

THE CONTROL OF ABANDONED LAND IN BATANG REGENCY

Aprila Niravita
Rofi Wahanisa

ABSTRACT

The government manages its land by issuing various types of land certificates such as right-to-own (SHM), right-to-cultivate (HGU), right-to-build (HGB), and right-to-use certificates referred to the Law No. 5 of 1960 on Basic Agrarian Provisions. Land title holders should cultivate, use, and utilize their land according to its designation and requirement granted by the land certificate. Article 2 of Government Regulation (PP) No. 11 of 2010 on Control and Utilization of Abandoned Land stipulates that land is considered to be abandoned if it is not cultivated, used, or utilized according to its circumstances or purposes provided by the land certificate. Land with cultivation permits (HGU) is relatively large land for plantation given by the government. The land is very vulnerable to be abandoned. The government basically issues HGU to be developed and used for plantation productivity. Every land certificate has some obligations and prohibitions. Then, land abandonment is one of HGU prohibitions. Batang Regency is dominated by mountainous regions offering a big potency to develop plantation businesses. One of them is PT. Perusahaan Perkebunan Tratak. When land owned with HGU status is not cultivated as its purpose, it will make the land abandoned. The statements of the problems are: 1). Why does abandoned land occur in Batang Regency? 2). How is the control mechanism of abandoned land in Batang Regency? This study used an empirical juridical approach, and it was analyzed using qualitative method. The research findings are as follows: 1). PT. Perusahaan Perkebunan Tratak abandoned its land because of its inability to manage the land for plantation 2). The control mechanism of abandoned land under HGU in PT. Perusahaan Perkebunan Tratak was implemented with 4 stages, i.e. inventory of indicated abandoned land, identification and field research, warning the land title holders, and determination of abandoned land referred to the BPN Head Regulation No. 4 of 2010.

Keywords: Abandoned Land, HGU, PP No. 11 of 2010

Introduction

Article 1 (2) and (3) of Law No. 5/1960 on Basic Agrarian Law (UUPA) states that paragraph (2) "The entire earth, water and airspace, including natural resources contained within the territory of the Republic of Indonesia as a gift from the God Almighty is the earth, water and airspace of Indonesia and constitute the national wealth. Then, paragraph (3) states that the relationship between Indonesia and the earth, water and airspace referred to in paragraph (2) of this article is an eternal relationship." It proves the relationship between people and their land is an eternal and fundamental relationship. Land as a gift from the God Almighty can be used by every people living on earth to perpetuate their life. People do many different kinds of activities on land, i.e. as a place to live and a production factor for their livelihoods. The number of people living on earth increases from time to time and their activities are more increased and diversified. When the number of people and their needs to use land is getting higher and higher, the land area does not increase at all. It triggers various problems and land conflicts related to the ownership and control of land.

Prof Notonagoro states that the relationship between people and land, both collectively and individually, is a dumvirate relationship based on the second principle value. A collective relationship between people and land can be found in Article 1 (1) and Article 2 (1) stating that the entire territory of Indonesia is unified motherland of the whole of the Indonesian people who are united as the Indonesian Nation, and the earth, water and natural resources in the highest instance controlled by the State being an authoritative organization of the whole people. An individual relationship is regulated by Article 2 (2) yis Article 4 (1) and (2) and Article 16. This idea is based on a concept that the State as an authoritative organization entrusted by people to control the earth, water and natural resources has an authority to determine and regulate the legal relation between people and the earth, water and natural resources by issuing various types of land rights with their own authority and the legal act concerning the earth, water and natural resources by taking into account that all land rights have social functions (Sumardjono, 2009: 101)

The government basically issues land certificates or a right-to-manage (HPL) to land title holders in order to be cultivated, used, utilized, and maintained properly for their prosperity as well as for the welfare of the community, state and nation. When the government issues land certificate to a person or legal entity, it is always accompanied by some obligations stated on the decision on award of right. Therefore, land title holders are prohibited to abandon their land, and if they abandon their land, UUPA has set out the legal consequences, i.e. the annulment of land rights, the termination of legal relation, and the land is directly controlled by the State (Supriyanto, Journal of Law Dynamics Vol. 10 No. 1 January 2010).

Article 4 (2) and (3) of UUPA states the government has the authority to hand over various land certificates to people either alone or together with other people and legal entities. The land certificate grants its holder the rights to use the land, and similarly

the earth, water, and airspace above it for the benefit directly connected with the use of land as long as it is allowed by this Law and other higher-level regulations. Based on Article 1 (1) of Government Regulation No. 40/1996 on right-to-cultivate (HGU), right-to-build (HGB), and right-to-use land, the government can issue land rights in the form of right-to-own (HM), right-to-cultivate (HGU), right-to-build (HGB), and right-to-use. Land with cultivation permits (HGU) is a special land right for agriculture, plantation, livestock and fishery given by the State. The ownership is limited to 25 years or 35 years for a business which is required a longer period. According to Article 12 (1) of Government Regulation No. 40/1996 on right-to-own (HM), right-to-cultivate (HGU), right-to-build (HGB), and right-to-use (PP No 40/1996), HGU's holder has some obligations as follows: a). pay income to the government; b). do agriculture, plantation, fishery and/or livestock business according to its designation and requirement granted by the land certificate; c). cultivate their own HGU land according to business feasibility criteria provided by the technical agency; d). build and maintain environmental infrastructure and land facility existed in the HGU area; e). maintain the fertility of soil, prevent the destruction of natural resources, and preserve the ability of the environment in accordance with the prevailing regulation; f). submit a written annual report on the use of HGU; g). hand back the HGU land to the government after the right-to-cultivate is removed; h). submit the removed HGU certificate to the Head of the National Land Agency (BPN).

The land title holders' obligations are also clearly stated in Article 10 (1) of UUPA, i.e. Every person and every legal entity having a certain right on agricultural land is obliged to cultivate or exploit it actively by himself and avoid the violation methods," and Article 15 of UUPA states "maintain the land, including the increase of its fertility as well as the prevention of its damage is the duty of every person, legal entity, and institution having legal relations with the mentioned land by considering the economically weak party. The government gives the rights to every Indonesian citizen and every Indonesian legal entity to be able to use and utilize the land located in the territory of the Republic of Indonesia. However, it is not an absolute right because there are some obligations that must be fulfilled by the land title holders. One of them is to actively cultivate the land.

Article 17 of Government Regulation No. 11/2010 states HGU can be removed by the competent authority before the expiration date if the holders do not fulfill their obligations and/or violate the provisions in Article 12 of Government Regulation No. 11/2010 and their rights can also be removed if they abandon their land.

Suharningsih states the fulfillment of obligations by the land title holders is the embodiment of successful legal relationship. If the execution differs from the initial designation causing the land is not well-maintained, well-preserved, and unproductive, it can be categorized as abandoned land. Therefore, the land can be recontrolled by the government and the management rights will be given to other party (Suharningsih, 2009: 90).

Land is considered to be abandoned if the right-to-own (HM), right-to-cultivate (HGU), right-to-build (HGB), right-to-manage (HPL), and right-to-use given by the government is not cultivated, used, or utilized according to the circumstances or natures and purposes of the land rights or ownership (Article 1 (6) Perkaban No. 4/2010). HGU with a relatively large area over 5 hectares is very vulnerable to be abandoned. In particular, when the land title holders, both individual and legal entity, are not in a good and stable condition to cultivate their land maximally.

Batang Regency as one of regencies in Central Java Province located in the northern coast of Java Island or often called "Pantura" has a bright prospect to develop their area. Supported by its quite large area, *Batang* Regency attracts many companies to develop their business. It is located at 6° 51' 46" to 7° 11' 47" South Latitude and 109° 40' 19" to 110° 03' 06" East Longitude on the northern coast of Central Java and it is passed by the main highway connecting Jakarta- Surabaya. Moreover, *Batang* Regency's region is surrounded by Java Sea on the north, *Kendal* Regency on the east, *Wonosobo* and *Banjarnegara* Regency on the south, and *Pekalongan* Regency on the west. (batangkab.go.id).

Batang Regency's region is divided into 15 subdistricts (kecamatan), 247 villages (desa) and 9 urban villages (kelurahan) with a population of ± 700,000 people and a total area of 78,864.16 Ha. The area consists of 22,432.13 Ha (28.44%) of rice fields and 56,432,03 Ha (71.56%) of non-rice fields. According to its usage, rice fields are divided into traditional irrigation rice fields (41, 95%) and technical irrigation rice fields (36.51%). Meanwhile, the non-rice field area is largely used as unirrigated farmland (37.50%), and it is also used for building/yard, plantation, state forest, pond/pool, and grassland. Its topography characteristics are divided into three parts: coastal, lowland and upland areas. *Batang* regency is dominated by mountainous regions with latosol 69.66%; andosol 13.23%; alluvial 11.47%; and podzolic 5.64% soil structures (batangkab.go.id).

Land utilization is mostly influenced by soil conditions, and it is also happened in *Batang* Regency. The land utilization in this region is strongly influenced by its topography dominated by mountainous region and its soil structure. The soil structure is suitable for forest cultivation, plantation and agriculture. The majority of forest and plantation is owned by the State. Meanwhile, the agriculture in dry and wet (traditional irrigation and technical irrigation) farmland is practiced by local community.

The changes in land utilization are very stagnant although *Batang* Regency is located in the main economic path. Approximately 60% of its area is utilized as forests, plantations and agricultural areas producing some commodities, i.e. teakwood, forest wood, rubber, tea, chocolate, kapok and other agricultural products.

With a total area of 78,864.16 Ha, there are 12 HGU (right-to-use) in *Batang* Regency owned by 9 companies controlling 6,308.75 9 Ha. It means approximately 7.9% of *Batang* Regency area is controlled by private and state- owned plantation companies. The data is issued by the National Land Agency (BPN) as the institution having authority to issue HGU for big

plantation companies. The plantation data in *Batang* Regency are as follows:

Table 1. The List of Large Plantations in *Batang* Regency

No .	Land Title Holder	The Decision of Land Cultivation Permit No.	Area (ha)	Allocation
1.	PT Aneka Usaha	08/HGU/DA/1990	90.39	Cottonwood and Coffee
2.	PT Estu Subur	06/HGU/DA/1978	17.83	Cocoa and Coconut
3.	PT Pagilaran	14/HGU/DA/1977	208.35	Cocoa and Coconut
4.	PT Pagilaran	15/HGU/DA/1983	1,113.85	Tea
5.	PT Perkebunan Tratak	61/HGU/DA/1988	89.64	Coffee, Rubber, and Clove
6.	PT Puspita Nicky	21/HGU/DA/1985	51.09	Clove, Coffee, and Gnetum gnemon
7.	PT Segayung	49/HGU/DA/1986	243.53	Cottonwood and Coconut
8.	PT Simbangjati Bahagia	94/001/2/1686/33/00	149.98	Cottonwood, Coffee, and Coconut
9.	PTPN IX	59/HGU/DA/1976	530.65	Coffee and Tea.
10.	PTPN IX	53/HGU/DA/1980	1,227.08	Rubber and Cocoa
11.	PTPN IX	60/HGU/DA/1980	2,226.36	Rubber, Coffee, and Livestock
12.	PT Rehobat	116/HGU/DA/1997	360.00	Rubber, Coffee, and Livestock

Source: the National Land Agency, Deputy Land Controlling and Community Empowerment of BPN (until December 2010)

From all the existing large plantations in *Batang* Regency, they are expected to make a major contribution to improve the land title holders and communities' prosperity as well as regional revenue. However, some plantation companies are not in a good condition so they cannot cultivate, use, or utilize the land in accordance with the circumstances or natures and purposes as stated in HGU, i.e. for plantation. With this condition some large plantations existed in this regency cannot contribute as expected by the government. Land abandonment is often practiced by land title holders which can be categorized as an indiscreet act. The

land abandonment creates a perception in the surrounding communities that the land is no longer used by the plantation companies because, in fact, there is no plantation operational activity. It causes illegal occupation by the community triggering a conflict between land title holder and community.

The abandoned land will disrupt the development because land availability is limited and its demand increases rapidly. The existence of abandoned land will reduce land-use efficiency and it may cause unwanted social issues (Suhariningsih, 2009: 88). From the background above, the statements of the problems are 1). Why does abandoned land occur in *Batang* Regency? 2). How is the control mechanism of abandoned land in *Batang* Regency?

RESEARCH METHODS

This legal study used an empirical juridical approach. It is conducted by observing the existing fact and field study, and then it is reviewed and analyzed based on the related laws and regulations as a reference to solve the problem (Soemitro, 1998: 52). The type of study was qualitative legal study focusing on determining how the government inventoried the indicated abandoned land in *Batang* Regency and how the control mechanism of abandoned land in *Batang* Regency.

Data validation technique is needed to check the validity (trustworthiness). The data validation technique or commonly called data validity is based on four criteria: trust, competence, dependence and certainty (Moleong, 2007: 324). One of techniques to check the data validity is triangulation technique. Triangulation is a data validity technique that utilizes something else. Sources triangulation compares and double-checks respondents' level of confidence obtained through different time and tool in qualitative research. Sources triangulation can be conducted as follows: a). Compare the observation and interview data, b). Compare what people say in public and in private, c). Compare what people think about research situation and what they say all the time, d). Compare someone's condition and perspective from different opinions and views such as ordinary people, people with medium or high level education, rich people, and civil servants, e). Compare the interview results with the contents of related document (Moleong, 2007: 330). Based on the explanation, this study also compared the research findings obtained through interviews and related documents with the control and rearrangement of abandoned land in *Batang* Regency.

RESEARCH FINDINGS AND DISCUSSION The Cause of Abandoned Land in Batang Regency

The government gives land certificate to its holder in order to be cultivated, used, utilized, and maintained properly for its holder's prosperity as well as for the welfare of the community, state and nation. It is not freely given because the land title holders need to utilize their land according to its designation.

As a business requiring a large area, plantation is expected by the government to be one of prosperity pillars especially for the surrounding community. As time goes by, some plantation companies are not able to continue their business activities. Therefore, the land automatically becomes dormant or abandoned. On the other hand, many people who live around the plantation area need the land to be cultivated as their livelihood. They illegally cultivate the plantation area which has been abandoned or left by its holder and it eventually triggers a land conflict.

The definition of abandoned land can be seen in Article 27 of UUPA which expressly states: "land is abandoned if it is deliberately not used in accordance with the circumstances, natures, and purposes of the land rights". Then, Article 28 of UUPA explains that plantation land under land-cultivation permit (HGU) is the right to cultivate state-owned land for agriculture, fishery or livestock purposes. Unlike right-to-use, right-to-cultivate can only be granted to land at least 5 hectares in size. HGU will be revoked if it is not actively used in accordance with its designated purposes as stated in Article 34 (e) of UUPA: "Right-to-cultivate is revoked because of abandonment." Article 1 (5) and (6) of The BPN Head Regulation No. 4/2010 on Control Procedures of Abandoned Land (Perkaban No.4 of 2010) states the definition of indicated abandoned land and abandoned land. Land is indicated to be abandoned if it is allegedly not cultivated, used, or utilized according to the circumstances or natures and objectives of the land rights or ownership which has not been identified and investigated. Meanwhile, abandoned land is land under right-to-own, right-to-cultivate, right-to-build, right-to-use, right-to-manage which is not cultivated, used, or utilized according to the circumstances or natures and objectives of the land rights or ownership.

Determination of abandoned land is not an easy task because it covers subject (person or legal entity), agricultural land or building, intentionally or unintentionally abandoned, and time period investigation in order to be categorized as abandoned land (Sumardjono 2001: 94). It requires many variables so that the determination does not trigger a big reaction and lead to land conflict.

The criteria of abandoned land are as follows: 1). There is land title holder/owner (subject); 2). There is land right (HM, HGU, HGB, etc) which is not well-cultivated causing a decrease in soil fertility; 3). There is a period of time; 4). There is an intentional action not to use the land in accordance with the purpose and content of the land rights (Suhariningsih, 2009: 120).

Land Office in *Batang* Regency inventoried the abandoned or indicated abandoned land based on community input and they followed it up with observation and field research. Based on the inventory of indicated abandoned land in *Batang* Regency, the Land Office found three objects of indicated abandoned land. They were determined as indicated abandoned land objects because they were abandoned and did not used in accordance with the circumstances or natures and purposes of the land rights. The locations of some abandoned land in *Batang* Regency are presented as follows:

Table 2. The Inventory Data of Indicated Abandoned Land in Batang Regency (February 2008 – May 2011)

No	Land Title Holder	Area (Ha)	Location	Expiration Date	Allocation	Existing Land Use
1.	PT. Puri Gajah Perkasa Mas	16.638	Tulis Subdistrict	24/9/ 2025	Housing	Unirrigated farmland / Agriculture
2.	PT. Muara Panca Utama	13.658	Batang Subdistrict	10/4/ 2001	Housing	Empty land / pond
3.	PT. Perkebunan Tratak	89.841	Bandar Subdistrict	31/12/2013	Coffee, Rubber, and Clove Plantation	Seasonal crops, clove

Source: Batang Regency Land Office

PT. Perusahaan Perkebunan Tratak is a private-company located in Pekalongan with Yap Kiem Loan as the Director. It is incorporated based on the approval of the Minister of Justice dated 8 April 1958 No. J.5/36/7 with its main commodities such as coffee, rubber and clove.

PT. Perusahaan Perkebunan Tratak filed the application to obtain land rights in *Tumbrep* Village, *Bandar* Subdistrict, *Batang* Regency with a total area of \pm 89.841 Ha. The application for land rights was approved by the Decision of the Minister of Home Affairs No. 61/HGU/DA/88 on HGU Issuance on behalf of PT. Perusahaan Perkebunan Tratak on 25 July 1988. The cultivation permit is valid from the registration date at the District Agrarian Office, i.e. *Batang* Regency, until the next 25 years and will expire on 31 December 2013.

PT. Perusahaan Perkebunan Tratak was initially in a good condition and planted clove and rubber as its main commodities, but afterwards financial difficulties began to affect the company. Therefore, almost all of the land was not well-managed and it was not used as its purposes. On the other hand, the surrounding community lived in poverty and they did not have land to be cultivated. This real condition coupled with political climate after the reform era which took small community's side triggering the prolonged horizontal conflict between PT. Perusahaan Perkebunan Tratak as the holder of HGU No: 1/Batang and the surrounding sharecropper family in the local organization called *paseduluran petani penggarap perkebunan tratak* (tratak plantation sharecropper family) (Batang Regency Land Office). In line with it, Abdul Rozak also explained the abandonment of land-cultivation permit conducted by PT. Tratak has happened since 1990 and it triggered a conflict with local community as the sharecroppers. Various efforts, including mediation, to settle the conflict had been facilitated by *Tim Penyelesaian Kasus Batang* (the Batang Conflict Settlement Team), but it was not able to bring the conflict to an end. From that moment on, local communities/sharecroppers called *Omah Tani* (Farmer House) held many demonstrations to revoke the concession of PT. Perkebunan Tratak and gave opportunities and legal certainty to the sharecroppers to own the land rights. (Interview with Abdul Rozak, Land Control and Community Empowerment Section of Batang Regency Land Office, 7 June 2016).

Many efforts were made to solve the conflict, but the land title holder and sharecroppers had not reached an agreement yet. Field monitoring was also carried out by the BPN Regional Office of Central Java and the Batang Regency Land Office. It was conducted to investigate whether it can be categorized as abandoned land or not. The criteria of abandoned land are as follows: 1). There is land title holder/owner (subject); 2). There is land right which is not well- cultivated causing a decrease in soil quality; 3). There is a period of time; 4). There is an intentional action not to use the land in accordance with the purposes and contents of the land rights (Suhariningsih, 2009: 120). Based on the field monitoring carried out by Batang Regency Land Office, the land owned by PT. Perkebunan Tratak fulfilled the criteria for abandoned land because there was no clove, coffee, and rubber in the plantation area, the act of abandonment to the sloped land causing a landslide, and the activity of red bricks making in the middle of the plantation area. In addition to the field monitoring, sharecroppers who were the members of "Omah Tani" organization also submitted their written reports on an act of land abandonment by PT. Perkebunan Tratak.

A normative effort facilitated by the Batang Conflict Settlement Team had been carried out to solve PT. Perkebunan Tratak's abandoned land, but it did not give significant results. After the government issued the Government Regulation (PP) No. 11/2010

on Control and Utilization of Abandoned Land, the abandonment conflict finally found its bright spot by registering HGU No. 1/Batang on behalf of PT. Perusahaan Perkebunan Tratak in the National Database for Indicated Abandoned Land. It means the land conflict will be settled based on the provisions of PP No. 11/2010.

Considering that land should be cultivated for the benefit and prosperity of all parties, land abandonment conducted by PT. Perusahaan Perkebunan Tratak was an indiscreet act and required serious attention from the government so that the land can be utilized by issuing the determination of abandoned land and rearranged the ownership of abandoned land so its utilization can be reached.

The Control Mechanism of Abandoned Land in *Batang* Regency

The control of abandoned land is implemented in accordance with Government Regulation No. 11/2010 (PP No. 11/2010) on Control and Utilization of Abandoned Land, and then the implementation procedures are based on the BPN Head Regulation No. 4/2010 on Control Procedures of Abandoned Land as instructed in Article 14 of PP No. 11/2010. According to Article 3 of Perkaban No. 4/2010, the control of abandoned land is conducted in stages as follows: a). inventory of land rights or ownership that is indicated to be abandoned; b). identification and investigation of indicated abandoned land; c). warning the land title holders, and d). determination of abandoned land. The first stage to control the abandoned land is by inventorying the indicated abandoned land.

A. Inventory of Indicated Abandoned Land

The Head of BPN Regional Office of Central Java has the authority to conduct the inventory. Article 4 (2) of Perkaban No. 4/2010 states the information on indicated abandoned land is obtained from field monitoring by Regional Office, Land Office or other agency/institution report, a written report from the community, or the right holder. The inventory object of indicated abandoned land consists of: a). Right-to-Own, Right-to-Cultivate, Right-to-Build, Right-to-Use, Right-to-Manage; and b). Land which has obtained a land title from the authorized officials since the issuance of permit/decision/letter of land title.

Inventory of indicated abandoned land is to record the land rights which is indicated to be abandoned or unused or inappropriate utilization according to the contents of the land rights and its designations. The inventory of indicated abandoned land in *Batang* Regency was performed by the Head of BPN Regional Office of Central Java based on many sources including field monitoring conducted by *Batang* Regency Land Office, a report from the related agency, a written report from the community and social organization. Based on the inventory of Tratak plantation in *Batang* Regency, the land owned by PT. Perusahaan Perkebunan Tratak can be categorized as indicated abandoned land and it will be followed by identification and field research.

The inventory of indicated abandoned land was performed by examining the data related to the land. The data included textual data (the name and address of the right holder, the number and date of the land certificate, land certificate's expiration date, land situation, land area, land use, land area which is identified to be abandoned) and spatial data or maps representing the position coordinates of indicated abandoned land.

The administration of the inventory data of the indicated abandoned land in Tratak plantation was orderly managed in the database for reporting purpose, material analysis, and determination of further actions, i.e. the identification and field research on PT. Perusahaan Tratak's HGU land, warning PT Perusahaan Perkebunan Tratak, and the last one was the determination of PT. Perusahaan Tratak's HGU land as abandoned land.

Table 3. The List of Activities on the HGU land No. 1/Batang on behalf of PT. Perusahaan Perkebunan Tratak

No	Activity	Execution	Explanation
1.	Identification and Field research	30 - 31 March 2011	Carried out by Committee C
2.	Committee C meeting	4 April 2011	Give a warning to PT. Perusahaan Perkebunan Tratak
3.	First Warning	13 May 2011	Not fulfilled
4.	Second Warning	14 June 2011	Not fulfilled
5.	Third Warning	5 July 2011	Not fulfilled

6.	The proposed land abandonment by the BPN Regional Office of Central Java	3 October 2011	
7.	The determination of abandoned land by the National Land Agency (BPN RI)	16 January 2013 No. SK. 7/ PTT-HGU/ BPN RI/2013	Remove the legal relation between the land title holder and its land and it was considered as TCUN
8.	The former land title holder filed a lawsuit at the Jakarta State Administrative Court (PTUN)	14 February 2013	The lawsuit was entirely rejected by the decision of the Jakarta State Administration Court No. 25/G/2013. The plaintiff did not file legal action so the decision had its permanent legal force.

Source: Batang Regency Land Office

B. Identification and field research

After the inventory of indicated abandoned land, it was followed up by identification and field research. Article 6 (2) of PP No. 11/2010 states the identification and field research on abandoned land includes as follows: a). the name and address of the right holder; b). location, size, right status, land title, and land physical condition controlled by the right holder; and c). any condition resulting in abandoned land. The Head of the Regional Office prepared the data and information of the indicated abandoned land that will be targeted for identification and field research.

According to Abdul Rozak, the identification and investigation on PT. Perusahaan Perkebunan Tratak's HGU land included the examination of administrative aspects and field research. The examination of administrative aspects included juridical record, such as land register, and/or authentication, and other documents such as mortgage, the Decision of HGU Issuance including data, plan and stages of land use and utilization when filing the land rights, requesting information from the right holders or parties related to the company's business continuity. Meanwhile, the identification and field research was focus on physical examination such as land area, whether the land was used in accordance with its purposes or not, whether the cultivation or occupation by other parties such as community happened or not, whether the community occupation was permitted by the right holder or not. (Interview with Abdul Rozak, Land Control and Community Empowerment Section of Batang Regency Land Office).

The identification and field research on tratak plantation was carried out by the Committee C consisting of the Head of BPN Regional Office of Central Java as Chairman, the Head of Land Control and Community Empowerment Division of the BPN Regional Office of Central Java as Secretary and member, the Staff of the Plantation Office at the First Level Regional Government of Central Java, the Staff of the Directorate of Administration at the First Level Regional Government of Central Java, the Head of the Sub Directorate of Agrarian, the Head of *Batang* Regency Plantation Office.

The results showed the land with a total area of ± 89.841 Ha which should be planted with clove, rubber, and coffee was not cultivated according to the Decision of the Minister of Home Affairs No. 61/HGU/DA/88 on HGU Issuance on behalf of PT. Perusahaan Perkebunan Tratak stating that the land right is granted for rubber, coffee, and clove plantation. Only ± 7.4 Ha of land which was used according to the natures and purposes of the land rights, meanwhile the rest was abandoned. Therefore, the land abandonment resulted in an illegal occupation by farmers. They made red bricks in the plantation area. (Interview with

Abdul Rozak, Land Control and Community Empowerment Section of *Batang* Regency Land Office).

In addition to the data obtained from the identification and field research, the Committee C took into account the assessment of Tratak plantation conducted by the Central Java Forestry and Plantation Office. According to Sriyono, the assessment of the Tratak plantation condition included 8 aspects as follows: legality, management, plantation sub-system, product management, socioeconomics, regional sub-system, environmental sub-system, and reporting sub-system. The assessment results will form the basis for plantation class. Based on the plantation class, the plantation office can decide the appropriate steps given to the plantation company. The plantation can be classified into 5 classes. According to the Permenten No: 07/Permenten/OT/140/2/2009, the plantation is categorized as class I (very good) when the score reaches 80-100, class II (good) with the score of 60-79, class III (moderate) with the score of 40-59, class IV (poor) with the score of 20-39, and class V (very poor) with the score of 0-19. The assessment of PT. Perusahaan Perkebunan Tratak was conducted based on the Letter No: 525.1/2862 dated 19 April 2011 stating that PT. Perusahaan Perkebunan Tratak was categorized as class V or "very poor" predicate. PT. Perusahaan Perkebunan Tratak got "very poor" score in the assessment of eight aspects, as far as I can remember. In legality aspect, PT. Perusahaan Perkebunan Tratak had a certificate of incorporation and the legality to obtain land rights. Then, PT. Perusahaan Perkebunan Tratak got "very poor" score in the management sub-system because there was no plantation expert, unclear task division between people involved in the plantation management, and labor shortage because of poor salary. When the management subsystem got "very poor" score, it will affect other subsystems in the plantation assessments. Therefore, PT. Perusahaan Perkebunan Tratak can be categorized as Class V. (Interview with Sriyono, the Head of Batang Regency Forestry and Plantation Office).

After the identification and field research on PT. Perusahaan Perkebunan Tratak's land, the Committee C held a meeting and gave advices to the Head of Regional Office in the form of Minutes of Committee Meeting. The results of the Committee C meeting states that HGU land on behalf of PT. Perusahaan Perkebunan Tratak was indicated to be abandoned, and then the Committee C will notify and warn the land title holder.

C. A Warning to the Land Title Holder

PT. Perusahaan Perkebunan Tratak's HGU land had been determined as indicated abandoned land by the Committee C meeting, and then it will notify the land title holder and give a warning. Article 14 of Perkaban No. 4/2010 states the warning is given 3 times. The warning given to PT. Perusahaan Perkebunan Tratak was based on the identification and field research stating that the land title holder did not cultivate the land and there was no plantation activities on the land, so the first warning given on 13 May 2011 with the Letter No. 3049/16- 500/V/33/2011 mentioning the actions to be carried out by the land title holder, i.e. to cultivate, use and utilize the land according to the circumstances or natures and objectives of the land rights with one month period to fulfill the warning. It was in line with Article 14 (2) of Perkaban No. 4/2010 and the first warning was also mentioned some concrete things should be conducted by the land title holder and imposed sanctions if the land title holder did not comply with the warning. If the land title holder did not carry out the first warning and after taking into account the progress of the first warning, the Head of Regional Office gave the second written warning with the same period as the first warning. If the right holder did not carry out the second warning and after taking into account the progress of the first warning, the Head of Regional Office gave the third written warning or the final warning with the same period as the second warning.

The first warning was not fulfilled by the land title holder so the second warning was given on 14 June 2011 with the Letter No. 4313/16-500/VI/33/2011 and the final third warning was given on 5 July 2011 with the Letter No. 4313/16- 500/VII/33/2011. Until the final warning, no action or activity was undertaken by PT. Tratak Plantation Company to comply with the warning.

Some actions or concrete things should be conducted by the land title holder at the first and second warning are as follows: a). to cultivate, use, and utilize the land according to the circumstances or natures and purposes of the land rights; b). in the event of the land is not used in accordance with the natures and purposes of the land rights, the land title holder should submit its application to change the land rights to the Head of Regional Office as stipulated in the prevailing regulations; c). to submit the application to obtain the land rights and to cultivate, use, or utilize the land in accordance with the permit/decision/letter from the competent authorities (Article 15 of Perkaban No. 4/2010).

After giving the third warning and no concrete action was undertaken by the land title holder, it was considered to neglect the last warning based on the provision of Article 17 (2) of Perkaban No. 4/2010. The non-compliance criteria are as follows: a). do not use the land in accordance with the natures and purposes of the land rights; b). there is still uncultivated land in accordance with the Decision or land rights; c). there is still some land which is not used in accordance with the Decision or land rights; d). no follow-up to finish the development; e). land is not used in accordance with the Decision or land rights; f). have not submitted an application to obtain land rights yet. When the third warning was neglected, the sanctions will be imposed to the land title holders. The sanctions are their land is set out to be abandoned land which will revoke the rights, remove legal relations, and the land is directly controlled by the government.

PT. Perusahaan Perkebunan Tratak did not comply with all warnings and it did not use its land in accordance with the natures and provisions of the land rights and there was still some uncultivated land, i.e. only ± 7.4 Ha was cultivated from the total area of ± 89.841 Ha and the rest was left uncultivated. Therefore, the proposal on the determination of abandoned land against HGU No. 1/Batang on behalf of PT. Perusahaan Perkebunan Tratak will be issued by the Head of BPN Regional Office of Central Java.

D. Determination of Abandoned Land

The determination of abandoned land was issued by the Head of the National Land Agency of the Republic of Indonesia based on the proposal submitted by the Head of the BPN Regional Office of Central Java No. 5748/16- 500/X/33/2011 dated 3 October 2011 on the proposed land abandonment. Based on the proposal, the government issued a Decision dated 16 January 2013 on the determination of abandoned land against HGU No. 1/Batang on behalf of PT. Perusahaan Perkebunan Tratak located in *Tumbrep Village, Bandar District, Batang Regency, Central Java Province*. The decision determined the HGU land as abandoned land and removed the legal relation between PT. Perusahaan Perkebunan Tratak and its HGU land.

In the event the determination of abandoned land PT. Perusahaan Perkebunan Tratak was given an opportunity to re-register the land which was cultivated and used in accordance with the circumstances or natures and purposes of the land rights with a total area \pm 7.4 Ha not later than one month from the decision thereof. However, PT. Perusahaan Perkebunan Tratak did not register its land right until the end of one month deadline so all HGU land on behalf of PT. Perusahaan Perkebunan Tratak was determined as abandoned land.

The determination of land abandonment on PT. Perusahaan Perkebunan Tratak's HGU land was conducted in accordance with the prevailing regulation, i.e. PP No. 11/2010, and supported by the implementing regulation, i.e. Perkaban No. 4/2010 on Control Procedures of Abandoned Land. The final result to be achieved by the determination of abandoned land is the fulfillment of Article 6 of UUPA stating land has social functions which means the land rights owned by the right holders are not absolute, there is obligations accompanying the issuance of land rights, so it must be cultivated according to its purposes and no land abandonment is allowed. Many communities around the abandoned land need the land for their livelihood, so it triggers disputes and even conflicts. Because every Indonesian citizen basically has the right to use, utilize and control the land within the territory of the Republic of Indonesia to perpetuate their life.

Article 21 of Perkaban No. 4/2010 explains state land which is obtained from abandoned land set out by the Head is directly controlled by the state or the National Land Agency of the Republic of Indonesia in this case, and it is determined as the State General Reserve Land which is utilized for the benefit of the community and the state through: a). agrarian reform; b). national strategic program; and c). other national reserves. The determination of land under any rights as abandoned land allows the government to restore the land's function for the entire community's welfare by rearranging the ownership to the parties in need of land.

CONCLUSION

The land is categorized as abandoned because it is obviously proven that the land is not cultivated, used, or utilized in accordance with the circumstances or natures and purposes of the land rights. Tratak plantation land fulfilled the criteria of abandoned land because there was no clove, coffee, and rubber in the plantation area, the act of abandonment by leaving the sloped land without any plantation crops causing a landslide, and the activity of red bricks making in the middle of the plantation area. The condition of PT Perusahaan Perkebunan was categorized as Class V or very poor because there was no plantation activities, land abandonment when the surrounding communities are farmworker or poor farmer in need of land to be cultivated. This real condition coupled with political climate after the reform era which took small communities' side triggering an illegal land occupation and became a prolonged horizontal conflict. Many efforts were made to solve the abandonment of Tratak land, but it had not given a significant result. After the government issued the Government Regulation No. 11/2010 on Control and Utilization of Abandoned Land, the land abandonment conflict finally found its bright spot by registering HGU No. 1/Batang on behalf of PT. Perusahaan Perkebunan Tratak in the National Database for Indicated Abandoned Land.

The control mechanism of abandoned land was implemented in accordance with Government Regulation No. 11/2010, and the implementation procedures are based on Perkaban No. 4/2010. According to Article 3 of Perkaban No. 4/2010, the control of abandoned land was conducted in some stages as follows: a). inventory of land rights or ownership that is indicated to be abandoned; b). identification and field research on indicated abandoned land; c). warning the land title holders, and d). determination of abandoned land.

REFERENCES

- Arisaputra. Muhammad Ilham, 2015, *Reforma Agraria di Indonesia*. Jakarta: Sinar Grafika. Harsono, Boedi, 2003, *Hukum Agraria Indonesia; Sejarah Pembentukan Undang-Undang Agraria, isi dan pelaksanaannya*, Jakarta: Djambatan Moleong, Lexy, J, 2007, *Metode Penelitian Penelitian Kualitatif*, Bandung :
- Remaja Roshakarya Suhariningsih, 2009, *Tanah Terlantar Asas dan Pembaharuan Konsep Menuju Penertiban*, Jakarta : Prestasi Pustaka Publisher Sumardjono, Maria S.W, 2009, *Tanah Dalam Perspektif Hak Ekonomi Sosial dan Budaya*, Jakarta : Penerbit Buku Kompas
- Soemitro, Rony Hanitijo, 1998, *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia Indonesia.
- Supriyanto, 2010, *Kriteria Tanah Terlantar dalam Peraturan Perundang- Undangan Indonesia* , Jurnal Dinamika Hukum Vol. 10 No. 1 Januari 2010

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Tap MPR Nomor IX/ MPR/ 2001 Tentang Pembaharuan Hukum dan Pengelolaan
Sumber Daya Alam Undang- Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria
Peraturan Pemerintah Nomor 40 Tahun 1996 Tentang Hak Guna Usaha, Hak Guna Bangunan dan Hak Pakai Atas Tanah
Peraturan Pemerintah Nomor 11 Tahun 2010 Tentang Penertiban dan Pendayagunaan Tanah Terlantar
Peraturan Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 4 Tahun 2010 Tentang Tata Cara Penertiban Tanah Terlantar

Aprila Niravita

Faculty of Law Universitas Negeri Semarang (Lecturer)

Email : niravitanugroho@gmail.com ; aprilaniravita@mail.unnes.ac.id

Rofi Wahanisa

Diponegoro University (Student on Doctoral Programme)

Faculty of Law Universitas Negeri Semarang (Lecturer)

Email : rofiwahanisa.fh@gmail.com ; rofiwahanisa@yahoo.com