



Legal Consequences for Abandoned Land Based on Indonesian Law

Ade Tiffany Pasha¹; Fransiscus Xaverius Sumarja²

¹ Civil Servant in Ministry of Agrarian Affairs and Spatial Planning, National Land Agency, Indonesia

² Universitas Lampung, Indonesia

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Abstract

Abandoned land is a complex problem and often has significant legal consequences. This article aims to find out the legal consequences of abandoned land according to Indonesian law. Abandoned land can be a source of problems such as waste of resources, ownership conflicts, and increased crime. On the other hand, abandoned land also has the potential to be developed into a productive asset if managed well. It is hoped that the results of this analysis will provide a better understanding of the complexity of abandoned land problems and provide a basis for formulating more effective policies in handling them. By understanding the legal impact on abandoned land, authorities can take more appropriate steps to encourage more efficient and sustainable land use. The results of this research are that the legal consequence of land being designated as abandoned land is that the legal relationship between the subject holding the land rights and the land object is broken, then the land is re-controlled by the state.

Keywords: *Abandoned; Land; Consequence*

Introduction

Based on Government Regulation Number 36 of 1998 concerning Control and Utilization of Abandoned Land, what is meant by abandoned land is land abandoned by land rights holders, Management Rights holders, or parties who have obtained basic control over the land but have not yet obtained the land rights in accordance with current regulations. In the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as Law The Foundation of the Republic of Indonesia) Article 33 (3) "Earth and water and natural riches its contents are controlled by the state and used for the greatest prosperity of the people." Land and natural resources must be used for the greatest prosperity of the people, so that The nation must strive to provide maximum benefits for all Indonesian people. Control of land by the state does not mean ownership, but as the ruler of the land, the state only provides regulations regarding the rights to land that can be granted, such as its designation, use and maintenance as well as regulations regarding actions and legal relations that can be carried out on the land.¹

Article 6 of the Basic Agrarian Law (UUPA) states that "all land rights have a social function." Based on this principle, if the land is used solely for personal gain, or if not used, it will be detrimental to

¹ Putri Aleydia Ardiana, "Akibat Hukum Penguasaan Tanah Terlantar Terhadap Proses Penguasaan Hak Atas Tanah (Studi di Desa Jatiguwi Kecamatan Sumberpucung Kabupaten Malang)," *Dinamika* 27, no. 12 (2021): 1712–26.

the community, so land use planning must be adjusted to the situation and rights to provide benefits to the welfare of society. For proper use of land optimally, the government issued Government Regulation no. 11 of 2010 concerning Management and Utilization of Abandoned Land. Avoidance, management and use of transferred land is an action aimed at ensuring that land can be used in accordance with the method and purpose of granting it right. Therefore, land abandonment must be prevented and regulated to reduce or eliminate the bad effects. Abandoned land regulated in UUPA shows that the state does not justify this action, with the aim of obtaining land within the territory of the Republic of Indonesia serves the interests of its owners and society as a whole.²

According to article 27 letter a number 3 of Law Number 5 of 1960 concerning the Basic Agrarian Principles Regulations, emphasizes that property rights are extinguished if the land fell to the state because it was neglected or derelict. The rapid increase in population and increasing development are faced with problems related to land use and land function, of course legal regulation and protection is also needed for the rights attached to the land on which the building stands, or a spatial plan for the use and allocation of land, either because the rights holder does not feel the need to use the land or the rights holder does not have sufficient funds to carry out development or use the land due to other reasons.³

In 2021 there will be around 120,000 hectares of abandoned land in Indonesia, and apart from that the ATR/BPN ministry also has a stock of abandoned land from its database of around 950,000 hectares, and the most abandoned land is on the island of Java.⁴ If the existence of abandoned land is not handled with attention, this will in turn disrupt the course of development, considering that land supplies are increasingly limited and the need for land for development is increasing. However, the problem with the difficulty of realizing the solution to the problem of abandoned land to date is that the indicative criteria for abandoned land which can be used as a measure that a piece of land has been abandoned have not been clearly defined. In the explanation of Article 27 of the UUPA it only states that land is abandoned if it is deliberately not used in accordance with its condition or the nature and purpose of its rights and other problems of abandoned land regarding Government Regulation Number 36 of 1998 concerning Land Control, namely the abandonment of abandoned land by BPN which so far has only been able to inventory and identify, because there are no rules that can decide the law between the owner and the land he controls.⁵

Based on the explanation above, this research aims to discuss the legal consequences of abandoned land based on Indonesian national law. The procedure for collecting data is obtained directly, namely data that obtained from existing information or facts and indirectly through Documentary materials in the form of statutory regulations, literature books as well scientific books in the field of law, especially those relating to property rights land, loss of ownership of land and abandoned land.

Discussion

In every land law there are regulations regarding various land control rights. Likewise, the UUPA stipulates the level/hierarchy of land control rights in material land law, namely:

1. Nation Rights;
2. The right to control from the State;
3. Customary law community customary rights;
4. Individual or individual rights.

² Ni Nyoman Adi Astiti dan Irna Wulandari, "Akibat Hukum Terhadap Penelantaran Tanah Hak Guna Bangunan," *Jurnal Ilmu Hukum Tambun Bungai* 5, no. 2 (2020): 800–817.

³ Mira Novana Ardani, "Pemanfaatan tanah Hak Guna Usaha guna mencegah tanah menjadi terlantar," *Gema Keadilan* 8, no. 1 (2021): 63–79.

⁴ https://sumut.bpk.go.id/wp-content/uploads/2021/08/CB_Juni-1_Mila_120-Hektar-tanah-terlantar_20210729164619.pdf.

⁵ Muhammad Alif Ridho Raviarda, "Akibat Hukum Terhadap Tanah Terlantar Di Tinjau Dari Peraturan Pemerintah Nomor 20 Tahun 2021 Tentang Penertiban Kawasan Dan Tanah Terlantar," *Dinamika* 29, no. 2 (2023): 7600–7618.

The definition of Abandoned Land is contained in the Explanation to Article 27 of the UUPA, which confirms that "Land is abandoned if it is deliberately not used in accordance with its conditions or the nature and purpose of its rights". However, since the promulgation of the UUPA, the articles regarding abandoned land cannot immediately be implemented, because instructions for implementing the article above have not been issued, as a result the prohibition on land abandonment is ineffective, so that acts of land abandonment are increasingly widespread and uncontrolled.⁶

Agrarian law that applies to earth, water and space is customary law as long as it does not conflict with national and state interests, which is based on national unity, with Indonesian socialism and with the regulations contained in this law and with statutory regulations. others, as well as by paying attention to elements that rely on religious law. This is stated in Article 5 of the UUPA. Customary law is used as the basis because this law is adhered to by the majority of the Indonesian people so that Customary Law has a special position in the formation of Agrarian Law. Paying attention to the provisions of this article, it is therefore necessary to know the boundaries of abandoned land according to Customary Law.⁷

According to Customary Law, "abandoned land" refers more to the physical condition of land that is no longer productive and unoccupied (abandoned by the right holder). Only legally the position is not clear. Because it is not stated who has the authority to determine whether a particular piece of land is abandoned. If you pay attention to the conclusions based on the opinions of researchers, it is stated that "returns to customary rights or indigenous peoples". Usually the person who has the right to declare abandoned land is the head of the traditional community.⁸

Based on a study of the various meanings of abandoned land according to Customary Law, it can be concluded that what is meant by abandoned land is land that has been cleared, worked on by the owner/cultivator until 1 or 2 harvests, then abandoned by the owner for a certain time until it becomes forest again. Juridically, this land returns to its customary rights. So the elements of land called abandoned according to Customary Law are:⁹

- a. Cultivators once cleared customary land;
- b. Cultivators work/cultivate up to 1 or 2 harvests;
- c. Cultivators leave at a certain time so that it becomes a forest again;
- d. The land again belongs to the customary law community.

In Article 5 of the UUPA, apart from Agrarian Law being based on Customary Law, it must also pay attention to elements that rely on Religious Law. According to Islamic law, abandoned land in Islam is known as dead land or *ihya al-mawat*. *Al-Mawat* etymologically means the dead or the opposite of life. *Al-mawat* means something that has no spirit or land that is uninhabited or no one uses it. *Al-Mawat* means something that has no spirit and uninhabited land or means something that does not have a spirit, it also means land that is not owned and not used. In Nataij al-Afkar's book, dead land is land that is not used because there is no water, and it is difficult to use it, it is not owned, or there is ownership of the land, but the owner is unknown and far from the village.¹⁰

⁶ Aghniya Nisya Andini dan Atik Winanti, "AKIBAT HUKUM HILANGNYA HAK MILIK ATAS TANAH YANG DITELANTARKAN (Legal Due To Loss Of Ownership Rights To Abandoned Land)," vol. 2, 2020, 539–51.

⁷ Gusti Kadek Dwi Ananta Wijayadi dan Ni Nyoman Mariadi, "AKIBAT HUKUM TERHADAP STATUS TANAH HAK GUNA BANGUNAN YANG DITELANTARKAN OLEH PEMILIKNYA BERDASARKAN PASAL 35 PERATURAN PEMERINTAH NOMOR 40 TAHUN 1996," *Kertha Widya* 8, no. 2 (2021): 61–75.

⁸ Akramin Akramin, Agus Riwanto, dan Rahayu Subekti, "Perlindungan Hukum terhadap Pemegang Hak Atas Tanah Terlantar di Wilayah Bekas Konflik," 2022.

⁹ Liani Sari, "AKIBAT HUKUM TERHADAP PEMILIK HAK ATAS TANAH YANG TANAHNYA DITERLANTARKAN," *Legal Pluralism: Journal of Law Science* 7, no. 2 (2017): 190–203.

¹⁰ Supriyanto Supriyanto, "Kriteria Tanah Terlantar Dalam Peraturan Perundangan Indonesia," *Jurnal Dinamika Hukum* 10, no. 1 (2010): 51–59.

Based on the definition of al-mawat put forward by the fuqaha above, the criteria for land that is classified as abandoned land according to Islamic law are: ¹¹

- a. Land that is not owned by a person or land that does not have ownership rights over it, whether owned by Muslims or non-Muslims.
- b. Uncultivated land. Land that is not cultivated can be proven by signs on the land such as fences, cultivation marks and other signs commonly used by local people.
- c. Land far outside the village.

Furthermore, based on the UUPA, there are several principles that need to be considered in land abandonment issues. It is stated in Article 6 of the UUPA that all land rights have a social function. This means that the use of land must be adapted to the circumstances and the nature of the rights so that it is beneficial both for the welfare and happiness of those who own it and also for the benefit of society and the state. For this reason, any land rights owned by a person/legal entity cannot be justified if the land is used or not used solely for their personal interests, let alone to the detriment of the public interest.¹² The utilization or use of land by individuals/legal entities is actually to achieve the welfare of the people. In connection with this, it is stipulated in Article 15 of the UUPA that: Maintaining land, including increasing its fertility and preventing damage to it, is the obligation of every person, legal entity or agency that has a legal relationship with that land, by paying attention to the parties involved economically weak.¹³

Furthermore, the provisions regarding abandoned land in Articles 27, 34 and 40 of the UUPA with the same editorial state that Ownership Rights, HGU and HGB can be removed because they are abandoned. Land is abandoned if it is deliberately not used in accordance with its conditions or the nature and purpose of its rights. Explanation of Article 27 UUPA). Thus, these rights are abolished due to law, namely failure to fulfill an obligation or violation of a prohibition. In the case of land abandonment, it appears that the rights holder/subject of the rights is deliberately not using it in accordance with the purpose and nature of their rights.

In Article 1 paragraph (5) of Government Regulation No. 36 of 1998, it is stated that abandoned land is land abandoned by land rights holders, management rights holders or parties who have obtained basic control over land, but have not yet obtained land rights. in accordance with the provisions of applicable laws and regulations. This provision has actually also been stipulated in UUPA Articles 27, 34 and 40 UUPA, namely that Freehold Rights, HGU, HGB can be declared as abandoned land and become state land if the land is intentionally not used by the right holder in accordance with its condition or nature. and the purpose of its rights or not being maintained properly.

In every case of land, the position of the people is always weak. A number of cases show that people usually do not have legal documents such as certificates. People claim land based only on historical facts. If even with legal documents such as certificates, sometimes you cannot prove legal ownership of the land, especially if you only rely on historical aspects, of course it will be much more difficult to get recognition. In connection with legal protection for owners of rights to abandoned land, it is necessary to clarify the criteria for abandoned land, so that it is clear which land is considered abandoned land, which will ultimately provide legal certainty to its owners.¹⁴

¹¹ Supriyanto.

¹² Dayat Limbong, "Tanah Negara, Tanah Terlantar Dan Penertibannya," *Jurnal Mercatoria* 10, no. 1 (2017): 1–9.

¹³ Wijayadi dan Mariadi, "AKIBAT HUKUM TERHADAP STATUS TANAH HAK GUNA BANGUNAN YANG DITELANTARKAN OLEH PEMILIKNYA BERDASARKAN PASAL 35 PERATURAN PEMERINTAH NOMOR 40 TAHUN 1996."

¹⁴ Raviarda, "Akibat Hukum Terhadap Tanah Terlantar Di Tinjau Dari Peraturan Pemerintah Nomor 20 Tahun 2021 Tentang Penertiban Kawasan Dan Tanah Terlantar."

The criteria for abandoned land can be found by systematizing the elements contained in abandoned land, then arranging them in the structure of national land law. The elements that exist in abandoned land are:

1. The existence of an owner or holder of rights to the land (subject);
2. The existence of land rights that are being cultivated/or not (object);
3. There is land that has been identified as having become forest again or whose fertility has not been maintained;
4. There is a certain period of time where the land becomes unproductive;
5. There is an act of intentionally not using the land;
6. Land status returns to customary rights or to the State.

By knowing the essential elements for the occurrence of abandoned land, the criteria or measurements that can be used to determine whether a plot of land is abandoned is by re-explaining it by interpreting the existing elements, with a focus on the purpose of granting land rights. So if from the physical condition it appears that the land is unkempt or unmaintained, that means it is not in accordance with the purpose for which the rights were granted. So the criteria for abandoned land are:

1. There must be an owner/holder of rights to the land (subject);
2. There must be land rights (HM, HGU, HGB, etc.) that are not well maintained so that the quality of the soil fertility decreases;
3. There must be a certain time period;
4. There must be an act of intentionally not using the land in accordance with the circumstances or the nature and purpose of the rights.

Next, the legal consequence of land being designated as abandoned land is that there is a termination of the legal relationship between the subject holding the land rights and the land object, then the land is re-controlled by the state. The Head of BPN will determine the Decree on Determining Abandoned Land based on the recommendation of the Head of the Regional Office. The decision to determine abandoned land by the Head of BPN affects land that has been cultivated/utilized/used.¹⁵

The holder of land rights whose land is designated as abandoned land is obliged to vacate the land from objects on it. These provisions are regulated in Article 23 paragraph (1) Perka BPN No.4/2010 in conjunction with Perka BPN No.9/2011. However, if the Rights Holder of the object does not carry out its obligations, then the object no longer belongs to him and will automatically be directly controlled by the state. Formerly abandoned state land is utilized for the benefit of society and the state through:

- 1) Agrarian Reform;
- 2) State strategic program; and
- 3) Other country reserves.

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, it is authentic evidence which has perfect evidentiary power. In Article 32 paragraph (2) Government Regulation Number 24 of 1997 it is clearly stipulated that a certificate is a proof of rights which is valid as a strong means of proof.¹⁶

¹⁵ Supriyanto, "Kriteria Tanah Terlantar Dalam Peraturan Perundangan Indonesia."

¹⁶ Amiratul Fatimah, "KAJIAN HUKUM PENERTIBAN TANAH TERLANTAR MENURUT PERATURAN PEMERINTAH NOMOR 20 TAHUN 2021 TENTANG PENERTIBAN TANAH TERLANTAR," *Jurnal Notarius* 2, no. 1 (2023).

A land certificate is a formal document containing juridical data and physical data which is used as evidence and means of proof for a person or legal entity (private or public) regarding a plot of land that is controlled or owned with a certain land right. The term "certificate" or certificate (ing), *certificaat / certifikaat* (bld), is a sign of a statement or statement issued or published by an official. Legal subject rights over a plot of land with evidence in the form of a certificate must be protected considering the certificate of rights to land is written evidence made by an authorized Public Official. Therefore, according to Article 164 HIR and Article 1866 of the Civil Code, it is authentic evidence that has perfect evidentiary power. In Article 32 *ayat* (2) Government Regulation Number 24 of 1997 it is clearly stipulated that a certificate is a proof of rights which is valid as a strong means of proof.¹⁷

In article 9 paragraph (2) and paragraph (3) PP no. 11 of 2010 concerning the Control and Utilization of Abandoned Land also explains that land that will be designated as abandoned land contains a stipulation for the abolition of land rights, as well as severing legal relations and is confirmed as land directly controlled by the state.

Then the abandoned land is based on the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 4 of 2010 concerning Procedures for Controlling Abandoned Land through a series of stages as follows:

Stage 1: Inventory of land rights or basis of control over land indicated as abandoned,

Stage 2: Identification and Research based on Articles 4 to Article 7 of Government Regulation 11 of 2010 concerning Control and Utilization of Abandoned Land,

Stage 3: Warning to Land Rights Holders based on Article 8 of Government Regulation Number 11 of 2010, Concerning Control and Utilization of Abandoned Land and

Stage 4: Determination of Abandoned Land which essentially states that the allocation for control, ownership, use and utilization of former abandoned land is utilized for the benefit of society and the State through Agrarian Reform and the State Strategic Program.

Controlling abandoned land also refers to Government Regulation Number 11 of 2010, but in reality the redistribution of abandoned land as a form of utilization of abandoned land cannot be fully carried out. In reality, of course, this land is in a position of unclear control, where this land should be controlled by the State but in reality it is occupied by people without any legal rights. The obligation of the right holder is not only to use the land but also to pay attention to the expiration of the specified time period. The state can grant land to a person or legal entity with rights according to its purpose and needs.¹⁸

Conclusion

The state grants rights to land or management rights to the right holder to cultivate, use, exploit and maintain them properly, apart from being for the welfare of the right holder, it must also be aimed at the welfare of the community, nation and state. and the state prohibits abandoning land as stated in the provisions governing obligations for holders of land rights (Articles 6, 7, 10, 15,19 UUPA) which are the principles contained in UUPA. The legal consequence of land being designated as abandoned land is that the legal relationship between the subject holding the land rights and the land object is terminated, then the land is re-controlled by the state.

¹⁷ Anik Ifitah dan MH SH, *Konflik Agraria: Seri Pelaksanaan Hukum Tanah Terindikasi Terlantar di Blitar* (GUEPEDIA, 2021).

¹⁸ SITI DJULAIKAH, "AKIBAT HUKUM TERHADAP PELANGGARAN KEPEMILIKAN TANAH ABSENTEE," 2013.

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