

## THE CONSTRAINTS OF LEGAL FACTORS IN CONTROLLING ABANDONED LAND AFTER THE ENACTMENT OF THE JOB CREATION LAW

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### ABSTRACT

Controlling abandoned land is a form of law enforcement in the context of implementing “instruction” in the Basic Agrarian Law (henceforth UUPA – *Undang-Undang Pokok Agraria*), and that the law functions as a social control exercised by the state against holders of land rights and Basis for Land Control (henceforth DPAT – *Dasar Penguasaan Atas Tanah*) that do not fulfill the obligations. Based on Article 27, Article 37, and Article 40 of the UUPA, land rights will be nullified if neglected. However, the UUPA has not explained how a land is categorized as abandoned land, and has not regulated the Control of Abandoned Land. Government Regulation No. 11 of 2010 is considered ineffective in overcoming the problem of controlling abandoned land so that it was revoked. Then, Government Regulation Number 20 of 2021 was stipulated. This law is a derivative of the Omnibus Law, and it is the basis for controlling the abandoned land. This paper aims to investigate the obstacles to controlling the abandoned land after the enactment of the Omnibus Law.

**Keywords:** Abandoned land, basis for land control, land control, job creation law, land rights, Land National Agency and Spatial Planning, abolition of land rights.

### A. INTRODUCTION

#### 1. Background of the Study

By granting land rights to the land holder, it does not mean that she/he can ignore his/her

obligations, and let he or she interferes with or harm the rights of others. Provide restrictions on a person's rights to the maximum extent so as not to interfere or harm

the rights of others in addition to setting minimum limits on obligations that must be fulfilled for the sake of the rights of others.<sup>1</sup>

Based on the Government Regulation Number 20 of 2021, Abandoned Land is land with rights, land with Management Rights, and land obtained based on the Basis of Control over Land, which is intentionally not cultivated, not used, not utilized, and/or not maintained. This abandoned land control activity is carried out by the Ministry of Agrarian Affairs and Spatial Planning, consisting of several stages, namely an inventory of abandoned land, evaluation, notification period, warning, proposal for determination of abandoned land, and determination of abandoned land. The stipulation of Abandoned Land is carried out by means of a Decision on Determination of Abandoned Land by the Minister of Agrarian Affairs

and Spatial Planning/Head of BPN (National Land Agency). By being designated as abandoned land, it will result in the abolition of land rights, severing the legal relationship between the holder of land rights and the land under control, and affirmed as land directly controlled by the state. This will later become the object of Agrarian Reform which can be redistributed to the community, in order to carry out the mandate, as much land as possible for the prosperity of the people.

There are at least three underlying motives why abandoned land must be brought under control. The first principle is the principle of justice. There are many abandoned lands whose status is not part of the state's economic and political system, but already has a basis of control, so the community and the state cannot use it. The second principle is the constitutional mandate. Based on the UUPA of 1960 in Article 27, Article 37 and Article 40 of Law no. 5 of 1960 mandates that

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<sup>1</sup> Maria SW. Sumardjono, Kebijakan Pertanahan antara Regulasi dan Implementasi. Jakarta: Penerbit Buku Kompas, 2001, hlm. 14.

abandoned land must be taken by the state. The third principle is that abandoned land is often a source of conflict.<sup>2</sup> The Control of Abandoned Land is a form of law enforcement in the context of carrying out "orders" in the UUPA, and that the law functions as a social control exercised by the state against holders of land rights and DPAT who do not fulfill their obligations.

In addition, the regulation on controlling abandoned land was first regulated in Government Regulation Number 36 of 1998. On January 22, 2010, Government Regulation No. 11/2010 was enacted, which also revoked the previous regulation. However, over time, Government Regulation 11 of 2010 has not been able to overcome the obstacles in controlling abandoned land. Moreover, there are many lawsuits in the State Administrative Court (PTUN – *Pengadilan Tata Usaha*

*Negara*) that end in the cancellation of the Abandoned Land Determination Decision. In February 2021, as a derivative of the Omnibus Law this gave birth to 4 Government Regulations in the land sector. One of them is Government Regulation Number 20 of 2021 on Control of Abandoned Areas and Land which revokes Government Regulation Number 11 of 2010. In April 2021, Regulation of the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency/ Head of BPN (National Land Agency) No. 20 of 2021 was stipulated, as the implementing regulation from the Government Regulation Number 20 of 2021. This regulation is the basis for controlling abandoned areas and land in Indonesia.

The most interesting for the author is that the regulation on controlling abandoned land has been started since 1998, which means that it has been 24 years since the control of abandoned land has been carried out, but in fact

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<sup>2</sup> Sarjita, *Beberapa Pemikiran tentang Status Tanah dan Dinamikanya*. Yogyakarta: STPN Press, 2020, hlm. 2

there are still many neglected lands in Indonesia. Some of the problems that occur are caused by not being regulated/legal vacuum in the series of controlling abandoned land. Even the legal vacuum occurs in a vital part of a regulation. In each regulation regarding the control of abandoned land, there are differences in the scope, criteria, and exceptions as indicators that a plot of land is declared as abandoned land. In fact, without clear boundaries, there will be many interpretations regarding abandoned land, which will lead to legal uncertainty in controlling abandoned land, even resulting in the cancellation of the determination of abandoned land.

## **2. Identification of the Problem**

Based on the problems above, the research question was;

1. What are the constraints of legal factors in controlling abandoned land in Indonesia?

## **B. METHOD**

This study was conducted empirically. The sources of data of this study

were primary and secondary legal materials and those were taken by using the library research techniques and the author's observations as policy implementers. The data were analyzed qualitatively.

## **C. RESULTS AND DISCUSSION**

Controlling abandoned land in Indonesia is regulated in Government Regulation Number 20 of 2021 and as its implementing regulation, Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 20 of 2021. Finding out the obstacles from the legal factor is from the regulation of abandoned land itself. According to Soerjono Soekanto, legal factors in the effectiveness of a law can be measured from the following rules;<sup>3</sup>

- a) The existing regulations regarding certain areas of life are quite systematic.
- b) The existing regulations regarding certain areas of life are quite synchronous,

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<sup>3</sup> Soerjono Soekanto, Efektivitas Hukum dan Peranan Sanksi. Bandung: Remadja Karya CV, 1985, hlm 22.

hierarchically and horizontally there are no conflicts.

- c) Qualitatively and quantitatively, the regulations governing certain areas of life are sufficient.
- d) The issuance of certain regulations is in accordance with the existing juridical requirements.

Therefore, to find out these constraints, the author measures by analyzing, with the following results;

### **1. Law Enforcement**

Because Government Regulation Number 20 of 2021 is a derivative of UUCK, regarding the formation of this regulation, it cannot be separated from Court Decision Number 91/PUU-XVIII/2020 that contained about the UUCK is declared conditionally unconstitutional to be revised immediately within 2 years from November 25, 2021. Otherwise, it will be permanently unconstitutional

and null and void. However, this Government Regulation is also based on the UUPA, and until now the UUPA remains in full force and effect.

This Government Regulation Number 20 of 2021 is a regulation that specifically regulates the control of abandoned land. Also, it revokes the previous regulation which is considered ineffective in overcoming the problem of controlling abandoned land in Indonesia, namely Government Regulation Number 11 of 2010.

The regulation on controlling abandoned land is part of what is regulated in Government Regulation Number 20 of 2021. The instruction to control abandoned land itself was born from Articles 6, 15, 27, 34, and 40 of the UUPA which until now is in full force and effect. Meanwhile, the new regulation in Article 180 of the UUCK is the regulation on controlling

abandoned areas, which is also equally regulated in Government Regulation No. 20 of 2021.

## **2. Legal Purpose**

Legal policy will be influenced by the legal character of a country and will be largely determined by the choice of the value of interest, namely whether legal policy is concerned with prosperity for individuals or will emphasize prosperity for many people. The distinction on whether or not the fulfillment of interests is fulfilled is based on a policy economic perspective as well as a social theory perspective, even from an ideological perspective. The difference in interests is dichotomized on the ideology of individualism-liberal that emphasize individual freedom or capitalism and collectivism or communism that emphasizes common interests.<sup>4</sup> The policy

in Indonesia certainly has the ideology of Pancasila (Five Principles), the 1945 Constitution, and specifically the regulation in the land sector is the UUPA.

The UUPA stipulates that one of the causes of the abolition of land rights is neglect. Controlling Abandoned Land is one of the efforts to overcome inequality in land control in Indonesia. The control was born as a manifestation of controlling land rights by supervising the fulfillment of the rights holder's obligations. The results of controlling abandoned land are utilized for agriculture and non-agriculture in the interest of society and the state, through Agrarian Reform, National Strategic Projects, Land Banks, and other state reserves.

## **3. Legal Substance**

Legal ambiguity or

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<sup>4</sup> Arie S. Hutagalung dan Markus Gunawan, *Kewenangan Pemerintah di Bidang Pertanahan*.

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Jakarta: PT Rajagrafindo Persada, 2008, hlm. 34

unclear legal norms (*vage van normen*) in the regulation of abandoned land will of course have an impact on its implementation. The following are some of the obstacles to the legal substance of these regulations:

**a) Definition of Abandoned Land**

According to Logemann, the rule of law is binding if it shows the relationship between a condition and its consequences. When it comes to controlling abandoned land, it is very important to define and explain the conditions under which a plot of land is categorized as abandoned land. It is important to clearly describe the scope, criteria, and exclusion of abandoned land. Moreover, there are differences in understanding between society and regulations. The community regards abandoned land as only physically neglected. Meanwhile, in the

regulation, it does not only look at physically, but also juridically neglected. Physically abandoned land is land rights that are not physically managed, such as leaving the land not properly maintained or allowing the land to be unproductive. Meanwhile, legally abandoned land is land with rights based on certain criteria that have been legally determined as abandoned land according to the applicable laws and regulations.<sup>5</sup>

In Government Regulation Number 20 of 2021, Abandoned Land means Basis for Land Control Entitled Land, Land under Right to Manage, or Land acquired based on the control of Land purposely not cultivated, not used, not utilized and/or not maintained. In other words, Land is categorized as

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<sup>5</sup> Soerjono Soekanto, *Efektivitas Hukum dan Peranan Sanksi*. Bandung: Remadja Karya CV, 1985, hlm. 27

abandoned if the subject (Holder with Rights of Ownership, Right to Build, Right to Cultivate, Right to Use, Right to Manage and the Basis for Land Control) intentionally violates or does not carry out obligations in the form of not working, not using, not utilizing the object (Ownership Rights, Right to Build, Right to Cultivate, Right to Use, Right to Management and Basis for Land Control). However, it does not determine what kind of concrete actions are included in the category of trying, using, and making use of it. Are each of these concrete actions the same for every land right and Basis for Land Control? Whereas each land right and the basis of land tenure has different characteristics. The previous regulation regulates the implementation of obligations, namely with indicators of the condition or nature and purpose of giving the object.

In Government Regulation Number 20 of 2021 it has not explained the types of Basic Control over Land and in the Regulation of the Minister of Agrarian Affairs and Spatial Planning /Head of BPN (National Land Agency) Number 20 of 2021 it has regulated the types of DPAT, they are;

- Deed of Sale and Purchase of certified Land Right that have not been renamed;
- Deed of Sale and Purchase of customary property rights that have not been issued;
- Residence permit;
- Minutes of Auction;
- Decree to release forest area; or
- Other proof of ownership from the authorized official.

As argued above, another question arises, what about the Basis for Land Control which also has a



different character?

In the explanation of Article 27 of Law Number 5 of 1960 (UUPA), it is stated that "Land is abandoned if it is intentionally not used in accordance with the circumstances or the nature and purpose of the rights". Considering that each land right has different characteristics, it is necessary to explain the circumstances or nature and purpose of each land right. This is unregulated. With this matter not yet regulated, it can lead to various and limitless interpretations, of course, this is an obstacle in controlling abandoned land in Indonesia

**b) The Exception of Abandoned Land**

The regulation on the exception of abandoned land has also corrected the weaknesses in the previous regulation by regulating the exception of objects that are the object of a case in the

Court, changes to the Spatial Plan, declared for conservation, due to force majeure. But it also creates a new weakness, namely the exception of Management Rights which are assets of the Land Bank.

Management rights which are assets of the Land Bank are excluded from controlling abandoned land. In the sense that if a Land Bank asset management rights are found that are not cultivated, not used, not utilized, and not maintained, based on Government Regulation Number 20 of 2021, it is not considered abandoned land. In fact, the Land Bank Asset Management Rights may come from the control of abandoned land. It does not let the land that has been brought under control because the original right holder abandoned the land, after it was designated as abandoned land, and controlled by the state as an asset of the

land bank, then abandoned, and cannot be brought into order because it includes the exception of the object of controlling abandoned land. This is contrary to the principle of equality in the rule of law. The application of Equality (Similia Similius or Equality before the law) in a State of Law, the Government may not privilege certain people or groups of people or discriminate against certain people or groups.<sup>6</sup> As regulated in Article 15 of the UUPA, it is also necessary to consider exceptions for subjects belonging to a weak economic group. Along with setting criteria for subjects who are in the lower economic status.

**c) Sanctions**

Sometimes the legislation also stipulates a negative sanction in the form of coercion or threats of a violation. Also, the sanctions

included in the Regulations for Controlling Abandoned Land in terms of negative sanction. This sanction is in the form of abolition of rights, termination of legal relations, and affirmation of being land controlled directly by the state. This negative witness is already an optimal civil sanction.

The method of using coercion or threats may be treated more often in a society that is undergoing rapid change. This is because in such a society, the social control system functions more as a form of new rules or values, as a substitute for old rules or values that are fading away. However, how to use coercion or threats must also have limits because it can cause real and potential negative reactions. The party who launches a negative reaction, will definitely wait for the opportunity where the "agent of social control" is in a state

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<sup>6</sup> Ibid

of carelessness.<sup>7</sup> The loophole in this regulation is exploited by filing a lawsuit against the Decision on the Determination of Abandoned Land by the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency. Thus, regulations need to strictly and clearly regulate the criteria and scope of abandoned land, as well as procedures for controlling it

**d) Procedure**

The following are the steps in controlling abandoned land:

- 1) Pre-Control of Abandoned Land, namely in the form of an inventory of abandoned land indicated.
- 2) Control of Abandoned Land, including: Evaluation, Notification Period, Warning, Proposal for Determination of Abandoned Land, Determination of Abandoned Land, and

Follow-up on Determination of Abandoned Land

The following are the procedural constraints in implementing the control of abandoned land, they are:

- 1) Evaluation of Abandoned Land

The regulation does not regulate the length of evaluation carried out in the context of controlling abandoned land. Even though in the Technical Instructions for Controlling Abandoned Land, this has been regulated. However, this should be regulated in a Government Regulation. This regulation does not yet regulate, starting from activity whether it is the period of reporting on the progress of land exploitation by the holder of the right.

- 2) Notification Period, setting the time period should also mention when

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<sup>7</sup> Ibid, page 36.

it starts.

### 3) Warning Period

The regulation stipulates that warnings are made in writing. For a number of calendar days since the receipt of a warning letter by the Holder of Rights/ Basis for Land Control. The date of receipt in question is in the form of a postal stamp of delivery or the date it is received directly by the Holder of Rights/ Basis for Land Control. In fact, the postal stamp of the shipment does not reflect the date the letter was received. Need to rearrange about this.

The previous regulation has not set what concrete action is meant. However, in this regulation it is already applied, they are;

- Cultivate, use, utilize, and/or maintain the land in accordance with the decision to grant the rights and/or the plan for exploitation, use, and utilization.

Of course, it will be difficult for the right holder if he has to cultivate, use, utilize, and/or maintain his land as a whole. It's a good idea to set it as a percentage of the abandoned land area, and this percentage increases with each warning.

- Applying for the right to DPAT

This actually makes the control of abandoned land back to zero. It is because if the rights to the land have been granted, and they are still neglected, then it will only take 2 more years to carry out an inventory of the land.

- 4) Proposed Determination of Abandoned Land, setting the time period also mentions when it is started.

- 5) Designation of Abandoned Land

This new regulation regulates the stipulation of

abandoned land on land rights, either wholly or partially abandoned, as well as the Basis for Land Control which is entirely abandoned. It has not been regulated regarding the stipulation of Abandoned Land on part of the Basis for Land Control over Abandoned Land.

6) Follow-up on Determination of Abandoned Land

This new regulation regulates the follow-up to land rights, whether partially or completely abandoned by withdrawing and crossing out land certificates. If some are neglected, then a broad revision will be carried out first. However, this regulation does not yet regulate the follow-up to abandoned land on Basis for Land Control, either partially or completely abandoned.

## **D. CLOSING**

### **1. Conclusion**

Government Regulation Number 20 of 2021 and its implementing regulations, there are still unclear norms in every stage of controlling abandoned land. Also, the most basic in the Control of Abandoned Land is the regulation on the conditions under which a parcel of land is categorized as abandoned. This has not been clearly regulated, including the indicators of being cultivated, utilized, and used for each land right, considering that each land right has a different character. Furthermore, government needs to re-set the exception in order.

### **2. Suggestions**

As presented in the results section, the suggestion is addressed to the Government to immediately implement the Court's Decision Number 91/PUU-XVIII/2020, by revising one of the derivatives of the UUCK. It is Government Regulation Number 20 of 2021 on

Controlling Abandoned Areas and Lands and their implementing regulations, while maintaining adhere to the basic rules, namely UUPA. The revision is expected to be able to resolve the weaknesses in Government Regulation Number 20 of 2021 and its regulation implementation.

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