

Legal Protection for Land Rights Holders Designated as Abandoned Land

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ABSTRACT

This article discusses the legal protection for lands right holder designated as abandoned lands. Abandoned land in Indonesia poses serious challenges, not only for the rights holders but also for the development of society and the states. This research employs a normative legal research method to analyzes applicable legal provision and implications of the regulations of abandoned land on rights holders and the wider community. The findings indicate that land rights holders have an obligation to manage and utilize their land in accordance with the prevailing regulations. Failure to do so may result in the designation of their land as abandoned, subsequently transferring its status to that controlled by the state. Additionally, this article recommends measures to enhance legal protection for rights holders, including the application of good governance principles in addressing abandoned land issues. These findings provide important insights into the need for more effective regulations and actions in managing abandoned land for the welfare of the communitation and the states.

Keywords: Abandoned land, Control, Issuance, Protection of abandoned land

ABSTRAK

Artikel ini membahas perlindungan hukum bagi pemegang hak atas tanah yang ditetapkan sebagai tanah terlantar. Tanah terlantar di Indonesia menimbulkan tantangan serius, tidak hanya bagi pemilik hak, tetapi juga bagi pembangunan masyarakat dan negara. Penelitian ini menggunakan metode penelitian hukum normatif untuk menganalisis ketentuan hukum yang berlaku, serta implikasi dari pengaturan tanah terlantar terhadap pemilik hak dan masyarakat luas. Hasil penelitian menunjukkan bahwa adanya kewajiban bagi pemegang hak untuk mengelola dan memanfaatkan tanah sesuai dengan pedoman yang berlaku. Jika pemegang hak mengabaikannya, tanah dapat ditetapkan sebagai tanah terlantar dan beralih status menjadi tanah yang dikuasai oleh negara. Selain itu, artikel ini juga menyarankan langkah-langkah untuk meningkatkan perlindungan hukum bagi pemegang hak, termasuk penerapan prinsip-prinsip good governance dalam penanganan tanah terlantar. Temuan ini memberikan wawasan penting tentang perlunya regulasi dan tindakan yang lebih efektif dalam mengelola tanah terlantar demi kesejahteraan masyarakat dan negara.

Kata Kunci: Penerbitan, Perlindungan tanah terlantar, Tanah terlantar

Introduction

Essentially, the Government provides land rights or Right of Management to the Right Holder to be properly cultivated, used, utilised and preserved. this case, in order to show that it is not only for the welfare of the holder of the right, but also for the welfare of the communitation, the nation and the states. Of course, when the states grant rights to individuals or legals entities, its always imposes certain obligations in the decision to grant the privilege. The function of land in Indonesia has a very significant function in order to realise the welfare of the community as mandated in Article 33 paragraph (3) of the 1945 Constitution (hereinafter referred to as the '1945 Constitution') which reads, 'The earth and water and the natural resources contained therein shall be under the control of the states and shall be used for the greatest prosperity of the people.' In order for the earth, waters and airspace to function properly and appropriately, their use

needs to be regulated by law, which is included in the purview of agrarian law (Virgiawan, H,2023).

The Basic Agrarian Law (UUPA) as the as the foundation for national land policies received legitimacy from the State based on Article 2 Paragraph (2) UUPA has the authority to:

1. To regulate and organise the allocation, usage, supplying and maintaining of the planet earth, the water and the spaces;
2. To define and settle the legal relations between the human beings and the planet earth, the water and the spaces;
3. To define and settle the legal relations between the human beings and the legal acts concerning the planet earth, the water and the spaces.

The provisions of Article 2 are then used as the basis for the state to regulate the granting of land rights. This is also as stated in Article 4 Paragraphs (1) and (2) of the UUPA. Article 4 determines:

- a. Based on the rights of controls refer to in Article 2, there are various right to the surfaced of the earth, called land, which may be granted to and owners by persons alone or together with others persons and legal entities;
- b. The right to lands mentioned in paragraph 1 of this Article provide the author to use the respective lands, as well as the earth and water bodies and the spaces above them, only for interest direct related to the used of the lands withing the limitations according to this Law and other higher legal regulation.

Therefore, Rights the case of abandonment, the Basic Agrarian Law (Law Number 5 of 1960) regulation the legal consequence, namely the abolition of the right to the lands in quest and the terminations of the legal relationship, and confirms that the land is under the direct control of the State. Landowners must play an active role in the managements, use, exploitation and cultivation of their land, in accordance with Article 15 of the UUPA. Using, utilizing, cultivating and managing land rights is a form of obligation which has to be carried out by all holder of land rights, both individuals and legal entities (Arsyad et al., 2022). Therefore, the legal consequence of not use lands in accordance with the terms and natures of its right, so that it does not provide benefits to the community and the state, can be categorised as abandoned lands. This is in accordance with the explanatory note to Article 27 of the UUPA.

In addition to being an unwise, uneconomical (lost of opportunity to realize the economic potential of the lands) and unfair practice, land abandonment, which occurs frequently in both rural and urban areas, is a violation of the obligation that must be carried out by the right holder or the part that has acquired the basic for controls of the lands. Other impact of land abandonment also hinder achievements of various development programs objective, the vulnerability of food security and national economic resilience, the closure of socioeconomic access to land for the community, especially farmers, and the disruption of the sense of justice and social harmony (Suprianto, 2020). Currently, there are many cases of land abandonment in Indonesia. Many land rights holders still do not manage and use the land in accordance with the original designation and purpose for which the land rights were granted to them. This creates land conditions that have the potential to become abandoned land. The authority to regulate abandoned lands is the authority delegated by the government (president) to the National Land Agency (now the Ministry of Agrarian Affairs and Spatial Planning) based on the provisions of legal regulations, the head of the National Land Agency and the head of the Land Office are state administrative officials who are authorised to carry out government affairs in the field of land, so they are authorised to issue a decree on the determination of abandoned land (Saadah, 2021). Which then in several cases the determination of abandoned land was appealed to the Administrative Court. Therefore, this article aims to find out the form of legal protections and legal certainty for the determination of abandoned land as a form of regulation of abandoned land area is taken.

This journal article will further explore the legal protection for land rights holders designated as abandoned land. The author will also review the development of agrarian law that has occurred in Indonesia, the important role of land ownership rights in terms of status, and the implications of these regulations for land owners and the wider community. In addition, the author will discuss potential solutions or recommendations that can minimize the impact of the loss of ownership rights to abandoned land. This study focuses on two questions as problem formulations. First, what is the status of land rights ownership designated as abandoned land. Second, what is the legal protection for land rights holders designated as abandoned land.

Methods Research

In writing the article, a legal research method is used, with a normative legal research type, namely a method that analyses the relationship and alignment between legal principles, legal norms and scientific opinions (theories) and other rules related to the main problem to be discussed, in orders to answers the legals questions faced.

Results and Discussion

The main and essential objective of the agrarian reform is the creation of agrarian justice and the eradication of poverty (Nurlinda, 2014). In order to realise this objective, one of the step taken by the government is the regulation of abandoned land as a form of identification and management of abandoned land (Andini et al., 2020). The policy of granting land rights (HM; HGU; HGB, etc.) by the states to individuals or legal entity to be cultivated, managed and used for the benefit of the community is a policy in the land sector that needs to be implemented as well as possible. In other words, there is an intention in granting these rights so that neglect is not justified (Yunior, 2019).

In implementing abandoned land management measures, the government must pay attention to the general principles of goods governance, namely the principle of acting carefully and the principles of balance. The principles of accuracy relate to actions in identifying and examining abandoned land which include: the name and address of the rights holder; locations, areas, status of right or basis for land ownership and the physical condition of the land controlled by the rights holder, as well as the conditions that caused the land to be abandoned (Tâm et al., 2016). Based on the Regulations of the Prime Minister of Agriculture and Spatial Planning/President of the National Land Agency No. 20 of 2021 on Procedures for the Arrangement and Utilizations of Abandoned Areas and Lands, Article 21, the arrangement of abandoned areas is carried out through following staged:

- a) evaluations of Abandoned Areas;
- b) warning of Abandoned Areas; and
- c) identification of Abandoned Areas.

Furthermore, in Article 38:

Paragraph (1) In the event that the License/Business Permit/Business Permit Holder Fails to carry outs the thirds written warnings as planned in Article 31 paragraph (6), the Head of the Agency shall determine the area as an Abandoned Area.

Paragraph (4) Areas that have been designated as Abandoned Areas can be designated as:

- a. Land Bank Assets; or
- b. Transferred/given to other parties through transparent and competitive mechanisms.

Based on the UUPA, The standards for abandoned land are regulated in several articles, namely Article 27 letter a number 3, Article 34 letter e, and Article 40 letter e UUPA. In addition, the criteria for abandoned lands are also regulated in Regulation Number 18 of 2021 on administrative rights, lands rights, house units and lands registrations. The criteria for abandoned land according to the laws and regulations must fulfil the following elements:

1. The existence of land rights;
2. The existence of an owners or holder of land rights;