
Juridical Analysis Of Controlling Abandoned Land Of The National Land Agency In The Context Of Realizing Community Welfare (Research Study At The Land Agency Of Riau Islands Province)

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ABSTRACT

In order to maintain land quality and improve community welfare, rights holders, management rights holders, and basic holders of land control are expected to protect and maintain their land and not neglect it. The problem of this research is legal regulation, controlling abandoned land, and the legal consequences of controlling abandoned land by the National Land Agency in order to realize community welfare. The results of the research on abandoned land are land rights, land with management rights, and land obtained based on control over land, deliberately not cultivated, not used, not exploited, and/or not maintained which is regulated based on Government Regulation Number 20 of 2021 concerning Controlling Areas and Abandoned Land Controlling Areas and Abandoned Land. Controlling abandoned land by the National Land Agency in order to realize community welfare includes inventory of land indicated to be abandoned, supervision of inventory of land indicated to be abandoned, reporting of the results of the inventory of land indicated to be abandoned, as well as follow-up to the results of the inventory of land indicated to be abandoned; The legal consequence of controlling abandoned land by the National Land Agency in the context of realizing community welfare is for the owner of the rights to abandoned land, namely that the land rights will be canceled and result in the end of the land rights. Efforts to overcome control or ownership of abandoned land are closely related to existing land policies. The application of norms in their implementation is identical to the implementation of rights and obligations. The government should perfect or improve the regulations for controlling and utilizing abandoned land, especially regarding the concept/understanding of abandoned land and the criteria to be further clarified and simplify the mechanism for implementing control, starting with identification work by the task force; provide recommendations for identification results to the Regency/City assessment team, Regional Offices and even to the Minister who will make a determination that a plot of land is abandoned. This is recommended so that there are no differences in perception between officers in the field.

Keywords: National Land Agency and Abandoned Land

INTRODUCTION

The land is the primary capital in development to improve the welfare of Indonesia's people, nation, and state. Therefore, land must be cultivated, utilized, and used for the greatest prosperity of the people. In order to curb abandoned land, Government Regulation Number 20 of 2021 concerning the Curbing of Abandoned Areas and Land and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 20 of 2021 concerning Procedures for Curbing and Utilizing Abandoned Areas and Land have been stipulated.

The problem of abandoned land is crucial regarding the extent and urgency of utilization in the face of the current reality of land tenure inequality in Indonesia. Inequality of land tenure is one of the strategic issues in the land sector; inequality of ownership, control, use, and

utilization of land is characterized by a small number of people controlling most of the land, and conversely, most people only control a small area of land.

The Government of Indonesia, through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), consistently seeks to reduce inequality in land tenure and ownership, one of which is carried out through curbing abandoned land for land titled with Cultivation Rights Title (HGU), Building Rights Title (HGB), and Management Rights that are not utilized or have expired.

Article 2 letter (a) of Presidential Regulation Number 48 of 2020 concerning the Ministry of Agrarian Affairs and Spatial Planning regulates the role of ATR / BPN in controlling abandoned land namely, the Ministry of Agrarian Affairs and Spatial Planning has the function of formulating, determining, and implementing policies in the fields of spatial planning, agrarian / land infrastructure, agrarian / land legal relations, agrarian / land arrangement, land acquisition, controlling space utilization and land tenure, as well as handling agrarian / land issues, space utilization, and land.

RESEARCH METHODS

The approach method used in this research is juridical sociological. The author's research specifications are classified as analytical descriptive research. The types of data in this research are primary data and secondary data. Data collection methods in this study were carried out by field observation through interviews and literature studies. The data obtained from the research results in the form of secondary data are then collected and arranged in an orderly manner to be analyzed. The author in writing this thesis uses qualitative data analysis.

RESULTS AND DISCUSSION

Legal Regulations Regarding Abandoned Land

According to the content of Article 4 paragraph (1) of the UUPA, it is stated: Based on the right to control from the state as referred to in Article 2, various kinds of rights over the surface of the earth, called land, are determined, which can be granted to and owned by persons, either alone or together with other persons and legal entities. The granting of rights over state land is regulated in Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights Jo. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2017 on Amendments to Regulation of the Head of

the National Land Agency Number 2 of 2013 on the Delegation of Authority to Grant Land Rights and Land Registration Activities.

According to the provisions of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2017 on the Amendment to the Regulation of the Head of the National Land Agency Number 2 of 2013 on the Delegation of Authority to Grant Land Rights and Land Registration Activities, the authority to grant land rights individually and collectively is partially delegated to the Head of the Provincial Regional Office of the National Land Agency or the Head of the District/Municipal Land Office.

Indonesian land, i.e., land with Indonesian rights, is almost all unregistered except for agrarisch eigendom land (Staatblaad Year 1873 Number 38), land owned within the cities of the Surakarta Karesidenan (Rijksblad Surakarta Year 1938 Number 14), grant land in eastern Sumatra (Rijksblad Surakarta Year 1938 Number 14).

Indonesian Land Law System

Based on the state's right to control by Article 2 paragraph (1) UUPA, henceforth as the implementation of Article 2 paragraph (2) UUPA, which is re-regulated in Article 4 paragraph (1), it is determined that various land rights can be given to individuals, both individuals and legal entities. The state regulates the existence of various land rights, which are detailed in Article 16 paragraph (1), namely as follows: Ownership rights, Cultivation Rights, Building rights, Use rights, Rental rights; The right to open land, The right to collect forest products; Other rights that are not included in the rights mentioned above will be determined by law as well as temporary rights as mentioned in Article 53 of the UUPA.

Article 21, paragraph (1) UUPA states that only Indonesian citizens can have property rights. Article 30, paragraph (1) states that those who can obtain business use rights are Indonesian citizens and legal entities established according to Indonesian law and domiciled in Indonesia. They are, likewise, building use rights according to Article 36, paragraph (1) UUPA.¹

The provisions of the principle of nationality in the right of use and right of lease for buildings referred to in Articles 42 and 45 of the UUPA read as follows: Those who can have the right of use/right of lease are a. Indonesian citizens b. foreigners domiciled in Indonesia; c. Legal entities established under Indonesian law and domiciled in Indonesia; d. Foreign legal

¹ Bachtiar Effendie, *Kumpulan Tulisan tentang Hukum Tanah, Op, Cit*, hlm 4.

entities with representatives in Indonesia. Foreign legal entities that have representatives in Indonesia.² Thus, foreigners not residents of Indonesia are no longer entitled to land rights with the status of right of use or right of lease.

Understanding and Legal Regulation of Abandoned Land

The latest regulations regarding abandoned land are regulated in Government Regulation Number 20 of 2021 concerning Controlling Abandoned Areas and Land, which was followed up with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 20 of 2021 concerning Procedures for Controlling and Utilizing Abandoned Areas and Land.

Land indicated as abandoned island suspected to be uncultivated, unused, or not utilized by the circumstances or nature and purpose of granting rights or the basis for control over which identification and research have not been carried out. Meanwhile, abandoned land is land that has been granted rights by the state in the form of Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, and Management Rights, or the basis for control over land that is not cultivated, not used, or not utilized according to its condition or nature. Moreover, the purpose of granting rights or the basis for their control. In the explanation of Government Regulation Number 20 of 2021 concerning Controlling Abandoned Areas and Land and the Regulation of the Minister of Agrarian Affairs, it is stated that land that has been controlled and owned, whether there are existing land rights or new ones based on land acquisition in several places, is still in a neglected state.

The object of controlling abandoned land includes land that has been granted rights by the state in the form of Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, and Management Rights, or the basis for control over land that is not cultivated, not used, or not utilized according to the circumstances or the nature and purpose of granting rights or the basis for their control.

Controlling Abandoned Land by the National Land Agency

The National Land Agency is a non-ministerial government agency that has duties in the land sector with work units at the Regional Offices of the National Land Agency in each

² A P Parlindungan, *Berakhirnya Hak-hak atas Tanah menurut Sistem UUPA*, *Op Cit*, hlm 6

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Province, Regency, and City, which carry out registration of land rights and maintain the general register of land registration.

According to Presidential Regulation Number 48 of 2020 concerning the Ministry of Agrarian Affairs and Spatial Planning, the National Land Agency (BPN) is a non-departmental government institution that is under and responsible to the President and is led by the Head of the National Land Agency which has the task of carrying out government duties in the land sector in an integrated manner. National, regional and sectoral. The task of the National Land Agency is to assist the President in managing and developing Land Administration based on Law Number 5 of 1960 and other statutory regulations, which include the regulation, use, control, and ownership of land, determination of land rights, measurement, and registration. Land and other matters related to land matters based on policies determined by the President.³

The function of the Land Office in carrying out tasks is that it is an organ of the National Land Agency in each district and city throughout Indonesia. The Land Office has the task of carrying out some of the duties and functions of the National Land Agency in districts/cities. In carrying out the duties as intended, the Land Office carries out the functions of Preparing plans, programs, budgets, and reporting; Carrying out surveys, measurements, and mapping; Implementation of land rights determination, land registration, and community empowerment; Implementation of land management; Implementation of land acquisition; Implementation of land control and handling of land disputes and cases and; Implementation of providing administrative support to all Land Office organizational units.

According to Murtir Jeddawi, the following conditions must be met in the case of government authority through delegation:⁴

1. Delegations must be definitive, and those giving the delegation (delegates) can no longer use the authority that has been delegated themselves.
2. Delegation must be based on statutory regulations, meaning that delegation is only possible if there are provisions for this in the statutory regulations.
3. Delegation is not to subordinates, meaning delegation is not permitted in employee hierarchical relationships.
4. Obligation to provide information (explanation), meaning that delegates have the right to request an explanation regarding the implementation of this authority.

³ Achmad Ali Chomzah, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Gunung Agung, Jakarta, 2002, hlm 14.

⁴ *Ibid*, hlm75.

5. Policy regulations, meaning that delegates provide instructions or guidance regarding the use of this authority.

Factors Causing Abandoned Land

The factors that cause land abandonment are because the concept of land abandonment accepted by the community is not the same as that contained in Government Regulation 20 of 2021 concerning Controlling Abandoned Areas and Land. To avoid this, regarding Government Regulation Number 20 of 2021 concerning Controlling Abandoned Areas and Land, socialization should be carried out. Based on the facts and findings in the field as well as the results of the discussion and analysis in the previous chapter, the following conclusions can be drawn: Lack of capital or lack of funds so that the rights holders or those who control the land are unable or unable to utilize their land; There is a tendency for controlled land to be used only as savings or investment; There is a land status in dispute over control and a transition process. Control over land that has not been resolved so that the land cannot be used/utilized by the objectives of its rights.

Determination of Abandoned Land

Article 3 of Government Regulation Number 20 of 2021 concerning Controlling Abandoned Areas and Land, Control of abandoned land is an effort to expand the target of Article 33 paragraph 3 of the 1945 Constitution, where land is used to make the best use of government assistance to individuals. Likewise, Article 15 of the UUPA is also ordered to protect land, increase land maturity, and focus on the interests of financially powerless groups.

It is also specifically stated that land which is limited by general authority does not become an abandoned land object as in Article 3 letter b of Government Regulation Number 20 of 2021 concerning Controlling Abandoned Areas and Land, where it has been stated that both people who have been registered as BUMN resources and BUMDs and poor people have been registered. Abandoned land will eventually become state land and return to state control. Furthermore, the state can hand it over to other legal subjects to be processed, utilized, or reused to provide more benefits.

Authority in Controlling Abandoned Land

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Authority comes from "authority," which means the right and power to do something. Authority is the right and power to act, so authority means the power to make/do something. Philips M. Hadjon states that authority is obtained in three (3) ways, namely:⁵

1. Attribution is the authority to make decisions that originate directly from the law in a material sense. From this understanding, authority obtained through attribution by government institutions is genuine authority.
2. Delegation is the handing over of authority to make a besluit by a government official to another party in the sense of a transfer from the person giving the delegation (delegates) to the recipient (delegator).
3. Mandate is a delegation of authority to subordinates in the sense of giving authority to subordinates to make decisions on behalf of the official who gives the mandate, and the responsibility lies with the person giving the mandate, not the responsibility of the mandatary.

The authority to control abandoned land is delegated from the government to the National Land Agency of the Republic of Indonesia. This provision is implied in Government Regulation 20 of 2021 concerning Controlling Abandoned Areas and Land, which states, "The Head carries out the implementation of control of abandoned land and utilization of abandoned land, and the results are reported periodically to the President." In carrying out control over abandoned land, a committee was formed. The membership composition of this committee consists of elements from the National Land Agency and related agencies regulated by the Head.

In Government Regulation Number 20 of 2021 concerning Controlling Abandoned Areas and Land and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 20 of 2021 concerning Procedures for Controlling and Utilizing Abandoned Areas and Land, it is stated: As a consideration in determining abandoned land, taking into account The area of abandoned land relative to land rights/basics of control is grouped based on the following percentages: The entire expanse of land rights/basics of control is abandoned or 100% abandoned; and most are abandoned, with a range of > 25% – < 100% abandoned, and c. a small portion are abandoned, with a range of ≤ 25% abandoned.

⁵ Handjon, Philipus, M. *Perlindungan Hukum Bagi Rakyat Di Indonesia, Peradapan*. Universitas Trisakti. Jakarta, 2007.

Implementation of Abandoned Land Control

The stages of land inventory activities indicated as abandoned can be explained as follows: The executor of Land Inventory Indicated as Abandoned

- a. The Head of the Regency/City Land Office is responsible for carrying out inventory activities of land indicated to be abandoned in the working area.
- b. The Head of the Regency/City Land Office forms an Inventory Team consisting of the head of the Dispute Control and Handling Section at the Regency/City Land Office, the Coordinator of land control substance at the Regency/City Land Office, and Implementing officers from other sections at the Regency/City Land Office.
- c. The formation of the Inventory Team is determined through the Decree of the Head of the Regency/City Land Office.

An inventory of land indicated as abandoned is carried out based on reports or information sourced from Holders of Cultivation Rights, Building Use Rights, Use Rights (legal entities or individuals), or Management Rights; Ministries/institutions; Local government; and Society.

Legal Consequences for Owners of Abandoned Land Rights

Land disputes in court have increased in the last two decades, and weak land laws have led to the emergence of land mafias. To overcome them, it is necessary to make the function of laws and regulations regarding land more effective.⁶ Legal uncertainty arises because operational, legal regulations in the land sector are unable to support their implementation due to both vertical and horizontal dis-synchronization in these legal regulations despite human resources in this case, officers at the local Land Office, the public/legal entities have consistently and consistently supported the existence of these laws and regulations.

The rights of legal subjects over a plot of land with evidence in the form of a certificate must be protected, considering that a certificate of land rights is written evidence made by an authorized Public Official. Therefore, according to Article 164 HIR and Article 1866 of the Civil Code, authentic evidence has perfect evidentiary power. Article 32 ayat (2) Government Regulation Number 24 of 1997 stipulates that a certificate is a proof of rights valid as a vital means of proof.

A land certificate is a formal document containing juridical and physical data used as evidence. It means proof for a person or legal entity (private or public) regarding a plot of land

⁶ Irawan Soerodjo, *Kepastian Hukum Pendaftaran Tanah*, (Yogyakarta : Arloka, 2003), Hal 175

controlled or owned with a specific land right. The term "certificate" or certificate (ing), certificate/certificate (wrong), is a sign of a statement or statement issued or issued by a particular official and institution/institution for a specific purpose. According to Boedi Harsono, a (land) certificate is a letter of proof of rights issued by the government in the context of carrying out land registration or is proof that a person or legal entity has land rights over a particular plot of land. Land disputes in court have increased in the last two decades, and weak land laws have led to the emergence of land mafias. To overcome them, it is necessary to make the function of laws and regulations regarding land more effective.⁷

1. The meaning of a land certificate, in its juridical construction, is a formal document that is used as a sign and juridical instrument to prove ownership rights to land issued by BPN RI (National Land Agency of the Republic of Indonesia), a state institution/institution appointed and authorized by the state to issue it. A certificate as a sign and proof of land ownership rights is a legal product issued by BPNRI that contains physical and juridical data. The legal construction of land title certificates and their evidentiary strength can be observed in several statutory provisions. In UUPA Article 19, paragraphs 1 and 2, it is stated:
2. To ensure legal certainty, land registration is carried out by the government throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations;
3. The registration referred to in paragraph 1 of this Article includes Measuring, mapping, and bookkeeping of land; Registration of land rights and transfer of these rights; and Providing letters of proof of title, which act as solid evidence;

CONCLUSION

1. Abandoned land is land with rights, land with management rights, and land obtained based on control over land, deliberately not cultivated, not used, not exploited, and not maintained as regulated based on Government Regulation Number 20 of 2021 concerning Controlling Areas and Abandoned Land Controlling Abandoned Areas and Land, and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 20 of 2021 concerning Procedures for Controlling and Utilizing Abandoned Areas and Land
2. Control of abandoned land by the National Land Agency in order to realize community

⁷ Boedi Harsono, *Op. Cit.* hal. 286

welfare, including inventory of land indicated to be abandoned, supervision of inventory of land indicated to be abandoned, reporting of the results of the inventory of land indicated to be abandoned, as well as follow-up to the results of the inventory of land indicated to be abandoned;

3. The legal consequences of controlling abandoned land by the National Land Agency in the context of realizing community welfare, namely for the owner of abandoned land, namely that the land rights will be canceled and result in the end of the land rights. Efforts to overcome control or ownership of abandoned land are closely related to existing land policies. The application of norms in their implementation is identical to the implementation of rights and obligations.

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