxiety and concern about the possibility of losing access to the land. Communities, including farmer groups, have attempted to apply to the government for legal certainty by collecting data and evidence of land cultivation. However, to date there has been no concrete follow-up from the authorities. This has created legal uncertainty for the communities that control the former land use rights, as they only have land deeds as proof of ownership.<sup>5</sup>

The government is making efforts to certify the former HGU land, but no results have been delivered. Although the local community has controlled the land illegally because there is no official certificate, there has been no grant process carried out by the government. Currently, the local government is conducting initial data collection to follow up with the land redistribution process. At the same time, provisional information suggests that a thousand households have started working on the land, suggesting that despite the lack of an official decision from the government, local people are actively using the land. Given that no official certificates have been issued, this activity could potentially be categorised as illegal land use. While the government is still in the process of collecting data and redistributing the land, the local community has started to utilise the land, so it is necessary to resolve this land issue. Therefore, the author feels the need to analyse the legal certainty for the Babahrot farming community on the granting of ex-use right land by the government of Southwest Aceh Regency according to Law Number 5 of 1960 and the theory of *milk al-daulah*.

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<sup>4</sup> Interview with Muksalmina Fadri, an employee of BPN Aceh Barat Daya in the field of land redistribution, on 28 April 2024.

<sup>5</sup> Interview with Muksalmina Fadri, an employee of BPN Aceh Barat Daya in the field of land redistribution, on 28 April 2024, *via whatsapp*.

## RESEARCH METHODS

This research uses qualitative research with descriptive analysis method to describe the legal certainty for the Babahrot farming community on the grant of ex-use right land by the Southwest Aceh Regency government according to Law Number 5 of 1960 and *milk al-daulah*. The approach used in this research is empirical juridical, a legal research approach regarding the enactment or implementation of normative legal provisions in action or the actual situation in each specific legal event that occurs in society. With this approach, the author will examine the implementation of legal certainty with the reality in the field related to the management of halal tourism objects, in order to see its suitability with applicable legal provisions. The data sources of this research are primary data and secondary data. The author collects primary data through interviews with respondents and informants from the management of the Southwest Aceh BPN, journalists and community leaders as well as farmers who obtained land grants for ex-use rights. In obtaining secondary data, the author examines published literature related to the concept of *milk al-daulah* and Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles related to legal certainty for farmers on land grants for ex-use rights by the Southwest Aceh Regency government.

## RESULTS AND DISCUSSION

### A. Milk Al-Daulah Theory in Islam

Etymologically *al-milk* comes from Arabic which means control of something object. *Al-milk* also means something that is owned (property). Ownership is also a person's relationship with a property that is recognised by *shara'*, which makes him have special power over the property, so that it can perform an action.<sup>6</sup> The word *al-milk* in terminology has several meanings including as mentioned in the dictionary *al-Munjid fi al-Lughati wa al-I'lām* means control of something, free to control and use it absolutely and responsible for what it has.<sup>7</sup> Raghīb al-Asfahani defines the word *al-milk* linguistically means spending (allocation of property) on a formal legal basis

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<sup>6</sup> Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2007)

<sup>7</sup> Louis Ma'luf al-Yassu'i, *al-Munjid fi al-Lughati wa al-I'lām dictionary*, (Beirut: Dar el-Mashreq, 1986)

in the form of commands and prohibitions that apply in society. <sup>8</sup>This definition is devoted to policies taken by the authorities. Thus, *milk* is the purity of something that can be spent based on the applicable law.<sup>9</sup>

In the perspective of *Milk al-Daulah*, the former Cultivation Rights Title (HGU) land that has been released by PT Cemerlang Abadi in Babahrot District is part of state ownership that must be managed for the benefit of the community. *Milk al-Daulah* in Islamic law emphasises that state assets, including land, must be used for the public interest, not for the benefit of certain individuals or groups. Therefore, the granting of ex-HGU land to farming communities in the region can be seen as a form of implementation of the principle of state asset management in Islam.<sup>10</sup>

However, the main problem faced by the community is the legal uncertainty over the land they have cultivated. Although the land is claimed to have been released to the community, the government has yet to provide them with official certificates. This leaves the community, including farmers, with only land deeds, which do not provide strong legal protection. This uncertainty contradicts the objectives of *Milk al-Daulah*, which prioritise stability and social justice in the management of state assets.

In the context of Indonesian agrarian law, as stipulated in Law No. 5/1960 on Agrarian Principles, former HGU land that has returned to state land should be distributed to people in need, including small farmers. This redistribution aims to support equitable distribution of land tenure and improve people's welfare. However, the slow administrative and bureaucratic processes, such as initial data collection and certificate issuance, have resulted in communities remaining in vulnerable situations.

This condition creates tension between *de facto* rights (physical control by the community) and *de jure* rights (legal certainty in the form of certificates that have not been issued). In *Milk al-Daulah*'s view, this situation shows that the state has not fully carried out its mandate in managing public assets for the benefit of the community. <sup>11</sup>The principle of social justice at the core of *Milk*

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<sup>8</sup> Halilah, Siti, and Mhd Fakhurrahman Arif. "The Principle of Legal Certainty According to Experts." *Siyasah: Journal of Constitutional Law* 4.II (2021).

<sup>9</sup> Abbdullah Abdul Hussein at-Tariqi, *Islamic Economics, Basic Principles, and Objectives*, (Transl: M. Irfan Sofwani), (Yogyakarta, Magistra Insania Press, 2004)

<sup>10</sup> Khairurrahma, Ulfa. *Sale and Purchase Transaction of Assisted Houses on State Land in Gampong Bada, Ingin Jaya Subdistrict in the Perspective of Milk Ad-Daulah*. Diss. UIN Ar-Raniry Banda Aceh, 2018.

<sup>11</sup> Agus Gunawan, "Ownership in Islam," *Journal of Islam, Society & Culture*, Vol. 18, No. 2 (2017). Accessed via <http://repository.uinbanten.ac.id>

*al-Daulah* should encourage the government to accelerate the process of land certification and redistribution so that people have clear legal certainty.<sup>12</sup>

The former HGU land used by around a thousand farming families has become their main source of livelihood. In Islam, the utilisation of land to fulfil basic needs such as food is part of *maqashid sharia*, which is to safeguard human survival. Therefore, the government has a moral and legal responsibility to ensure that the land can be utilised by the community with clear legal guarantees.

## **B. Legal Certainty of Ex HGU Land Grants in Southwest Aceh Regency**

Law Number 5 of 1960 on Basic Agrarian Principles (hereinafter referred to as UUPA) and Presidential Decree Number 34 of 1992 on the Utilisation of Land for Business Use and Building Rights for Joint Ventures in the Framework of Foreign Investment.<sup>13</sup> In Article 2 paragraph (2) letter c of Law Number 5 of 1960 concerning Basic Agrarian Principles, which states that determining and regulating legal relationships between people and legal acts concerning the earth, water and space.<sup>14</sup> Where the Earth in question is land or land which is the most important thing in human life that is regulated by the state. The purpose of this UUPA is to end the dualism of agrarian law in Indonesia at that time.<sup>15</sup>

Cultivation Rights are the result of a government stipulation contained in Article 31 of Law Number 5 of 1960 UUPA. The definition of Cultivation Rights is the right to cultivate land directly controlled by the State, within a certain period of time, for agricultural, fishery and livestock companies.<sup>16</sup> This definition is explained in Article 28 of Law Number 5 of 1960 Basic Agrarian Principles.<sup>17</sup>

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<sup>12</sup> Khairurrahma, Ulfa. *Sale and Purchase Transaction of Assisted Houses on State Land in Gampong Bada, Ingin Jaya Subdistrict in the Perspective of Milk Ad-Daulah*. Diss. UIN Ar-Raniry Banda Aceh, 2018.

<sup>13</sup> Arifin, Zaenal, and Nikmatul Wachidah. "Implementation of Redistribution of Ex-Employment Rights Land." *Al-Adl: Journal of Law* 15.2 (2023): 270-286.

<sup>14</sup> Sakinah, Chairina, et al. *Land Utilisation of the Krueng Aceh Riverbanks After Arrangement According to the Milk Ad-Daulah Perspective (case study in Krueng Barona Jaya District)*. 2021. PhD Thesis. UIN Ar-Raniry.

<sup>15</sup> Fianda, C. I. *Transfer of Building Rights Title to Land Ownership Rights in Ulee Kareng Sub-district, Banda Aceh* (Doctoral dissertation, UIN Ar-Raniry Banda Aceh, 2024).

<sup>16</sup> Parihah, Vera Siti. "Settlement of Land Disputes with Cultivation Rights in the Curbing of Abandoned Land." *Administrative Law and Governance Journal* 5.3 (2022): 205-215.

<sup>17</sup> Arifin, Zaenal, and Nikmatul Wachidah. "Implementation of Redistribution of Ex-Employment Rights Land." *Al-Adl: Journal of Law* 15.2 (2023): 270-286.



Article 1 paragraph 4 of the Basic Agrarian Law states that "only the surface of the earth, which is called land, can be controlled by someone, so land is the surface of the earth."<sup>18</sup> "That land is the uppermost loose layer of the earth's surface, which is used to grow plants. That is why the terms arable land, yard land, agricultural land, plantation land are known. Meanwhile, land that is used to construct buildings is called building land."<sup>19</sup>

Cultivation Rights are the result of a government stipulation contained in Article 31 of Law Number 5 of 1960 UUPA. The definition of Cultivation Rights is the right to cultivate land directly controlled by the State, within a certain period of time, for agricultural, fishery and livestock enterprises. This definition is explained in Article 28 of Law Number 5 of 1960 Basic Agrarian Principles.<sup>20</sup>

The subject of Cultivation Rights Title is the holder who owns the Cultivation Rights Title who is legally capable.<sup>21</sup> The subject of Cultivation Rights Title has been regulated in Article 30 of Law Number 5 of 1960 concerning Basic Agrarian Principles which explains that legal subjects who can become holders of land rights include Indonesian Citizens, basically Indonesian Citizens have the authority to carry out a legal action, for example, such as marrying, entering into an agreement, or entering into legal actions related to land or land rights. The conditions so that Indonesian Citizens can be classified as subjects of law include, among others, being 21 years old (already mature or legally capable) and not being under guardianship.<sup>22</sup>

There are seven main principles that form the basis for the regulation of agrarian law as stipulated in Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA). The following is an explanation of each of these principles:

## **1. Principle of State Control of Land**

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<sup>18</sup> Wicaksono, D. A., Yurista, A. P., & Sari, A. C. F, (2019), *Situating the Sultanate and Duchy as Subjects of Property Rights on Sultanate Land and Duchy Land in the Specialty of Yogyakarta*, Journal of Rechts Vinding: Media for National Law Development

<sup>19</sup> Suhariningsih. *Abandoned Land Principles and Concept Renewal Towards Curbing*, (Jakarta, Prestasi Pustaka Publisher, 2009).

<sup>20</sup> Nurbaedah, Nurbaedah. "Agrarian Resource Dispute Resolution on Former Cultivation Rights Plantation Land." *DIVERSI: Journal of Law* 6.2 (2020): 220-233.

<sup>21</sup> Muhammad Nashiruddin Al-Albani, *Sahih Sunan Ibn Majah Volume 2*, (Jakarta: Pustaka Azzam, 2007).

<sup>22</sup> Krismanika, Ni Ketut, I. Putu Gede Seputra, and Luh Putu Suryani. "Granting Cultivation Rights on Communal Rights Land According to Indonesian Land Law." *Journal of Legal Interpretation* 1.1 (2020): 161-166.

The state has the right to regulate, manage and supervise the use of land for the benefit of the people. This is reflected in Article 2 of the UUPA, which states that all land, water and natural resources within are controlled by the state for the greatest prosperity of the people. The principle of State Control of Land stipulated in Article 2 of the UUPA authorises the state to regulate, manage and supervise the use of land for the greatest prosperity of the people.<sup>23</sup>

The granting of former Cultivation Rights Title (HGU) land to farming communities in Babahrot District by the Government of Southwest Aceh District, this principle becomes the legal basis for distributing land to farmers.<sup>24</sup> The grants reflect the state's efforts to ensure that land is utilised productively in accordance with its social function, as stipulated in Article 6 of the LoGA. However, to provide maximum benefits, legal certainty is very important. This includes the issuance of land certificates to grantees, transparent redistribution procedures, and recognition of the rights of local communities, including indigenous peoples where relevant.<sup>25</sup> The District Government of Aceh Barat Daya has the responsibility to ensure that land redistribution is carried out in accordance with laws and regulations, such as regulations on land redistribution and land registration to provide legal protection to farmers. With legal certainty, farming communities are not only protected from potential land disputes, but can also utilise the land optimally for productive activities that support their welfare.

## 2. Social Function Principle of Land

Land rights are not absolute; their use must take into account the interests of society. This is regulated in Article 6 of the UUPA, which states that every land right has a social function, so landowners are obliged to use their land in accordance with its designation in the public interest.<sup>26</sup>

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<sup>23</sup> Minulyo, A. J. Legal Principles of Agrarian Reform. *Pro Justitia Law Journal*, 25(4), 2007.

<sup>24</sup> Sharfinda, Nisriina Milla, Antikowati Antikowati, and Bhim Prakoso. "Legal Certainty of Cultivation Rights over Management Rights." *MIMBAR YUSTITIA: Journal of Law and Human Rights* 7.2 (2023): 144-162.

<sup>25</sup> Abby, Fat'hul Achmadi. "Land Disputes over Indigenous Peoples' Rights with Cultivation Rights (Hgu) of Oil Palm Plantations in South Kalimantan." *Al-Adl* 8.3 (2016): 225070.

<sup>26</sup> Wiguna, Made Oka Cahyadi. "Opportunities for resolving civil disputes about land through alternative dispute resolution with the principles of agreement law in it." *Journal of Law & Development* 48.3 (2018): 506-520.



Land rights that are not absolute and must pay attention to social functions as stipulated in Article 6 of the LoGA have an important relevance in the context of the granting of former Cultivation Rights Title (HGU) land to farming communities in Babahrot District by the Government of Southwest Aceh District. The social function of land confirms that land must be utilised for the welfare of the community at large, not just for the benefit of certain individuals or groups. In this case, the redistribution of ex-HGU land to farmers is a concrete manifestation of the implementation of the social function, because the land is granted to support productive community activities, such as agriculture, which contributes to improving people's welfare and food security.

However, the implementation of this social function cannot be separated from the need for legal certainty for the grantee community. Legal certainty includes the guarantee of legal ownership rights through land certification, so that farmers can utilise the land without the risk of disputes or threats from other parties. The Aceh Barat Daya District Government has the responsibility to ensure that the land grant process is conducted transparently, in accordance with laws and regulations, and is equipped with legal documents that provide legal protection to the grantees.

### **3. Nationality Principle**

Land can only be owned by Indonesian citizens or legal entities determined by the state. This is in accordance with Article 9 of the UUPA, which confirms that only Indonesian citizens can own land rights in Indonesia.<sup>27</sup> Article 9 of the LoGA, which affirms that only Indonesian citizens or legal entities determined by the state can own land rights in Indonesia, is closely related to efforts to provide legal certainty for the farming community of Babahrot Sub-district regarding the granting of former Cultivation Rights Title (HGU) land by the Southwest Aceh District Government.<sup>28</sup> This provision provides a legal basis that the redistribution of ex-HGU land can only be given to Indonesian citizens, thus ensuring

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<sup>27</sup> Rahadiyan Veda Mahardika, S. H., et al. *The Position of Legal Subjects in View of Civil Rights: Reflection: The Occurrence of Overlapping Land Use Rights*. UM Jember Press, 2022.

<sup>28</sup> Sirait, Janri Wolden Halomoan. "Implementation of the Policy on Granting Cultivation Rights." *Journal of State Administration* 15.1 (2017): 132-141.

that the land rights are managed by people who are legally entitled to utilise the land for productive purposes.<sup>29</sup>

Local governments are responsible for ensuring that grantees are eligible Indonesian citizens, as well as carrying out the grant process in accordance with applicable legal provisions. The process must be followed by the issuance of legal land certificates on behalf of the grantees to provide legal certainty and protection of their rights. <sup>30</sup>This legal certainty is important to prevent conflicts or claims by other parties who are not entitled to the land. Thus, the regulation in Article 9 of the UUPA is not only a legal basis to ensure that land remains owned by Indonesian citizens, but also supports the process of redistributing ex-HGU land that is fair, transparent, and legally protects the interests of farming communities.

#### 4. Principle of Justice

The regulation and control of land must pay attention to social justice and balance between individuals, communities and the state. This principle refers to national development goals that prioritise equity in land utilisation. In the context of ex-HGU land redistribution, land grants to farmers are a concrete step towards realising social justice, where land previously controlled by companies through HGU is reallocated to communities in need to support their welfare.<sup>31</sup>

However, the implementation of this social justice principle will not be optimal without legal certainty for the grantees. Legal certainty guarantees that land rights granted to farmers are legally recognised through a transparent legal process, including the issuance of land certificates. This provides protection to farmers from potential conflicts or claims by other parties that could threaten sustainable land utilisation. <sup>32</sup>In

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<sup>29</sup> Istijab, Istijab. "Settlement of land disputes after the enactment of the basic agrarian law." *Widya Yuridika* 1.1 (2018)

<sup>30</sup> Utami, Ristya Amalia. "Overlapping between Mining Business Licences and Plantation Business Use Rights." *Justitia Journal of Law* 2.2 (2018).

<sup>31</sup> Zakaria, Aditya Darmawan. "The Policy of Granting Cultivation Rights on Management Rights in the Perspective of the Basic Agrarian Law." *Notaire* 5.1 (2022).

<sup>32</sup> Artamevia, Aldavira, and Listyowati Sumanto. "Disputes over the Issuance of Property Rights Certificates on Land with Cultivation Rights." *Trisakti Law Reform* 3.2 (2021): 178-187.

addition, legal certainty allows farmers to utilise the land optimally, for example as collateral to gain access to agricultural business financing.

The District Government of Aceh Barat Daya plays an important role in ensuring that the land grant process is conducted with due regard to the principles of social justice and in accordance with laws and regulations. Thus, the redistribution of ex-HGU land in Babahrot District not only reflects equity in land utilisation, but also provides a strong legal guarantee for farmers to support the sustainability of their welfare.

## **5. Principle of Unity**

Land, water, and airspace are considered an inseparable unit. This reflects the relationship between natural resources located on the surface and under the ground, as explained in Article 1 paragraph 2 of the UUPA. The Babahrot farming community not only has rights over the surface of the land, but also has legal certainty over the resources within it, such as water needed for agricultural activities. <sup>33</sup>Legal certainty through the issuance of land certificates guarantees that the land can be fully utilised by farmers without any interference from other parties or conflicts related to the management of the resources on it.

In addition, the local government has the responsibility to ensure that the land grant process is carried out with due regard to environmental sustainability, including water use and airspace management, so that it does not cause detrimental damage to the community. . By integrating the principle of the unity of land, water and airspace in the redistribution of ex-HGU land, the grant not only provides legal certainty for farmers, but also ensures that the land can be utilised productively and sustainably to support the welfare of the people in Babahrot District.

## **6. Simplicity Principle**

Agrarian law regulations are designed to be simple, easy to understand, and not to cause complexity. This is intended to create a legal system that is easily understood by the community. Simplicity in land grant procedures, such as straightforward administrative requirements and easily accessible land registration procedures, will help farming

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<sup>33</sup> Ardani, Mira Novana. "Utilisation of Cultivation Rights land to prevent land from becoming abandoned." *Gema Keadilan* 8.1 (2021): 63-79.

communities understand and follow the process of legalising land ownership.<sup>34</sup> This is important to provide legal certainty to grantees, so that they have land rights that are legally recognised by the state. Land certificates as proof of legal rights are a key instrument in providing legal security for farmers, enabling them to utilise their land without fear of potential disputes.<sup>35</sup>

The District Government of Aceh Barat Daya needs to ensure that the entire grant process is conducted in accordance with the principle of simplicity, including counselling farming communities on their rights and obligations over the granted land. With a simple and easy-to-understand approach, this principle supports legal certainty and empowers farming communities to utilise land productively and sustainably.<sup>36</sup>

## **7. Principle of Legal Certainty**

The state is responsible for providing legal certainty over land ownership and use, including through land registration as stipulated in Article 19 of the UUPA. This registration includes measuring, mapping and issuing land certificates. The granting of former Cultivation Rights Title (HGU) land to farming communities in Babahrot Sub-district by the District Government of Aceh Barat Daya, this principle becomes very relevant. Legal certainty is a key element to ensure that the land granted is truly legally owned by the farmers and does not lead to conflicts in the future.<sup>37</sup>

A simple and transparent land registration process, including the issuance of certificates as proof of land rights, provides legal protection to farmers. These certificates not only serve as legal proof of ownership, but also enable farmers to utilise the land productively, for example to gain access to farm credit. Without legal certainty, farmers are at risk of disputes

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<sup>34</sup> Abwar, Irsyad Hamdie Bey, Didik Suhariyanto, and Dewi Iryani. "Legal Protection of Land Ownership Rights into Business Use Rights in State Administrative Decisions." *IUS FACTI: Periodical Journal of the Faculty of Law, Bung Karno University* 2.1 June (2023): 245-248.

<sup>35</sup> Nurbaedah, Nurbaedah. "Agrarian Resource Dispute Resolution on Former Cultivation Rights Plantation Land." *DIVERSI: Journal of Law* 6.2 (2020): 220-233.

<sup>36</sup> Chairul Fahmi and Peter-Tobias Stoll, "Measuring WTO Approaches in Resolving Palm Oil and Biofuel Trade Disputes from Indonesia," *BESTUUR* 12, no. 2 (December 31, 2024), <https://doi.org/10.20961/BESTUUR.V12I2.94203>.

<sup>37</sup> Winata, Muhammad Reza, and Erlina Maria Christin Sinaga. "Transparency of Land Use Rights to Support Land Redistribution Based on the Constitutional Right to Information." *Journal of Rechts Vinding: Media for National Law Development* 8.3 (2019): 421.

or claims from other parties that could disrupt the stability of land utilisation.<sup>38</sup>

The Aceh Barat Daya District Government has the responsibility to ensure that all stages of the grant, from land identification to certificate issuance, are carried out in accordance with applicable legal provisions. By ensuring legal certainty, ex-HGU land grants will not only be a fair form of land redistribution, but also provide security for farmers to utilise the land sustainably to improve their welfare.<sup>39</sup>

In relation to legal certainty for farming communities in Babahrot Sub-district, Southwest Aceh District, the LoGA is an important instrument in ensuring justice and sustainability of land utilisation. Article 28 and Article 31 of the LoGA, which regulate Cultivation Rights, emphasise that land controlled by the state can be granted to certain legal subjects for agricultural purposes such as agriculture, fisheries and animal husbandry. When the government grants ex HGU land to farming communities, the arrangement must comply with basic agrarian principles, namely creating social justice and prioritising the interests of the wider community.<sup>40</sup>

However, the implementation of ex HGU land grants requires strong legal certainty, especially in the aspects of administration and recognition of rights by the state. This legal certainty includes the verification process of beneficiaries, the validity of grant documents, and guarantees of legal protection of land rights that have been granted.<sup>41</sup> Article 2 paragraph (2) of the UUPA emphasises the role of the state in regulating legal relations concerning the earth and space, including granting rights to entitled parties based on applicable law. In the context of Babahrot Sub-district, the granting of ex HGU land to farming communities is in line with the spirit

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<sup>38</sup> Feddyawan, Dwi Aris, and Sukresno Sukresno. "Legal Protection of Former Right Holders of Former Cultivation Rights or Building Rights that Have Expired." *Innovative: Journal Of Social Science Research* 3.5 (2023): 5044-5053.

<sup>39</sup> Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," <https://doi.org/10.1177/11771801241235261> 20, no. 1 (March 8, 2024): 157-66, <https://doi.org/10.1177/11771801241235261>.

<sup>40</sup> Adhipermana, I. Gusti Agung Ngurah Klaustra, Ketut Kasta Arya Wijaya, and Luh Putu Suryani. "Land Tenure Arrangements of Former Cultivation Rights in Agrarian Reform." *Journal of Legal Analogy* 4.3 (2022): 328-332.

<sup>41</sup> Urasana, Yules Moses, Adonia Ivonne Laturette, and Pieter Radjawane. "Legal Protection of the Rights of Indigenous Peoples after the Expiration of Cultivation Rights." *BAMETI Customary Law Review* 1.1 (2023): 26-40.

of UUPA to empower agrarian communities, reduce inequality in land ownership, and support productive and sustainable land utilisation.<sup>42</sup>

Thus, the successful implementation of these ex HGU land grants depends on transparency and fairness in the process of determining the legal subjects of land recipients, as well as the provision of legal ownership documents, such as property rights certificates. The local government, in this case the District of Aceh Barat Daya, needs to ensure that the farming community in Babahrot Sub-district obtains legal certainty over the granted land, so that they can optimally utilise the land for their welfare, while at the same time supporting the UUPA's great goal of realising agrarian justice in Indonesia.<sup>43</sup>

### **C. Legal Certainty of Ex HGU Management in Babahrot District, Abdya**

Legal certainty for the people of Babahrot Sub-district, Southwest Aceh, over the management of ex-HGU land is essential to guarantee the community's rights to the land that has been allocated by the government. Ex-HGU land, after the expiry of its rights, becomes state-controlled land and can be distributed to people in need, especially farmers, to improve their welfare. This legal certainty is realised through land registration as stipulated in Article 19 of the UUPA, which includes measuring, mapping and issuing land certificates as proof of legal ownership. Land certificates provide legal protection to the community from potential disputes or claims by other parties, and provide a sense of security in managing land productively and sustainably. <sup>44</sup>The Government of Southwest Aceh District has the responsibility to ensure that the land redistribution process is conducted transparently, fairly and in accordance with legal provisions, including prioritising the issuance of land certificates to grantees. With legal certainty, the community can optimally utilise the land for productive activities such as agriculture, gain access to business credit, and improve their standard of

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<sup>42</sup> Nadya, Alifa, and Deddy Hernawan. "Juridical Analysis of Tenure of Abandoned Land Ex Hak Guna Usaha by the Kasomalang Village Community." *Litigation* 25.1 (2024): 124-142.

<sup>43</sup> Chairul Fahmi and Syarifah Riyani, "ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT," *Wahana Akademika: Jurnal Studi Islam Dan Sosial* 11, no. 1 (July 17, 2024): 89-104, <https://doi.org/10.21580/WA.V11I1.20007>.

<sup>44</sup> Ayuningtyas, Tri Retno, et al. "Legal Analysis of the Regulation of Cultivation Rights in the National Capital City." *Unes Law Review* 6.4 (2024): 11766-11776.



living, so that the redistribution of ex-HGU land can support economic equity and social justice in the region.<sup>45</sup>

In the context of Indonesian agrarian law based on Law No. 5 of 1960 (UUPA), ex-HGU land that has been released becomes land controlled by the state, so the state is obliged to distribute the land to the community through a legal process that ends with the issuance of certificates as proof of legal ownership. This is in accordance with the principles of social justice and legal certainty mandated by the UUPA, where land redistribution must be carried out fairly, transparently, and with adequate legal protection for the recipient community. However, the government's slow administrative process in land redistribution and certification has resulted in communities being forced to hold land informally, which can be legally considered illegal even though the land has been released for their benefit.<sup>46</sup>

From the perspective of *milk al-daulah* in Islamic law, land controlled by the state is an asset that must be managed for the benefit of the people, taking into account justice and public welfare.<sup>47</sup> In this case, the government has a moral and legal responsibility to accelerate the land redistribution process and provide legal certainty to the farming community in Babahrot Sub-district. Concrete steps, such as accurate data collection, legal counselling to the community, and accelerated issuance of land certificates, must be taken immediately to end the legal uncertainty that harms the community. Thus, resolving this issue not only fulfils the government's obligations under the UUPA, but also reflects the principles of social justice that underpin agrarian management in Indonesia.

## CONCLUSIONS

Legal certainty for the community of Babahrot Sub-district over the management of the former Cultivation Rights Title (HGU) land released by PT Cemerlang Abadi shows significant legal uncertainty. Although the land has been utilised by the community for agricultural needs and has become the

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<sup>45</sup> Sri Wahyuni et al., "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 1 (June 10, 2023): 1-23, <https://doi.org/10.1234/JURISTA.V7I1.42>.

<sup>46</sup> Trinanda, Fery Okta. "Juridical Analysis of Landreform Enforcement of Expired Cultivation Rights." *IBLAM LAW REVIEW* 3.3 (2023): 219-231.

<sup>47</sup> Jannah, Putri Miftahul. *Output of DD Utilisation in Montasik Subdistrict in the Review of Milk Al-Daulah and Law Number 6 of 2014 concerning Villages (Study of Fiscal Years 2022-2023)*. Diss. Ar-Raniry State Islamic University, 2024.

main source of income for around a thousand households, the government has yet to provide official certificates as legal proof of land ownership. The slow process of land administration and redistribution by both the Aceh government and the Aceh Barat Daya local government has raised community concerns about potentially losing access to the land.

In the perspective of agrarian law based on Law No. 5/1960 (UUPA), ex-HGU land that has been released becomes land controlled by the state and should be distributed fairly to the community with legal protection in the form of certificates. However, the government's slow concrete steps contradict the principle of legal certainty, which is the main principle in agrarian management. From the perspective of *milik al-daulah* in Islamic law, the land is a public asset that must be managed for the welfare of the people, so the state has an obligation to accelerate the redistribution process and provide legal certainty.

This legal uncertainty poses social, economic and legal risks to the community, including potential future disputes. Therefore, concrete steps are needed from the government, such as accelerating the data collection process, issuing certificates, and legal education to the community, to ensure that the land actually benefits the community legally and sustainably. The resolution of this issue will reflect social justice and the government's commitment to implementing the agrarian principles regulated by the UUPA.

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