

## 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 communiton 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, penertiban, 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 communiton, 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.

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 authority 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 use of the lands within 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 question 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 management, 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 nature 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 party that has acquired the basic for controls of the lands. Other impact of land abandonment also hinder achievements of various development program 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 order to answer the legal 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 steps 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 stages:

- 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 out the third 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;
3. There is a intentional failure to utilize the land as granted for the granting of control of its rights;
4. There is an act of ignoring its obligations;
5. There is a certain period of time in which its obligations

Stages or mechanisms in determining abandoned land through Collecting data on land that is indicated as abandoned include textualls data and spatials data. The textualls information include, name and address of the holders of rights, the numbers and date of the decisions granting the rights, the numbers, date and expire of the certificates, the locations of the lands, the areas of the lands, the use of the lands, the area of the lands designated as abandoned. Spatial data is defined as graphic Information in the nature of a map with the geographical coordinates of the location of the plot area indicated as abandoned. The National Land Agency determines the target of rights land indicated as abandoned by considering the lengths of times the land has been left unused and/ or the area of lands indicated as abandoned. In the event that the rights holders does nothing compilation with the initial warnings letter regarding abandoned land, the Head of the Regional Land Office will issue a second warning letter with the same period as the first warning letter. Should the rights holder still not comply with the seconds warning letter, the Head of the Regional Office will issue a third warning letter with the same period as the second warning letter. Should the rights holders still nothing compilation with the warning, the Heads of the Regionals Office will propose to the Head of the National Land Agency of the Republic of Indonesia that the lands be declared abandoned. Subsequent to this, the Heads of the National Land Agency of the Republic of Indonesia will determine the lands in question as abandoned land, as outlined in the Land Determination submitted by the Head of the Regional Office. This will also result in the elimination of land rights and the simultaneous termination of the legal relationship between the lands and the rights holder. Furthermore, it will confirm the land as state lands, namely land direct controled by the states, thereby maintaining the abandoned lands in a status quo state. The status quo in question is calculated from the date of submission so that the abandon lands determination is issued and no legal action can be taken against the land.

Based on the UUPA, The criterion of abandoned land is stipulated in several articles, namely Article 27(a)(3), Article 34(e) and Article 40(e) of the UUPA. Additionally, the criteria for abandoned land are also regulated in Government Regulation Number 18 of 2021 concerning managements rights, lands rights, units apartment, and lands registration. The criteria for abandoned land according to the laws and regulations must meet the following elements:

1. Existence of land rights;
2. Existence of an owner or holder of land right;
3. There is a wilful failure to use the land as granted for the control of his rights;
4. There is an act of ignoring his obligations;
5. There is a certain duration of his obligations.

Stages or mechanisms in determining abandoned land through Collecting data on land that is indicated as abandoned include textualls data and spatials data. Textual information includes the names and address of the holders of the rights, the numbers and dated of the

decision granting the rights, the number, date and expiry of the certificate, the locations of the lands, the areas of the lands, the used of the lands, the areas of the land designated as abandoned. Spatial data is defined as graphic data in the form of a maps equipes with the geographical coordinates of the location of the area indicated as abandoned. The National Land Agency determines the target of rights land indicated as abandoned by considering the amount of time the lands has been abandoned and/ or the areas of land indicated as abandoned. In the event that the rights holders does not compilation with the initial warnings letter regarding abandoned land, the Head of the Regionals Land Office will issue a second warnings letter with the same period as the first warning letter. Should the rights holders still not comply with the second warning letter, the Head of the Regional Office will issue a third warning letter with the same period as the second warning letter. Should the rights holders still no comply with the warnings, the Head of the Regional Office will propose to the Head of the National Land Agency of the Republic of Indonesia that the land be declared abandoned. Subsequent to this, the Head of the National Land Agency of the Republic of Indonesia will determine the lands in question as abandoned land, as outlined in the Land Determination submitted by the Head of the Regional Office. This will also result in the elimination of land right and the simultaneous termination of the legal relationship between the lands and the rights holder. Furthermore, it will confirm the lands as states lands, namely lands direction controlled by the states, thereby maintaining the abandoned lands in a status quo state. The status quo in question is calculated from the date of submission so that the abandoned land determination is issued and no legal action can be taken against the land.

Further explained in Article 70;

- a. In the cases of Abandoned Lands at time it is designated as State General Reserve Land, at that location there are already community groups cultivating it, efforts are made to record the old and new cultivators.
- b. Data collection efforts as referred to in paragraph (1) are caried outs in the contexts of planning the regulation of the use of States General Reserve Land and preventing the spread of new control by old and new cultivators.

Land that has been designates as abandoned is to be directly controlled by the states. In this case, the National Land Agency of the Republic of Indonesia will assume direct control of such land as State General Reserve Land (TNK), for the benefit of both the communiton and the states: The first component of the financial plan is the Agrarian Reform. The second is the States strategice programed. The third is remaining State funds Control. The objective of regulating abandoned lands encompasses lands thats has been grant right by the States in the form of Ownership Rights, Cultivation Right, Bulding Right, Usage Right, and Managements Right, or the basis for controls over lands that is nothing cultivates, nothing use, or nothing utilised in acordance with its conditional or the natured and purposes of granting right or the basic for control. Abandoned lands that had been designated as such is subject to automatic nullification and voidance by law. This legal process entails the transfers of lands right previous held by individual, groups, or legals entities to the States as the land regulators in Indonesia, thereby ensuring proper execution of the lands purpose and function (Utami et al., 2021).

It is imperative to acknowledge the fundamental stages of legal protection, which are as follows: legal protections is born from legals provisions and all legals regulation provided by the community. The community essentially enters into an agreement to regulated behaviour relationship between citizens and between individuals and the governments, which is consider to represented the community's interest. It is important to note that the pursuit of legal protection is driven by the desire to establish order and consistency within the fundamental values of law, names legals certain, legals benefit and legals justice. However, it



should be acknowledged that these three principles are often at odds with one another. Nevertheless, concerted efforts must be made to ensure the simultaneous presence of these three values in legal protection (Rangkut, 2016).

Dispute resolution is a process of resolution through litigation through the courts or non-litigation outside the courts or often referred to as alternative dispute resolution. Dispute resolution to create justice based on the 1945 Constitutions of the Republic of Indonesia confirms that Indonesia is a country of law. One of principles of a country of law is the guarantee of the implementation of power by enforcing fair laws in deciding all decisions without intervention or interference from other parties, especially high-ranking officials who have power. Land disputes can be formulated as "Disputed or Disputes that make lands rights the objects of the Disputes". The following paper sets out the salient points of the issue at hand: firstly the emergence of land disputes, and secondly the submission of complaints by an aggrieved party, whether individual or legal entity, in which said party is entitled to raise objection and demand for land right, both regarding the status of the lands, its priorition, and its ownerships. These complaints will include the hope of obtaining administrative adjustments in accordance with the relevant legal regulations; and secondly, the submission of complaints by an aggrieved party, whether individual or legal entity, in which said party is entitled to raise objections and demands for land right, both regarding the status of the lands, its priorition, and its ownerships.

The determination what constitutes 'abandoned land' may be considered to be in direct contravention of the relevant laws and regulations, for the following reasons (Satra Putra, 2020):

1. The competent state administrative body or officials believes that it has the authority to issue or refused to issue a decision, when in fact it does not have the authority to issue or refuse to issue a decision;
2. The authority to issue a decision does exist on the basis of the relevant laws and regulations, but the authority is nothing actual conferred on the body that issued the disputed decisions. This can occur if the agency has acted on the basis of delegation, even though the delegation is nothing actual based on a delegation decision from party who delegated it, or the delegation should not have been carried out because it has no legal basis or statutory regulations;
3. The authority in question may have a legal basis or statutory regulation, but the disputed decision itself conflicts with higher laws and regulations or conflicts with other laws and regulations.
4. The laws and regulations that are the basis for issuing the relevant decision may turn out to conflict with higher laws and regulations.
5. The disputed decision may have been issued in a manner that deviates from the provisions of the laws and regulation that should have been stipulated.

The policy is predicated on the creation of order in society, the protection of the community right and the realisation of its welfare. The legal basis for the authority to bind a decision is Government Regulation Number 20 of 2021 concerning the Order of Abandoned Area and Lands. The policy that will decide on handling of abandoned lands is based on the Law (Parihah et al., 2022). In the context of abandoned land cases, efforts to safeguard the community and ensure legal certainty in the determination of abandoned land, free from any semblance of abuse of authority, ought to be accorded precedence over the orderly processes themselves. This is predicated on the understanding that the risk of erroneously designating land as abandoned is significant, as such designations effectively sever the legal relationships between a landowner and their property. The utilisation of abandoned lands constitutes a strategic phase, and the mechanism must be able to guarantee that effort to organise

abandoned lands can be returned to greatest prosperity of the people. This can be achieved through the process of determining abandoned land that applied AAUPB values as a form of guarantee in providing legal certainty and truth in determining abandoned lands. The implications of the existence of the State General Reserve Lands through the Determinations of Abandoned Land can be utilized effectively.

## Conclusion

The form of legal protections for lands right holders designated as abandoned land in Indonesia shows that injustice in land management and utilization can result in the enactment of land designates as abandoned lands, resulting in the loss of ownership rights to lands and maintenance of the lands status as land controlled by the states. Therefore, it is important for rights holders to actively manage and utilize the land in accordance with applicable legal provisions. Strengthening legal protection through the application of good governance principles in the managements of abandoned lands. This study also highlights the need for more effective regulations to ensure that abandoned land is managed for the welfare and society of the country. With the right steps, the management of abandoned lands that is built can provide maximum benefits and support sustainable development.

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