

# LEGAL IMPLICATION OF PLANTATION CONCESSIONS DURING THE DUTCH COLONIALISM ON THE CONTEMPORARY LAND GOVERNANCE AND CIVIL RIGHTS

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## ABSTRACT

*This paper would like to present the position of Deli Sultanate in East Sumatera in the context of covenant law. This study was presented by using historical approach in discussing this problem, supported by library research using qualitative analysis. The problem that emerged during this colonial period which is of interest to further investigation is that although the Sultan of Deli was a party to the government, but in a plantation concession agreement with the private sector of the estate at the end of the 19th century, he posed as an individual, and the inter-party relationship took place within civil relations. This is because the position of Sultan Deli under the Dutch colonial government. The nature of this concession is a rent in which the sultanate provides land for plantations and plantation companies as the leasing agreement rented for a period of 99 years at the most. The plantation concession is a civil agreement between the Deli Sultan as representing Deli indigenous customary communities with Dutch plantation companies. As a result, there are several clauses of agreement involving customary land and the inhabitants therein. Nevertheless the results of the study show that the Sultan of Deli has a wide right and authority to form the structure of Deli Sultanate and represents the interest for / on behalf of deli customary law community. Moreover, the findings show that after the term of the agreement expires, the concession land does not return to Sultan Deli but is taken over by the state through nationalization policy by Indonesian government.*

**Keywords:** Plantation Concessions, Sultan Deli, Lease Agreements, Historical Study.

## INTRODUCTION

Understanding of the concession in relation to this paper, quoted from Waal's (1950) statement which mentions that plantation concession is an individual right, which is based on an agreement between the Sultan and the concessionaire. Ontologically the legality of this plantation concession is subject to the law of covenant. The existence of the concession contains a legal figure of the agreement that leads to legal action (rechthandeling). In the example of the Pabatoe Concession Act between Sultan Deli and Van Duisburg (Rotterdam Deli Maatchappij) which was published in Bij Besluit van den Resident der Ooskust van Sumatra on August 19, 1912 No. 569 under the title Acte van Concessie begins with the word "overeenkomst" followed by the parties. This indicates that, concessie is a civil engagement. Overeenkomst meaningful agreement, engagement in Dutch using verbintennis terminology or in English is the agreement. The agreement in Dutch uses the term overeenkomst terminology, while in English is contract. The terminology clearly illustrates the legal relationship of a concession as a private or civil law relationship. Rights and obligations set forth in the clauses of the articles proves that the

substance of the deed of concession is a private legal relationship. To comply with the principle of publicity, the deed of concession requires the approval of the Dutch Government Resident, but it does not undermine the essential character of the treaty law that is the legal relationship between the Sultan Deli and the Dutch plantation businessmen. The declarative element in the form of approval from Resident of East Sumatra as the government at that time was nothing more than knowing, seeing or noting that there were parties who were binding on the agreement.

The covenant is a series of words containing promises or abilities that are spoken or written. Article 1313 of the Civil Code states an agreement is an act that occurs between one person or more binds himself to one or more persons. The definition of the agreement contained in the above provisions is incomplete and too broad. It was not complete because what was formulated was only a one-sided agreement. Agreements made by both parties, binding as law for the parties making it (Badruzaman, 1977; Susilowati, 2018). Each party shall respect and implement all clauses containing the rights and obligations set forth in the treaty text (in this case the deed of concession).

The deed of concession on land in the Deli Sultanate area was born out of the agreement of Sultan Deli and his great men (Orang-Orang Besar) who acted on behalf of Deli's customary law community with plantation entrepreneurs originally represented by Jacobus Nienhuys, an employee of a tobacco company at Rotterdams Tobacco' P Firm van de Arend in Surabaya. The first concession was accepted by Nienhuys in 1864. The area of East Sumatra in the colonial period was the territory belonging to the Malay kings located on the north of the Kampar River and in the south of the Tamiang River with an area of about 92,000 km<sup>2</sup>. This area is often referred to as Residentie van Oostkust Soematra which covers the regions of the Deli Serdang Sultanate, Asahan, Langkat and Simalungun-Tanah Karo. With the exception of the Batak-controlled Simalungun-Karo region, the rest of East Sumatra is the power of the Malay sultans and was inhabited by ethnic Malays with their land rights in accordance with Malay customs. There is the word "*customary Malay*", meaning there is a law. If there is a law, then there are people. If there are people (as the subject of rights) then there is the object of rights, namely customary land. The status of customary land is not owned by individuals but in groups called customary law communities (Kalo & Boezemer, 2004)

## HISTORY OF DELI SULTANATE PLANTATION CONCESSION AGREEMENT

There are two political agreements made during the Kingdom of Sultan Ma'mun Al Rashid (Sultan of IX) (Sinar, 2006) on October 30, 1883 and August 8, 1907, which contained the following:

1. **Van verband:** where it is mentioned that the Sultan is willing to implement the agreement between the Dutch and the Deli Sultanate, as well as his successor. That the Sultan would be obedient and loyal to the Dutch King/Governor-General of the Dutch East Indies and implement the government in Deli according to customs and regulations; willing to advance the country and the people; willing to comply with the unclear or unlisted terms of addition of the certificate. This deed was signed by the Dutch government officials and the great men of Deli as witnesses.
2. **Bevestiging van certificate:** In this deed the Dutch East Indies government (Governor-General) recognized the Sultan as King of Deli and mentioned in the Dutch Indies Ordinance. Important contents include the provisions that Deli is subdued and becomes part of the Dutch East Indies and Deli Sultanate consists of:
  1. Main domain of Sultan territory.
  2. Urung XII Kota Hampan Perak headed Datuk Hampan Perak Setia Diraja.

3. Urung Serbanyaman-Sunggal headed by Datuk Sunggal Sri Indera Pahlawan.
  4. Urung Sukapiring-Kampung Baru is headed by Datuk Sukapiring Sri Indera Asmara.
  5. Urung Senembah-Petumbak is headed by Kejeruan Senembah Deli. As for the Heads of Urung XII Countries; Serbanyaman-Sunggal, Sukapiring and Petumbak are the Big Man/Vizir of Deli Country.
  6. Negeri Percut headed by the King of the King's Cock War.
  7. The Bedagai Country House is headed by Prince Nara Kelana Raja Bedagai.
  8. Padang State Administration is headed by Maharaja Negeri Padang.
3. Country Deli by the Dutch leadership is submitted to the Sultan Deli as long as he executes the contents of the agreement well.
  4. The Sultanate Government of Deli is only within the territory of that country alone. The Sultan Deli shall not surrender this country to any other State or enter into agreements with other States, or receive/dispatch missions from/to other States.
  5. People of the Deli Sultanate shall be all indigenous peoples who do not belong to the regions and shall not be governed directly by the Governor, or derivatives of immigrants who have been intermingled with the indigenous population so that they are considered to be related by marriage (semenda) except:
    1. People who work for the Governor.
    2. People who live within the Governor's etabilisemen. If there is a dispute concerning whether one enters the citizen of Gubernemen or Kaula Swapraja Deli, it will be decided by the Resident.
  6. Citizens of the Governor shall be all persons excluded from the Sultanate of Deli subjects and shall be subordinate to the judiciary and the judges of the Governor, the Sultan and his Major shall be obliged to carry out a request from the representatives of the Governor to arrest the citizens of the Governor who are suspected of committing a crime and a violation, and submit them to the representatives of the Governor.

The contents of Politiek Contract in 1907 was always added by the Dutch so that the more binding and lessen the rights of the Sultan, especially if the Sultan dies, his successor must ask for legalization of the Netherlands.

The plantation concession agreement in the Deli Sultanate, which is part of the East Sumatra region, is historically inseparable from the agreement (the London Treaty of 1824) between the Government of England and the Dutch Government to end various disputes between the two countries. The dispute settlement effort had begun in 1818, the length of the negotiations was due to the lack of genuine interest of the parties, if asked by the British, the Dutch would surely take time as well. The contents of this agreement include:

1. The rulers of both sides will not make regional expansion in the East waters without prior permission from their respective governments in Europe.
2. The Netherlands surrendered all its territory in the Indian subcontinent.
3. To the Dutch all the British regions in Sumatra, accompanied by a promise from the British will not open an office on the island and will not sign any agreement with the Indonesian King on the island (Mahadi, 1978).

The existence of this London Treaty does not necessarily make the Netherlands immediately come to the region of Sumatra because it turns out that the Netherlands is still concentrated in its colonies of Java and Madura. Only in 1857, the Riau Resident went to Siak to approach the Kingdom for the preparation of the agreement. This action was carried out because of the reexamination efforts undertaken by the Kingdom of Aceh against the territory of the

kingdoms in East Sumatra from Tamiang to Asahan so that secretly escape from the influence of the Kingdom of Siak. Such a reality of course makes the Dutch surprised because if left unchecked will be able to make the Netherlands lost the opportunity to control the territory of East Sumatra.

The authority to enter into agreements with kings in Indonesia is undertaken by the Governor-General under the Constitution of the Dutch Government called Regerings-Reglement or abbreviated as R.R. Article 44 R.R. 1854 states: The Governor-General declares war on and signs peace and other covenants with the kings of Indonesia by observing the instructions of the King. The Governor General binds covenants with kings and nations of Indonesia.

On February 1, 1858, the Government of the Netherlands East Indies signed a political agreement with the Siak Sri Indrapura Kingdom which was experiencing civil war for the power of the weak Sultan. This Dutch aid as is commonly done in various regions of Indonesia is not free but always with the aim of expanding power. In this political agreement the Kingdom of Siak finally willing to subdue itself under the authority of the Dutch Government by submitting its territory to be ruled into this submission is also included so-called Siak colonies from Tamiang to Pasir Putih Rokah.

At the momentum of the agreement on February 1, 1958 the Dutch side was represented by the former Resident of Riau, Frederik Nicolas Nienwenhuyzen and Resident Riau, Joan Hendrik Tobias. Both act on behalf of the Governor-General in accordance with the power of attorney dated 29 November 1857. From the side of Siak Kingdom acts:

1. Sultan Siak (King Ismail).
2. Yang Dipertuan Muda Negeri Siak Tengku Putra.
3. Orang Kaya Sri Maharaja.
4. Orang Kaya Sri Indra Muda.
5. Datoe Maharaja Koeta Wangela.
6. Orang Kaya Laksamana Mahadi.

This asserted that this Siak treaty is an important milestone in which there is a grasp of Dutch rule over the territory of East Sumatra such as Bilah, Panei, and Langkat which is the territory of Siak sovereignty. The grip of Dutch rule which is bound by the deed of concession was what will cause a dispute caused by the unclear boundaries of land that became the object of concession as well as the occurrence of various violations of the rights of indigenous and tribal peoples who have previously inhabited and cultivated customary land with various rules usually prevail of communal land rights. Pelzer (1978) alleged that there would be a conflict related to granting concessions by the Deli Sultanate to the Dutch Plantation Company because, in practice, even though the deed is mentioned, the concession holders are obliged to respect the village land, the fields and gardens owned by local communities such as nutmeg and pepper, the area of land that should be set aside by the planters as a respect and recognition of local agrarian rights. Pelzer (1978) reveals:

*"As to the Agrarian rights of the concession of the concessionaires of the land of the land, fields and orchards in particular nutmeg and pepper gardens, be respected by the planters. But nothing was said as to the amount of land that must be spared."*

Pelzer's (1978) statement is also corroborated by Anderson (1826), a researcher from England who traveled to East Sumatra on orders from the United Kingdom, who reported that the land in this region is very high value. Potential fertility and mineral wealth contained therein may lead to conflict to fight over it. However Anderson (1826) did not explain things related to the legal aspects and rules. Anderson elaborates that:

*“The soil I see is a very special precipitate, and vegetable plants thrive. Deli, Langkat and Bulu China, these lands are abundant, such as a black mold, in some locations, depth reaches 8 to 10 feet, the top position in the form of a thick clay and sand and gravel bottom. But getting to Asahan, the land is not so good. If you continue into the mountainous terrain, red and sandy soils will be found, mixed with granite grains and crushed fruit seeds.”*

Various sources mentioned that the first concession agreement was made between the Kingdom Deli with Nienhuys in 1863. But history finds a different fact. A few years before Nienhuys obtained a concession in 1863, it was recorded and considered the first plantation concession in the Dutch East Indies given to foreign entrepreneurs in the Swapraja region is a plantation concession agreement obtained by J.W. Neys of the king and the great men of Limboto (Menado Residency) through Besluit No. 17 dated May 14, 1860 for a period of 15 years for the planting of chocolate. The terms of the concession received by Neys refer to the terms of the concession received by Neys referring to the rules contained in the Conflict of Excellence No. 1856. 64. A number of key conditions which may be later compared to the 1877 Concession Agreement and beyond show the similarities between the deeds (Ratna, 1992).

There is interest in granting this concession, Sultan Deli (Mahmud Perkasa Alam) provide concessions (in practice, ground rent) of 4000 bow for 20 years, where the first 5 years are exempt from payment of rent and then pay rent of 200 Dutch guilders per bow. The model of this concession agreement in the early stages has not been standardized. This may be due to the unpopularity of the model of the concession agreement among businessmen and even the Netherlands Indies Government has not regulated it yet. The standard modeling of the new concession agreement was made in 1877 after 14 years since Nienhuys acquired land concessions for plantations.

The standardization of the concession model was enacted through a decree of the Government of the Dutch Indies No. 4 dated January 28, 1877) (Bijblad No. 3381, amended and supplemented in 1878 Bijblad, 3381 of 1884 Bijblad 4350 and 1892 Bijblad 4770, 5889, 7735 and 9155. In Article 1 of Besluit it is stated that the consent required under the terms of the treaty applicable to the Siak Sri Indrapura Kingdom from the Government on the agreement in the Kingdom, is not granted unless the agreement is in accordance with the model attached to this Decree In the East Coast of Sumatra the authority is submitted to consent to the Plantation Agreement made on this basis and on behalf of the government as referred to above.

Although seen in the 1877 concession certificate in the model of the agreement has not been perfect, in the concession has been affirmed that when in the concession area there are villages or lands that are still used by the people then the holder of the concession should not control the right. The granting of concessions by Sultan Deli not only to Nienhuys, but also to other Dutch plantation companies such as de Rotterdam and so on until the end of Dutch rule in 1945. Actually the plantation is an area that belongs to the Sultanate of Deli Malay who ruled in this country. At that time the Dutch onderneming entrepreneur got the rights to the land based on the Concession Deed from the Deli Sultanate. On top of the land use concessions for the

plantation area, Mahadi (1974) notes that at least two kinds of obligations must be fulfilled by the foreign plantation to the people, namely:

### **First**

The obligation of the plantation to provide farming land for the people.

### **Second**

The obligation of the plantation to hand over the tobacco planted land to the people for the cultivation of rice at the bera period (bera period is the time period of land not to be planted with tobacco from the last harvest until the next cultivation period, usually with a 7 year rotation).

In the course of the latter, the second obligation becomes very complex and brings disputes not only between the plantation and the people but also the fellow citizens who feel they have the right to the land (later called the street soil), which harms many parties. A seven-year bera period is a long and excellent opportunity to grow crops for local people (who later called themselves "*People of the Watchers*"). For years the people of the watchman live from cultivating the soil. The life of the peoples of the watchers-as if it could no longer be separated by the existence of street ground. What is meant by street soil is the land where tobacco plants are just picked, on which the farmers are allowed to plant seasonal crops of rice and corn, and after the crops are harvested no longer allowed to be cultivated and cultivated because it needs to be forested until it is the turn to re-planted with tobacco (rotation system).

According to Article 1 of the Decree of the Dutch Government (Gouvernements Besluit) no. 2 dated 3 November 1892 (Bijblaad 4470) Head of Regional Government (Hoofd van Bawestelijk Bestuur/Resident) who has self-governing territory granted power on behalf of the Dutch East Indies government authorized the granting of concession rights by the King to foreigners. To the kings shall be granted the right to grant permission to foreigners to cultivate land in their territory with a concession right for a maximum period of 75 years and may be extended for another 50 years when the concession period ends there is still hard (teak or rubber) crops planted by a concessionaire.

Maximum land area is 3500 hectares of land and if necessary land concessions can still be added, provided that if the land in concession associated with the concession of another person then the total area not more than 3500 hectares. Those entitled to obtain concessions are Dutch (Nederlandsche Onderdoan) or other trade associations based in the Netherlands or the Netherlands East Indies (Indonesia). Especially for the East Sumatra region with a letter of the Government (Regeringsmissive) dated 18 June 1894, Bijblaad 4954, granting concession rights may also be made to other foreigners (not just to the Dutch). To the Foreign Orient (Vreemde Oosterlingen), may also be granted concession rights. However, if the regional authorities object, due to political considerations or broad causes, then the decision is taken over by the Central Government. Other regulations on granting concession rights also determine among other things (Tauchid, 2011):

1. Giving concessions shall not be contrary to political agreements between the Dutch East Indies and Swapraja governments granting the concession rights.
2. Concession land is for agriculture and forest only as requested.

3. Mines within concession areas do not belong to concessionaire rights. The concessionaire shall permit the mining employee to enter into a mine investigation within the concession.
4. Villagers already existing within the concession area must remain recognized, as long as the villagers want it. If the inhabitants there can no longer obtain land outside the concession for their agricultural purposes, the concessionaire must provide land for the supply of the population. The number of villagers is determined every 5 years. Land occupied by the people and done, should not be taken by onderneming except with the permission of Hoofd van Gewestelijk Bestuur even if the residents there do not object to the takeover of the land.

The village according to Article 28 of 1892 deed is woonplaats der Inlansche bevolking (people's residence). In this sense it does not include tijdelijke verblijfplaatsen (temporary shelters such as lading huizen (pondok ladang) (Mahadi, 1978). Article 28 above confirms that the main characteristic of a village (kampongi) is a fixed people's dwelling place and not a temporary residence. In general, villages can be defined as community groups in which there is only one ethnic or ethnic group living in a region in groups with simple lifestyles and rules of rules are followed participatively.

### **Civil Rights in the Concession Agreement**

It is explicitly seen that the rules made in relation to the concession agreement between the king/sultan and the foreign plantation companies indicate that the civil rights over the communal land of Deli customary law community remain in the hands of Sultan Deli as indigenous stakeholder and Sultan Deli as the authority to make a concession agreement. It also provides for the protection of the rights (people) of the people who inhabit or attempt in the concession land area before the land is consested. Implicitly, however, the Sultan as a concessionaire has surrendered the fate of his people to the concessionaire. The unclear boundaries of the land being consonant and the absence of consistent and continuous supervision of the empire resulted in the potential for conflict between the people and future concessions. Compared with the Sambas concession agreement. The arrangement of villagers is done as follows (Tauchid, 2011):

1. Cultured crops belonging to the people in the concession area may be taken with appropriate losses. If the population can no longer obtain land outside the concession area until the breadth is all 21 bow for each family, the concessionaire must provide the vast land up to meet the 21 bow.
2. Fruit trees and trees for beehives within the concession area should not be felled by a concessionary if not with the consent of the population. If the trees are in the village area of the population, must get permission from the Head of the Local Area (Hoofd van Plaastelijk Bestuur).
3. Around the village the population should be provided with a 200 m wide land for the expansion of the village, up to at least 3 times the extent of the existing village. The land should not be transferred, except with the consent of the residents and Hoofd van Gewestelijk Bestuur. But for the inevitable onderneming interest such as for waterways, for roads and so on, may be exempt from the above provisions.
4. New villages should not be re-established within the concession area, except with the permission of the head of the region, keeping in mind the onderneming interests and the residents who will stay. This is to provide the possibility for onderneming to organize settlements for workers working on their onderneming.
5. People are entitled to pick fruits and forest products in concession areas that have not been cultivated. Similarly, to pick up firewood and wood tools, provided only for their own purposes. For this it must first get approval from the concessionaire.

6. If the government wants a place for government purposes, it can take the land of the concession, provided that it is not a garden plantation, or other onderneming buildings and housing. This land acquisition by providing compensation and reduction of "cijns" because of the land acquisition.
7. The concessionaire shall not interfere with the grave land and in addition shall provide the land for the expansion of the grave, without obtaining a reduction of the cijns from the stock of the grave.

In the Sambas treaty, it is mentioned that The sultan's people who are in the concession area or working on a concessionaire, and their obligations to the king (herendienst and so on) are governed by the agreement. They could pay money to the sultan instead of working for the king. Although different regions, the substance of the clauses contained in this concession agreement generally has similarities. This shows the characteristics of the community and its customary culture is not much different. On June 11, 1870 and refined on November 7, 1874, Deli Cultuur Maatschappij Plantation Company obtained a land concession, in Deli. This deed of concession is then known as Mabar-Deli Toewa Contract with its territory adjacent to Marindal plantation, Patumbak, Gunung Rintih and Two River.

The following is cited in the substance of the articles contained in the deed of Deli Toewa Mabar in 1898 as follows:

#### **Article 4**

1. Within the boundaries of the concession land used by the people for their own crops or for shifting cultivation, it remains for the cultivator.
2. In the case of tenants outside the concession boundaries unable to obtain the above objectives, the opinion of the local Governor is unable to obtain sufficient land, the concessionaire shall allow the lands situated within the boundaries of the land for their needs ie for each family is provided as wide as 4 hectares.
3. The large number of families for this, every 5 years will be determined again.
4. The concessionaire is not permitted to use land which has been occupied by the population, not even justified without the consent of the tenants, except with the consent/permission of the Regional Government/Governor.
5. This permission is also required for each submission of land for the plant to move to persons not included in the population of the son's earth.

#### **Article 5**

1. Fruit trees contained in the concession land include all aged trees, on which the property applies proprietary rights, ie spices, dadaps and the like-as well as trees where there is a cage/a honeycomb, may not be felled by the concessionaire, except with the permission of those who have obtained the right and subsequently been given compensation for their benefit (the residents); as long as the trees are located on the land occupied/worked on by the population, it is required/required also the permission of the Resident Government.
2. Deli concessionaires are required to pay compensation to them (the people who are entitled to the trees, as well as for the losses made by the employees of the concessionaire, the compensation is stipulated by the Regional Head/Tuan Resident.

#### **Article 6**

Within the boundaries of the concession land, within which mine works belong to local residents or other persons, the concessionaire is not authorized to the lands used therein and



includes irrigation works, except after obtaining permission from the entitled and after they have been compensated for their benefit.

### **Article 7**

1. Around the villages where lands, houses and so on, have been used by concessionaires (Deli C. Mij.), Not in accordance with paragraph 4 of Article 4 shall be given a minimum of 200 m of minimum land with minimum area which is equal to approximately three times the actual village, with everything above it as a village land, except the lands of the reserves mentioned in paragraphs 1 and 2 above.
2. The land of this village is immovable/sold, pawned, any treaty contrary to it is not applicable, only with the consent of the population or the Governor may be granted privileges to the water regulation (Weterleiding), the roads are for the benefit of the concessionaire (Deli C.Mij.).

### **Article 8**

Residents are at all times free to collect natural materials in concessionary concession land, such as firewood, timber for housing, but the timber is for their own use only with prior notice to the concessionaire.

### **Article 9**

1. The concessionaire, except in the case of the provisions of Articles 4 and 7 shall grant the latter lands he has planted on lands which in the year to come he does not wish to cultivate, shall give a piece of land to the people within limits boundary of concession land for once planting, ie rice or corn or both, at the same time, and it is not justified by the concessionaires to ask for any retribution.
2. The section referred to in paragraph 1 above shall not amount to half of the available land.
3. The lands in question, by the rights holder (the people) shall not be transferred/given to another person who excludes the indigenous population, except with the permission of the Head of the Regional Government/Governor.

### **Article 10**

1. Graves or places deemed crucial/haunted by the inhabitants within the concession boundary shall be respected by the concessionaire/Deli C. Mij.
2. If, in the opinion of the Governor/Registrar, the extension of the cemetery shall be established, the concessionaire shall give the place/land for it, as long as the land/premises is not used/required for housing, factories, plants, without compensation or tax citation.

### **Article 11**

1. Throughout all rivers and trenches, in the dry season all timber/tree plants 50 m left and right of the river and ditches should not be felled, as well as around water sources in the dry season at a distance of 100 meters, except with permission from the head of the local government.
2. Concessionaires are required to permit the cutting of trees in the concession line which the Governor considers to be in the public interest.

To further emphasize that the land that became the object of the concession was the land of indigenous peoples, Mahadi & Edy (2011) found it in Pendecten III, 36/7 which mentions the non-processing lands belonging to the entire population (de maleische staat) represented by the king. This sentence clearly gives the impression that the king is not the owner of the land, he acts

on behalf of the people, as a representative of the people. As owners, the people not only acquire existing rights before the concession certificate is made and these rights must be retained, but after the concession is made, the concessionaire is liable to the following obligations:

1. The obligation to provide farming land for the people.
2. The obligation to hand over the tobacco planted land to the people for the cultivation of rice in the fallow period, which in the future is popular with the term street soil and is destined for locals known as the opponents (opgezettene).

### **Legal Analysis of Plantation Concession Agreement**

Of the various concession agreements made and therein contain the rights and obligations of the parties, when linked with civil law, the concession agreement may be qualified as a lease agreement as defined in Articles 1548 to Article 1600 of the Civil Code. Rent of rent includes a type of agreement named (Benoemde overeenkomst) or a special agreement that is a contract that has its own name, meaning that the agreements are regulated and named by the legislator based on the most common type. Special agreementsweare provided in Chapter V up to Chapter XVIII of the Civil Code (Badruzaman, 2001).

Article 1548 of the Civil Code states that a lease is an agreement by which one party binds to give the enjoyment of an item to another party for a certain period of time, with the payment of a price which the latter undertakes. One can rent various types of goods, both fixed and mobile. Characteristics of lease rent explicitly its elements contained in the concession agreement namely:

#### **There are parties who rent**

In this case the Sultan Deli as stakeholders of indigenous people of Deli and the authorities, and in this case the Dutch plantation company or other foreign plantation companies.

#### **Agreement (consensus) of both parties**

The agreement in question is related to the payment of rent and duration of the lease term. In the mode of deed of concession in 1877, Article 5 states *“voor den afgestanen grond zal door den contractan terandere zijd eene jaarliksche pacht worden veldaan van een gulden per bouw. De pacht of huur wordt gerekend terstond na de goed keuring van het contract te zijn ingegaan, met dien verstaande, dat in het cerstejaar de pacht moet worden voloor voor het aantal bouws, dat in ontginning is gebracht, en in elk geval minstens eenvijfde gedeelte dergeheele pachtsom, inhet tweede jaar tweede vijfden, in het derde jaar drie vijfden, in het vierde jaarviervijfden en in het vijfde eninde volgen de jaren de geheele pachtschtat (free translation: for the released land, an annual rent must be paid by the contractor, amounting to one gulden per bouw This rental or bulk money immediately after agreement is made, paid in the sense that in the first year rent must be paid for the amount of bouw to be opened and in any case at least one fifth of the rent, in the second year of two fifth, in the third year by three fifths, in the fourth year by four fifths and the following years s five fifths of all the rent”*.

## **Object lease hire provided to the lessee to be used/enjoyed within a certain period of time**

Hire is an agreement for the temporary use of an item, whether mobile or fixed with the payment of a certain price. In the deed of the concession, Sultan Deli and its Big People granted concession rights to plantation companies excluding all other concessions, to conduct plantation business on proven land on sketches included in this deed and so on (Badrulzaman, 1983). The land of the concession is a forest land (*woeste grond*), this is expressly mentioned in the model of the deed of concession in 1877, Article 1. In the following articles it emphasizes the duration and variety of protection and recognition of the rights of the people (locals) recognition of customary (*ulayat*) rights (*beschikking recht*) (Wicaksono, 2018). Discussion about "*woeste grond*" is then led to a prolonged polemic. The essence of the matter is the position of the sultan and king when surrendering the land as the object of the concession, whether as the owner or as representing the interests of the people over the communal land/communal land under his control. Mahadi described forest soil as a land where no one (including the king) recognized it as his right. Although this description illustrates as if no one owns the land but from further information it can be concluded that the people living in the forest (such as the Swamp in Siak) have customary rights over the forests (Mahadi, 1978). This expression is in line with the opinion of Lekkerkerker (1928) which states, *de regeling van de beschikking over gebruiks rechten op grond toe komst an gemeenschappen* (arrangement and power of the land rests in the hands of law alliance). The king's right does not exist, even if it refers to the model of the 1877 Concession deed. Sultan Siak considers himself the owner and the forests on it, but the existence of the Swamps is also recognized by *ulayatnya* rights by allowing them to do whatever they wish in the forest-the forest. According to the 1877 concession deed, Article 1 mentions that this agreement is made between the Sultan and the people of Siak Sri Indrapoera on one side and the Master on the side etc. According to the explanation of the chapter, the mention of the Sultan and his great men is due to the recognition of the Sultan (Siak) and his Great men that the lands are under their ownership (*dat Sultan en de vijksgrouten de gronden eigener autoriteit uitgevan*) and the assertion that Sultan-sultans in Deli, Langkat and Serdang are considered to be at the lower level who have no right to interfere in matters of land tenure, in contrast to what Hymans van Anrooy proposes that the right the possession of the land is not in the hands of the sultans, but it is in the people who cultivate the land (Anrooys, 1885). Koreman (1901) also states that no matter how different Malay and Batak customs relate to communal lands (over wild lands), *kampong chiefs* (whether small villages or large villages), with their very strong understanding of the plots of land, as owners power over these lands for use or disuse. It appears that from the very beginning, there was an ambiguous assumption over the position of the sultans over their powers over lands categorized as wild land (*woeste grond*). This situation may have been triggered by the Dutch East Indies government's view after the signing of the London treaty in 1824 and the conquest of King Siak in 1858, that the Sultanate of Siak and all its conquests had actually become part of the Dutch territory. Other conditions lie in the territory of doubt over the origin of the ruling Sultan who was regarded as non-locals but originally from Johor (Malaysia) for the assistance of the Minangkabau who lived there (Anrooys, 1885). For the easier to control the lands that will become concessions, the Dutch Colonial Government recognizes the authority of local rulers or by raising its degree of allowing those with low titles to use the title of Sultan as well, so that the Colonial government successfully purchases loyalty from the indigenous officials. According to the first garden gentlemen, the indigenous rulers were actually ordinary

people who were not much different from their Kawulanya (Haar, 1981). At first their power was limited, but then their power over the population and the lower chiefs became even greater. For example, by handing over land to Europeans for long-term use-this is one of the few transactions requiring permission from the local Government-they are grabbing the rights to land they were not allowed to own (Pelzer, 1978). Thus, the longer the land that becomes the object of the concession is wider, so that it can trigger a dispute like the occurrence of Sunggal War (Batak Oorlog) in 1872 and various other conflicts.

### **Liability of the renter (concessionaire) to pay the rent**

According to the 1877 concession deed model, the rent on the concession land, also called *cijns* (*pachtschat*), shall be paid by a conscription by one guilder per *bouw*. Payments begin in the second year of 1/5 of the rent, in the third year of 2/5, the 4th year is 3/5 onwards. The concessionaire will pay in full by the seventh year. Subsequent developments occurred in the model of the deed of the concession after the model of deed of 1877, in which the amount of rent payment was not pegged at the price of one guilder for each *bouw*, but in the agreement can be negotiated by considering the condition of the soil process, if the soil is good and fertile, the *pachtschat* payment may be more than one guilder for one *bouw*, but vice versa if the soil condition is not good as well as various obstacles that may be faced. The concession holder may request a reduction under one guilder per *bouw* as long as it is approved by the Dutch Government.

The clause of the plantation concession agreement above clearly illustrates the civil relationship of the parties (substantively the lease agreement), so that the rights and obligations and legal consequences arising from the breach of the agreement are settled through civil law mechanism. When the time period of the agreement expires should the land of plantation land that becomes the object of the concession is returned to the Sultan Deli as representing Deli customary law community. The issuance of the Law of the Republic of Indonesia Number 86 of 1958 on the Nationalization of Dutch Companies in Indonesia does not necessarily take over the land that became the object of concession because the facts of history prove that the land is not the assets of the Dutch company but the customary law community of Deli. Nationalization is intended to transfer the assets of Dutch companies into Indonesian property so that the acquisition of assets belonging to the customary law community of Deli into state property is a wrong action. Therefore, the Government must immediately return all the land to the Sultan Deli representing the Customary Law Community Deli.

### **CONCLUSION**

The Sultan of Deli has the right and authority (*Beschikkingbevoegdheid*) to enter into an agreement with the Dutch plantation company because the position of the Deli Sultan represents the customary law community deli confirmed by Datuk Four Tribes who have the Ten Territory of Kuta-Hamparan Perak, Serbanyaman-Sunggal, Sukapiring-Kampung Baru and Senembah-Petumbak through Ulun Janji reading ceremony. This inauguration also gives the Sultan Deli a wide right and authority to form the structure of Deli Sultanate and represents the interest for/on behalf of deli customary law community. Based on historical facts, although in the political contract the Deli Sultanate declared subservient to the Dutch East Indies government but the position of the Sultan of Deli on the territory of his power is not necessarily submitted to the

Dutch government. Land tenure in the Deli Sultanate for the benefit of the Dutch plantation company remains with the plantation concession agreement for a concession period of 99 years. Supposedly when the concession period ends then the concession land land back to the Sultan Deli as representing the customary community of Deli. However, after independence, the Government of the Republic of Indonesia Nationalized Dutch Company should the land that became the object of the concession excluding nationalized assets because it is not the assets of Dutch companies but the people of Indonesia itself.

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