Legal Implications of Cultivation Right Issued on Mining Business Permit (Case Study of Issuance of Cultivation Right Certificate Number: 00090/Bangka on Behalf of Gunung Pelawan Lestari (Gpl) Company on Mining Business Permit of Timah Company in Bangka Regency)

Noor Azizah, I Gusti Ayu Ketut Rachmi, Lego Karjoko

azizahnoor1234b@gmail.com[1] ayu_igk@staff.uns.ac.i [2] *legokarjoko@staff.uns.ac.id*[3]

[123*] Faculty of Law; Universitas Sebelas Maret, Indonesia.

Article Info

Received: 2023 – 09 - 15
Revised: 2023 – 12 - 24
Accepted: 2023 – 12 - 30

Keywords:
Security Principles, Cultivation Rights, Mining Business Permits

Abstract

This thesis was aimed to find out and analyze whether the issuance of a Certificate of Cultivation Rights on Mining Business Permit (IUP) complies with the secure principle that can guarantee legal certainty and the implications of issuance of Cultivation Right Certificate on an IUP for Cultivation Right and IUP holders. This research applied a normative legal research or library research method, which was carried out by examining library materials or secondary data. Based on the research results, the authors concluded that: First, the issuance of GPL Company in accordance with the provisions of the Laws and Regulations in the field of land, and also in accordance with the fact that IUP was not the ownership of land rights, so there were no land rights as referred to in Article 16 paragraph (1) Law Number 5 of 1960 concerning Agrarian Fundamentals Regulations (UUPA) which were born earlier on the land in question, as well as considering the agreement between TIMAH Company as the holder of Mining Business Permit and GPL Company as the holder of land rights is included as part of the consideration in the decision on granting Cultivation Rights to GPL Company met the secure principle. Second, the legal implication of issuing a Cultivation Right Certificate above the IUP for GPL Company as a land rights holder and TIMAH Company as an IUP holder was that the Cultivation Right of GPL Company was the legitimacy of legal land rights and received legal protection so that they did not overlap with IUP.

1. Introduction

The state, through the Central Government, is responsible for the use of minerals andcoal within the legal territory of the Republic of Indonesia through optimal, effective, and efficient management and utilization of minerals and coal in order to encourage and support the development and independence of national industrial development based on mineral resources and/or coal energy. As a result, in order to carry out the mandate of Article 33 paragraph (3) of the 1945 Constitution, Law Number 4 of 2009 concerning Mineral and Coal Mining Jo. Law No. 3 of 2020 amending Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as the MINERBA Law) in order to provide legal certainty regarding mining business activities involving minerals and/or coal.[1]

As stated in Article 1 number 8 of Government Regulation Number 22 of 2010 concerning Mining Areas that Mining Areas, hereinafter referred to as WP, are areas that have mineral potential and/or coal and are not bound by government administrative boundaries thatare part of the national spatial plan. According to the MINERBA Law, related legal subjectswho wish to conduct mining activities must ensure that the mining activities they intend to conduct are included in the Mining Business Permit Area (WIUP). The Minister's statementabout the WIUP refers to MINERBA Law Article 17 paragraph (1), which states: "The area and boundaries of the Metal Mineral WIUP and Coal WIUP are determined by the Minister after being determined by the governor," which is then reaffirmed in Article 4 of Minister of Energy and Mineral Resources Regulation Number 7 of 2020 concerning Procedures for Granting Areas, Permits, and Reporting on Mineral and Coal Mining Business Activities, which states: "The Minister shall determine the Metal Mineral WIUP and/or Coal WIUP within the Metal Mineral WUP and/or Coal WUP after fulfilling the criteria in accordance with the provisions of the Regulations Legislation".

Areas designated as WIUP can carry out mining activities by the relevant legal subjects after obtaining a Mining Business Permit, as stated in Article 9 paragraph (5) of Government Regulation Number 96 of 2021 concerning Implementation of Mineral and CoalMining Business Activities, which states: "IUP as referred to in paragraph (1) is granted after obtaining a WIUP." A Mining Business Permit, or IUP, is a permit to conduct a Mining Business, according to Article 1 point 7 of the MINERBA Law. The IUP in question is

[1] General Explanation of Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to LawNumber 4 of 2009 concerning Mineral and Coal Mining

provided by the Minister in accordance with the provisions of Article 9 paragraph (1) of Government Regulation 96 of 2021 Jo. Article 37 Regulation of the Minister of Energy and Mineral Resources Number 7 of 2020 or by the Governor in accordance with Article 37 Regulation of the Minister of Energy and Mineral Resources Number 7 of 2020.

Based on the provisions of Article 38 of the Minerba Law, IUP is granted to business entities, cooperatives, and individual companies (hereinafter referred to as IUP holders). According to Article 134 paragraph (1) of the Minerba Law, rights to WIUP, WPR, or WIUPK do not include rights to land on the earth's surface. The vital role of land in life frequently leads to extremely complex social problems.[2] So that every owner of land rights must carry out the registration of rights or land registration as required by the applicable landlaw in Indonesia. As a result, before engaging in mining activities, the IUP holder must settleall land rights issues with the land rights holder. This is in a line with the Minerba Law's orderin Article 39 letter i, which states: "IUP as referred to in Article 36 paragraph (1) shall containat least: i. duty to settle land claims".

The provisions on this subject are reiterated in Article 175 paragraph (1) Government Regulations 96/2021, which states that "IUP, IUPK, or SIPB holders must settle land rights in WIUP or WIUPK with land rights holders in accordance with the provisions Laws and Regulations" as well as paragraphs (3) and (4), which state that "IUP, IUPK, or SIPB holdersin completing land rights as referred to in paragraph (1) are required to provide compensationbased on a mutual agreement with land rights holders, the compensation referred to in paragraph (3) is calculated based on the area of land and/or objects on the land that will be cultivated for Mining Business activities by holders of IUP, IUPK, or SIPB and does not takethe potential value of the Coal commodity into account. According to Article 176 Government Regulations 96 of 2021, land rights settlement between holders of IUP, IUPK, or SIPB and holders of land rights as defined in Article 175 paragraph (1) is carried out through deliberation to reach a consensus.

IUP is granted to IUP holders for a very large area and for an extended period of time.This is in accordance with Article 42 of the Minerba Law, which states that:

The period of exploration activities specified in Article 36 paragraph (1) letter an is asfollows: a. 8 (eight) years for metal mineral mining, b. 3 (three) years for non-metallicmineral mining, c. 7 (seven) years for certain types of non-

[2] Boedi Harsono, 2005, *Indonesian Agrarian Law*, *History of Formation of the Basic Agrarian Law*, *Contentsand Implementation*, Jakarta: Djambatan, Page 5.

metal mineral mining, d. 3 (three) years for rock mining, or e. 7 (seven) years for coal mining." as well as ArticleThe period of Production Operation activities referred to in Article 36 paragraph (1) letter b is granted with the following conditions: a. for Metal Mineral Mining for a maximum of 20 (twenty) years with a guaranteed extension of 2 (two) times for 10 (ten) years each after fulfilling the requirements in accordance with laws and regulations. b. for Non-metal Mineral Mining for a maximum of 10 (ten) years with a guaranteed extension of 2 (two) times for 5 (five) years each after fulfilling the requirements in accordance with laws and regulations. c. for certain types of non-metal mineral mining for a maximum period of 20 (twenty) years and guaranteed to obtain an extension of 2 (two) times for 10 (ten) years each after meeting the requirements under applicable laws and regulations d. for rock mining for a maximum of 5 (five) years and guaranteed to obtain an extension of 2 (two) times for 5 (five) years each after fulfilling the legislative requirements. e. for Coal Mining for a maximum of 20 (twenty) years with a guaranteed extension of 2 (two) times for 10 (ten) years each aftermeeting the requirements set forth in laws and regulations. f. integrated with the facilityfor Metal Mineral Mining g. for Coal Mining that is integrated with Development and/or Utilization activities for 30 (thirty) years and is guaranteed to get an extension for 10 (ten) years each time after fulfilling the requirements according to processing and/or refining requirements for 30 (thirty) years and is guaranteed to get an extension for 10 (ten) years each time after fulfilling the requirements in accordance with the provisions of the legislation for 30 (thirty) years and is guaranteed to get an extension for 10 (ten) years.

According to Article 36 of the MINERBA Law, "IUP consists of two stages of activity: a. Exploration, which includes General Investigation, Exploration, and Feasibility Study activities; and b. Production Operations, which includes Construction, Mining, Processing and/or Refining or Development and/or Utilization activities, as well as Transportation and Sales." In fact, IUP holders have not engaged in mining activities (exploration and production operations) or acquired land in a long time. Along with the increase in investment in the plantation sector, the need for land also increases, on the other hand, determined IUPs are very broad in scope and tend not to be used by IUP holders for a long time, so the area becomes stagnant and lacks economic value activities. This prompted local governments to issue permits for plantations located above the IUP.

For plantations in contact with the IUP, the location permit issued by the Regional Government is used as the foundation for plantation companies to carry out land acquisition activities for land owners within the location permit area. After acquiring land in the above- mentioned location permit area, the plantation company applies to the National Land Agency(BPN) for the issuance

of Cultivation Right certificates. The above-mentioned legal events occurred between TIMAH Company as an IUP holder and GPL Company as a holder of land rights in the form of Cultivation Rights with the right number: 00090/Bangka and Field Identification Number: 00135 (hereinafter referred to as Cultivation Right of GPL Company).IUP of TIMAH Company was founded before the Regional Government of Bangka issued the plantation's location permit. The location permit serves as the foundation for GPL Company applied to National Land Agency for Cultivation Right, so it is also possible to saythat the Cultivation Right of GPL Company issued by BPN was also born after the IUP of TIMAH Company.

2. Results and Discussion

a. The Safe Principle That Ensures Legal Certainty in the Issuance of CultivationRight Certificates on IUP

IUP held by TIMAH Company is based on the Director General of General Mining Decree Number: 323.K/2014/DDJP/1995 dated 21 July 1995, Number: 324.K/2014/DDJP/1995 dated 21 July 1995, Number: 327.K/2014/DDJP/1995 dated 21 July 1995, Number: 1193.K/2014/MPE/1997 dated 21 July 1996, which has been adjusted to the Minerba Law to become a Production Operation Mining Permit.[3]

Mining activities have not taken place in the IUP area owned by TIMAH Company As a result, the Regional Government regards the IUP area in question as having no economicvalue, and a location permit for the plantation above the IUP of TIMAH Company is issued.GPL Company conducts land acquisition for land owners in the said IUP area based on a location permit from the Regional Government. GPL Company then applied to BPN for a Cultivation Rights (Cultivation Right) certificate for lands in the IUP area of TIMAH Company that had been released by GPL Company land rights. Considering the foregoing and departing on a safe basis, before issuing the Cultivation Right over the IUP, BPN orderedboth parties to reach an agreement. Based on the foregoing, TIMAH Company and GPL Company signed a letter of agreement dated 23 September 2013 (hereinafter referred to as aletter of agreement).

Substantially, the parties agree to resolve overlapping land use on the basis of mutualdesire, establish cooperation in managing land where the second party's location permit (GPL Company) is partly in the Mining

[3] Based on Letter of Agreement Number: 370/TBK/SP-0000/14-SII.4 dated 23 September 2013

Business Permit (IUP) production operation owned by the first party (TIMAH Company). According to the agreement's Article 2 paragraph (1), this joint land utilization agreement is only limited to overlapping land (between TIMAH Company's IUP and GPL Company's land) that will be used for first-party mining activities based on the results of the feasibility study that is on the second party's land, as shown on theattached map.

According to Article 4 paragraph (3), "the parties agree that mining activities get priority to carry out mining activities (production) in the recommendation area that has not been compensated (exempt) or that has been compensated by the second party who has economic potential, and the second party will not carry out oil palm planting activities beforethe first party carries out mining (production) activities, where the area that has this potentialis attached in Appendix 3". The agreement states in Article 4 paragraph (5) that "the parties have the right to appoint mining partners in carrying out mining activities in a predetermined overlapping area." According to Article 4 paragraph (6), "during the validity period of this agreement, the first party has the right to carry out exploration activities and/or drill checks, for areas/land which later turn out to have economic potential to be mined proven based on the first party's exploration results, mining activities by the first party still receive priority and will then follow the stages as referred in paragraph (4) of this article."

We can see from the agreement that has been described above through Article 2 paragraph (1), Article 4 paragraph (3), (5), and (6) that agreements tend to be like unilateral agreements, unequal, and very profitable for TIMAH Company However, the agreement remains in effect as long as both parties agree. Article 1320 of the Civil Code states that the agreement is 1 (one) of 4 (four) conditions for the agreement's validity. This legal requirementis cumulative rather than alternative in nature, which means that the four legal terms of the agreement contained in Article 1320 of the Civil Code must be fulfilled in order for the agreement to be legally binding, one of which is an agreement. Determining the validity of an agreement is an important issue in contract or contract law. [4]

In the Indonesian contract law system, Article 1320 of the Civil Code serves as the standard for agreement validity. According to Civil Code Article 1320, "for an agreement tobe valid, four conditions must be met: 1) the agreement of those who are obligated. 2) The ability to enter into an

[4] Sudargo Gautanam, *Indonesian Business Law*, Bandung: Citra Aditya Bakti, 1995, p. 76

engagement. 3) a specific item. 4) A legal reason. In order for a contractor agreement to be valid, the parties must agree on all of its terms. There is an element of offer and acceptance in the formation of an agreement. In principle, an agreement is the occurrence of an agreement between the offer and acceptance or a meeting of the two wills. Then a declaration of intent is required. The statement of will must state that the person wishesto enter into a legal relationship. Will expressions can take various forms, such as written, verbally, firmly, silently, and so on.[5]

An agreement was reached between TIMAH Company and PT. We can clearly see the GPL from the written agreement number: 370/TBK/SP-0000/14-S11.4 dated 15 August 2014, indicating that the agreement has been fulfilled as one of the legal terms of the agreement. The proficiency requirement is the next legal requirement. PT, as a legal entity, isalso a legal subject with individual rights and obligations. The Limited Liability Company Law (UUPT) shows the competence of legal entities, one of which is evidenced by the existence of a deed of establishment and legalization of legal entities from the Ministry of Law and Human Rights. As a result, TIMAH Company and GPL Company are legal subjectscapable of law, and their agreement meets one of the legal requirements of the agreement outlined in Article 1320 of the Civil Code.

The existence of a specific thing is the third condition for the agreement validity. Article 1320 of the Civil Code refers to the debtor's obligation and the creditor's rights, or inthe sense that this particular matter is what was agreed upon, namely the rights and obligationsof both parties. According to Civil Code Article 1333 paragraph (1), "an agreement must contain at least one object whose type can be determined." The object does not refer to goodsin the narrow sense, but rather to the subject matter in general. The main point of contentionin the agreement is performance.[6] According to Civil Code Article 1234, achievement is classified as giving something, doing something, or not doing anything. One of the conditions for the validity of the agreement stated in the agreement letter between TIMAH Company and GPL Company is contained in the achievements agreed upon by both parties, which are contained in the 11 (eleven) Articles of the agreement.

The lawful cause is the agreement's final valid condition. According to Article 1337 of the Civil Code, a cause is prohibited if it is prohibited by

[5] Ridwan Khairandy,*Indonesian Contract Law*, Yogyakarta: FH UII Press, 2013, p. 168-170
[6] Ridwan Khairandy,*Indonesian Contract Law*, Yogyakarta: FH UII Press, 2013, p. 186

law or is contrary to good morality or public order. It simply means that clauses in an agreement may not be in conflict with lawsand regulations. As one of the legal terms of the agreement, the said agreement has violated the law.

As previously stated, the substance of the said agreement between the two parties can be stated as follows: in principle, the parties agree that mining activities get priority to carry out mining activities (production) in recommended areas that have not been compensated (exempt) or those that have been compensated by a second party that has economic potential,and the second party will not carry out oil palm planting activities before the first party carriesout mining activities (production), As can be seen, the first party (TIMAH Company) is givenvery high priority even for land already owned by the second party (GPL Company), where the second party is required to prioritize the interests of the first party as an IUP holder in order to carry out mining activities, despite the fact that Article 39 letter I, Article 135, Article136 paragraphs (1) and (2) of the Minerba Law, and Article 100 paragraphs (1) and (2) of Government Regulation Number 23 of 2010 concerning Implementation of Mineral and CoalMining Business Activities (which have been revoked by Government Regulations No. 96 of 2021) requires IUP holders to complete their land rights obligations to land rights holders prior to carrying out mining activities, as a result, such agreement clauses are null and void because they fail to meet one of the legal requirements for a valid agreement, because Halal in the Minerba Laws and Regulations and related Laws and Regulations require IUP holdersto settle their land rights obligations in advance to the land rights holders, which in this case is PT. Before engaging in mining activities, GPL does not necessarily engage in mining activities on land rights of GPL Company is only by convention.

Based on the agreement letter, it can be seen that the second party agrees that the firstparty can carry out mining activities on land owned by the second party, which is why the agreement clause violates the Minerba Laws and Regulations. In fact, even if both parties agree, it cannot be with the agreement that the first party does mining activities on land already owned by the second party. The Minerba Law mandates that IUP holders settle their land rights obligations to land rights holders through land acquisition. So that if TIMAH Company as IUP holders later want to provide compensation to be able to own land from GPL Company as the holder of land rights for the purpose of carrying out mining activities, GPL

Company rejects that of course it is a civil right of GPL Company and the civil domainof both parties that has nothing to do with BPN. Violation of lawful causes renders the agreement null and void in the sense that it has been invalid since its inception, and the law considers the agreement to have never existed before.[7]

According to Article 5 paragraph (7) of the agreement, "the second party has the rightto carry out harvesting activities on the second party's oil palm trees that are still standing orgrowing in the mining business permit area (IUP) as referred to in Article 4 paragraph (1) aslong as the first party has not done mining." Such agreement clauses, once again, violate the mandate of the Minerba Legislative Regulations, which require IUP holders to first settle theirland rights obligations to land rights holders and not necessarily control the land of a secondparty as land rights holders in order to carry out mining activities.

According to Article 6 paragraph (1) of the agreement, the validity period of the said agreement expires on July 31, 2023. If GPL Company refuses to extend the agreement, it is entirely a civil matter for both parties that is dependent on the agreement. Looking deeper intothe agreement, it can be seen in Article 7 paragraph (1) that it does discuss compensation, but the article only discusses third parties who take care of compensation and also discusses objectsof compensation such as oil palm trees owned by the second party, but did not discuss the agreement on the compensation price for land compensation for the second party as the holderof temporary land rights, Article 100 paragraph (1) and (2) of Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities, whichreads "Holders of Production Operation IUP or Production Operation IUPK who will carry outproduction operation activities must settle part or all of the land rights within the Holders of Production Operation IUP or Production Operation IUPK who will carry out production operation activities must settle part or all of the land rights within the WIUP or WIUPK with the holders of land rights in accordance with the provisions of the Laws and Regulations. Theowner of Production Operation IUP or Production Operation IUPK is required to compensatethe landowner based on a mutual agreement."

This is in a line with current laws and regulations, specifically Article 175 paragraph (1) of Government Regulations Number 96 of 2021, which

[7] Ridwan Khairandy, *Indonesian Contract Law*, Yogyakarta: FH UII Press, 2013, p. 192

states that "Holders of IUP, IUPK,or SIPB are required to settle land rights in WIUP or WIUPK with land rights holders in accordance with the provisions of the Legislation" and paragraphs (3) and (4) which states that "IUP, IUPK, or SIPB holders are required to provide compensation based on agreement with the holders of land rights in completing land rights as referred to in paragraph (1), the compensation as referred to in paragraph (3) is calculated based on the area of land and/or objects on the land that will be cultivated for Mining Business activities by IUP, IUPK, or SIPB holders and does not take into account the potential value of the commodity Coal." Then, according to Article 176 Government Regulations Number 96 of 2021, the settlement of landrights between IUP, IUPK, or SIPB holders and holders of land rights as defined in Article 175paragraph (1) is done through deliberation in order to reach a consensus.

Based on the above-mentioned agreement, TIMAH Company issued a letter of recommendation to GPL Company in the context of managing Cultivation Right on behalf ofGPL Company. This recommendation letter was later considered in the Decree of the Head ofthe Regional Office of the National Land Agency of the Bangka Belitung Islands Province Number: 52/Cultivation Right/BPN.19/2017 dated 01 February 2017 concerning Granting Cultivation Rights on behalf of the Gunung Pelawan Lestari Limited Liability Company for A plot of land in Bangka Regency (hereinafter referred to as the Decree on the Granting of Cultivation Right) which is the foundation for the rights or the foundation for the issuance of the Cultivation Right of GPL Company with title number 00090/Bangka and Field Identification Number: 00135. To determine whether the issuance of the Cultivation Right Certificate over the IUP is intended to fulfill the security principle that can guarantee legal certainty, one must depart from the understanding of the secure principle of land registration itself. According to Article 2 of Government Regulation Number 24 of 1997 on LandRegistration, "Land registration is carried out on the principles of simplicity, safety, affordability, up-to-date, and openness". The security principle is intended to show that land registration must be carried out thoroughly and carefully so that the results can guarantee legalcertainty in accordance with the purpose of land registration itself.[8]

The purpose of land registration is stated in Articles 3 and 4 of Government RegulationNumber 24 of 1997 concerning Land Registration

[8] Urip Santoso, *Registration And Transfer Of Land Rights (First Print)*, Kencana Prenada Media Group: Jakarta, 2010, p. 17

that is "to provide legal certainty and legal protection, to provide information to interested parties, and to maintain an orderly administration." The definition of land registration is based on Article 1 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which states that "Land registration is a series of activities carried out by the Government continuously and regularly, including collection, processing, bookkeeping, and presentation and maintenance ofphysical data and juridical data in the form of maps and lists of land parcels and apartment units, including the issuance of certificates as proof of title for land parcels with existing rightsand ownership rights to apartment units, as well as certain rights that burden him." As long asthe above elements of understanding land registration based on Government Regulations No. 24 of 1997 are met, and the Cultivation Right of GPL Company was born in accordance with the procedures stipulated by the relevant Laws and Regulations, the Cultivation Right certificate is proof of valid land rights, as stated in Article 32 of Government Regulations Number 24 of 1997, and the said Cultivation Right certificate has fulfilled the principle of secure land registration. Ensure legal certainty.

A certificate referring to Article 32 Government Regulations Number 24 of 1997 is a certificate of proof of land rights that is registered as a strong means of proof regarding the physical and juridical data contained therein, as long as the physical and juridical data are consistent with the data contained in the concerned certificate of measurement and land title book. One of the land rights mentioned is Cultivation Rights, which are mentioned in Article 16 paragraph (1) Law Number 5 of 1960 concerning Agrarian Fundamentals Regulations (UUPA). It is possible to interpret the Certificate as a guarantee of legal certainty regarding the legal subjects and objects contained therein. To determine whether the Cultivation Right certificate issued by GPL Company satisfies the secure principle of land registration, it is necessary to investigate the process of the issuance of cultivation right of GPL Company itself.The Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the NationalLand Agency of the Republic of Indonesia Number 18 of 2021 regulates the procedures for determining management rights and land rights, but due to the Cultivation Right certificate ofGPL Company was created in 2017, the discussion will revolve around the Adjusting Legislation time legal event.

Article 8 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 Concerning the Delegation

of Authority for Granting Land Rights and Land Registration Activities states that "the Head of the BPN Regional Office issues a decision regarding the granting of Cultivation Rights over land with an area of no morethan 2,000,000 M2 (two million square meter)". Referring to the Decree of the Head of the Regional Office of the National Land Agency of the Bangka Belitung Islands Province Number: 52/Cultivation Right/BPN.19/2017 dated February 1st, 2017 regarding the Grantingof Cultivation Rights in the Name of the Gunung Pelawan Lestari Limited Liability Companyfor a Plot of Land in Bangka Regency, which is the basis for its issuance of Cultivation Right certificate with right number: 00090/Bangka Field Identification Number: 00035 that the areaof land issued by the Cultivation Right by the BPN Regional Office of the Bangka Belitung Islands Province is 1,990,000 M^2 so it is related to the authority of the Regional Office, this isin accordance with the provisions of Article 8 PerkaBPN Number 2 of 2013 as referred to above.

At the time the GPL company's Cultivation Rights certificate was issued, the Laws and Regulations referred to the Minister of Agrarian Affairs/Head of the National Land Agency Regulation (PMNA) Number 9 of 1999 concerning Procedures for Granting and Cancelling State Land Rights and Management Rights. Jo. Regulation Number 7 of 2007 ofthe Head of the National Land Agency of the Republic of Indonesia concerning the Land Inspection Committee. PMNA Number 9 of 1999, Article 17 to Article 31, governs the granting of Cultivation Rights. The issuance of the GPL company cultivation right certificate, related to the terms of the application for cultivation rights, is in accordance with the provisions contained in PMNA Number 9 of 1999, paragraph 1, part three such as legal subjects that can be granted an Cultivation Right, an Cultivation Right application that mustbe submitted in writing up to the Cultivation Right application requirements that the applicantmust attach.

The issuance of Cultivation Right Certificate by GPL Company is also appropriate, as evidenced by the Procedures for Granting Cultivation Rights in paragraph 2 of PMNA Number 9 of 1999. "Application for Cultivation Rights is submitted to the Minister through the Head of the Regional Office, with a copy to the Head of the Land Office whose working area covers the location of the land," states Article 20 paragraph (1) of the PMNA Number 9of 1999. Then, according to Article 21 of the PMNA Number 9 of 1999, "after receiving theapplication for Cultivation Rights as referred to in Article 20 paragraph (1), the Head of the Regional Office: 1.

examines and examines the completeness of juridical data and physical data. 2. fill out the form using the sample in Appendix 14. 3. notify the applicant of the fees required to complete the application in accordance with the provisions of the applicable lawsand regulations. 4. direct the Heads of Related Fields to complete the required materials.

Article 22 paragraph (1), (3), (5) and (6), (7) and Article 23 paragraph (3) PMNA Number 9 of 1999 states that:

The Regional Office's Head examines the completeness and correctness of the juridical and physical data of the application for Cultivation Rights referred to in Article 20 paragraph (1)and determines whether the application can be granted or processed further in accordance with the provisions of the applicable laws and regulations. Then, direct the Land ExaminationCommittee B or the designated officer to conduct a land inspection. According to Appendix15, the results of the Land Inspection Committee B's land inspection are included in the Minutes of Land Inspection, and the results of the appointed officer's land inspection are included in the Minutes of Land Inspection (Constatering Rappot) as long as the juridical andphysical data are sufficient to make a decision, according to Attachment 16. If the decision to grant Cultivation Right has been delegated to the Head of the Regional Office as referred to in Article 3 paragraph (2), the decision will be made after considering the opinion of the Land Inspection Committee B or the appointed Officer as referred to in paragraph (5), the Regional Office's Head shall issue a decision granting the right to conduct business on land.In the event that the decision to grant Cultivation Rights is not delegated to the Head of the Regional Office as specified in Article 3 paragraph (2), the Head of the Regional Office concerned submits the application file to the Minister, along with his opinions and considerations, as shown in Appendix 12. Following consideration of the Head's opinions and considerations The Minister shall issue a decision granting a Cultivation Right to the requested land or a decision refusing the request, accompanied by the reasons for the refusal,for the regional office referred to in Article 22 paragraph (7).

Considering the process of the issuance of GPL Company as described above in Article 22 paragraph (1), (3), (5) and (6), (7) and Article 23 paragraph (3) PMNA Number 9of 1999, it can be stated that the Cultivation Right of GPL Company complies with these laws and regulations. The results of the Land Inspection Committee B's land inspection are set forth in the Minutes of Land Inspection referred to above in the Minutes of the Land Inspection Committee "B" Number 32/RPT"B"/BPN/ PROV.KEP.BABEL/19/2017 dated 27 January 2017. The decision to grant Cultivation Right is contained in the Decree of the Head of the Regional

Office of the National Land Agency of the Bangka Belitung Islands Province Number: 52/Cultivation Right/BPN.19/2017 dated 01 February 2017, which was made in accordance with the provisions of the Laws and Regulations in effect at that time.

Based on Article 8 paragraph (1) of Government Regulations Number 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Rights, Cultivation Right is granted for a maximum period of thirty-five years and can be extended for a maximum period of twenty-five years. Referring to the decision to grant Cultivation Right, which is the foundation for the issuance of Cultivation Right certificate, it can be seen that the grant of Cultivation Right to GPL Company is for 35 (thirty-five) years. This is, of course, in accordance with the mandate of the provisions of the Cultivation Right laws and regulations.

As previously stated, the principle of security is intended to show that land registrationmust be carried out in a thorough and careful in order for the results to guarantee legal certainty in accordance with the purpose of land registration itself.[9] To determine whether land registration should be done thoroughly and carefully so that the results provide legal certainty for interested parties, the land registration itself must be done in accordance with the relevant laws and regulations. Based on the process of issuing the GPL company cultivation right certificate with regard to the provisions of the Laws and Regulations related to the Cultivation Right as described above, it is possible to conclude that the issuance of theCultivation Right certificate of GPL Company above the IUP of TIMAH Company has complied with the security principle that can guarantee legal certainty.

Land Examination Committee B, also known as "Committee B," is a committee tasked with conducting examinations, research, and studies of physical and juridical data in the field and at the office for settlement purposes, in accordance with Article 1 point 2 of theRegulation of the Head of the National Land Agency of the Republic of Indonesia (PerkaBPN) Number 7 of 2007 concerning the Land Inspection Committee. Committee B was formed and established by the Decree of the Head of Regional Office based on Article 13 of PerkaBPN Number 7 of 2007. According to Article 14 paragraph (1) of PerkaBPN Number 7 of 2007 which states that:

Committee B has the following duties:

1) examining the completeness of application files for Cultivation Rights

[9] Urip Santoso, *Registration And Transfer Of Land Rights (First Edition)*, Kencana Prenada Media Group: Jakarta, 2010, p.17

granting,extension, and renewal;
2) carrying out research and studies on land status, land history, and the legal relationshipbetween the requested land and the applicant, and other interest;
3) conducting research and a physical survey of the requested land to determine ownership,land use/condition, and the boundaries of the requested land area;
4) determining whether the land's use is compatible with the regional development plan;
5) holding a hearing based on physical and juridical data derived from a field inspection, aswell as other supporting data;
6) providing opinions and considerations on the application, as detailed in the Minutes ofLand Inspection Committee B, which are signed by all Committee B members.

According to Article 12 of PerkaBPN Number 7 of 2007, the membership ofCommittee B consists of the Head of the Regional Office, as Chairperson concurrently Member, Head of the Survey, Measurement, and Mapping Division at the Regional Office, as a Member, Head of the Land Rights and Land Registration Division at the Regional Office,as a Member, Head of the Land Management and Administration Division at the Regional Office, as a Member, Head of the Land Control and Community Empowerment Division at the Regional Office, as a Member, the Regent/City Official who is related and concerned, asa Member, the Head of the relevant Land Office, as Member, Head of Service/Agency/Officeof the relevant Provincial Technical Agency, as Member, Head of Provincial Forestry Service/Agency/Office, Head of Section for Determination of Individual Land Rights or Head of Section for Determination of Legal Entity Land Rights or Head of Section for Government Land Arrangement at the Regional Office, as a non-member Secretary.

Referring to the Minutes of the Land Inspection Committee "B" Number 32/RPT"B"/BPN/PROV.KEP.BABEL/19/2017 dated January 27, 2017, which was one of the bases for the decision to grant the Cultivation Right referred, it can be seen that the Minutes Land Inspection "B" referred to were made in accordance with the provisions of the Legislation as described above, both in terms of the committee's composition, duties, and formation. According to PerkaBPN Number 7 of 2007, the Minutes of the Land Inspection Committee "B" include representatives from the Ministry of Energy and Mineral Resources. As a result, the presence of representatives from the Ministry of Energy and Mineral Resources, who

are also taken into account in the aforementioned Decision to grant Cultivation Right reflects "thorough" action and "careful" in carrying out land registration as required by the security principle. As a result, the formation of the "B" Land Inspection Committee and its responsibilities, as well as the issuance of GPL Cultivation Rights based on the decision to grant cultivation right as referred above has been implemented in accordance with applicable laws and regulations and has met the security principle.

In addition, based on the agreement above, the agreement letter resulted in a Statement of Recommendation Number: 011/Tbk/S.PERNY-0000/2014-SI dated 25 August2014, in which this recommendation letter, along with the agreement letter, which required by BPN is included as part of consideration in the Decree of the Head of the Regional Officeof the National Land Agency of the Bangka Belitung Island Number: 52/HGU/BPN.19/2017dated 01 February 2017 which became the basis for the issuance of the cultivation right GPL Company. This is also a representation of the words "careful" and "thorough" found in the security principle, which ensures legal certainty. As a state agency that issues certificates of land rights, BPN must ensure that there are no disputing parties when issuing certificates. As a result, internalizing the letter of recommendation as one of the considerations in the decision to grant Cultivation Right reflects the principle of security.

When Cultivation Right and IUP are compared, it is clear that the Cultivation Right of GPL Company shows legal ownership of land rights that are protected by law. Furthermore, the Cultivation Right certificate was created in accordance with the mandate ofthe aforementioned laws and regulations. IUP of TIMAH Company only has a permit. Beforeengaging in mining activities, IUP holders are required by the MINERBA Law and related regulations to settle their land rights obligations in advance. Even the Minerba Law states inArticle 134 paragraph (1) that the right to WIUP, WPR, or WIUPK does not include rights to land on the earth's surface. As a result, it is possible to conclude that IUP is not proof of ownership of land rights. This means that after the issuance of the Cultivation Rightcertificate of GPL Company, the overlap that occurs between permits (IUP of TIMAH Company) and Land Rights Ownership (Cultivation Right of GPL Company) is not an overlap between ownership of Land Rights, and thus BPN has complied with the principle ofsecurity, which guarantees legal certainty, in issuing Cultivation Right certificates with title number

00090/Bangka because there were no other land rights previously.

b. Implications of Issuing Cultivation Right Certificates above IUP for Cultivation Right and IUP Holders

An IUP, or Mining Business Permit, is a permit to conduct a Mining Business. An IUP is issued by the Ministry as referred to Article 9 paragraph (1) Government Regulation 96 of 2021 Jo. Article 37 of Regulation of the Ministry of Energy and Mineral Resource Number 7 of 2020 or by the Governor based on Article 37 of Regulation of the Ministry of Energy and Mineral Resource Number 7 of 2020. IUP is granted to the IUP holder after an area is stated as WIUP as stated in Article 9 paragraph (5) of Government Regulation Number96 of 2021 regarding the Implementation of Mineral and Coal Mining Business Activities, "IUP as referred to in paragraph (1) is granted following the acquisition of a WIUP".

The MINERBA Law requires related legal subjects who wish to conduct mining activities to ensure that the mining activities they intend to conduct are included in the MiningBusiness Permit Area (WIUP). The WIUP issued by the Ministry refers to MINERBA Law Article 17 paragraph (1), which states: "The area and boundaries of the Metal Mineral WIUPand Coal WIUP are determined by the Minister after being determined by the governor," which is reaffirmed in Article 4 of Minister of Energy and Mineral Resources Regulation Number 7 Year 2020 concerning Procedures for Granting Areas, Permits, and Reporting on Mineral and Coal Mining Business Activities, which states: "The Minister shall determine the Metal Mineral WIUP and/or Coal WIUP within the Metal Mineral WUP and/or Coal WUP after fulfilling the criteria in accordance with the provisions of the Regulations Legislation."

IUP is granted to business entities, cooperatives, and individual companies, who are referred to as IUP holders, under the provisions of Article 38 of the Minerba Law. Rights toWIUP, WPR, or WIUPK do not include rights to land on the earth's surface, according to Article 134 paragraph (1) of the Minerba Law. Indeed, according to Article 135 of the MINERBA Law, "Holders of IUP Exploration or IUPK Exploration may only carry out theiractivities with the approval of the holder of land rights." As a result, the IUP holder must settle all obligations owed to land rights holders before engaging in mining activities. This isin a line with the order in Article 39 letter i of the Minerba Law, which states: "IUP as referredto in Article 36 paragraph (1) shall contain at least: i. obligation to settle land claims.

According to Government Regulation Number 23 of 2010 concerning theImplementation of Mineral and Coal Mining Business Activities, Article 100 paragraphs (1)and (2) state that "the holder of a Production Operation IUP or Production Operation IUPK who will carry out production operation activities is obliged to settle part or all of the land rights in the WIUP or WIUPK with the holders of land rights in accordance with the regulation." Based on a mutual agreement, the owner of Production Operation IUP or Production Operation IUPK is required to compensate the landowner."

This is in a line with the provisions of current laws and regulations, namely Article 175 paragraph (1) Government Regulations Number 96 of 2021, which states that "Holders of IUP, IUPK, or SIPB before carrying out Mining Business activities are required to settle land rights in WIUP or WIUPK with land rights holders in accordance with the provisions ofthe Legislation" and paragraphs (3) and (4), which state that "IUP, IUPK, or SIPB holders incompleting land rights, the compensation referred to in paragraph (3) is calculated based on the area of land and/or objects on the land that will be cultivated for Mining Business activities by IUP, IUPK, or SIPB holders and does not take the potential value of the commodity Coal into account." Then, according to Article 176 Government Regulations Number 96 of 2021, land rights are settled through deliberation between IUP, IUPK, or SIPBholders and holders of land rights as defined in Article 175 paragraph (1).

Although TIMAH Company is an IUP holder, they cannot conduct mining activitiesunless they have completed their obligations to land rights, as stated in Article 136 paragraph (1) and (2) of the MINERBA Law, which states that: "IUP or IUPK holders must settle of land rights with rights holders in accordance with the provisions of Laws and Regulations and settlement of land rights as referred to in paragraph (1) which can be carried out in stages according to the need for land by IUP or IUPK holders. Therefore, it is possible to concludethat IUP does not constitute proof of land rights ownership. This is clear from what the relevant regulations state, both explicitly and implicitly, as described above.

A certificate is a written or printed statement or sign that can be used to prove ownership or the existence of an incident, whereas a land certificate is proof of ownership of land rights issued by an authorized agency. According to Article 3 of Government Regulations Number 24 of 1997, one of the goals of land registration is to provide legal protection and legal

certainty to holders of rights over a parcel of land, apartment units, and other registered rights so that they can easily prove their ownership of the land in question. To provide legal certainty, a certificate of land rights is issued to the right holder.[10]

In The Government Regulation Number 24 of 1997 it does not stipulate what a certificate means, but only implicitly stipulates in Article 32 Government Regulations Number 24 of 1997, namely: a certificate is a land rights proof certificate that is registered asa strong means of proof regarding physical data and juridical data contained therein, as longas the physical data and juridical data are in accordance with the data contained in the measurement certificate and land title book concerned. Cultivation Rights are one of the landrights mentioned in Article 16 paragraph (1) of the UUPA.

Cultivation Rights provisions are governed by Article 16 paragraph (1) letter b of theUUPA, and are further governed by Articles 28 to 34 of the UUPA. Additional provisions governing Cultivation Rights are found in Articles 2 to 18 of Government Regulations Number 40 of 1996. Cultivation Rights are defined in Article 28 paragraph (1) of the UUPAas the right of agricultural, fishery, or livestock companies to cultivate land directly controlledby the state within a time period specified in Article 29 of the UUPA. Government Regulations No. 40 of 1996 differs slightly in this case because the regulation includes a provision for plantation companies. Cultivation rights granted only in public land. However,it is not impossible that the land is not derived from state land. If the Cultivation Right were derived from private land, the right holder must relinquish or transfer the land rights in exchange for compensation. If the land is derived from a forest area, the status of the land must be issued as a forest area.

Cultivation rights are obtained through the applicant's application to the Head of theNational Land Agency of the Republic of Indonesia for the grant of Cultivation Right. Cultivation rights are granted with the minister's or an appointed official's decision to grantrights. Cultivation Rights must be registered at the land office in the land book. The right to cultivate has been granted as a result of this registration. It is also emphasized in the elucidation of Article 7 Government Regulations Number 40 of 1996 that before being registered, the Cultivation Rights have not yet occurred and the status is still state land.

[10] Urip Santoso,*Registration And Transfer Of Land Rights (First Edition)*, Kencana Prenada Media Group: Jakarta, 2010, p. 259

"Application for Cultivation Rights shall be submitted in writing," states Article 18 paragraph (1) of the Minister of Agrarian Affairs/Head of the National Land AgencyRegulation Number 9 of 1999. "Application for Cultivation Rights, as referred to in paragraph (1) of PMNA Number 9 of 1999, contains: 2. Land information, including legal and physical data: a. A deed of forest area release, a deed of former customary land release, or other evidence of land acquisition can serve as the basis for their control. According to Government Regulations Number 40 of 1996, "granting Cultivation Rights over land that hasbeen controlled with certain rights in accordance with applicable regulations, implementationof the provisions of Cultivation Rights can only be carried out after the relinquishment of these rights has been completed in accordance with the procedures stipulated in the applied Laws and Regulations."

According to Article 4 paragraph (4) Government Regulations No. 40 of 1996, "In the event that on the land to be granted with the Cultivation Right there are plants and/or buildings belonging to other parties whose existence is based on legal rights, the owners of the buildings and plants are given compensation losses that are borne by the new CultivationRights holders." The applicant must first control the land for which the Cultivation Right is requested, according to the preceding Articles. The legal and physical data referred to are defined in Government Regulations 24 of 1997, Article 1 numbers 6 and 8, as follows: "Physical data is information about the location, boundaries, and area of registered land parcels and apartment units, as well as the existence of buildings or parts of buildings on it, whereas juridical data is information about the legal status of registered land parcels and apartment units, the holders of their rights, the rights of other parties, and other burdens."

Article 7 of Government Regulations Number 40 of 1996 states that "The granting ofCultivation Right as referred to in Article 6 paragraph (1) must be registered in the land bookat the Land Office". The Cultivation Right exists because it is recorded in the land book by the Land Office in accordance with the provisions of the applicable laws and regulations. The holder of the Cultivation Right is given a certificate of land rights as proof of rights." Basedon the above-mentioned Cultivation Right provisions, it can be concluded that GPL Company, as the owner of land rights in the form of Cultivation Right, is the only legal subjectand obtains legal guarantees for land objects that overlap with IUP of TIMAH Company

Although IUP of TIMAH Company was born before the Cultivation

Right of GPL Company, IUP is not proof of ownership of land rights. In addition to what has already beenstated about the Cultivation Right, this is emphasized in the Minerba Law and Regulations, which predate the issuance of the IUP and state that the IUP does not cover land rights. As a result of the method of systematic interpretation known in this legal discipline, IUP is not proof of ownership of land rights. Even after obtaining an IUP, the IUP holder is required tosettle land rights obligations to land rights holders with compensation for damages in accordance with the mandate of the Minerba Legislation as described above. This will makeit clear that an IUP is not proof of ownership of land rights.

As long as the Cultivation Right issued by PT. GPL is in accordance with the procedures stated in the first discussion, as well as considering that there were no previous land rights in the area of the Cultivation Right application by GPL Company to BPN that overlaps with the IUP of TIMAH Company, so there is no overlapping ownership between the IUP of TIMAH Company and the Cultivation Right of GPL Company. As a result, GPLCompany is the only legal subject that has a legal relationship with the land included in IUParea of TIMAH Company.

In the context of the cases described above, the debate over IUP and Cultivation Rightis indeed irrelevant. IUP is only a permit, and it is even ordered by the MINERBA Law in order for IUP holders to complete their land rights obligations, whereas Cultivation Right isthe legal ownership of land rights to land rights that are protected by law to receive legal guarantees. As a result, the discussion about IUP and Cultivation Right cannot be clashed andlacks elements of conflict or dispute because they have no relevance to each other.

Concerning the agreement between TIMAH Company, the holder of IUP, and GPL Company, the holder of land rights, which essentially contains so that both parties can walk side by side carrying out their business activities on land objects that overlap between IUP and land rights belonging to each party as detailed in the first discussion, namely the civil relations of the two parties and has nothing to do with and has no legal relationship with theauthority of BPN regarding the issuance of a Certificate of Cultivation Rights. The agreementis set to expire on July 31, 2023, but if GPL Company does not wish to renegotiate or extendthe agreement with TIMAH Company, this is a civil domain between TIMAH Company and GPL Company.

The personality principle is incorporated into the agreement between

TIMAH Company and GPL Company. The personality principle is enshrined in Civil Code Article 1340, which states that "an agreement only applies between the parties who make it." As a result of the agreement reached between TIMAH Company and GPL Company binds only both parties and is a civil domain between them, so it has no causality to BPN or the issuance of Cultivation Right certificates. As a result, the legal implications of the existence of Cultivation right of GPL Company that the cultivation right are valid land rights to GPL Company as an Cultivation Right holder who does not share land ownership rights with TIMAH Company as an IUP.

3. Conclusion

Firstly, the principle of security is intended to show that land registration must be done thoroughly and carefully so that the results can provide legal certainty in accordance with the purpose of land registration itself. As a result, the registration of the land itself must, of course, be done in accordance with the applicable laws and regulations. Issuance of GPL Company cultivation right certificate considering that it was done in accordance with the provisions of the Land Laws and Regulations, and also considering that IUP is notownership of land rights, so there are no land rights as referred to in Article 16 paragraph (1) of the UUPA that were born earlier on the land in question, and taking into account theagreement between TIMAH Company as the holder of IUP and GPL Company as the holderof land rights as part of the decision to grant Cultivation Right, it can be concluded that the issuance of Cultivation Right of GPL Company meets the secure principle.

Secondly, the legal implications of issuing a Cultivation Right Certificate above the IUP to GPL Company as the land rights holder and TIMAH Company as an IUP holder arethat the Cultivation Right of GPL Company receives legal protection and does not have elements of overlapping ownership of land rights with the IUP of TIMAH Company. Cultivation Right is a foundation for legal rights and can provide legal certainty as describedin land laws and regulations, whereas IUP is only a permit and not proof of land ownershipas described in MINERBA laws and regulations, so the distinction between the two is meaningless in the context of land rights. The agreement letter was created so that the mining activities by TIMAH Company and the plantation activities by GPL Company couldcoexist, namely the private or civil domains of both parties, and there is no legal relationship with the National Land Agency as per the personality principle contained in Article 1340 ofthe Civil Code, so it has no

causality to BPN or the issuance of Cultivation Right certificates.

References

Books

Gautanam, Sudargo. 1995, *Indonesian Business Law,* Bandung: Citra Aditya Bakti.

Hajati, Sri dan Agus Sekarmadji. 2011, *Buku Ajar Politik Hukum Pertanahan*, Surabaya, Airlangga University Press.

Harsono, Boedi. 2005, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang- Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Djambatan.

Khairandy, Ridwan. 2013, *Hukum Kontrak Indonesia*, Yogyakarta: FH UII Press. Marzuki, Peter Mahmud. 2011, *Penelitian Hukum,* Jakarta : Kencana Prenada Media Group.

Santoso, Urip. 2010, *Pendaftaran Dan Peralihan Hak Atas Tanah (Cetakan Kesatu),* Jakarta: Kencana Prenada Media Group.

Soekanto, Soerjono dan Sri Mamudji. 2006, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada.

Urip Santoso, 2010, *Pendaftaran dan Peralihan Hak atas Tanah,* Jakarta: Kencana Prenamedia Grup.

_____. 2012, *Hukum Agraria Kajian Komprehensif*, Jakarta: Kencana.

Legislation

Constitution of Republic of Indonesia Code of Civil Law

Law Number 5 of 1960 concerning Agrarian Fundamentals Regulation Law Number 4 of 2009 concerning Mineral and Coal Mining

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining

Government Regulation Number 24 of 1997 concerning Land Registration Government Regulation Number 22 of 2010 concerning Mining Areas

Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities

Government Regulation 96 of 2021 concerning Implementation of Mineral and Coal Mining Business Activities

Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for the Granting and Cancellation of State Land Rights and Management Rights

Regulation of the Minister of Energy and Mineral Resources Number 7 of 2020 concerning Procedures for Granting Areas, Permits, and Reporting on Mineral and Coal Mining Business Activities

Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 7 of 2007 concerning the Land Inspection Committee

Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 concerning Delegation of Authority for Granting Land Rights and Land Registration Activities