

## THE URGENCY OF CONTROLLING AND UTILIZATION OF THE ABANDONED LAND ON LAND AGREEMENT IN INDONESIA

Risqi Mumpuni Dyastuti  
I Gusti Ayu Ketut Rachmi Handayani

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### ABSTRACT

*Land abandonment is causing damage to any sectors namely economy, social and environment. This is one of the deeds that inconsistent with legislation will cause legal impact for society in general and particularly the party who own the right. This research is non-doctrinal or juridical empirical legal study. It uses sociological approach that is deductively analyzed. The land abandonment is able to damage the ecosystem and specific species within natural conservation beside against the law about the abandonment of land. Critique regarding to land abandonment is necessary because of the following reasons; firstly, the right abolition of the abandoned land; secondly, the legal discontinuity for the party who have the right; thirdly, the unavailability of permit or decision on behalf of the abandoned land which is on staus quo.*

Key words: Urgency, controlling of land abandonment, the utilization of abandoned land, land abandonment

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### Introduction

Land is God-given for people, nation and motherland of Indonesia, of which its blessing must be exerted, used and utilized concentrating on behalf people prosperity. It is one of main resources for nation lives and livelihood all the time namely to achieve the greatest prosperity in justly and equitably

The regulation land authorization is considered important. Based on Article 33, Paragraph (3), Constitution of Republic of Indonesia of 1945, land is authorized by the country and utilized concentrating on behalf people prosperity. This Act in principal mean delivers the legal substance that land, ocean and natural wealth in the country will be utilized altogether for people prosperity.<sup>1</sup>

The land utilization should be in harmonized with its condition and character rather than its right, so that the land is profitable in favor of prosperity and contentment of the owner, people and nation. According to Article 6 of Basic Agrarian Law Act on the subject of social function of land, suggest that anyone who has the right of any land ownership, is not allowed whether to use the land or not simply for his or her personal gain particularly if his or her deed could damage the society. The ownership must be associated with utilization as stated omits license, so that the aim for people prosperity, justice and contentment may well be achieved as it stated in Article 2 Paragraph 3 of Basic Agrarian Law Act.

The abolition of right concerning abandoned land by its owner is one of attempts to accomplish people prosperity regarding their land. In this manner, those who genuinely utilize the land can experience its beneficial rather than those who own the right but simply make it into asset. As a result, society can experience their rights regarding the benefit of natural resource in Indonesia for their prosperous life. The implementation of land controlling is critically related to well-organized National Land Agency administration. Since the prohibition of land abandonment is clearly regulated on peraturan perundang-undangan, the National Land Agency of Boyolali Regency has a duty to handle land abandonment problem soon. The implementation of controlling and utilization of abandoned is time-consuming. Accordingly if it is not implemented soon as peraturan perundang-undangan explained, the interest of either personal or institution concerning rights or basic ownership of land whether to use or not use it based on the its procurement license will unable to find legal certainty.

Both of The National Land Agency of Boyolali Regency and The National Land Agency of Central Java have put Pondok Solo Permai Inc. on inventory list for having asset which is indicated abandoned in Ngesrep, Ngeplak, Boyolali. The indicated area is Building Rights Title about 3,3403 hectare. Consistent with this explanation the researcher will discuss about how is the urgency of the controlling and utilization of abandoned land in Boyolali on the perspective of legal regulation in Indonesia?

### Research Method

Research methodology is about the principles of how to do a research orderly and systematically.<sup>2</sup>This research is non-doctrinal or juridical sociological legal study. The characteristic of this research is descriptive analytical. It functions to describe

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<sup>1</sup>Bactiar Effendi, *Kumpulan Tulisan Tentang Hukum Tanah*, Alumni, Bandung, 1993, p. 2.

<sup>2</sup>Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 2007, p. 5.

the object studied through the collected data as it is, before doing the analysis and making conclusion which publically applied.<sup>3</sup>The data used in this research is primary and secondary data. The primary data is obtained promptly from informant in field. It was done by interviewing well-informed official related to the study. The secondary data typically is obtained from documents.<sup>4</sup>This type of data is specifically in a form of information or explanation that supporting the primary data. The research was carried out at National Land Agency of Boyolali Regency office. As a State Organization, National Land Agency manages and regulates on the subject of defense and its administration. The technique of collecting data that used by the researcher were field study and literature study. The data analysis is processing data in such a way so the data and legal material were well-ordered and systematic make it easier to be analyzed.<sup>5</sup>Miles and Huberman on Sugiono describe that the procedures of data analyzing are the following; data reduction, displaying, and conclusion.<sup>6</sup>

## Research Finding and Discussion

Article 35, Paragraph (1), item e on Regulation No. 40 of 1996 about Cultivation Right Title, Building Use Title and Right to Use Title clarifies that: "The Building Use Title will be canceled because the land is abandoned." It is clear that the land abandonment is disallowed as the Regulation, Laws and Regulation, Government Ordinance and the Regulation of National Land Agency of Republic of Indonesia which specifically regulate the controlling of abandoned land.

Article 33, Paragraph (3) of *Constitution of the Republic of Indonesia* 1945 states that: "Earth, water and natural resources are preserved by the State and utilized altogether for people prosperity." Comprehensively, it states that the natural resource can be used for achieving people prosperity. If the definition is defectively applied, it will cause the implementation of regulation in daily life become stagger. Correspondingly, Act No. 5 of 1960 about Basic Agrarian Law Act on Article 27 item a number 3, Article 34 item e, and Article 40 item regulates about the abolishment of abandoned land. Particularly, on Article 34 item estates that because of the land abandonment, the Cultivation Right Title can be canceled. It is illustrated on the land condition and the Cultivation Right Title of Pondok Solo Permai Inc. which identified as abandoned land because of its inappropriate use.

The land abandonment causes according *Food and Agriculture Organization (FAO)* is: "the reasons for abandonment of land are multidimensional and can be differentiated as follows: natural constraints, land degradation, socio-economic factors, demographic structure and institutional framework."<sup>7</sup>

Based on the causes as stated by FAO, the land abandonment is multidimensional such as the limitation of nature, the loss of land quality, socio-economic factor, demography factor and Institutional framework. The social-economic is the most dominant factor brings out the land abandonment in Boyolali. The regulation of abandoned land written down on Government Ordinance No. 11 of 2010 on Article 2 about the Controlling and Utilization of abandoned land state that "The Object of the controlling is a land which have Right of Ownership, Cultivation Right Title, Building Use Title, Right to Use Title, and Right of Management or the basic ownership of land which is not to be used or utilized as its condition and its aim as the license application. Based on the object criteria of land abandonment, a land owned by Solo Pondok Permai Inc. is considered in this criterion. The status of Building Use Title which is not to be used or utilized as its condition and its aim of the license application, because of social and economic factor of the company. Whatever the reason it is, land abandonment is not allowed. *Abandonment is of concern to policy makers and others because of its negative social, economic and environmental associations.*<sup>8</sup>As *Moravec and Jemecis* state that whatever the reason and cause occur, the abandonment of land in allowed. The policy maker and those who linked to it because of its social association, economic and environment with negative inclination should pay attention to this concern.

The inclination which is impacted from the abandonment of land is a negative effect. Therefore, must be the handling of this matter must be carried out soon.

The controlling of the abandoned land functions as prearrangement of the abandoned land, so it can be used optimally for people prosperity. It is in line with the Act 1, Paragraph (7) of the regulation of Head of National Land Agency of Republic Indonesia No 4 of 2010 about The Procedures of Abandonment Land Controlling. Essentially, the natural source benefit in Indonesia is for the whole society thoroughly. The land abandonment is a deed that likely disadvantages the owner itself, other people and the state. The land can be a productive area for others. It can be used and have a high usefulness value for the state. Hence, it is the principal of the prohibition of land abandonment intentionally or not. *Keenleyside and Tucker* say that "In many circumstances abandonment may be damaging as it will threaten a range of semi-natural habitats and associated species of nature conservation importance."<sup>9</sup>In some area, *Keenleyside dan Tucker* also explain that: "In some locations, abandonment

<sup>3</sup> Sugiono, *Metode Penelitian Kuantitatif, Kualitatif dan R & D*, Alfabeta, Bandung, 2009. p. 29.

<sup>4</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, RajaGrafindo Persada, Jakarta, 2011. p. 12.

<sup>5</sup> Mukti Fajar dan Yulianto Achmad, *Op.Cit.*, p. 180.

<sup>6</sup> Sugiyono. *Op.Cit.* p. 337.

<sup>7</sup> FAO, 2006, The Role of Agriculture and Rural Development in Revitalizing Abandoned/Depopulated Areas, *European Commission on Agriculture*. 34th Session, Riga, Latvia, 7 June 2006, p. 15.

<sup>8</sup> Moravec J., Zemeckis R., 2007. *Cross Compliance and Land Abandonment*. Deliverable D17 of the CC Network Project, SSPE-CT-2005-022727. p.6-16.

<sup>9</sup> Keenleyside, C and Tucker, G M., 2010. Farmland Abandonment in the EU: an Assessment of Trends and Prospects. *Report prepared for WWF*. Institute for European Environmental Policy, London. p. 1

could be highly beneficial, particularly in highly fragmented landscapes and where it could provide the opportunity for significant large-scale restoration of non-agricultural habitats.” The reasons that potentially destroy the natural habitat and conservation should be protected because if it is unprotected, it will badly impact the soil, nature and environment. Thus, these are supporting the idea that abandoned land must be controlled and utilized for its necessity duly.

The land abandonment can disadvantage the owner as the following; Firstly, the cancelation of Right of Ownership of the land and secondly the legal discontinuity for the party who have the right; thirdly, the unavailability of permit or decision on behalf of the abandoned land which is on *staus quo*. The land abandonment in Boyolali has been occurring since 2010. It is presumed that can destroy the natural condition and environment. Solo Pondok Permai Incorporate not yet fully taking care the permit application maximally, soup to this present time the permit application and the utilization of the land have not completed well. The impact of it is the Solo Pondok Permai’s asset in Ngesrep, Ngeplak, Boyolali attempted to be terancam abandoned land. Moreover, the status of Solo Pondok Permai’s land still in the indicated being abandoned stage because Decision Letter regarding the Decrement of Land Abandonment issued by National Land Agency of Central Java. The data inventory of lands that were indicated abandoned can be seen in the table 1.

Table 1: Textual Data of lands that were indicated abandoned inventory of 2010 National Land Agency of Central Java Building Use Title

No.	Name &Address of the right owner	The Decree of Right	Certificates
		a. Nomor b. Date c. Type of Right	a. Nomor b. Date c. Expired
1.	Pondok Solo Permai Inc	a. - b. - c. Building Use Title	a. 1, 2, 3, 4 b. 1990 c. -

Resource: Official Document by National Land Agency of Central Java

Table 2: Textual Data of lands that were indicated abandoned inventory of 2010 National Land Agency of Central Java Building Use Title

No.	Location	Wide (Ha)	The purpose of Right Decree	The current utilization
	a. District b. Village			
1.	a. Ngeplak	0,4058	Ruko(housing and shop)	Rice field
	b. Ngesrep	0,8999		
		1,3734		
		0,6612		

Resource: Official document by National Land Agency of Central Java

Table 3: Textual Data of lands that were indicated abandoned inventory of 2010 National Land Agency of Central Java Building Use Title

No.	The width of land that is indicated abandoned (Ha)	Other information
1.	0,4058	
	0,8999	
	1,3734	
	0,6612	

Resource: Official document by National Land Agency of Central Java

From the data above, land asset that indicated as abandoned owned by Pondok Solo Permai Inc. must soon be controlled. On formal juridical viewpoint the company abandoned their land in the period of the land is licensed for use. The license ofPondok Solo Permai Inc. was obtain in 1980with itsNo.Right Decree xxx.x/xxx/1/XII/33/91with Right Decree 8-7-1991.This company asset is not yet implemented according to its use up to 2010, so the Central Java Government in2010 declared the land asset of Pondok Solo Permai Inc. as land which indicated was being abandoned. Currently in 2018, the lands are not use yet wholly and only partially as the license.

According to fourteen regulations of the Head of National Land Agency of Republic of Indonesia No 4 of 2010 about The Procedure of Land Abandoned Controlling states that warning to land abandonment is done three times. The first warning issued also as announcement to the land owner to utilize their land. Each warning is a year apart from the previous warning.

Once the land has been declared as land that indicated being abandoned, in 2018 it should have been carried out to control the abandoned land, since from 2010 to 2018 Solo Pondok Permai Inc. not did not use of their as the utilization aim. This means that the owner of the land rights has obviously abandoned his land and violated the provisions of the legislation.

Under the provisions of Article 11 paragraph (1) of the Government Regulation of the Republic of Indonesia No. 11 of 2010 on the Control and Utilization of Abandoned Land states that, "If abandoned land is less than or equal to 25% (twenty five percent), then Right owner may submit a broad revision of the plot of land used and utilized in accordance with the Right Decree." Under the provision the existence of land which is not utilized by Solo Pondok Permai Inc. is more than 25%. This is stated in the table listed above. So, it is clear that the control over the land should be implemented immediately because it clearly verified as abandoned land. If the controlling not immediately enforced, then the Government inadvertently supports rights owners who abandoned their land and violated the regulations in Indonesia of which the impact cause damage to natural ecosystems and environment. It is hoped that the government will immediately control the abandoned land in order to be efficient for the people and the state.

### Conclusion and Suggestion

The prohibition of abandoned land has been evident in the legislation. Based on the provisions of Article 35 paragraph (1) item e of Government Regulation No. 40/1996 concerning Cultivation Right Title, Building Use Title, and Right of Ownership states that: "The Cultivation Right Title is canceled due to its abandonment." It is clear that abandonment of land is disallowed in the regulation of the Laws, Regulations and Regulations of the Head of the National Land Agency of the Republic of Indonesia which specifically regulates the controlling of abandoned land. The provisions on the neglect of abandoned land include the Constitution of Republic of Indonesia 1945, Act No. 5 of 1960 on Basic Agrarian Law Act), Government Regulation No. 11 Year 2010 on the Control and Utilization of Abandoned Land, and Head Regulation National Land Agency of the Republic of Indonesia Number 4 Year 2010 on the Procedures of Ordering Land Abandoned.

The Constitution of Republic of Indonesia 1945 in Article 33 Paragraph (3) states that: "The earth, water and natural resources contained in the motherland are controlled by the State and used for the greatest prosperity of the people." It states that the resources used for the prosperity of the people. If the definition is not applied properly, then there will be imbalances in the implementation of regulations in everyday life. Act No. 5/1960 on Basic Agrarian Law Act also regulates in Article 27 letter a number 3, Article 34 letter e, and Article 40 letter e regulating the abolition of abandoned land. Especially in Article 34 letter e, states that the Cultivation Right Title is cancelled due to the abandonment. It is in line with the condition of Building Right Title of Pondok Solo Permai Inc. Which is indicated to be neglected because it is not used as intended.

Arrangement of abandoned land objects is written down in the Articles mentioned in Basic Agrarian Law Act and in Government Regulation No. 11 of 2010 on the Control and Utilization of Abandoned Land in Article 2, namely: "The Object of the controlling is a land which have Right of Ownership, Cultivation Right Title, Building Use Title, Right to Use Title, and Right of Management or the basic ownership of land which is not to be used or utilized as its condition and its aim as the license application. Based on the criteria of the object of the controlling the abandoned land, the land owned by Solo Pondok Permai Inc. is included in this criterion of which the Building Rights Title is not cultivated, used, and utilized in accordance with the circumstances or the nature and purpose of the granting of its rights. Because of in the essence the utilization of natural resources contained in Indonesia is for the welfare of all people without exception, the restructuring abandoned land functions as a process of restructuring abandoned land to be utilized optimally for the benefit of society and the state.

Based on the arrangements above, the land abandonment constitutes an act which can harm the right owner of the land itself, the state and other people. It can also damage natural ecosystems, destroy important species in nature conservation and damage the land itself. It also raises social, economic and environmental disparities. The land can be a productive land for others or can produce usefulness and have value for the country for its usefulness. This is the underlying prohibition of land abandonment intentionally or not intentionally. The land abandonment may harm the right owner because; firstly, the right abolition of the abandoned land; secondly, the legal discontinuity for the party who have the right; thirdly, the unavailability of permit or decision on behalf of the abandoned land which is on *staus quo*.

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### **Laws and Regulations**

The Constitution of Republic of Indonesia 1945

The Act No. 5 of 1960 about Basic Agrarian Law Act

The Government Regulation of Republic Indonesia No. 11 of 2010 about controlling and utilization of abandoned land

The Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 4 of 2010 on the Procedures of Ordering Abandoned Land

### **List of Authors:**

Risqi Mumpuni Dyastuti  
*Universitas Sebelas Maret*  
Email: mumpuni.risqi@gmail.com

I Gusti Ayu Ketut Rachmi Handayani  
*Universitas Sebelas Maret*  
Email: ayu\_igk@staff.uns.ac.id