
Control and Empowerment of Abandoned Land for Agrarian Reform

Siti Hafsyah Idris¹ and I Wayan Kartika Jaya Utama^{2*}

1. Faculty of Law, Universiti Teknologi MARA, Malaysia

2. Faculty of Law, Universitas Warmadewa

*utama.kartika@yahoo.com

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Abstract

This research is conducted to describe the impact of the issuance of Government Regulation Number 11 of 2010 on the Control and Utilization of Abandoned Land that serves as an important part of the agrarian reform agenda. It is relevant to the solution to counteract and eradicate the crisis of poverty by providing land and other facilities necessary for production so that people are able to work more productively and live a prosperous life. Essentially, it involves the whole process of restructuring the tenure, ownership, use, and utilization of land in order to achieve social welfare and justice. This research applies normative legal methods to conduct a literary review because of the characteristics and traditions of law. The approaches used in legal research are the statute approach, the case approach, and the conceptual approach. The results of the research show that agrarian reform needs to be included in the nation's agenda and the basic strategy of the country to build a just political, economic and social structure. This is the relevance of placing all references, understanding, scope, and usefulness of the management of "the abandoned land which later becomes the state property" in realizing the true agrarian reform.

Keywords: Control and Empowerment; Abandoned Land; Agrarian Reform

I. INTRODUCTION

All land is scarce due to competing demands for its use, and sustainable land use and coordinated land policies have come under increasing pressure from industrialization and urbanization and ecological civilization construction (Jing Wang, Lin, Glendinning, & Xu, 2018). Decisions about land use are sites of political and legal contestation about social and environmental justice in both rural and urban contexts (Van Wagner, 2016). The land narrative is based on the dichotomous distinction between urban and rural-agricultural land, and consequently between urban and rural-agricultural settlers (Hananel, 2015). Cultivated land use is a process by which people make use of the ecosystem service functions of cultivated land to meet their own needs (Li, Zhang, Zhang, & Wu, 2017). The migration of people from rural to urban areas in the region has overwhelmed the capacity of municipal governments to provide both infrastructure and social services (Hawley, Miranda, & Sawyer, 2018). The right to land possession and use of peasants and pastoralists is perpetual as it cannot be restricted except in cases of expropriation by the government authorities (Tura, 2018).

Land becomes very important for individuals as well as the community to make ends meet. Agricultural land abandonment can lead to multiple negative ecological, economic and social consequences (Abolina & Luzadis, 2014). Efforts to plan economic development tend to apply uniform and supposedly optimal solutions, increasingly expressed in terms of targets, such as, in the area of interest here, the percentage of registered and properly mapped land (Arruñada, 2018).

With urbanization and the changing industrial structure, increasingly more land in urban areas has been abandoned. This abandoned land not only results in a waste of resources and energy as well as

ecological destruction but also restricts the orderly development of the urban landscape (Jingmao Wang, Liu, Wu, Li, & Wang, 2017).

Article 33 paragraph (3) in the 1945 Constitution states that: the lands, water, and natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people. That the relationship between the Indonesia people and the lands, water, and space is eternal in nature¹. It means that the relationship exists not only in the present generation but also in the future generations, including our children and grandchildren, therefore natural resources must be maintained so as not to be damaged or abandoned.

Article 15 of Government Regulation Number 11 of 2010 concerning the Control and Utilization of Abandoned Land regulates: The tenure, ownership, use, and utilization of abandoned lands that become the state property are used for the benefit of society and State through agrarian reform and State strategic programs as well as for other State reserves. The concept of abandoned land cannot be separated from the concept of State land, which is derived from the concept of the right to control the State over the land contained in the constitution and Basic Regulations on Agrarian Principles. The State, as the highest level organization that regulates agribusiness, has a key role in controlling and establishing legal relation over land as well as regulating allotment and use of land for the prosperity and justice of the people.

The rights over land will be terminated or removed if the land was abandoned. Some regulations in Basic Regulations on Agrarian Principles related to abandoned land are elaborated in the following:

The right of ownership over land is removed if the land becomes the State property due to abandonment².

The right of exploitation is removed due to land getting abandoned³.

The right of building is removed due to land getting abandoned⁴.

Abandoned land which utilization is neglected—whether it is the right of ownership, the right of exploitation, the right of building as well as the right of management and the right of control—will become state or regional property, even though that land is controlled by the government, directly or indirectly. Thus, abandoned land is a plot of land which already has the right of ownership, the right of exploitation, the right of building, the right of use, or the right of management or control over land, but is not cultivated, not used, or not utilized according to its condition or the nature and purpose of the rights or the basis of its control⁵.

People who reckless enough to take the remaining crops from the land with expired exploitation right are forced to deal with the authorities because their actions are considered a theft. In general, people think that when the right of exploitation expired, the remaining crops become the State property as well⁶. Abandoned land can also occur because the holders of the right of use no longer have working capital to cultivate their land, or the plantation are not profitable because they are not properly maintained, prices are declining in the market, in disputes with other people, or the validity of the exploitation right has expired, so it is unclear who manage the land. This makes the land with expired exploitation right is no man's land. Furthermore, the procedures or norms to declare the land is abandoned cannot be easily implemented as well.

The absence of harmony between the Laws and Government Regulations issued so far results in an abandoned land with unclear regulation. This impact adds or triggers a conflict and dispute over the utilization of land. Based on this explanation, the writer is very interested in studying and analyzing these two issues, which do not have clear regulation and also become the major factor of a conflict and disputes on the utilization of land that is indicated abandoned by the community.

1. Article 1 paragraph (3) in the Basic Regulations on Agrarian Principles

2. Article 27 letter a paragraph (3) in the Basic Regulations on Agrarian Principles

3. Article 34 letter e in the Basic Regulations on Agrarian Principles

4. Article 40 letter e in the Basic Regulations on Agrarian Principles

5. Article 2 in Government Regulation Number 11 of 2010

6. Achmad Sodiki, *Penanganan dan Penyelesaian Konflik Agraria sebagai Kewajiban Konstitusi*, the paper was presented at the National Seminar organized by the Agrarian Reform Consortium (KPA), Jakarta, March 13, 2012, p., 6.

II. METHOD OF RESEARCH

This research applies normative legal methods to conduct a literary review because of the characteristics and traditions of law. The approaches used in legal research are the statute approach, the case approach, and the conceptual approach.

III. RESULT AND DISCUSSION

Land Reform Review in Indonesia

The term land reform comes from English: land and reform, which means change or reform. Land reform means a change of the land structure, but in fact, it is meant not only a change of the land ownership structure but also a change of human relationship with other humans related to the land, in order to increase the income of farmers⁷.

Land reform has two definitions, broad and narrow definitions. A. P. Parlindungan states that land reform carries a broad purpose. In the global world, the land reform means⁸:

The change in the relationship between humans and the land, for example, a farmer is entitled to own and utilize a land and so that the farmer has the right of ownership.

The change and protection of the sharecroppers from the landlord or the abolition of the landlord system by determining a certain portion must be given to the landlord in the revenue share.

The prohibition of possession of a large land is called as *latifundia ban*.

The prohibition of absenteeism, which means that it is not permissible for a person to own a farm if he does not work on his own, or if he resides outside the farm site, or does not work on the land at all and leases it instead or instructs others to do it.

The establishment of a ceiling for ownership aims to prevent *latifundia* or to prevent the accumulation of land, with one landlord controlled by many people.

On the other hand, land reform in a narrow sense involves the change of land ownership and control as well as the legal relations associated with land tenure⁹. Agrarian reform is a more comprehensive concept because it involves changes in circumstances that are very broad and very influential on the agricultural sector. Land reform means a change of the land structure. But it is actually intended not only at a change of the land ownership structure but also a change of human relationships with the land, human relationship with humans, especially in relation to the land to increase the income of farmers. The change is fundamental in nature and not just a patchwork¹⁰ of land tenure as well as the legal relation related to it.

Peter Doner states that land reform in the narrow sense is¹¹:

It indicates the action of redistributing the land for the interests of the farmers. On the other hand, in the broad sense, it includes consolidation and registration in areas where the rights and traditional land tenure, as well as the land settlement on new grounds, are applied.

In a narrower sense, the term land reform is described as a change in land tenure, especially redistribution of land ownership which aims to create equity. Thus, it is clear that land reform in a narrow sense is part of land reform in a broad sense. Later, the definition of land reform in the narrow sense is known as land redistribution. The purpose of a land reform program in Indonesia can be divided into two: general purpose and specific purpose. In general, the objective of land reform is to improve the standard of living and income of sharecroppers as the foundation of economic development towards a

7. Sri Sudaryatmi, *Penentuan Hak dan Pemanfaatan Tanah Timbul Dalam Kaitannya Dengan Pengembangan Ekonomi Wilayah Pantai (Studi Kasus di Desa Bulumanis Kidul, Kecamatan Margoyoso, Kabupaten Pati)*. Master Program Thesis of Law Science, Undergraduate Program, p. 42.

8. A.P. Parlindungan, *Aneka Hukum Agraria*, Alumni, Bandung, 1986, p. 8.

9. I Nyoman Budi Jaya, *Tinjauan Yuridis tentang Redistribusi Tanah Pertanian dalam Rangka Pelaksanaan Landreform*, Liberty, Yogyakarta, 1989 p. 9

10. Hustiati, *Agraria Reform di Philipina dan Perbandingannya dengan Landreform di Indonesia*, Mandar Maju, Bandung, 1990., pp. 31-32.

11. Doner *landreform in narrow sense in Soebakti, Koen, Landrefom Catat-Catat di Dalam Struktur Agraria Sebagai Hambatan Bagi Perkembangan Ekonomi*, Jakarta Pusdiklat, Jakarta, 1975 p. 12.

just and prosperous society based on Pancasila.

The lands become the object of land reform in Indonesia in accordance with the provisions of Article 1 in Government Regulation Number 224 of 1961 on Implementation of the Land Division and Compensation. It is stated that the lands to be distributed in the framework of land reform are: lands that exceeds the maximum limit; absentee lands; autonomous lands and ex-autonomous lands which have been transferred to the State; and other lands directly controlled by the State.

The Decree of Head of National Land Agency Number 25 of 2002 on Guidelines for Implementation of Affirmation Application for State Land to Become Land Reform declares that other state lands which will be affirmed to be land reform object by Head of National Land Agency include: free state land; lands formerly within the Erfpacht Rights; lands with expired exploitation right which is not renewed by the rights holder or have been revoked or canceled by the government; forest lands which have been utilized by the people and has been released by the relevant agency; lands that formerly belong to indigenous people; and lands formerly within the Customary Rights.

The Concept of Abandoned Land

According to the Elucidation of Article 2 in Government Regulation Number 11 of 2010, abandoned land is: a land with the right of ownership, the right of exploitation, the right of building, the right of use, or the right of management that is not cultivated, not used or not utilized according to the circumstances or the nature and purpose of their rights. Similarly, the land with a basis of control should be declared as abandoned land if it is not sought for rights, not cultivated, not utilized, or unused in accordance with the terms or conditions stipulated in the location permit, decree on granting rights, decree on the release of forest areas, and/or in permission or decree or other letter from the officials.

Thus, abandoned land is a land with the right of ownership, the right of exploitation, the right of building, the right of use, and the right of management or land with a basis of control which is intentionally not cultivated, not used, and not utilized according to the circumstances, nature and purpose of its rights.

The criteria for abandoned land can be found by systematizing the elements present in an abandoned land, such as: owners or holders of land rights (a subject). A land that has been identified to become a forest again or its fertility is not maintained in certain time period in which the land becomes unproductive, certain actions that intentionally do not make use of the land and the status of the land, whether or not it has been returned to the State.

By knowing the essential elements of abandoned land, the criterion or measure that can be used to determine whether a plot of land is abandoned or not is by interpreting the existing elements, with a focus on the purpose of granting rights over land. If a land looks like it is not maintained, it means that the land not utilized in accordance with the purpose of its rights. Therefore, the criteria of abandoned land are: there should be an owner or holder of land rights (a subject). There should be a land that is not properly maintained so that the quality of soil fertility decreases. There must be a certain period of time. There should be an action that intentionally does not use the land according to the circumstances or the nature and purpose of its rights.

Based on the Elucidation of Article 27 of the Basic Regulations on Agrarian Principles that regulates the concept of abandoned land, it is stated that a land is abandoned if it is intentionally not used in accordance with the circumstances or the nature and purpose of its right. The criteria of abandoned land in Basic Regulations on Agrarian Principles is unclear or vague because it only determines the subject or holders of land rights, the object of land rights, and the actions that cause the land to be abandoned. Furthermore, it does not give a specific time period. In Government Regulation Number 36 of 1998, the criteria for abandoned land are regulated in Chapter III, which is divided into three parts: First Section especially explains about lands with the right of ownership, the right of exploitation, the right of building, and the right of use.

The Elucidation of Article 2 in Government Regulation Number 11 of 2010 specifies that abandoned land is a land which has been granted rights by the State, namely the right of ownership, the right of exploitation, the right of building, the right of use, and the right of management or a basis of control over land which is not cultivated, not used, or not utilized in accordance with its circumstances or the nature

and purpose of granting the right or basis of its control. Then the Elucidation of Article 6 in Government Regulation Number 11 of 2010 states that identification and research are conducted starting from three years since the issuance of the right of ownership, the right of exploitation, the right of building, the right of use or since the expiration of a permit, decree, or letter of land tenure from an official.

In Government Regulation Number 11 of 2010, the criteria for abandoned land include subjects or holders of land rights, objects of land rights, actions which resulted in abandoned land, three-year period since the issuance of the right of ownership, the right of exploitation, the right of building, the right of use or since the expiration of a permit, decree, or letter of land tenure from an official.

Soedikno Mertokusumo states that the authority possessed by the holder of the land rights over his land is divided into two types¹²:

General Authority

In general, the holder of the land right has the authority to use his land, including the earth's interior, water and the space, as needed for the purposes that are directly related to the use of the land within the limits of the Basic Regulations on Agrarian Principles and other legal regulations of a higher level (Article 4 paragraph (2) of the Basic Regulations on Agrarian Principles).

Specific Authority

The holder of land right has a specific authority to use the land in accordance with the type of land rights he possessed, for example, if he had a land with ownership right, he can use his land for agriculture and or build a building; if he had a building right, he can only build and own buildings on land which is not his own; if he had an exploitation right, he can use the land only for the benefit of the company that deals with agriculture, fishery, animal husbandry, or plantation.

In addition, land rights determine the obligations that must be carried out by holders of land rights. Article 10 of the Basic Regulation of Agrarian Principles states that every person and every legal institution holding a right to agricultural land is, in principle, obliged to actively work on their own by preventing extortion. Then Article 15 mentions that maintaining the land, including increasing its fertility and preventing damage is the obligation of each person, legal institution, and any other institution that has legal relation with the land, with a focus on those with a poor financial situation.

Land redistribution is generally known as land reform¹³. In some cases, the term land reform is used in a narrow sense that is a change in land ownership and control, especially the redistribution of land. It is similar to human history, specifically a continuation of historical processes. Redistribution of land is basically motivated by the circumstances in which the large plots of agricultural land are owned by only a few people, whereas the small plots of the land are owned by most people. This is especially true in developing countries where population pressures are generally high and industrial capacity to accommodate rural overpopulation is limited.

Redistribution of land is the division of lands controlled by the State and has been affirmed to be the object of land reform given to the sharecroppers who have met the requirements of Government Regulations Number 224 of 1961. Aiming to improve the socio-economic conditions of the people, a land, the livelihood of farmers, is distributed fairly and equitably to ensure a fair and equitable revenue share.

In order to settle disputes arising as a result of the implementation of land reform, a court of land reform was established under Law Number 1 of 1964. But in reality, this court was unable to work effectively. Therefore, Law Number 7 of 1970 was issued to abolish the land reform court. In the event of a dispute concerning land reform, a settlement should be made through; general court, according to Law Number 14 of 1970, for civil or criminal disputes and land reform officers for administrative disputes.

Implementation of Abandoned Land Utilization

12. Soedikno Mertokusumo, *Hukum dan Politik Agraria*, Karunika, Universitas Terbuka, Jakarta, 1988, p. 45.

13. Land Redistribution in general according to Erich Jacoby as quoted in Arie Susanti Hutagalung, *Program Redistribusi Tanah di Indonesia; Suatu Sarana ke Arah Pemecahan Masalah Penguasaan dan Pemilikan Tanah*, Rajawali, Jakarta, 1985, p. 57.

The lands that have been designated as abandoned lands will become State lands. The next step is for the abandoned land to be utilized for the benefit of the community. Based on Article 15 in Government Regulation Number 11 of 2010, it is stated that the allotment of authorization, ownership, use, and utilization of a State land which is formerly an abandoned land, is for the benefit of society through agrarian reform, State strategic program, and for other State reserves. Thus, the use of a State land, which is formerly an abandoned land, is the utilization of an abandoned land that has become a State land through the allotment and regulation of allotment of land authorization, ownership, use, and utilization for the benefit of society through agrarian reform, State strategic program, and for other State reserves.

The term agrarian reform in the sense of authorization and utilization restructuring of agrarian resources has been known long enough, although in different forms and nature, depending on the era and the country where the agrarian reform occur. This is considering that every country has agrarian structure and different political systems, although there are some fundamental similarities in the agrarian reform.

Agrarian reform is an attempt for structural change based on intra-and inter-agrarian subjects in terms of access (control and use) of agrarian objects. However, in concrete terms, agrarian reform is directed to change the structure of land tenure and also to change the assurance of land tenure for people who use the land and the natural resources it contains¹⁴.

According to Maria Sumardjono, agrarian reform is¹⁵: A continuous process; related to the restructuring of ownership or control and use of resources; and implemented in order to achieve legal certainty and legal protection of land ownership and utilization of natural or agrarian resources, and the realization of social justice for all people.

The concept of agrarian reform is not merely the concept of land redistribution, but a concept of development that aims to equal distribution of income and social justice.

Elias H. Tuma mentions that land reform and agrarian reform share the same operational concept, which includes five types of reform¹⁶: A reform which is directed at the structure of land ownership and tenure conditions; redistribution of land ownership from an individual to individual, from individual to larger group/community, or from group to individual; structuring the scale of agricultural enterprises by increasing or decreasing the scale of its operations; improvement of the technical aspect of agricultural cultivation pattern in order to bring a significant impact to its productivity; and improvements to aspects outside of agriculture, such as credit, marketing, and education.

Maria S.W. Sumardjono states that the basic principles of agrarian reform are¹⁷: Upholding human rights since everyone has equal economic rights to utilize agrarian resources; legal unification capable of accommodating local legal diversity (pluralism); justice in the control and utilization of agrarian resources (gender justice, justice within generations and inter generations, and recognition of indigenous peoples' ownership of the agrarian resources they have); social and ecological functions of land and other agrarian resources; that a person's rights impose a social obligation on the space concerned because his rights are limited by the rights of others and the rights of the society; settlement of land disputes; distribution of responsibilities to regions regarding the allocation and management of agrarian resources; transparency and participation in policy-making; land reform or restructuring the possession, control, and utilization of agrarian resources; and production process in the agrarian field.

Any activities done by the villagers or sharecroppers that make use of land will have a dilemmatic impact, since, on the one hand, their activities maintain or increase the benefits of the land, but on the other hand the utilization of the land that they do is illegal because they utilize the land that is not within their rights. When observed, there is a paradox in the ownership and control of the land. On the one hand, a person or legal institution controls large plots of land but they are not cultivated according to the circumstances as well as the nature and purpose of their right, and more likely abandoned, while on the other hand there are people who need the land but do not have access to utilize the land.

14. Ida Nurlinda, *Prinsip-Prinsip Pembaharuan Agraria Perspektif Hukum*, Edisi I, Raja Grafindo Persada, 2009. p. 77

15. Maria S.W. Sumardjono, *Kebijakan Pertanahan antara Regulasi dan Implementasi*. Kompas, Jakarta, 2005, p.2.

16. Ida Nurlinda, *Op Cit*, p.80

17. Maria S. W. Sumardjono, *Op Cit*, p. 96

IV. CONCLUSION

An abandoned land has several characteristics: There should be an owner or holder of land rights (a subject). There should be a land that is not properly maintained so that the quality of soil fertility decreases. There must be a certain period of time. There should be actions which intentionally do not use the land according to the circumstances or the nature and the purpose of its right.

According to the PLTP Law (Law concerning the Stipulation of Area of Agricultural Land) the minimum and maximum limits of agricultural land and land redistribution of both State land and land whose area exceeds the maximum limit, which has been taken over by the government through compensation. The basis of government authority in deciding the maximum limit and minimum limit of control and ownership of agricultural land is based on Basic Regulations on Agrarian Principles, the PLTP Law and Government Regulation Number 224 of 1961, which is a manifestation of the Article 33 paragraph (3) of the 1945 Constitution.

Legal protection is available for those who control and manage the abandoned land, namely a certificate of title. It will protect the landowner from arbitrary actions from other parties and prevent land ownership disputes. With the registration of the ownership rights of the land, a citizen or legal institution and also with the issuance of a certificate of ownership namely a land title certificate, the State should ensure the security of the ownership of the land, so that the land can be utilized optimally. A subject or the holder of land rights must perform his obligations based on a good faith (*te goede trouw*). To date, there is no legal protection available for those whose land is abandoned, whether it is a written regulation issued as a related Law or Ministerial Regulation, but there is room for farmers who work on vacant land to manage the land that is not theirs securely.

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