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## **IMPLEMENTATION OF LAND POLICY IN UTILIZATION AND ABANDONED LAND CONTROL<sup>1</sup>**

In 2014 National Land Agency of the Republic of Indonesia (BPN RI) recording there are about 25.000 Ha lands has been set as abandoned land. Head of BPN RI said that abandoned land which has been recorded reaches 1,2 million Ha. From those total, half has been determined by BPN as abandoned land. The aim is done for analysis in Juridical about Implementation of land policy in utilization and abandoned land control. The method is using Normative Juridical, with statute approach, conceptual approach, and case study, with collecting the primary and secondary legal materials. The main problems faced in control and utilization of the abandoned land is an implementation of identification regarding the presence of abandoned land has not proceeded in accordance with the provisions, the civil rights of former rights holder's problems, term of rights with funding to identification and inventory of abandoned land. The Role of Local Government Regions with authority that they have in the field, can be optimally to synergy is implementation abandoned land control can be used as a basis of first data abandoned land recording in the District/City area.

**Keywords:** abandoned land, law, land policy, constitution, and state regulation.

### **Introduction**

In 2014 National Land Agency of the Republic of Indonesia (BPN RI) recorded that around 25.000 hectare lands set as abandoned land. Head of BPN RI said that

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abandoned land which has been recorded reaches 1,2 million Hectare. From those total, half has been determined by BPN as abandoned land. The total land set as abandoned land around 60.000 ha. From those total, it must pass the litigation foremost (Qanit, 2014). Those data shows that many land still not yet managed. With the increase in development in all fields of agriculture, settlement, and industry, the need for land is also increasing. The increasing need for land is also increasing the problems caused by the land that must be dealt with immediately.

Abandonment land is unfair actions, which can cause the loss of opportunities to realize the economic potential of the land. Moreover, abandonment land is also impact on the achievement of various development program objectives, vulnerable food security and national economic security, closed access social-economic of citizen especially farmer, and disturbed sense of justice and social harmony. Abandonment land is violence on obligations of right holders must carry out or the party has obtained in the basis of land tenure. The nation gives the land rights or management rights to right holder to be managed, used, and utilized and maintained properly to prosperity for right holder is also intended to citizen prosperity, nation and state.

The land condition (indicates) abandon in Indonesia now is very large. Based on the BPN Identification result in 2011, there are around 7.3 million hectares of land that indicates abandoned; while the land has been declared abandoned is 459 land areas (Toha, 2012), the extent land is increase, because the data in 2007 abandoned land is 7,1 Million Hectares in outside forest land (Winoto, 2007). An abandoned area of that size is 14 times the size of Singapore. The last data (2014), the land potential (indicates) abandonment is reaches 7,5 million hectare (Mulyanto, 2014).

Various laws and regulations have been formed, the policy has been taken to handle the problem about abandoned land, but the results are still not as expected. In New Order era, is already existed Minister of Home Affairs Instruction Number 2/1982 about abandoned land control in Urban Areas That Are Controlled by Legal Entities/Individuals that Are Not Utilized/abandonment. Afterwards, Minister of Home Affairs Decree Number 268/1982 about concerning the Principles of Policy for Controlling/Utilizing Land Reserved for and/or Controlled by Companies. In reformation era, it appeared the Government Regulation Number 36/1998 is about Control and Utilization of Abandoned Land juncto Decree Head of BPN Number 24/2002 as implementing regulation. The Government Regulation/GR is changing by GR Number 11/2010 about Procedures for Control of Abandoned Land and Agreement Number 5/2011 about The Procedure for Utilizing the Land of the Former State of Abandoned Land.

Although regulation and Policy has been made but the fact of the total land (indicates) abandoned is increased, efforts to control and exploit neglected land

more far from the first purpose, which is realize the agrarian justice in agrarian reform line. If agrarian reform does only to restructure the order of Authority and land ownership only, agrarian reform only has a purpose as a mere social change (Nurlinda, 2013), agrarian justice is not yet reached. Therefore, control and utilization abandoned land must lead to agrarian justice as a mandate from Constitutional Article 33 paragraph (3) of 1945. Based on the description stated above is interesting to do a research with the title “implementation of land policy in utilization and abandoned land control.”

## **2. Overview of Abandoned Land**

Land is an asset of Indonesia nation. These existences become the main pillar of national and state life. But, now it has been controlled or owned, both existing land rights and new ones based on the acquisition land in some place is still many in abandoned conditions. Therefore, implementation of abandoned land use policies this must be sure (1) this abandoned land can contributes, it means in supporting utilization land process in Indonesia, economic, and citizen welfare with decreasing environment quality, and in the same time, (2) can minimize law complications while in utilization of abandoned land.

## **3. Methodology**

The research type is a kind of law research with normative law study matters. This research is study about statutory regulation that connecting with Land Policy in the Utilization and Control of Abandoned Land.

This research is normative research with using *statue approach*. This approach is examining all constitution and regulations relating to legal issues that are being addressed (Marzuki, 2005). Conceptual approach is done while not move from existing legal regulations. In using *conceptual approach* and it connected to law principal (Marzuki, 2005). The concept is focusing general business concepts and especially companies formed in joint ventures. Moreover, reviewed with *case study* it connecting with material studied. Statute pproach is done with collecting an then analyze with concluding contextulization with discussion context, while conceptual approach is done with collecting opion of law expert to answer the problem. The secondary law is consist of texts book, journals, the research result in the form of thesis, essay and other. The collecting Law data is done with examine and review the legal materials that have been determined.

## **4. Discussion**

### **A. General Policy on Land Use and Utilization**

Article 33 paragraphs (3) The Constitution 1945 in has mandated that “The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.”

Statute of The People’s Consultative Assembly of the Republic of Indonesia (MPR RI) Number IX/MPR/2001 about Agrarian Development and Natural

Resource Management, in Article 2 it stated that Agrarian Development contain a continuous process with regard with realignment of control, ownership, user and utilization agrarian resources, implemented in order to achieve legal certainty and legal protection with justice and prosperity for entire Indonesian citizen. Thus, in Article 4 letter h. is stated that implementation of social function, sustainability and ecological function in accordance with local socio-cultural conditions.

The Constitutional Number 5/1960 or it is often called with Agrarian Principles Law/UUPA (*State Gazette of 1960 Number 104, Additional State Gazette (TLN) No. 2043*), in Article 6, stated that “All land rights have a social function”. Formulation of the article get the description in general explanation, UUPA Chapter II number 4, that is, the right to any land that is in a person cannot be justified, that the land will be used or not used solely for his personal interests, and cause harm to the community. The use of land must be adapted to the conditions and nature of the rights, so it benefits both the welfare and happiness that has it and also benefits the community and the State.

If connecting between Article 6 with Article 15 UUPA and all the land right must well maintain, in order to increase its fertility and prevent damage. The well maintains obligation land only become the burden of any person, legal entity or agency that has a legal relationship with the land. The land right, will be deleted automatically if the land is abandoned. As regulated in: 1) Article 27 letter a number 3: Freehold; 2) Article 34 letter e: Cultivation Rights (HGU); 3) Article 40 letter e: Building Rights (HGB).

The Constitution Number 32/2004 about regional government (*State Gazette of 2004 Number 125, TLN Number 4437*). The regulation Article 13 Constitutional Number 32/2004, stated that Mandatory Affairs which are the authority of provincial regional governments include: a. development planning and control; b. spatial planning, utilization and supervision; Article 13 letter k. *land services including cross-regency/city*. Article 14 states that mandatory affairs which become the authority of regional governments for regencies/cities include: a. development planning and control; b. space planning, utilization and supervision; Article 14 letter k. *land service*.

The Constitutional Number 41/2009 is about Protection of Sustainable Food Agriculture Land (*State Gazette of 2009 Number 149, TLN Number 5068*). In Article 1 point 22 it stated that abandoned land is land that has been given rights by the State example Ownership Right (HM), Right Of Exploitation (HGU), Right Of Building (HGB), Usage Right, Management Right, the basis for control of land that is not cultivated, not used, or not utilized in accordance with the circumstances or the nature and purpose of the granting of rights or basis for control. Article 9 paragraph (3) stated that abandoned land is one of the object land preparation for

Sustainable Food Agriculture (*State Gazette of 2009 Number 149, TLN Number 5068*). Article 29 paragraph (4): abandoned land can be converted into a land for Sustainable Food Agriculture, if: a. the land given right of his land but half or entire but part or all of it is not cultivated, not used, and not utilized in accordance with the nature and purpose of granting rights; or b. the land for more than 3 (three) years has not been utilized since the date the rights were issued.

In the description of Article 29 Constitutional, is stated that for the purposes of developing Sustainable Food Agriculture Land, as a Sustainable Food Agriculture Reserve Land, ***the takeover can be carried out by the State without compensation and subsequently used as an object of agrarian reform to be distributed to farmers without land or narrow land that can use it for food crops.*** Therefore, citizen roles in neglected land surveillance with the report on the use of land that is considered abandoned to be proposed as land for sustainable food agriculture (LCPBP).

*The government and regional government are obligated to gives the protection and utilization with and appropriate incentives for farmers who have land rights wants to use their land for food agriculture, but is poor and has limited access to production factors until abandoned the land.*

Government Regulation (PP) Number 40/1996 concerning HGU, HGB and Land Use Rights (*Additional State Gazette Year 1996 Number 58, TLN Number 3643*). Concerning the abolition of land rights, as regulated in Article 17 paragraph (1) letter e: HGU, Article 35 paragraph (1) letter: HGB, and Article 55 paragraph (1) letter e: Right to Use.

Government regulation Number 16/2004 is about concerning Land Stewardship (*Additional State Gazette Year 2004 Number 4385*). This PP was born to maintain the provisions Article 16 paragraph (2) of Constitutions (UU) Number 24/1992 concerning Spatial Planning. The C is in its development based on provisions Article 79 of Law Number 26/2007 which is declared revoked and declared invalid. PP Article 6, stated that Land Stewardship Policy is implemented against: a. land plots with pre-existing rights whether or not registered; b. State land; c. ulayat land customary land in accordance with applicable laws and regulations.

Article 7 paragraphs (1) on the land above, usage and utilization of the land must be in accordance with the Regional Spatial Plan (RTRW); paragraph (2) The suitability of the use and utilization of land against RTRW is determined based on guidelines, standards and technical criteria set by the Government. Paragraph (3) the guidelines, standards and technical criteria are further explained by the Regency/City Government with the condition of each region. Paragraph (4) the use of land that is not in accordance with the RTRW cannot be expanded or developed to be used. Government Regulation Number 38/2007 concerning the Sharing of Government Affairs between the Government,

Provincial Governments and Regency/City Governments (*Statute Gazette Number 82/2007, TLN No.4737*).

Article 7 states that mandatory affairs as referred to in Article 6 include: a. education; land design; etc. The Division of Government Affairs in the Land Sector as listed in Appendix I includes: 1) Location Permit; 2) Land Procurement for Public Interest; 3) Settlement of arable land disputes; 4) Settlement of Problems of Compensation and Land Compensation for Development; 5) Determination of the Subject and Object of Land Redistribution, is as well as compensation for the Maximum excess land and Absentee land; 6) Determination of Ulayat Land; 7) Utilization and Settlement of Blank Land Issues; 8) Permit to open the land (*assistance task/medebewind*); 9). District/City Area Land Use Planning.

Then to implementation of control of spatial use is done from instrument in the form of *zoning, licensing, incentives and disincentives and sanctions*. Permit in the scope of utilization can be granted by the Regency / City Government in the form of: *a. principle permit; b. location permission; c. permit for the use of land use; and d. building permit; and e. other permits based on statutory regulation*.

Regulation of the Minister from Agrarian Affairs/Head of BPN Number 3 of 1998 is concerning Utilization of Vacant Land for Food Plants. Regulation of the Head of BPN RI Number 4 of 2010 is concerning Procedures to Control Abandoned Land. Rules of the Head of BPN has stated in Article 28 that the Decree Head of BPN Number 24 of 2002 concerning Provisions for the Implementation of Government Regulation (PP) Number 36 of 1998 concerning Control and Utilization of Abandoned Land.

### **B. Implementation of Land Policy and Abandoned Land Control**

In research conducted by Padjadjaran University Student from Faculty of Law shows that implementation of land policy and abandoned land control still face obstacle. Both implementations which are refer to PP Number 36 of 1998 or in PP Number 11 of 2010 and the implementation of law as the basic law. Many things cause these obstacles, the welfare of the people has not been achieved as mandated by Article 33 Paragraph (3) of the 1945 Constitution. The obstacles referring to these constraints should be assessed with a multi-sector perspective because the facts on the field show that obstacles appear not only related to the authority of the BPN and the authorities at the level of implementation (regional offices and land offices) but also related to the authority of other agency. Many things happen in cases of land (indicates) abandoned in West Java Province.

The example in Tasikmalaya District, the lands (owned by Genteng Marba Company and Datar Salam Company) which is being proposed for the process of determining abandoned land by Local Land Office to West Java Province BPN Regional Office and Central BPN Office, not well monitoring (unknown) by



Regional Development Planning Agency (Bappeda) with the local Agriculture and Plantation Service, so that in their policies the two agencies still include the two lands that are indicated abandoned in agriculture intensification policy in Area of Tasikmalaya District. According to the Article 12 PP Number 11 of 2010, land proposed to be designated abandoned, must be declared in the status quo conditions. This should not have happened because in forming Committee C on duty must identification and abandoned land research, department/agency related with allotment of land (both at the Regency/City level and at the Provincial level) are the member from the Committee C (Nurlinda, Pujiwati and Ishak s, 2013), as confirmed in Article 10 Regulation of the Head of the National Land Agency Number 4 of 2010 about Procedures for Control of Abandoned Land. As such it should Regulation of the Head of the National Land Agency (Bappeda) and Agriculture and Plantation Service in Tasikmalaya District knows that.

In West Java Province, the problem of control and utilize of abandoned land is quite complicated and great potential for land conflicts/disputes. In West Java Province, the land indicates abandoned until 2011 reaches 19.654,2694 Hectare. Those lands spreading in some area like Districts of Sukabumi, Karawang, Tasikmalaya, Ciamis, and etc; on the basis of ownership rights in the form of cultivation rights (HGU), building rights (HGB), right to manage, and even those with location permits (Nurlinda, 2014). From those areas in the West Java Province, Sukabumi district are the largest abandoned land. From Sukabumi Regency area is 412.799,54 ha, there is a land (indicates) abandon area of 12,652.8 hectare. The lands both are cultivation rights or building rights. In detail these lands can be seen in the following table:

*Table 1*

**The lands that (indicates) abandon in Sukabumi District**

<b>No.</b>	<b>RIGHTS HOLDERS</b>	<b>STATUS</b>	<b>AREA</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
1	Cibuhung Company	HGU	121 Ha
2	Bumi Lestari Abadi Company	HGU	538 Ha
3	Intan Hepta Company	HGU	634 Ha
4	Intan Hepta (Pandan Arum) Company	HGU	583 Ha
5	Hardjasari (Cikapundung) Company	HGU	130 Ha
6	Djasulawangi (Ciranggon) Company	HGU	1101 Ha
7	Golden Private (Citandoh) Company	HGU	340 Ha
8	Priangan (Gunung Walat) Company	HGU	480 Ha
9	Priangan (Gunung Walat) Company	HGU	124 Ha
10	Sugih Mukti (Halimun) Company	HGU	731 Ha

1	2	3	4
11	Cengkeh Zanzibar (Maranginan) Company	HGU	612 Ha
12	Cengkeh Zanzibar (Mataram) Company	HGU	363 Ha
13	Pasir Salam (Pasir Salam) Company	HGU	199 Ha
14	Putri Perdana Company	HGU	90 Ha
15	Tybar Company	HGU	1055 Ha
16	Tybar Company	HGU	774 Ha
17	Papanmas Permai Sejahtera Company	HGB	170 Ha
18	Mustika Raharja Company	HGB	30 Ha
19	Surya Nadi Cipta Company	HGB	700 Ha
20	Pengembangan Agrowisata Prima Company	HGB	215 Ha
21	Jaya Langgasari Persada Company	HGB	100 Ha
22	Matahari Caritaria Company	HGB	150 Ha
23	Harja Setia Company	HGB	630 Ha
24	Nuansa Baskara Cipta Company	HGB	500 Ha
25	Prisma Maju Indonesia Company	HGB	74 Ha
26	Pusin Plus Indonesia Company	HGB	200 Ha
27	Kowarman Internasional Corp Company	HGB	120 Ha
28	Surya Petani Company	HGB	39 Ha
29	Mustika Rahardja Company	HGB	420 Ha
30	Wijaya Karya Company	HGB	100 Ha
31	Cijambe Indah Company	HGB	160 Ha
32	KPN Gemah Company	HGB	3,8 Ha
33	Bangunarta Pola Perkasa Company	HGB	5 Ha
34	Citra Wisata Habitat Company	HGB	15 Ha
35	Margahayu Raya Company	HGB	50 Ha
36	Plaban Purwa Griya Company	HGB	17 Ha
37	Perkasa Indosteel Company	HGB	300 Ha
38	Rizky Company	HGB	5 Ha
39	Honoris Industri Company	HGB	5 Ha
40	Yayasan Ar-Raya Company	HGB	15 Ha
41	Perdagangan dan Industri Tjipelang Company	HGU	136 Ha
42	Djaja Company	HGU	618 Ha
	<b>TOTAL</b>	<b>12.652,8 Ha</b>	

Resources: The Land Policy of Sukabumi District, in 2011(Sasmita, 2011).

Why there are so many Land that (indicates) abandoned in Sukabumi District? How The Regional Spatial Planning (RTRW) and stewardship land of Sukabumi District is arranged with so much land is unclear allotment and use? How Agency for Regional Development at Sukabumi District works with the facts like above?



The series of questions it must not appeared where the decision to grant rights is as thorough as possible and controlling with monitoring is goes well.

Moreover, which is also interesting is from the cases in the Sukabumi District is quite a lot of land (indicated) is abandoned with HGB status. This is actually quite rare in Sukabumi District found a quite a lot of abandoned land in status of Building Rights because before the monetary crisis and financial crisis happened in the end of 1990, in Sukabumi District a quiet of property entrepreneur is planning to build the hotel and resort (Nurlinda, 2014). The land that (indicates) abandoned status in Building Rights is also found in Bandung City, although is not as large as Sukabumi District, which is only 2,360,951 m<sup>2</sup> building right owned by of Duma Kaya Megar Company and an area of 89,962 m<sup>2</sup> building right owner Mahkota Permata Perdana Company (Suryadin, 2014). Although it is not too large but considering the location of the land is in the centre of Bandung City, the land indicates abandoned because high demand for land in the Bandung city. Moreover, some land that confirmed as abandoned land is also still in the status of being pledged to the Bank, the example cases the land that indicate abandoned is cultivate right owned by Utama Company in Karawang District has been pledge to the BNI Bank Company in Karawang District in 2009, while it will confirmed as abandoned land in 2013, the BNI Bank party does the law effort from court (Nurhasanah, 2012). This is actually needs handled carefully and cooperate with the bank party because designation of abandoned land who carelessly did not pay attention to the legal aspects of collateral will cause banks to be reluctant to provide credit.

Outside of Java Island, cases of abandoned land occur more in plantation HGU lands more happened, it happens in East Kalimantan Province. The Non-forestry cultivation land with broad palm oil commodity area is 2.044,36 ha located in West Nunukan Villages, Nunukan District, Nunukan Region East Kalimantan Province, cultivate right owned by Bhumi Simanggaris Indah Company. The lands are not managed well by the owner so it indicates as abandoned land (Nastiti, 2013). Realizing Nunukan District is very strategic location as boundary area between Indonesia and Malaysia, the neglect of land in the country's border regions has a very strategic impact as well. The land which is not utilized by Bhumi Simanggaris Indah Company then used and authorized by local citizen area of 810,82 ha (Nastiti, 2013). Although the citizen finally get the authorized land through cultivation right of land redistribution from abandoned land utilization programs, but land cases in Nunukan District is suffering the local citizen around the plantation land location.

Some cases of controlling and utilizing land and on the basis of other studies related to abandoned land, which is 2 sides become obstacle of controlling implementation and utilizing abandoned land, especially in transition of

implementation of statutory regulation number 11 of 2010 along with the implementing regulations, which is:

1. In normative, the form of PP law (Government Regulation) is set about controlling and utilizing abandoned land, have the inferior position while in the field faced the abandoned land which is the forest area example, it arranged in more higher law (Constitutions) rather than Government Regulation; or if the control measures are related to the authority of other regulated agencies in Constitution form. Example in relation of plantation land, it arranged in form of Constitution Law (UU), which is UU Number 41/2009 about Protection of Sustainable Agricultural Land or plantation land that arranged in Constitutional Number 18/2004 about Plantation.

2. In implementation level, The form of PP from regulation about control and utilize the abandoned land become the problem while connecting with another agency where National Land Agency (BPN) only a «organization» which would be different from the forest area or plantation land whose authority is exercised by a ministry. These constraints are recognized or not become a separate obstacle when BPN will determine a land to become abandoned.

The obstacles above need to be overcome immediately by putting back (repositioning) the nature of the controlling and utilizing abandoned land to realize agrarian justice within the framework of agrarian reform, the efforts to overcome these obstacles by prioritizing the interests of the people, realizing people's welfare and based on the principles of good governance in all sectors and the related scope. The transparency, equality of all parties and law supremacy must be forward. The law supremacy it does not mean putting forward the aspect of legal certainty but also the aspect of justice and the benefit of the law must be put forward, if prosperity aspect of citizen become the final purpose (Nurlinda, 2009). In short, in good land government all government elements together realize the land optimal role to realize citizen welfare. Agrarian reform is not solely task of BPN but all elements of the Indonesian nation.

Furthermore, the substitution that arranged in Government Regulation (PP) Number 11/2010 related with human right is the breaking of the legal relationship between the land owner and his land, with PP Number 11/2010 in practice intersect with other UU, the regulation on the regulation of neglected land should be in the form of UU law (Sumardjono, 2010). This analog with the issue of land acquisition for development in the public interest that arranged by Constitutional (UU Number 2/2012) because there is a takeover of a person's right to land by the state in the name of the public interest.

Determination of a plot of land as abandoned land is related with Human Rights problems because termination of the law relationship between the right owner and

the land as the object of that right. This is very potentially influencing an accusation, triggers disputes and even massive land conflicts. This condition can be prevented with the understanding of implementation Government Regulation (PP) Number 11/2010 are the last effort after all persuasive effort and a warning is carried out so that the land owner manages the land in accordance with the principles of land stewardship as regulated arranged in Article 2 PP Number 16 of 2004 about Land Stewardship. The warnings are not necessary until indications of abandoned lands are indicated based on the result of identification and research. Land stewardship principle is not well implemented, so the measures to prevent land abandonment can be carried out.

These precautions must be taken in coordination with other relevant agencies, example with the Departments of Agriculture or Plantation. The fact in land owned by Datar Salam Company in Tasikmalaya District that indicates abandoned, shows the land is not utilized because the structure/soil content is not suitable for use as a rubber plantation (Nurlinda, Pujiwati, & Ishak, 2013). Thus the determination of abandoned land should be is not only based of the area (Quantity) land that is not utilized but the land quality aspects to some utilization.

### **C. Utilizing Abandoned Land Through Agrarian Reform**

In the literature, various meaning of agrarian reform has been formulated, there are Kuhnen opinion quoted by Michael Kirk, et al. (Kirk, Löffler, & Zimmermann, 1998) stated:

*Agrarian reform can be defined as a bundle of measures for overcoming the obstacles to economic and social development that are based on shortcomings in the agrarian structure. Agrarian reforms includes both the conditions for land tenure (like ownership, lease, etc.), known as reform of land ownership and those aspects for land use (like farm size, supporting institutions, etc.) called land management reform.*

Thus, the agrarian reform meaning has a large explanation from agrarian restructuring, to overcome the obstacle in development of economic and social.

As a political commitment, Article 2 People's Consultative Assembly (MPR) Decree No. IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management confirm that:

The agrarian renewal is a continuous process with regard with the realignment of authority, ownership, usage and utilization of agrarian resources, which is carried out in order to achieve certainty and law protection with justice and citizen prosperity for the entire people of Indonesia.

In the meaning above, it shows the keywords implementation of agrarian reform in Indonesia, which is (1) certainty and legal protection, with (2) justice and the people prosperity. Those keywords become last purpose from implementation of

agrarian reform. For realize it, it needed the supporting political law. Mahfud M. D. stated that political law is official direction/line used as a basis for steps and ways to made and implement laws in order to achieve the goals of the nation and state (Mahfud MD, 2006). Thus, the agrarian political laws that support agrarian reform are crystallization from some political will on land tenure to achieve both keywords agrarian reform above (Nurlinda, 2013).

In relation with control and utilize abandoned land, on Statutory Regulation Number 36/1998 confirmed that utilize abandoned land to program partnership, land redistribution, land consolidation and granting land rights to other parties. Meanwhile, Article 15 paragraph (1) Statutory Regulation (PP) Number 11/2010 juncto Article 16 paragraph (1) Regulation of the Head of the National Land Agency (Perkaban) Number 5/2011 about Procedures for the Utilization of Formerly Abandoned Land, stated that allotment of authority, usage and the utilization of former state land abandoned land is utilized to community interests and nation from (1) agrarian reform programs, (2) allocation of state strategic programs and (3) to other state reserves. This land then known as State General Reserve Land (TCUN). Therefore, directions for the use of abandoned land on PP Number 11/2010 are larger than Statutory Regulation Number 36/1998.

Although, utilizing the abandoned land can be done in 3 ways, but the utilizing programs is connected and both intended to realize the welfare of the people. TCUN from agrarian reform can be used to agriculture and non-agriculture; while TCUN to country strategic program is used to development food sector, energy and people housing. Meanwhile, TCUN to other state reserves is used to government interest, defense and security and natural disaster. Utilization of TCUN through agrarian reform and strategic program directed to the formation of food security and energy security with and the fulfillment of housing needs as basic human needs.

#### **D. Problems in Implementation of Abandoned Land Policies**

In each land case, the citizen position is always weak. Some cases are shows the people are generally not have the legal document example certificate. The people are claimed the land based only the mere historical facts. If with legal document example certificate, sometimes they have not been able to prove legal ownership of their land, especially with just by relying on historical aspects only, it will difficult to get recognition. Land that does not get recognition tends to cause land to become displaced.

Besides the issue of certification, the rights on land has been given to some interest, it is not always following with the land use physical activities according to nature and the purpose of his rights or spatial plan of use and land, either because the right-holder has not felt the need to use the land or the right-holder does not have sufficient funds to carry out the construction or use of the land or because of

other matters. As a result of development has not been implemented and the land usage as with designation, the land concerned can be considered as land abandoned by the rights holder. Moreover, it needed the neglected land policing activities corresponding with Regulation of the Head of the National Land Agency Republic of Indonesia Number 4/2010 with Regarding the Procedures for the Regulation of Abandoned Land and the regulations of the Republic of Indonesia government number 11/2010 about control and utilizes the abandoned land.

The primary problem that faced in control and utilizes the abandoned land is implement of identification about the existence of abandoned land has not been carried out according to the provisions, the civil disputes of former rights holders, the period of rights and funding to identify and inventory abandoned lands. More and more land dispute cases are also caused by lack of awareness or citizen understanding with the constitution and other legal regulations in the field of land, the lack of coordination between agencies that related with the issues of land.

## **5. Conclusion**

Based on the previous, so it can conclude that:

1. The regulation of Government Regulation (PP) Number 10/2010 is focusing to support the success of agrarian reform, where the abandoned land s one of the object. The Regulation of the substance of control of neglected land There are still several problems, there are very limited object, the land criteria that indicates as abandoned land is causing the land in the dispute/case, does not accommodate the transfer of rights because of the law events, the issue of civil rights of former land rights holders, with the non-regulated operational costs of Committee C in PP Number 13/2010, vulnerable to lawsuits in the form of legal products in the form of a Decree as the abandoned land in Administrative Court. The role of the PP with the authority that it has in the land sector, can be optimal to synergize in the implementation of control of neglected land by carrying out an inventory and identification of the use of vacant land which can be used as the initial database for data on abandoned land in the Regency/City area.

2. That implementation of land policy in utilization and abandoned land control still faced the obstacle. Both implementations which are refer to PP Number 36/1998 or in the PP Number 11/2010 and implementing regulations as the Basic law. Many things that causing the emergence of these obstacles, that is, not achieving the people's welfare as mandated Article 33 paragraph (3) Constitution (UUD) 1945. These constraints should be assessed from a multi-sector perspective because the facts in the field are shows that obstacles arise not only related to the authority of BPN and the authorities at the level of implementation (regional office and land office) but also related to the other agency authority. This is so common in the case of land (indicated) displaced in Indonesian Provinces.

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## **РЕАЛИЗАЦИЯ ЗЕМЕЛЬНОЙ ПОЛИТИКИ В СФЕРЕ ИСПОЛЬЗОВАНИЯ И КОНТРОЛЯ ЗАБРОШЕННЫХ ЗЕМЕЛЬ**

В 2014 году Национальное земельное агентство Республики Индонезия (BPN RI) зафиксировало, что около 25 000 га было объявлено заброшенными (покинутыми) землями. Глава BPN RI считает, что количество таких земель достигает 1,2 млн га, из них половина должна быть определена как заброшенная земля.

Цель статьи – осуществить юридический анализ реализации земельной политики в области использования и контроля заброшенных земель.

В статье применяется нормативный юридический подход с использованием статутного подхода, концептуального подхода и тематического исследования путем сбора первичных и вторичных юридических материалов.

Автор последовательно рассматривает проблемы:

А. Общая политика в отношении использования земель в Республике Индонезия.

В. Осуществление земельной политики и контроля за заброшенными землями.

С. Использование заброшенных земель как составляющая аграрной реформы.

Д. Проблемы реализации политики заброшенных земель и основные подходы к их решению.

Особое внимание уделяется роли регионов и полномочиям органов местного самоуправления в контроле, учете и управлении заброшенными землями в районе/городе.

**Ключевые слова:** заброшенная земля, закон, земельная политика, конституция, государственное регулирование.

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## **РЕАЛІЗАЦІЯ ЗЕМЕЛЬНОЇ ПОЛІТИКИ У СФЕРІ ВИКОРИСТАННЯ І КОНТРОЛЮ ЗАНЕДБАНИХ ЗЕМЕЛЬ**

**Постановка проблеми.** У 2014 році Національне земельне агентство Республіки Індонезія (BPN RI) зафіксувало, що близько 25 000 га було визнано занедбаними (покинутими) землями. Натомість глава BPN RI вважає, що кількість таких земель сягає 1,2 млн га, з них половина повинна бути зареєстрована як занедбані землі. Причому кількість занедбаної землі останнім часом збільшується, а зусилля щодо контролю та експлуатації занедбаних земель не забезпечують аграрної справедливості у процесі аграрних реформ.

**Мета статті** – здійснити юридичний аналіз реалізації земельної політики в галузі використання та контролю занедбаних земель.

**Метод дослідження.** У статті застосовується нормативно-юридичний підхід з використанням статутного підходу, концептуального підходу та тематичного дослідження шляхом збору первинних і вторинних юридичних матеріалів.

**Виклад основного матеріалу.** У статті послідовно розглядаються:

A. Загальна політика щодо використання земель у Республіці Індонезія.

B. Здійснення земельної політики та контролю за занедбаними землями.

C. Використання занедбаних земель як складова аграрної реформи.

D. Проблеми реалізації політики занедбаних земель та основні підходи до їх реалізації.

Автор дотримується думки, що земля є надбанням країни Індонезія, головною опорою національного та державного життя. Занедбана земля – це втрата можливостей для реалізації економічного потенціалу землі. Більше того, відмова від використання земельних ділянок негативно впливає на досягнення різних цілей програм розвитку, підриває продовольчу безпеку та національну економічну безпеку, порушує відносини справедливості та соціальну гармонію.

Водночас це й проблема реалізації своїх зобов'язань землевласниками. Нація надає права на землю або права управління правовласникам, якими вони мають керуватися не тільки у власних інтересах, а й з метою процвітання громадян, нації та держави. Основними проблемами, з якими фахівці органів місцевого самоврядування стикаються при контролі й використанні покинутої землі, є здійснення ідентифікації та інвентаризації землі відповідно до нормативних документів, реалізація цивільних прав колишнього правовласника та ін.

**Висновки.** Автор статті пропонує шляхи законодавчого регулювання використання занедбаних земель як складової державної (урядової) політики землекористування та сучасної аграрної реформи в Республіці Індонезія.

#### **Коротка анотація до статті**

**Анотація.** Автор здійснює юридичний аналіз реалізації земельної політики в галузі використання та контролю занедбаних земель у Республіці Індонезія. Послідовно розглядаються: загальна політика щодо використання земель у Республіці Індонезія; здійснення земельної політики і контролю за покинутими землями; використання занедбаних земель як складова аграрної реформи; проблеми реалізації політики занедбаних земель і основні підходи до їх вирішення. Особлива увага приділяється ролі регіонів і повноважень органів місцевого самоврядування в контролі, обліку й управлінні занедбаними землями в районі/місті.

**Ключові слова:** занедбана земля, закон, земельна політика, конституція, державне регулювання.

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