

RECONSTRUCTION OF LAW ENFORCEMENT AND USE OF ABANDONED LAND IN INDONESIA

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Abstract

The aim of this research is to find out the model Reconstruction of Law Enforcement, Control and Utilization of Abandoned Land in Indonesia. This type of research is normative legal research, namely research that examines positive legal norms and legal principles that apply in Indonesia, especially in various laws and regulations regarding the Control and Utilization of Abandoned Land. The approaches used are: Philosophical Approach, Conceptual Approach, Legislative Approach, case approach, and comparative approach. The theories used are the theory of the Rule of Law, Theory of Justice, Theory of Legal Protection, Theory of Legal Certainty, and Theory of Hierarchy of Legislative Regulations. The research results show that it is the obligation of the State through the government to control and regulate the control, ownership, use and utilization of land for the greatest prosperity of the people. The form of implementation of control and use of abandoned land in Indonesia is not in accordance with the mandate of Article 33 (3) of the 1945 Constitution and UUPA, this is because there are procedures for controlling abandoned land which are in conflict with Law Number 30/2004 in addition to the absence of conflict mapping resulting from land use. Neglected for a long time and not up to the mark. Therefore, a reconstructed model of law enforcement for controlling and utilizing abandoned land is needed, in the form of: a publicity principle model in controlling abandoned land, a win-win solution model in controlling abandoned land, a model for revoking certificates of land rights based on the determination of abandoned land and mapping conflicts over abandoned land so that its utilization can be right on target.

Keywords: Reconstruction; Law Enforcement; Abandoned Land.

INTRODUCTION

The state philosophically assumes very important duties and authority, namely protecting the entire Indonesian homeland and implementing the goals of the Indonesian nation to advance general welfare. Therefore, the state must be able to build a system to facilitate its duties and authority. In this position, the state's role as carried out by the government system is known. It is the government that brings together and regulates the various interests and needs of citizens, both individually and in groups, which must be carried out fairly, including the task of public authority to regulate and lead the control and use of land throughout Indonesia.

The state has an element of public authority to regulate and lead the control and use of land throughout Indonesia. This authority is carried out by the State based on the right to control the State. According to HM. Arba the right to control the state is to give authority to legal institutions and concrete legal relations between the state and Indonesian land. ¹ To illustrate how important state intervention is in society in helping economic development and prosperity, it is useful to look at what John Maynerad Keynes said about the welfare state. According to John Mayner Keynes, economic activity cannot be left to run alone, but must be corrected, namely correction by the state or government regarding the harmonious balance between

economic actors.² The manifestation of land registration is the issuance of a certificate of land rights which acts as a strong means of proof. Based on the types of provisions, land rights certificates include provisions that are constitutive, namely provisions that create new rights that were not previously owned by the person whose name is listed on the land rights certificate.³ Thus, the purpose of land registration is to guarantee legal certainty of land rights. The aim of land law policy in the choice of negative publicity system (with positive elements) is closely related to the aim of the land law system itself, namely the creation of a just, prosperous and prosperous society. Therefore, the choice of using the land law system in a negative publicity system (with positive elements) should be oriented towards basic legal values, namely to create order and regularity, peace and justice. However, inequality in control and ownership as well as land neglect has resulted in various conflicts surrounding land so that the prosperity (prosperity, happiness and justice for the State and the People) mandated by the 1945 Constitution has not yet been achieved optimally.

Achieving social justice can be described through several aspects, for example the role of land as a basis for obtaining work and income, identification of disadvantaged parties in various conflicts of interest, as well as caring for the lands of customary law communities. Meanwhile, goals related to environmental issues require the availability of comprehensive land use regulations, the ability to explore the role of local communities in managing natural resources, and effective coordination of administrative branches.⁴

Indonesia's choice to understand the welfare state has become a firm determination. Where apart from being a welfare state, Indonesia also declares itself to be a rule of law state. The principle of the rule of law adopted by Indonesia is the Pancasila State of Law which is prismatic and integrative, namely the principle of the rule of law which integrates or brings together good elements from several different concepts (namely elements in the Rechtsstaat, the rule of law. The concept of the state formal law and material legal state) and given Indonesian values (such as divinity, kinship, fatherhood, harmony, balance and deliberation, all of which are the roots of Indonesian legal culture) as specific values so that they become the principles of the Pancasila legal state.⁵

Therefore, it is necessary to reconstruct land law policies which are steps to correct policy uncertainty in the land sector, especially related to controlling and utilizing abandoned land as well as improving the quality of human resources and public services at the Ministry of Agrarian Affairs and Spatial Planning/Land Agency. National. So that land law policies are able to explore, follow and understand the legal values and sense of justice that live in society, not the values of capitalism or secularism.

Therefore, it is necessary to study the reconstruction of land law policies, especially regarding the enforcement of laws for controlling and utilizing abandoned land in accordance with the constitution, does not conflict with legal principles and does not conflict with other regulations that have been formed and can be implemented by State Administrative Officials in accordance with the law. With AUPB.

METHOD

This type of research is normative legal research, namely research that examines positive legal norms and legal principles that apply in Indonesia, especially in various laws and regulations regarding the Control and Utilization of Abandoned Land. The approaches used are: Philosophical Approach, Conceptual Approach, Legislative Approach, case approach, and comparative approach. The theories used are the theory of the Rule of Law, Theory of Justice, Theory of Legal Protection, Theory of Legal Certainty, and Theory of Hierarchy of Legislative Regulations.

RESULTS AND DISCUSSION

Before discussing further the legal reconstruction model for controlling abandoned land. It is necessary to understand that the word model, although not known as a term directly related to legal science, is increasingly being used by legal experts and legal institutions in Indonesia and its use is increasingly being accepted in discussions of legal science. In the Indonesian Dictionary⁶ The word model means pattern, example, reference, variety, something that will be made or produced. The word model has now been accepted and is often used in legal discussions. Romli Atmasasmita⁷ Mention that the word model is the equivalent of the term paradigm to explain a model in science or a framework of thinking. Meanwhile Jimly Asshiddiqie⁸ also uses the term model in explaining his framework for thinking about constitutional models. According to Jimly Asshiddiqie, the word model refers to the meaning of the word form or structure. So, in discussing the reconstruction model for controlling and utilizing abandoned land, it refers to the meaning of paradigm, form, structure, classification and general description of the reconstruction of controlling and utilizing abandoned land.

As previously explained, controlling abandoned land is a constitutional issue. Because of the ideals of the 1945 Constitution as a welfare state constitution. In our constitution, namely the 1945 Constitution, controlling abandoned land has been discussed from the opening, namely in the fourth paragraph, to the main body as in Chapter XIV concerning the national economy and social welfare. The inclusion of points and provisions in article 33 paragraph (3) of the 1945 Constitution regarding the control of abandoned land in the constitution is a form of constitutional protection for the constitutional rights of citizens in utilizing land controlled by the state for the greatest prosperity of the people.

Even though the implementing regulations for controlling abandoned land have been in place since 1998 and have undergone two changes, resolving abandoned land which creates inequality in control and ownership of land has still been the government's homework from the Old Order era up to the current revoemation era. In fact, the issue of land abandonment is a constitutional issue, which is included as a constitutional right. The implementation of constitutional rights must not only be respected and fulfilled, but must also be protected. Therefore, it is necessary to reconstruct regulations regarding the control and utilization of abandoned land, as explained below:

Publicity Principle Model in Controlling Abandoned Land

It has been explained above that the objects for controlling abandoned land include land ownership rights, building use rights, business use rights, use rights, management rights, and land obtained based on the basis of land control. In Article 27, Article 34 and Article 40 of the UUPA it is explained that one of the reasons for the elimination of land rights is due to neglect. Apart from that, in article 180 of Law of the Republic of Indonesia Number 6 of 2023 LN RI Number 238 of 2022 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation Becoming Law (hereinafter referred to as Law Number 6/2023) has It is regulated that land rights which are intentionally not cultivated or abandoned within a maximum period of 2 (two) years from the time they are granted, are revoked and returned to the state.

At the stage of proposing the determination of abandoned land to the Minister as regulated in articles 27 and 28 of Government Regulation Number 20/2021, legal actions cannot be taken on this plot of land (transfer of rights, imposition of mortgage rights, and use and utilization of the land). Therefore, it is necessary to have the principle of openness (*openbaarheid*) in controlling abandoned land. This is based on the fact that in PP Number 24/1997 land registration is carried out based on the principles of simple, safe, affordable, up-to-date and open. The open principle in land registration is intended so that the public can obtain information regarding correct physical data and juridical data at all times.

In the perspective of state administrative law, it is known that there are principles or general principles of good government (AAUPB) which are very functional and have an important meaning in the implementation of good government so that they can be interpreted as legal principles whose material is extracted and found from moral elements, based on Morals as real laws are closely related to ethics, decency and propriety based on applicable norms. In this way, state administration is expected to avoid acts of *onrechtmatige daad*, *detournement de pouvoir*, *abuse de droit*, and *ultravires*. In AAUPB, what is meant by the principle of openness is the principle of opening up to the public's right to obtain correct, honest and non-discriminatory information about state administration while still paying attention to the protection of personal, group human rights and state secrets. The principle of openness is based on the principle of democracy in the implementation of government, which shows that the principle of democracy is not only implemented through the people's representative bodies, but also by every citizen in connection with government actions in the form of decisions.

Along with the development and demands of a democratic legal state, the existence of the principle of openness cannot be ignored. This principle of openness has important functions, namely: first, the function of participation, where openness is a tool for citizens to participate in the government process independently. Second, the function of general accountability and monitoring openness, on the one hand as a tool for the authorities to provide accountability in public, on the other hand as a tool for citizens to monitor the authorities. Third, the function of legal certainty; Decisions of certain authorities that concern the legal position of citizens for the sake of legal certainty must be known, so they must be open. Fourth, the function of basic rights, openness can apply for the use of basic rights such as the right to vote, freedom of

opinion, and the right to assemble and speak.⁹ Referring to the explanation above, when proposing the determination of abandoned land, no legal action may be taken on the plot of land, therefore, when proposing the determination of abandoned land to the Minister, it must be announced first via the mass media or the Ministry's website regarding the land plot. The land is indicated as abandoned land so that other parties who also have a legal relationship with the plot of land can obtain information as the purpose of land registration, namely to provide information to interested parties, can be achieved.

Win-Win Solution Model in Controlling Abandoned Land

Currently, land indicated as abandoned is spread almost evenly across Indonesia. This condition shows that land abandonment is a strategic issue because it causes inequalities in distribution patterns of control, ownership and use of land result in people being powerless in obtaining land assets to improve the economy and meet needs, including food.

Conditions of inequality in asset control and access to land can be minimized if land rights, management rights or basic control over land are cultivated, used and exploited optimally so as to provide maximum beneficial effects for economic growth and community welfare, such as increasing Gross Domestic Product as an indicator. economic growth, increasing employment, increasing state revenue through taxes and levies as well as creating a multiplier effect for the growth of supporting businesses around the land location.

At the practical level, managing abandoned land covering millions of hectares with state losses of trillions of rupiah is not an easy matter. In many cases, the determination of abandoned land as the object of a lawsuit at the State Administrative Court (PTUN) faces resistance from rights holders who have influence in implementing policies and is not supported by sectoral agencies, so that the decision is dominated by the cancellation and revocation of the decision letter determining abandoned land. resulting in it not being able to be used for the benefit of society and the state, through agrarian reform and state strategic programs as well as for other state reserves. Likewise, abandoned land that has been decided by the court and won by the government, is not easy to distribute, because of the bureaucratic process and problems of contesting/distributing rights to land that has been designated as abandoned land among the community, in addition to the emergence of land bank agencies in PP 20 /2021 also caused unrest among the public because the regulation did not regulate in detail the subject of beneficiaries from the designation of abandoned land and the type of development.

Legal enforcement of abandoned land theoretically goes hand in hand with granting land rights, to ensure that the use of rights is appropriate and does not conflict with statutory regulations. When the state has given rights to land, it becomes a private right or personal right and the Indonesian constitution and law guarantee and protect the ownership and implementation of these private rights from interference by anyone. However, the ownership and implementation of private rights does not make these private rights superior to those held by the state. Violations of the land abandonment law, by large investors or the capital holding group, require affirmative and commensurate law enforcement. Public authority originating from constitutional and positive law marks law enforcement by "usurping" rights when the right

owner violates the law. In line with practice in America, the most liberal country and mother of capitalists in the world, land confiscation is carried out on law violators, which are called land confiscated.

If we look at the basis of our constitution, the aim of controlling abandoned land is to use it for the greatest prosperity of the people. So the regulations regarding controlling abandoned land should be ones that can directly provide benefits for the welfare of the people. Because most of the land included in the designation of abandoned land has been occupied by the community, this has given rise to conflicts between the community, the government and land rights holders.

Controlling abandoned land takes a relatively long time, not to mention resistance from land rights holders which results in decrees determining abandoned land being often defeated at the court level, and the "sleeping" of land that has been designated as abandoned land because it cannot be utilized by the government, resulting in The aim of controlling and utilizing abandoned land is far from the spirit of the constitution to improve the welfare of the people.

Before the evaluation stage of abandoned land is carried out by the Regional Office of the National Land Agency, an inventory is first carried out by the Land Office. It is during this inventory that conflict mapping is needed on plots of land that will be included in the land database indicated as abandoned, so that during the evaluation stage abandoned land can provide a win-win solution related to the conflicts or problems faced.

Therefore, training in mediator skills is needed for state civil servants carrying out control of abandoned land, so that they can shift negotiations from positional claims to underlying interests, so that the plot of land can be utilized in accordance with the purpose of granting rights and the use of land that is intended for the welfare of the community can be realized.

Model of Revocation of Land Rights Certificate Based on Determination of Abandoned Land

In PP Number 20/2021, the determination of abandoned land includes the abolition of Land Rights or Management Rights, severance of legal relations, and confirmation as state land, former abandoned land which is controlled directly by the state. In article 62 paragraph (2) ATR/BPN Ministerial Regulation Number 20/2021 it is stated that:

“Based on the Ministerial Decree as intended in paragraph (1), the head of the Land Office is obliged to: a. withdraw and cross out certificates of Land Rights/Management Rights and/or certificates of mortgage rights in the general register and other entries in the registration administration and announce them in the newspaper 1 (one) time within 30 (thirty) calendar days or put up a notice board at the location after the issuance of a decision stating that the certificate is invalid; or - b. announce in the newspaper 1 (one) time within 30 (thirty) calendar days or put up a notice board at the location after the decision is issued stating that the certificate is invalid, in the event that the certificate of Land Rights/Management Rights cannot be withdrawn”

In the regulations for controlling abandoned land, there is no need for a Decree to Cancel a Certificate of Land Rights. Meanwhile, a land rights certificate is a KTUN, based on the types

of provisions on a land rights certificate, including provisions that are constitutive, namely provisions that create new rights that were not previously owned by the person whose name is listed on the land rights certificate.¹⁰

So that the decision to determine abandoned land is in accordance with the principle of legality, the principle of protection of human rights and the General Principles of Good Governance (hereinafter referred to as AUPB), so that the revocation of the certificate of land rights must be determined by a stand-alone KTUN, because the issuance of a decision letter determining abandoned land means that the certificate of land rights has a substantive defect, namely that the decision is not used in accordance with the objectives stated in the content of the decision.¹¹ In accordance with the active nature of the government as described in the concept of "sturen", the government's active actions are not only limited to regulatory actions but also the government is active (even very active) in enforcing administrative law.¹²

Although basically the KTUN (certificate) that has been issued cannot be revoked again in line with the principle of *rechmatig* presumption and the principle of legal certainty, this does not mean eliminating the possibility of revoking the KTUN. Ridwan HR¹³ said that the HAN Rules provide the possibility of revoking profitable KTUN as a result of the KTUN recipient's mistake, so that revocation is a sanction for him. Hadjon further said that the imposition of administrative sanctions was carried out directly by government agencies/officials without having to go through a court process.¹⁴

Classification of Abandoned Land Utilization Programs

It has been explained above that land designated as abandoned land becomes former state land, its rights are abolished, its legal relationship is terminated, and it is confirmed as land directly controlled by the State, and is hereinafter referred to as State General Reserve Land (TCUN). The State General Reserve Land will be utilized. Utilization is business and restructuring so that it can bring results and benefits for the benefit of society and the state. So that in the context of utilizing State General Reserve Land, it is intended to exploit and reorganize State General Reserve Land so that it can bring results and benefits for the benefit of society and the state. Based on PERMEN ATR/KBPN Number 20 of 2021, the provisions for control, ownership, use and utilization of TCUN are utilized for the benefit of society and the state through: 1. Agrarian Reform; 2. National Strategic Project; 3. Land Bank; and 4. Other State Reserves.

In practice, the designation of abandoned land is not immediately accompanied by utilization of abandoned land, this results in land that is intended to provide prosperity for the people cannot be implemented, due to the long bureaucratic process in utilizing abandoned land which is cross-sectoral and the absence of classification in the utilization of abandoned land results in -The land that had been designated as abandoned land went back to "sleeping".

Local Government Involvement in Controlling and Utilizing Abandoned Land

To speed up the implementation of control and utilization of abandoned land, cooperation is needed between the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency as the central government and local regional governments. This is necessary

because controlling abandoned land not only affects the legal relationship between the land and the land rights holder, but is also related to the permits that the rights holder has on the land rights.

Although matters of controlling and utilizing abandoned land which fall within the Agrarian domain as described in the background are the authority of the central government, regional governments have the authority to regulate and organize the allocation, use, supply and maintenance of land. The authority to regulate, for example, relates to regional development planning, the authority to organize, for example, in the form of actions to finalize land to be prepared for the construction of public housing, industry and others.¹⁵

In line with this, in the general explanation of Government Regulation Number 6 of 2021 LN Number 16 of 2021 concerning the Implementation of Business Licensing in the Regions (hereinafter referred to as PP Number 6/2021) that regional governments have the authority to administer business licensing in the regions, Regional Regulations and Regional Regulations regarding Business Licensing, reporting on the Implementation of Business Licensing in the Regions, guidance and supervision as well as funding. Furthermore, article 6 of PP Number 6/2021 states that the implementation of business licensing in the regions is carried out to improve the investment ecosystem and business activities, one of which is the basic requirements for business licensing including suitability of space utilization activities, environmental approval and building approval and a functionally appropriate certificate.

Seeing that the authority for business licensing is a regional authority, the central government needs to have a cooperative relationship with regional governments in monitoring land indicated to be abandoned, this is because land abandonment not only results in inequality in land control and ownership but goes further than that into land abandonment. have an effect on the investment climate and regional income. This is in line with the concept of a welfare state, where the state is required to expand its responsibilities to the social problems faced by the people at large.

Therefore, in mapping abandoned land conflicts which result in land rights not being utilized in accordance with the purpose of granting the rights, it is necessary to involve the local regional government, so that the regional government can also take action or steps to be taken regarding the permits that have been issued and The utilization of abandoned land will also be in accordance with regional spatial planning and also the direction of regional development goals. Relations between the Central and Regional Governments The relations between the Central and Regional Governments can be traced from the third and fourth paragraphs of the Preamble to the 1945 Constitution of the Republic of Indonesia. The progress of a nation is largely determined by the innovations carried out by that nation. For this reason, it is necessary to protect innovative activities carried out by regional state civil servants in advancing their regions. There needs to be efforts to stimulate regional creativity to increase regional competitiveness. For this reason, it is necessary to have objective criteria that can be used as a guide for regional officials to carry out innovative activities. In this way, innovation will be stimulated and developed without any worry of becoming the object of a legal violation.

CONCLUSION

The legal reconstruction model for controlling and utilizing abandoned land in Indonesia is:

a. Model of the principle of publicity in controlling abandoned land

At the stage of proposing abandoned land to the Minister, no legal action can be taken on the plot of land until the Ministerial Decree is issued, therefore the principle of publicity is needed to prevent legal actions from being carried out by land rights holders and to provide opportunities for legal action to parties. third party who has an interest in the land plot.

b. Win-win solution model in controlling abandoned land

At the inventory stage of controlling abandoned land, conflict mapping is carried out so that it can provide a solution to implement a win-win solution. This is done to cut down on the very long bureaucratic process with the results of the plot of land being immediately utilized and resolving the conflict over the plot of land so that it can provide prosperity for public.

c. Model of Revocation of Land Rights Certificate Based on Determination of Abandoned Land

To implement the AUPB, the revocation of land title certificates must be determined by a stand-alone KTUN, because the issuance of a decision letter determining abandoned land means that the certificate of land rights has a substantive defect, namely the decision is not used in accordance with the objectives stated in the content of the decision.

d. Classification of Abandoned Land Utilization Programs

Determination of abandoned land is carried out for stopk There is inequality in the distribution pattern of control, ownership and use of land, so that the determination of abandoned land should be directly accompanied by the utilization of abandoned land, therefore it is necessary to have a classification program for the utilization of abandoned land.

e. Involving the local government in enforcing the law for controlling and utilizing abandoned land, because land abandonment not only has an impact on inequality of control and ownership of land but also impacts permits that have been issued by the regional government, and the utilization of abandoned land must be in accordance with the RTRW and the direction of development. Area

Footnotes

- 1) HM Arba, Indonesian Agrarian Law, Cet.6 (Jakarta: Sinar Graphics, 2019) p.78.
- 2) Gunarto Hadi, The Role of Law in Economic Development, (Yogyakarta: Atmajaya University, 2002) p. 35
- 3) Adrian Sutedi, Land Rights Certificate, Cet. 6(Jakarta, Sinar Graphics:2017), p. 52
- 4) Widhi Handoko, Land Law Policy A Reflection of Progressive Legal Justice, (Yogyakarta, Thafa Media: 2014) p. 84
- 5) Ibid, p. 127
- 6) Language Center Department of National Education, Indonesian Dictionary, Language Center, Jakarta, 2008.

- 7) Romli Atmasasmita, Three Legal Paradigms in National Development, *Prioris Law Journal*, Volume 3 No. 1 of 2012.
- 8) Jimly Asshiddiqie, *Models of Constitutional Testing in Various Countries*, Constitution Press Print II, 2005, p. 46.
- 9) Ateng Syafrudin in HR Ridwan, *Op.Cit.*, p. 256
- 10) Adrian Sutedi, *Op.Cit.*, p. 52
- 11) See the explanation of article 64 paragraph (1) letter c of Law no. 30/2014
- 12) Philipus M Hadjon, *The Grid of Administrative Law in the Context of Corruption* (Yogyakarta, UGM Press: 2011) p. 3
- 13) Ridawan HR, *Op.Cit.*, p. 312
- 14) Philipus M Hadjon, *Op.Cit.*, p. 8
- 15) HMArba, *Agrarian Law..... Op.Cit.*, p. 94

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