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Legal Protection of Owners of Title to Abandoned Land

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Abstract: The state is authorized to take over and redistribute non-productive Right of Ownership (*Hak Milik*) land under Government Regulation Number 48 of 2025. However, the mechanism for declaring land as abandoned does not fully guarantee legal protection for rights holders due to limited rights to be heard, lack of transparency, and restricted access to legal remedies. This normative legal research aims to analyze the regulation of Right of Ownership over abandoned land within national land law and the forms of legal protection available to rights holders. The findings show that under Article 27 of Law Number 5 of 1960 in conjunction with Government Regulation Number 48 of 2025, the enforcement procedure is streamlined to 90 days, and land proven to be abandoned can have its rights revoked and converted into State Land. Although systematic, the current regulation still exhibits procedural weaknesses in protecting landowners. The novelty of this study lies in its critical evaluation of Government Regulation Number 48 of 2025 and the formulation of proposals to clarify the parameters for the "intentionally unmaintained" criterion in the Regulation of the Minister of ATR/BPN, aiming to establish balanced legal certainty between landowner obligations and state authority.

Keywords: Abandoned Land, Right of Ownership, Legal Protection.

INTRODUCTION

Land is one of the most basic assets of the State of Indonesia, because the State and the nation live and develop on the land. The Indonesian people position land in a very important position because it is the main factor in increasing agrarian productivity. Land has an important meaning for human life and for a country as evidenced by the existence of constitutional rules in the Constitution of the Republic of Indonesia in 1945 Article 33 paragraph (3) that "The earth, water and natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people". (Constitution of the Republic of Indonesia in 1945) Based on the content of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it explicitly explains that the right to own land belongs to all Indonesian people and the State is only given an authority to control, which means that it is only limited to power over something or holding power or something, while ownership is in the hands of all Indonesian people. The provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of

Indonesia are the mandate for the formation of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles. (Law based on Agrarian Principles, Law Number 5 of 1960)

At the time of the enactment of this regulation on September 24, 1960, the unification of land law for all regions of Indonesia that is simple, easy, modern and in favor of the Indonesian people and in essence Law 5/1960 must also lay the foundations for national agrarian law that will be able to bring prosperity, happiness, justice and legal certainty to the nation and state. (Hasan Wargakusumah, 1992) The purpose of Law 5/1960 is to ensure legal certainty for land rights in all regions in Indonesia can be realized. (Boedi Harsono, 2003) The scope of the earth according to Law 5/1960 is the surface of the earth, and the body of the earth under it and that which is underwater. The surface of the earth as part of the earth is also called soil.

The land referred to here does not regulate the land in all its aspects, but only regulates one of its aspects, namely land in a juridical sense called the right of control over the land. Possession can be used in a physical sense, also in a juridical sense, as well as in a private and public aspect. Possession in a juridical sense is control based on rights, which is protected by law and generally gives authority to the right holder to physically control the land that is owned. The right of land ownership contains a series of authorities, obligations and/or prohibitions for the right holder to do something about the land that is owned. Something that is allowed, obligatory or prohibited to be done, which is the content of the right of possession. Meanwhile, land acquisition is a legal act carried out by the government to obtain land for certain interests by providing compensation to the owner (either an individual or a legal entity) of the land according to certain procedures and nominal amounts. A criterion or benchmark for differentiating between land tenure rights regulated in land law.

In Article 4 paragraph (1) of Law 5/1960 it is further explained that on the basis of the right to control from the state, it is determined that there are various rights to the surface of the earth, which are called land that can be given and owned by people either individually or together with other people and legal entities. Law 5/1960 is still known or recognized as the existence of rights that can be owned by individuals or legal entities. But in this case, it is only about the surface of the earth, namely land that can be claimed by a person such as property rights, business use rights, building use rights and so on. In the legal concept, the relationship between people and objects is a relationship called 'Rights'. The meaning of the term is the right of ownership of an object called the right of ownership of the object or known as the term "property right".

The word property itself in the legal sense emphasizes more on rights than on the property. Property rights are very basic rights and are basic rights guaranteed by the constitution. Meanwhile, Law 5/1960 as a basic regulation of national land law stipulates that property rights over land are hereditary, strongest and fullest rights that can be owned by people over land, bearing in mind the provisions that all rights to land have a social function. In Article 20 paragraph (1) of Law 5/1960 states that "Property rights are hereditary, strongest and fullest rights that can be owned by people over land, bearing in mind the provisions in article 6". In this paragraph, property rights are formulated according to Law 5/1960 further, it is emphasized that this property right is the "strongest" right, which can be obtained by a person over land. Another nature of this property is that this right is the "fullest" right. The provision that this property rights are the strongest and most fulfilled rights should not be interpreted in such a way that they mean "absolute" while not being contestable, as formulated in the Burgerlijk Wetboek. Such a property would be clearly contrary to the nature of customary and social law of each right. Property rights in accordance with what is stipulated in Article 6 of Law 5/1960 have a social function. Therefore, these property rights can be seen as absolute and inviolable. When compared to other rights, it is property rights that we must view as the strongest and fullest rights that a person can have. This property right is also a hereditary right, so it can be inherited and inherited (Gautama, 1993).

Furthermore, Article 20 paragraph (2) of Law 5/1960 states that "Property rights can be transferred and transferred to other parties". This paragraph explains the nature of "zakelijk" of property rights. Zakelijk is a right to property that is applicable to each person, so it is an absolute or absolute right. Because it is not personal (persoonlijk), this right can be transferred and transferred to another party. This property right can be seen as working for everyone, because it is material, so these property rights need to be registered. The enactment of Law 5/1960 makes it clear that being controlled by the state does not mean owning and or only the state has ownership of the land. This meaning is related to the phrase used as much as possible to achieve the prosperity of the Indonesian people. This also clarifies that all Indonesian people can obtain the right to land controlled by the state, if they meet the provisions and/or conditions that have been regulated in Law 5/1950 and its implementing regulations. In return for the rights that have been given, the state also imposes an obligation on the right holder not to abandon the land that he has controlled. If the right holder does not fulfill his obligation not to abandon the land he controls, the land will be again controlled by the State, and or the power of the holder of the land rights to the land will be removed and/or eliminated. Economically, land can be the basis or basis of economic activities. Politically, land will also be based on the power of the owner because it has rights given by the state. This causes land to be contested by everyone, it can be a bargaining process, a tug-of-war between interests that can cause cooperation or conflicts between these interests (Kurniati, 1960).

Until now, land, which is the basic life of human beings, is dealing with various things such as the limitation of land area that must be fulfilled demanding that land on the one hand must be used and utilized for the greatest possible welfare of the people born inwardly, fairly and equitably. (Adrian Sutedi, 2008) However, empirically, it illustrates that in Indonesia there is still an area of land that is abandoned by the rights holder. When referring to the purpose of land existence regulated by land law, the Land Rights Holder, the Management Rights Holder, or the Holder of the Basic Land Ownership Rights should be able to maintain and maintain the land that has become their right. However, in practice and in fact, there are still many rights holders who neglect the land they hold. This neglect has an impact and causes social problems, especially in urban communities. The existence of abandoned land in urban settlements is a problem for the community around the neighborhood itself. This problem arises when the abandoned plot of land has disturbed the local environment, such as becoming a pile of garbage, becoming a nesting place for dangerous wild animals and even becoming a place that is prone to be used for other crimes such as drug use and the like.

Such conditions are certainly not in accordance with the purpose of the existence of the land parcel, which should provide legal certainty about the Right Holder so that the condition and condition of the land are the responsibility of the right holder to use, utilize, and maintain its tanah. It is not to increase the activities of settlement residents to clean the land parcel because it has disturbed the environment. In other situations, there are still many residents, community leaders or officials of the local government structure up to their neighboring units who do not understand, and do not understand the acts, or actions that can be taken so that the land can be useful for the environmental welfare of the local community. Precisely what happened these parties justified and supported the issues that arise from the community about the existence and status of the abandoned land, without knowing, seeing and holding evidence of the actual rights holder. It should be when referring to the applicable land law, if the land is not used within two years, it will be declared as abandoned land.

If the right holder abandons his land, then the legal relationship related to his land will be abolished and affirmed as land directly controlled by the state. This is regardless of the proof of ownership of the land holder, let alone the proof of ownership of the right holder. Law 5/1960 and its implementing regulations have stipulated a prohibition for right holders not to abandon their land, if this neglect still occurs and is carried out by the right holder, the law has regulated the legal consequences, namely the removal of land rights for the rights holder so

that there is a termination of legal relations. Meanwhile, the land that is abandoned will be determined as those that will be directly controlled by the state. This provision is regulated in Law Number 11 of 2020 concerning Job Creation. (Law on Job Creation, Law Number 11 of 2020, Statute Book of the Republic of Indonesia of 2020) Likewise, according to Law 5/1960 Article 20, land that is not used will be deprived of its ownership rights. Owners of land rights or holders of land rights certificates that include abandoned land should be given legal protection, one of which is the provision of compensation rights for land reclaimed by the state with compensation equal to the acquisition price that has been paid by the owner of the land katas rights, the price given also by taking into account the costs that have been incurred to create physical infrastructure on land that is designated as abandoned land (Tutiek Retnowati and Widyawati Boediningsih, 2021). Based on Government Regulation Number 48 of 2025 concerning the Control of Abandoned Areas and Lands, (Government Regulation on the Management of Abandoned Areas and Lands, Government Regulation Number 48 of 2025), Title Land generally cannot be the object of control of abandoned land, unless it is deliberately not used/maintained, so that it is controlled by the community, controlled by other parties for more than 20 years, or its social function is not fulfilled. Legal protection is provided through inventory procedures, written warnings, and clarification rights before the land is designated as abandoned.

Based on the above background, the problems that will be discussed include, how to regulate ownership of abandoned land based on national land law and how to legally protect owners of abandoned land in indonesia.

METHODS

This research uses a type of normative juridical law research that focuses on the tracing, study, and analysis of norms, principles, and laws and regulations (Soerjono Soekanto & Sri Mamudji, 2015). The object of this research focuses on the regulation of property rights over abandoned land based on national land law and legal protection mechanisms for owners of property rights to abandoned land in Indonesia (Simanjuntak, 2026). The procedures and series of research are carried out using a combination of statutory approach (statute approach) and conceptual approach (Peter Mahmud Marzuki, 2017). The analysis in this study is supported by a comprehensive theoretical framework as an analytical scalpel, which includes the Welfare State Theory, Ownership Theory, Legal Protection Theory, Legal Certainty Theory, and Progressive Legal Theory (Satjipto Rahardjo, 2009). The research instruments applied are based on library research and document studies on primary, secondary, and tertiary legal materials which include 61 literatures from book elements, laws and regulations, scientific journals, and internet references (Peter Mahmud Marzuki, 2017). Meanwhile, the analytical tools and techniques used are normative qualitative data analysis techniques by applying deductive reasoning methods and legal interpretation to process all legal materials to produce systematic and logical conclusions (Johnny Ibrahim, 2006).

RESULTS AND DISCUSSION

Arrangement of Ownership of Abandoned Land Based on National Land Law

Indonesia's national land law is a single land law and is composed of a system based on the nature of customary law thinking about the legal relationship between customary law communities and their customary lands, where there is a belief that the land environment is a legacy or the provision of supernatural powers to support the life of groups and their members across generations (Article 5 of Law No. 5 of 1960). Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA) takes customary law institutions as the basis for the formation of the structure of land rights and requires land registration to ensure legal certainty, as well as repeal the Dutch colonial agrarian law in order to realize the incarnation of Pancasila, Paragraph IV of the Preamble to the 1945 Constitution of the Republic of

Indonesia, and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which requires the state to lead the control of land, water, and natural resources for the welfare of the people (Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia). Through the Right to Control the State, the state grants the authority to control land to individuals or legal entities through Property Rights, Business Use Rights (HGU), Building Rights (HGB), or Right of Use, while still relying on the existence of Customary Rights as long as they still exist and in accordance with the national interest. Land control is divided into juridical control that gives the authority of physical control, physical control by other parties (such as rent rent), and juridical control that does not provide physical control authority (such as bank loans with land collateral where creditors hold the right of guarantee judicially, but physical control remains with the owner). Property Rights are defined as hereditary, strongest, and fullest rights (Article 20 paragraph (1) of Law No. 5 of 1960) that can be transferred (Article 20 paragraph (2) of Law No. 5 of 1960) and provide the authority to use it for all purposes for an indefinite period of time (Boedi Harsono, 2003).

The word "strongest and fullest" is not absolute or unlimited but is limited by the social function of the land (Article 6 of Law No. 5 of 1960) and is relative because the Property Rights can be deleted if abandoned. The Grant of Property Rights can come directly from the State Land based on an application through a Decree on the Granting of Land Rights or changes to existing rights (HGU, HGB, Hak Papag). According to the provisions of the UUPA, Property Rights are deleted for 6 main reasons:

- (1) his land falls to the state,
- (2) revocation of rights in the public interest (Article 18 of Law No. 5 of 1960),
- (3) voluntary surrender by the owner,
- (4) abandoned,
- (5) violation of the provisions of the limitation of ownership and transfer of rights (Article 21 paragraph (3) and Article 26 paragraph (2) of Law No. 5 of 1960), and
- (6) The land is destroyed (Article 27 of Law No. 5 of 1960).

The regulation of abandoned land has historically been regulated in stages starting from the Decree of the Minister of Home Affairs Number 88 of 1973 (Ministry of Home Affairs 88/1973) which cracked down on the abandonment of HGB/plantation land in order to provide community welfare, the Instruction of the Minister of Home Affairs Number 2 of 1982 (Instruction of the Minister of Home Affairs 2/1982) for the management of urban land, Government Regulation Number 36 of 1998 (Article 4 PP 36/1998) which assessed the suitability of the designation of the Regional Spatial Plan (RTRW), Government Regulation Number 11 of 2010 (PP 11/2010) which issues abandoned land into State Land as an object of Agrarian Reform (Article 9 of Government Regulation 11/2010), Government Regulation Number 20 of 2021 (PP 20/2021), to Government Regulation Number 48 of 2025 (PP 48/2025). Based on PP 48/2025, *abandoned areas* are permitted/concessioned non-forest areas (such as mining, plantations, industry, tourism, large-scale housing) that are deliberately not cultivated/utilized (Article 4 of GR 48/2025), while *abandoned land* is land of rights, management rights, or land tenure that is deliberately not cultivated, utilized, or maintained (Article 6 of GR 48/2025). Specifically for Property Rights, land cannot be used as an object of control of abandoned land unless it is deliberately not used or maintained so that:

- a) controlled by the community into a village area,
- b) be controlled by another party continuously for 20 years without legal relationship, or
- c) its social functions are not fulfilled (Article 6 GR 48/2025).

The stages of the order start from an inventory (no earlier than 2 years since the permit is issued or since the permit expires, based on reports, monitoring of BPN/Regional Government, as well as textual and spatial data), followed by evaluation, written warnings I, II, and III, to the determination of the revocation of permits and affirmation of land directly controlled by the state to be used as assets of the Land Bank or State Public Reserve Land / TCUN (Article

22 PP 48/2025). The author concludes that the criteria for abandoned land are cumulative (must be proven simultaneously and integrated) and must prove the existence of an element of "intentionality" (done consciously and knowing the consequences). Violations of social functions do not automatically remove Property Rights directly without transparent official administrative procedures of BPN to guarantee the principle of *due process of law* (Article 27 of Law No. 5 of 1960).

Legal Protection for Owners of Abandoned Land in Indonesia

Legal protection is a fundamental principle in the state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia which aims to protect human rights, guarantee individual rights from arbitrary state actions, and provide a sense of physical and mental security. Rights are interpreted as legal relationships between subjects and other objects/subjects that are recognized and protected by the legal system. Ownership of Property Rights (Article 20 paragraph (1) of Law No. 5 of 1960) must be guaranteed through land registration that produces a certificate as valid evidence (Article 19 paragraph (1) of Law No. 5 of 1960; Government Regulation No. 10 of 1961; Government Regulation No. 24 of 1997; Article 32 paragraph (1) of Government Regulation No. 24 of 1997) to provide legal certainty on the subject, object, and transfer of rights, as well as to prevent unauthorized control by third parties through seizure or administrative manipulation. The Land Office is obliged to socialize land registration procedures and fees and update land book data periodically to prevent duplicate or false certificates. The form of legal protection for rights holders is divided into two paths, namely preventive and repressive protection. Preventive protection is carried out before a dispute occurs through:

- (1) correct land registration (Article 19 of Law No. 5 of 1960),
- (2) inspection of land status or due diligence to the land office to ensure that the land is free of disputes and not in abandoned status (Article 27 of Law No. 5 of 1960),
- (3) physical supervision and maintenance by the owner such as fencing and real use in accordance with the principle of social function (Article 6 of Law No. 5 of 1960), and
- (4) the obligation to change the name immediately after the transfer of rights through the deed of the Land Deed Making Officer / PPAT (Article 37 paragraph (1) PP No. 24 of 1997).

Repressive protection is provided after the dispute occurs in order to restore the situation and provide a deterrent effect through three channels:

- (1) a civil lawsuit is vindicated to the district court to request the return of the land from the controlling party without rights (Article 574 of the Civil Code),
- (2) criminal reporting of land grabbing for the act of illegally selling, renting, or guaranteeing other people's land with a maximum penalty of 5 years in prison or a fine of category V (Article 385 and Article 502 of the Criminal Code), and
- (3) administrative application to BPN for cancellation or correction of third-party certificates that are proven to contain administrative defects or juridical defects (Article 29 paragraph (1) of Permen ATR/BPN No. 21 of 2020).

The author provides in-depth criticism of the mechanism for controlling abandoned land in GR 48/2025 which is considered not to fully guarantee legal protection for landowners. Although it has the stages of evaluation, warning, and determination (Article 22 of GR 48/2025), there are crucial weaknesses in its application: at the evaluation stage, the authorized officials assess the use of land without the obligation to listen to information or provide the right of active involvement for the landowner (Article 23 paragraphs (1) and (2) of GR 48/2025), which ignores the principle of the right to be heard in the due process of law; at the warning stage, there are no detailed arrangements regarding the form and manner of delivery, as well as a relatively short period of improvement (Article 27 GR 48/2025); there are

restrictions on legal acts on land that is being evaluated even though there is no final decision (Article 28 GR 48/2025); and at the determination stage, the Minister establishes an abandoned status that has a fatal effect on the abolition of land rights (Article 29 paragraph (1) and Article 30 of GR 48/2025) accompanied by the obligation of extensive revision and physical emptying in a short period of time (Article 31 and Article 32 of GR 48/2025) without the availability of a mechanism for submitting objections or administrative legal remedies (objections/appeals) that are clear to the owner. Therefore, the author emphasizes the need to improve the regulation of PP 48/2025 so that the process of controlling abandoned land can ensure legal certainty, transparency, and justice in a balanced manner between the interests of the state and the protection of citizens' property rights.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

1. The regulation regarding ownership of abandoned land in Indonesia is expressly regulated in Article 27 of Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA) and sharpened through its latest implementing regulation, namely Government Regulation (PP) Number 48 of 2025. Through this regulation, the state has the legal authority to take over non-productive land or land that is left without optimal utilization by implementing a control procedure which has now been reduced to 90 days. If a Title of Ownership land is officially designated as abandoned land, then the right to the land is legally declared expunged and its ownership status is restored to land directly controlled by the State (State Land).
2. Legal protection for Property Rights holders is outlined in Government Regulation Number 48 of 2025 through strict criteria, where new Property Rights land can be used as an object of control if it is deliberately not managed, utilized, or maintained by the owner. This form of legal protection is realized through systematic control stages, including inventory, verification and evaluation, providing written warnings, and providing clarification rights for landowners before the final determination is made. However, this tiered control mechanism is considered to not have provided optimal legal protection because there are still weaknesses in the aspects of the right to be heard, transparency, and certainty of legal remedies. Therefore, to realize a balanced legal protection between the interests of rights holders and the interests of the state, the government needs to clarify the definition and parameters of "deliberately not maintained or utilized" in national land regulations.

Recommendations

1. The government needs to clarify the definition and parameters of "deliberately not maintained or utilized" in Property Rights, considering that Property Rights are hereditary and strongest, so that their treatment is not confused with Right to Use Business (HGU) or Right to Use Building (HGB) which is sourced from permits or utilization agreements.
2. That the owner of land rights is obliged to utilize, manage and use his land after receiving a warning to avoid sanctions for the removal of land rights and land falling into the hands of the state.

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