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The nature of abandoned land control regulations

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Abstract. This research is a normative legal research. Abandonment of land as regulated in LoGA and its implementing regulations PP No.11 of 2010, the enactment Job Creation Law and PP No. 20 of 2021 essentially brings legal certainty in its implementation, in fact as Article 180, 181 of the Job Creation Law and PP No.20 of 2021, there is still a need for a harmonization of laws and regulations, which means that there is no guarantee of legal certainty. As a result of law on controlling and utilizing abandoned land, with the harmonization of statutory regulations regarding abandoned areas and abandoned land, agrarian reform which still recognizes land reform as so far is intended for abandoned land in UUPA, makes the utilization of abandoned land.

Keywords. nature; abandoned land; regulation

Introduction

The promulgation of Law Number 11 of 2020 concerning Job Creation (Law on Job Creation) State Gazette of the Republic of Indonesia of 2020 Number 245, Supplementary State Gazette of the Republic Indonesia Number 6573 and its derivative legislation namely Government Regulation Number 20 of 2021 Control of Abandoned Areas and Lands (PP No. 20 of 2021), State Gazette of the Republic Indonesia in 2021 Number 28, Supplement to State Gazette of the Republic Indonesia Number 6630, which revoked Government Regulation Number 11 of 2010 concerning Control and Utilization Abandoned Land (State Gazette of the Republic Indonesia Year 2010 Number 16, Supplement State Gazette of the Republic Indonesia Number 5098), there is a change in regulations related to determination of abandoned land and the utilization of abandoned land.(Komalasari, 2020)

The plot of land designated as abandoned land as regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) with implementing regulations namely PP.11 of 2010 and Regulation of the Head National Land Agency Number 5 of 2011 concerning Procedures for Utilization of State Lands Former Abandoned Lands (Per.Kep.BPN No. 5 of 2011). All of these policy products are specifically aimed at solving the abandoned land problem in Indonesia.(*PENERTIBAN TANAH TERLANTAR DAN PENDAYAGUNAAN TANAH NEGARA BEKAS TANAH TERLANTAR DI INDONESIA | Jurnal Ilmiah Magister Administrasi*, n.d.)

Article 180, Job Creation Law states that rights, permits, or concessions on land and or areas that are intentionally not cultivated or neglected within a maximum period of 2 (two)

years from the time they are granted are revoked and returned the state. The provisions of Article 180 paragraph (1) in Job Creation Law above, relate to neglect, namely that it is not enough just to have land rights, but also permits, or concessions on land and or areas, which are not used according to their functions, within a maximum period of 2 (two) years since the grant is revoked and returned the state. The provisions of Article 180 is Job Creation Law are further elaborated in PP No.20 Year 2021.

Land parcels before being designated as abandoned land, an evaluation of the Abandoned Land is carried out; Abandoned Land warning; and determination of Abandoned Land, as referred in Article 22 PP No.20 of 2021, which is carried out by the Head of Agency. If Head of the Agency doesn't stipulate Abandoned Areas, the stipulation of Abandoned Areas is carried out by the Minister. In making determination, the Minister may coordinate with Head of Institution, minister, or head of the relevant institution in accordance with his/her authority. In above provisions show that there are two institutions for stipulation as abandoned land, namely head of the institution and minister, so that there is no legal certainty regarding the party authorized to stipulate that a parcel of land is abandoned land.(Daroini & Artati, 2020)

Regarding basis for setting up abandoned land, as stated in Article 181 Job Creation Law, at the time Employment Creation Law comes into effect, any statutory regulations under the applicable Law and conflict with provisions of Job Creation Law or are in conflict with more advanced laws and regulations high, or contrary to a court decision, harmonization and synchronization must be carried out which is coordinated by ministry or institution that carries out government affairs in field of forming laws and regulations. Harmonization and synchronization relating to regional regulations and/or regional head regulations are carried out by ministry or institution that carries out government affairs in field of forming laws and regulations together with the ministry that administers domestic government affairs.(*Urgency of Harmonization and Synchronization of Regional Regulations and/or Regulation of Regional Heads After the Enactment of Law No. 11 of 2020 on Work Copyright | Atlantis Press, n.d.*) In this provision, that appears plot of land is designated as abandoned land, there is a ambiguity, on the one hand, related of laws and regulations governing it, because the previous laws and regulations are still in effect as long as there are no new laws and regulations with harmonization or synchronization, so it seems that there are no laws and regulations governing the determination and distribution of abandoned land, so there is no legal certainty. Based on description above, several problems can be stated as follows:

1. What is the nature of regulation on determination of land rights that is used not in accordance with its function?
2. What are the legal consequences for controlling and utilizing abandoned land?

Research Method

This research is a normative legal research. Normative legal research according to Peter Mahmud Marzuki is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced.(Michael, 2022)

The problem approach in a research is determined and limited by scientific tradition that is developed. This research is a normative legal research, with tools to analyze this research used 3 (three) approaches, namely:(Michael, 2020)

1. Philosophical approach
2. Legal approach
3. Conceptual approach

Legal Materials/Resources. The primary legal material in this study is form of legislation in field of making authentic deeds by a notary as a public official. The primary legal materials of this research include rules that are categorized in form of regulations as a product of legislation, and regulations as a product of regulation. Primary legal materials, which are legal materials that have binding power, namely laws and regulations related to land. Secondary legal materials, namely materials that are closely related to primary legal materials - can help analyze and process primary legal materials, namely books, papers and research results.

Legal Materials Collection and Processing Techniques. In conducting legal research, steps are taken: (1) identifying legal facts and eliminating irrelevant matters to determine the legal issues to be resolved; (2) collection of legal materials which are deemed relevant as well as non-legal materials; (3) conduct a study of the proposed legal issues based on materials that have been collected; (4) draw conclusions in form of arguments that answer legal issues; and (5) giving prescriptions based on arguments that have been built in the conclusions. These steps are in accordance with the character of law as a prescriptive and applied science.(Humaira & Latumeten, 2022)

Legal Material Analysis. The legal material obtained is classified logically and systematically, and then analyzed using a deductive method which is contrary to general proportions whose truth has been believed and ends at a specific conclusion, which leads to answers the problems discussed. This deductive method is a study that wants to understand from something general to something special, by way of thinking starting from initial point by outlining all the things that are contained or may be arranged on that basis, so that there are no conflicting or incompatible ways of thinking ,while analysis used the consistency of laws and regulations in relation of field or material being studied.

Results and Discussion

The nature regulation on determination of land rights used is not in accordance with its function

The essence of legislation is a reflection of people's will and fulfills needs of community's sense justice.(Akirav, 2018) Legislation serves to serve the needs of justice in society.(Aiusheeva & Soyfer, 2022) The laws and regulations governing the stipulation and utilization of abandoned lands UUPA, the Job Creation Law and PP No.20 of 2021 concerning Control of Abandoned Areas and Lands. The essence of regulation on determination of land rights used is not in accordance with its function as abandoned land, in interest of greatest prosperity of people through the arrangement of abandoned land parcels. Article 180, Job Creation Law stipulates that rights, permits, or concessions on land and or areas that are intentionally not cultivated or neglected within a maximum period of 2 (two) years from the time they are granted are revoked and returned the state. The provisions in Article 180 paragraph (1) of Job Creation Law above, relate to neglect, namely that it is not enough just to have land rights, but also permits, or concessions on land and or areas, which are not used according to their functions, within a maximum period of 2 (two) years since grant is revoked and returned to state. The provisions of Article 180 Job Creation Law are further elaborated in PP No.20 Year 2021.

Article 37 PP No.20 of 2021, that further provisions regarding the procedures for controlling and utilizing Territorial Areas and Abandoned Lands are regulated in a Ministerial Regulation. Article 39 letter a PP No.20 of 2021 that when this Government Regulation comes into force all existing implementing regulations governing control and utilization of Abandoned Land will remain in effect as long as they don't conflict with or have not been replaced based

on this Government Regulation. Associated with the nature is part of actual reality, nature of land that has been designated as abandoned land is used as an object of agrarian reform, with harmonization of laws and regulations governing determination and utilization of abandoned land, not as intended by the establishment of legislation. (*KONSEP PENERTIBAN DAN PENDAYAGUNAAN TANAH TERLANTAR DALAM PERSPEKTIF REFORMA AGRARIA / DiH: Jurnal Ilmu Hukum*, n.d.)

Consequences of Law on Control and Utilization Abandoned Land

Land parcels designated as abandoned land are returned to state and can become assets of Land Bank and/or TCUN, as stated in Article 33 of PP No.20 of 2021. The sentence “can become a state asset and/or”, which means that’s land can be an asset and not included as a state asset. (*AKIBAT HUKUM HILANGNYA HAK MILIK ATAS TANAH YANG DITELANTARKAN (Legal Due To Loss Of Ownership Rights To Abandoned Land) | Andini | National Conference on Law Studies (NCOLS)*, n.d.) Land parcels into bank assets Land are all assets controlled by Land Bank, both tangible and intangible, which have value or value due to past events that provide benefits in the future. It appears that land that is designated as abandoned is returned to state and can be used as an asset of land bank and/or TCUN, regarding the utilization land there is no further regulation. If the regulation on utilization land bank assets is linked to provisions of Article 181 Job Creation Law, it appears regulation doesn’t guarantee legal certainty, because the existing rules are used as long as they are not contradicted by existing laws and regulations on it. Land that is determined to be abandoned is controlled by state, control through land banks, availability of land for investors, based on fact the implementation of State Controlling Rights over land is dominated by foreign investors and domestic entrepreneurs who are more business-oriented than sustainable development. Of course, it is not in line with provisions in Article 33 paragraph (3) 1945 Constitution Republic of Indonesia for land parcels to greatest prosperity for all people with *land reform*, realigning land for benefit of people.

As a result of the law of controlling and utilizing abandoned land, it can be explained that it is found that land that is designated as abandoned land can be designated as abandoned, which is an abandoned area and abandoned land. As Article 33 PP No.20 of 2021 that Land that has been designated as Abandoned Land can become an Asset of the Land Bank and/or TCUN. The plot of land designated as abandoned land, the government issued Presidential Decree no. 86 of 2018 concerning Agrarian Reform is a restructuring of the structure of control, ownership, use, and utilization of land that is more equitable through Asset Management and accompanied by Access Management for the prosperity of the Indonesian people. Utilization of TCUN is intended for agriculture and non-agriculture in the interest of society and the state through agrarian reform. This means that land parcels that are designated as abandoned land, land redistribution as well as being the basis for people's welfare in line with provisions of Article 33 paragraph (3) of the 1945 Constitution, through land reform, don't become assets the Land Bank.

Research related the Nature of Abandoned Land Control Regulations with enactment Job Creation Law and its implementing regulations, namely PP No.20 of 2021 for Controlling Abandoned Areas and Lands, it is hoped that what is desired through the nature and function of law is realized. This research discusses about problem of how nature regulation on determination of land rights used is not in accordance with its function and what are legal consequences of controlling and utilizing abandoned land. Research using a philosophical approach, a legal approach and a conceptual approach, a conclusion is obtained that: Abandonment of land as regulated in UUPA and its implementing regulations PP no.11 of 2010,

the enactment of Job Creation Law and PP No.20 of 2021 essentially brings legal certainty in its implementation, in fact as Article 180, 181 Job Creation Law and PP No.20 of 2021, there is still a need for a harmonization of laws and regulations, which means that there is no guarantee of legal certainty. As a result of law on controlling and utilizing abandoned land, with harmonization of statutory regulations regarding abandoned areas and abandoned land, agrarian reform which still recognizes land reform as so far is intended for abandoned land in UUPA, makes the utilization of abandoned land.

Conclusion

Abandonment of land as regulated in LoGA and its implementing regulations PP No.11 of 2010, the enactment Job Creation Law and PP No. 20 of 2021 essentially brings legal certainty in its implementation, in fact as Article 180, 181 of the Job Creation Law and PP No.20 of 2021, there is still a need for a harmonization of laws and regulations, which means that there is no guarantee of legal certainty.

As a result of law on controlling and utilizing abandoned land, with the harmonization of statutory regulations regarding abandoned areas and abandoned land, agrarian reform which still recognizes land reform as so far is intended for abandoned land in UUPA, makes the utilization of abandoned land.

The nature of regulation on determination by land rights used is not in accordance with its function, it can be as desired if legislation has been realized as required by Article 181 Job Creation Law and Articles 37 and 39 of PP.20 of 2021. Vagueness regarding the utilization of abandoned areas and abandoned land when land parcels are designated as abandoned lands are returned to state and controlled by the Land Bank, so that they don't reflect land parcels for greatest benefit the people.

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