



Determination of abandoned land as a form of government supervision of land rights holders based on government regulation number 20 of 2021 concerning the control of abandoned areas and land

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ABSTRACT

Government regulation on abandoned land as specified in Government Regulation No. 20 of 2021 is still relatively weak. Government supervision of land rights holders has not been regulated in detail, especially regarding how the government ensures that the land is used as intended. In addition, at the inventory stage, there are no provisions regarding the reporting period of land rights holders, whether the reporting should be done monthly or annually. This lack of clarity has the potential to cause conflicts such as potential social conflicts that will occur in the taking of land rights. This paper aims to examine the criteria and qualifications for determining abandoned land by the government as well as the forms of supervision that have not been regulated in Government Regulation No. 20 of 2021. It is hoped that this paper can provide proposed norms to create legal certainty and be useful in resolving land disputes in Indonesia. The result of this writing is that supervision by the government is still needed on the exclusion of abandoned land objects to ensure that the land is actually utilized properly in accordance with Article 4 of the UUPA. In addition, there are still weaknesses in PP No.20 of 2021, in that there are no rules, time frames, and obligations to report on the condition of land utilization for holders of property rights to land that are different from the obligations of other rights holders. This situation reflects inequality in regulation between different types of land rights, which can lead to land conflicts due to differences in supervision by the government of land rights holders.

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1. INTRODUCTION

The definition of the word "land" can be interpreted with various meanings, but to simplify the discussion, its use needs to be limited. Land in a juridical sense can be seen from Article 4 paragraph (1) of Law No. 5/1960 on the Basic Regulation of Agrarian Principles (hereinafter referred to as UUPA) which states that, "On the basis of the State's right to control as referred to in Article 2, various rights over the surface of the earth, called land, can be granted to and owned by persons, either alone or together with other persons and legal entities." (Basic Agrarian Principles, Law Number 5 of 1960. LN Year 1960 No. 104 TLN No. 2043, , Article Number 4.)

Based on Article 4 paragraph (1) of the UUPA, it can be concluded that land rights can be owned by anyone and are not limited to individuals, groups of people or legal entities. In owning land rights, the government provides certain limitations and obligations stipulated in Article 4 paragraph (2) of the UUPA, that all parties who have land rights are obliged to organize, use and utilize land rights by the limits determined by the applicable laws and regulations in Indonesia (Basic Agrarian Principles, Law Number 5 of 1960. LN Year 1960 No. 104 TLN No. 2043, , Article Number 4.). Then, Article 6 of the UUPA explains that “All land rights have a social function.(Basic Agrarian Principles, Law Number 5 of 1960. LN Year 1960 No. 104 TLN No. 2043, , Article Number 6)According to Prof. Boedi Harsono argues that any land rights that exist in a person cannot be justified, that his land will be used (or not used) solely for his personal interests, especially if it causes harm to the community, so that the use of land must be adjusted to its circumstances and the nature of its rights in order to benefit both the welfare and benefit the community and the State. (Harsono, 2007) In connection with its social function, it is a natural thing that the land must be well maintained, so that its fertility increases and its damage is prevented. The obligation to maintain this land is not only imposed on the owner or holder of the rights concerned, but also on every person, legal entity or agency that has a legal relationship with the land (Harsono, 2007). Therefore, land cannot be used solely for private interests, so the use of land must not harm individual interests, social interests, and public interests (Beatley, 1994). Thus it can be seen how important land is to people's lives.

The granting of land rights by the state to individuals / legal entities is intended so that the community can use, cultivate land to achieve economic sufficiency, welfare or prosperity (Kusumawati, 2023). In order for the goal to be achieved, the community as the bearer of land rights must play an active role in managing, using, and utilizing and cultivating their land so that they cannot be arbitrary in using the land because there are obligations that must be carried out on the land they control in accordance with the rules and boundaries set by laws and regulations, one of which is the prohibition to neglect the land (Basic Agrarian Principles, Law Number 5 of 1960. LN Year 1960 No. 104 TLN No. 2043, , Article Number 6, 2023).

Along with the times, the number of needs regarding land continues to increase, but in reality, there are many land rights holders who act arbitrarily towards the land they control, such as not providing benefits to the community and the State by not using the land (Kolopaking & SH, 2021), not cultivating and not maintaining it, which causes the land to become abandoned land and there are legal consequences for not using the land in accordance with the conditions and nature of their rights, which can be categorized as abandoned land. This is in line with the Explanation of Article 27 of the Basic Land Agrarian. The regulation is then supported by relevant agencies, namely the National Land Agency (BPN) which is now the Ministry of Agrarian Affairs and Spatial Planning (Minister of ATR) as a state administrative official authorized to carry out government affairs in the field of land so that it is authorized to issue a decree on the determination of abandoned land based on Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 20 of 2021 concerning Procedures for Curbing and Utilizing Abandoned Areas and Land. In general, abandoned land is land whose rights are null and void, meaning that the legal relationship is terminated and controlled by the state. This happens because the land is not properly maintained as defined in Article 1 of Government Regulation No. 20 of 2021 concerning the Curbing of Abandoned Areas and Land (hereinafter referred to as PP No. 20 of 2021), which states that “Abandoned Land is titled land, Management Rights land, and land obtained based on the Basis of Land Tenure, which is deliberately not cultivated, not used, not utilized, and/or not maintained.”(Government Regulation on the Control of Abandoned Areas and Land, PP No. 20 of 2021. LN Year 2021 No.30 TLN No.6632, Hereinafter Referred to as PP No.20 Year 2021, Article 1)

Land abandonment has various impacts on life, including social and economic inequality such as farmers who do not own land but have the ability to manage agriculture (Gomiero, 2016), while large tracts of land are controlled by rights holders who do not utilize them (Fischel, 1987). In addition, land abandonment has an impact on the decline in environmental quality which causes damage to ecosystems, loss of biodiversity, erosion, and even a decrease in water quality. For example, abandoned land in Tasikmalaya Regency causes significant erosion. This erosion has an

impact on the degradation of soil quality such as becoming less fertile and vulnerable to other geological activities (Rashmi et al., 2022). In addition, abandoned land also causes long-term loss of soil fertility, which in turn affects agricultural productivity (Hossain et al., 2020).

Based on the Decree on Abandoned Land Determination by the Directorate General of Land and Spatial Control and Order (Ditjen PPTR), Indonesia in 2022 there are 6,894.03 Ha of land designated as abandoned land. In 2023, there was an increase in the number of abandoned land determinations of 14,739.17 Ha. The increase in 2023 was 113.80% higher than the previous year.

There are several factors that cause land to become abandoned, including physical factors such as infertile soil conditions, lack of irrigation facilities and road access that result in the owner being unable to cultivate it (Maulana et al., 2018); economic factors such as limited funds or excessive land ownership for investment purposes without the intention of cultivating it (De Schutter, 2011); and institutional factors such as the lack of strict regulations on abandoned land and complicated administrative processes (Farvacque & McAuslan, 1992).

The procedure for determining abandoned land is regulated in PP No. 20 of 2021 with the following stages: Inventory of land indicated as abandoned; Identification and research of land indicated as abandoned; Warning to rights holders; Determination of abandoned land; Land that has been decided to be abandoned land results in a transfer of ownership of the land rights to become State Land, meaning that the land is under direct control of the State.

Government regulations regarding abandoned land stipulated in PP No. 20 of 2021 are still relatively weak. Government supervision of land rights holders has not been regulated in detail, especially regarding how the government ensures that the land is used according to its intended use (Dale & McLaughlin, 2000). In addition, at the inventory stage, there are no provisions regarding the reporting period from land rights holders, whether the reporting must be done monthly or annually. This ambiguity has the potential to cause conflicts such as the potential for social conflicts that will occur in the acquisition of land rights.

Starting from the background of the problem, this paper aims to further examine the criteria and qualifications for determining abandoned land by the government and the form of government supervision of land rights holders that are not regulated in PP No. 20 of 2021. This paper aims to be able to provide proposed norms in order to create legal certainty. So that it is useful in resolving land disputes in Indonesia.

2. RESEARCH METHOD

The writing of this article uses doctrinal or normative legal research methods that focus on the study of legal norms (Soekanto, 2011, p. 13). In this case, it is Law 7 PP Number 20 of 2021 concerning Controlling Abandoned Areas and Lands. The nature of this research is Prescriptive which provides an assessment of something that should be done (Bell et al., 1988). Namely analyzing the comparison of legal norms related to human rights law in a state of emergency and the implementation of various experiences that occurred in Indonesia. The writing of this article uses a Statutory Approach and a Conceptual Approach.

3. RESULTS AND DISCUSSIONS

Criteria and qualifications for determination of abandoned land by the government

Objects of wasteland control in Indonesia include various types of land that have rights status but are not utilized or managed in accordance with applicable provisions. Based on Article 7 of PP Number 20 of 2021, it regulates the objects of wasteland control:

1. The objects of the Abandoned Land Control as referred to in Article 5 paragraph (1) include land ownership rights, building use rights, business use rights, usage rights, Management Rights, and land obtained based on the Basis of Land Control.
2. Land ownership rights become the object of Abandoned Land Control if it is intentionally not used, not utilized, and/or not maintained so that:
 - a. controlled by the community and becomes a village area;
 - b. controlled by another party continuously for 20 (twenty) years without any legal relationship with the Rights Holder; or

- c. the social function of Land Rights is not fulfilled, whether the Rights Holder still exists or no longer exists.
3. Land with building use rights, usage rights and management rights becomes the object of Abandoned Land control if it is used, not utilized and/or intentionally not cultivated or maintained for 2 (two) years from the date the rights were issued.
 4. Land with a right to cultivate becomes the object of Abandoned Land Control if it is intentionally not cultivated, not used, and/or not utilized for 2 (two) years from the date the right was issued.
 5. Land obtained based on the Basis of Land Control becomes the object of Abandoned Land Control if it is used, not utilized, and/or intentionally not cultivated, not maintained, starting from 2 (two) years from the issuance of the Basis of Land Control.

From these regulations, it can be seen that the criteria for abandoned land refer to the conditions that must be met so that a plot of land can be declared abandoned, including: The existence of land rights means that there must be a rights status, such as Ownership Rights, Cultivation Rights, Building Rights, Management Rights or other rights; The existence of an owner or rights holder, namely a legal subject who can be an individual or a legal entity who has rights to the land; There is an intention by the holder of land rights to not cultivate, not use, or not utilize it in accordance with its condition or the nature and purpose of granting the rights or the basis for its control; There are actions or actions that ignore the obligation to cultivate and maintain the land; Land is not utilized within a certain specified period of time (minimum three years since the issuance of land rights)

Meanwhile, the qualification of abandoned land is more related to the classification or category of land based on its condition and status. This qualification includes: The physical condition of the land identified as being unmaintained, unproductive, or having experienced a decrease in fertility; The existence of legal land status in the form of a land ownership certificate or other types of rights, such as HGU or HGB, but not managed properly; The existence of legal subjects related to land ownership and control; Land that does not fulfill its social function in accordance with land law provisions can also be categorized as abandoned.

Based on the explanation above, it can be seen that abandoned land only includes land that has legal status or rights status because there is a legal obligation for the rights holder to cultivate, utilize, and maintain the land. If the owner does not fulfill this obligation, the land can be declared abandoned. This is different from land without legal status or rights status that does not have a clear owner and is not bound by the same legal obligations, so it cannot be categorized as abandoned land.

The exceptions as objects of regulation of abandoned land are regulated in Article 8 of PP No. 20 of 2021 which states that, "Land Management Rights that are excluded from the objects of regulation of Abandoned Land include: customary law community land management rights; and Management Rights land which is a Land Bank Asset."

The exception of abandoned land objects in Article 8 point a aims to provide protection for customary law community land that has Management Rights (HPL) status. This is done to ensure that the land is not included in the category of abandoned land, so that it can still be used for the interests and development of customary law communities. Likewise, Article 8 point b stipulates that land that is a Land Bank asset is excluded from the object of abandoned land control which aims to avoid injustice for holders of management rights, as well as to facilitate better and more sustainable land management. With this exception, it is hoped that land use can be more focused and in accordance with community needs and national development goals.

Although customary land rights and land managed by the Land Bank cannot be categorized as abandoned land objects due to legal recognition, active use by indigenous peoples, and different ownership statuses, in the author's opinion, government supervision is still needed to ensure that the land is truly utilized properly in accordance with Article 4 of the UUPA. To strengthen this supervision, a legal basis or regulation is needed that regulates the form of government supervision of abandoned land exception objects as a form of legal certainty and justice.

The regulation of abandoned land does not aim to ignore the law and justice at all (Roestamy et al., 2022), but rather tries to use the element of coercion as little as possible to make

the community obey the law (Himma, 2020). The principle of justice is still upheld in law enforcement, including when the application of the principles of regulation of abandoned land is carried out. So from the government's policies and regulations related to the regulation of abandoned land, it is hoped that there will be supervision from the government towards land rights holders in order to create justice by placing honesty and equal treatment on everyone (Ferrerias, 2023), without distinguishing between objects and subjects of the law itself.

Forms of government supervision over land rights holders

The problem of abandoned land is not easy to solve. In general, land can be said to be abandoned by looking at the physical condition such as the land is not utilized so that the land is overgrown with weeds (West, 2022). However, legally, it is not easy to declare a piece of land abandoned or not, because it must be seen based on the criteria, qualifications and mechanisms for determining abandoned land by conducting an inventory and data search until the process of the land is determined as abandoned land.

The mechanism for determining abandoned land has been regulated in Government Regulation Number 20 of 2021 by means of inventory, namely the activity of recording, data collection, and reporting of land indicated as abandoned which is carried out by the Land Office and submitted to the Ministry of Agrarian Affairs and Spatial Planning (Minister of ATR/BPN) based on reports or information sourced from: Rights Holder, Management Rights Holder, or Holder of Basic Land Control; Results of monitoring and evaluation of Land Rights and the Basis for Land Control carried out by the Land Office, Regional Offices and Ministries; Ministry/institution; Local government; and/or Public

Land inventory is conducted through reports that include data and information on land ownership, use, and utilization. In real terms, this report is usually in the form of a written document containing the results of a survey and mapping of land plots, including ownership status and indications of abandonment (Bachriadi & Wiradi, 2020). The report may also include a map showing the location of land indicated as abandoned, as well as an analysis of the factors causing the abandonment. For example, in the implementation of the inventory at the Surabaya II City Land Office, the report included data on seven plots of land with Building Use Rights (HGB) status and indicated as abandoned, with a total area of 10.15 hectares. This report is a reference for the government to carry out further control and management of the unused land.

Furthermore, the results of the inventory are processed into data on land indicated as abandoned based on textual data and spatial data which is then followed up with the regulation of abandoned land with the following stages:

1. Evaluation of abandoned land: The results of the evaluation of abandoned land are concluded based on documents, inspection of land management, use, utilization and maintenance factually carried out within a period of 180 days. If within that period the rights holders intentionally do not manage, use, utilize and/or maintain the land they control, then the Regional Office will notify the rights holders to carry out their land maintenance obligations, if this is not done within that period then a warning process will be carried out.
2. Abandoned land warning: the head of the Regional Office issues a written warning 3 times within a span of 165 days to the rights holder, management rights holder, or basic land control holder and other interested parties to cultivate, use, utilize, and/or maintain their land. The time interval for cultivating, using, utilizing and/or maintaining the land is a maximum of 90 calendar days after receiving the first warning letter, 45 calendar days after receiving the second warning letter, and 30 calendar days after receiving the third warning letter.
3. Determination of abandoned land: If there is no action from the rights holder, then the determination of abandoned land is carried out by issuing a Decree of the Minister of Determination of Abandoned Land to carry out the eviction of land that has been determined as abandoned land. Determination of abandoned land contains: elimination of land rights or management rights; termination of legal relations; and affirmation as state land, former abandoned land directly controlled by the state. After the land changes its status to state land or land directly controlled by the state.

As explained regarding the mechanism for determining abandoned land, it can be seen that the form of government supervision of land rights holders based on PP No. 20 of 2021 is preventive supervision, namely supervision carried out on an activity before the activity is carried out which aims to prevent deviations. In this case, the government is trying harder to prevent land abandonment that may be carried out by rights holders so that the land is cultivated and utilized with the aim of increasing efficiency in regulating areas and the use of abandoned land, as well as providing better legal certainty for land management in Indonesia (Subekti et al., 2023).

In addition to regulations, other methods used by the Ministry of ATR (BPN) to increase effectiveness and optimization in terms of supervision of land rights holders are by developing the latest methods such as utilizing Artificial Intelligence (AI) Geographic Information technology. This method is designed to monitor land ownership, use, and utilization more effectively, thus enabling more accurate and integrated monitoring at various levels, from local to national. With this approach, it is hoped that land rights supervision can be carried out more holistically and efficiently.

However, in this case there are still weaknesses, both in terms of regulations and supervision carried out by the government, one of which is that at the inventory stage it is only explained that inventory, identification, and research activities are carried out at the earliest 2 (two) years after the issuance of land rights but it is not explained in detail regarding the reporting period that must be submitted by rights holders related to land use according to its designation. For example, holders of land rights other than ownership rights are required to report to the land office when extending their rights. This aims to allow the land office to see and monitor whether the legal subject can extend their rights, and to ensure whether the land is actually used according to its designation. On the other hand, land rights holders do not have rules or obligations to report on the conditions of their land use (Ramadhani, 2021). This situation reflects the inequality in regulations between various types of land rights that can lead to land conflicts due to differences in supervision carried out by the government on land rights holders (Azadi, 2020).

Therefore, the government needs to make improvements to the regulation of PP No. 20 of 2021 in terms of supervising land rights holders so that the regulation of abandoned land is carried out by paying attention to the principles of legal certainty for abandoned land objects, clear regulatory procedures, transparent procedures, protection of owner rights, and effective communication to all related parties. With legal certainty, the government can achieve the goal of regulating abandoned land more effectively and support sustainable development (Sasmito et al., 2023).

4. CONCLUSION

From the analysis presented, it can be concluded that although customary land and land managed by the Land Bank are not included in the category of abandoned land, government supervision is still needed to ensure utilization in accordance with the law. In addition, there are still weaknesses in PP No.20 of 2021, especially regarding the period of inventory that must be reported by land rights holders, one of which is the lack of clarity regarding the obligation to report land utilization by property rights holders which is different from other holders. This can cause inequality in supervision and potentially lead to land conflicts. Therefore, the control of abandoned land must be carried out with the principles of justice and legal certainty, without ignoring the rights of the community, so the Government needs to improve PP No. 20 of 2021 to clearly regulate the obligation to report land utilization for all types of land rights, including property rights. This is important to create equality in regulation and supervision. In addition, the government needs to develop a continuous monitoring system to effectively monitor land utilization, so that the government can immediately take action if there are deviations from the designated designation.

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