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Legal Reconstruction in Indonesia Based on Human Rights

Imam As Syafei Building

Faculty of Law, Sultan Agung Islamic University

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The 5th PROCEEDING

“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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Reviewer:

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Prof. Henning Glaser

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

Dr. Amin Purnawan., S.H., CN., M.Hum

Dr. Hj. Widayati., S.H., M.H

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. H. Ahmad Khisni., S.H., M.H

M. Abdul Hadi., SE

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

PROCEEDINGS

The 5th International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

Table of Contents

<i>FRONT PAGE</i>	<i>I</i>
<i>Information of The International Seminar</i>	<i>III</i>
<i>Committee Composition</i>	<i>IV</i>
<i>PREFACE</i>	<i>V</i>
Fulfillment Of Teacher Protection Rights <i>Yenny AS, Rini Setiawati</i>	<i>I</i>
Legal Reconstruction Of Laws Regarding Human Rights Through Judicial Re- view To The Constitutional Court <i>Umar Ma'ruf</i>	<i>13</i>
Legal Analysis Of Social Security Transformation And The Reality Of Its Implementation In The Community In Indonesia <i>Siti Ummu Adillah, I Gusti Ayu Ketut Rachmi Handayani ,Adi Sulistiyono</i>	<i>30</i>
Increasing Voluntary Compliance Of Tax Payments In Micro Small And Medium Enterprises (Msmes) Post-Issuance Of Government Regulation Number 23 Of 2018 (Case Study In Semarang City) <i>Amin Purnawan, Akhmad Khisni, Aryani Witasari</i>	<i>41</i>
Legal Analysis Of Racist Exams In Surabaya Papua Dormitory <i>Ma'aruf Akib</i>	<i>50</i>
Reconstruction Of Misdemeanor Settlement Based On Pancasila Value <i>S. Andi Sutrasno</i>	<i>57</i>
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights <i>Adhi Budi Susilo, Indra Yuliawan</i>	<i>63</i>
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice <i>Rahmatsyah</i>	<i>67</i>
Problematic Presidential Electoral Threshold In The Operation Of Value-Based Simultaneous Justice <i>Widayati , Winanto</i>	<i>73</i>

Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methodsbased On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Sopyono, Nuridin</i>	82
Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice <i>Carto Nuryanto, Gunarto, Anis Mashdurohatun</i>	91
Study of the theory of Legal Protection Against Online High Yield Investment Program Contracts in Indonesia (HYIP) <i>muhamad Iqbal al Hakiem,aryani witasari</i>	96
Reconstruction Completion Of The Crime Of Light On Value Pancasila <i>Andi S. Sutrasno</i>	102
Law Reconstruction Of Registration On Fiduciary Obligation Based On Justice Value <i>Wieke Dewi Suryandari ; Gunarto; Amin Purnawan</i>	108
Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice <i>Hartanto, Gunarto, Anis Mashdurohatun</i>	114
Reconstruction Of Scientific Investigation In Indonesia Based On Justice <i>Teguh Prihmono; Gunarto, Sri Endah Wahyuningsih</i>	120
Legal Construction On Training Ship Management Belongs To Human Resources Development Of Transportation (Bpsdmp) Based On Dignity Justice Value <i>Wahyu Wibisono, Gunarto, Anis Mashdurohatun</i>	126
Protection Of Law Refugees/Asylum Seekers In Indonesia (As A Transit State) No Ratify 1951 Convention Of And The 1967 Protocol <i>Muhammad Djamir</i>	133
Reconstruction Of Legal Policy On Decency Crime In Indonesia Based On Pancasila Value (Lgbt Rehabilitation Institute For Children) <i>Cucuk Kristiono, Gunarto, Anis Mashdurohatun; Suparji</i>	144
Legal Protection Against Indonesian Workers (Tki) In Abroad <i>Yaya Kareng ,Ong Argo Victoria ,Sri Yulianingsih</i>	149
Recontruction Of Auction Execution Of Mortgage Object In Determine The Auction Price Based On Justice <i>Moh Djarkasih**</i>	158

Reconstruction Policy Of Sanctions Against Destruction Of Evidence Illegal Fishing Based Small Fishing Welfare Values <i>R. Juli Moertiyono</i>	165
Reconstruction Of Legal Policy Interfaith Marriage In Indonesia <i>Moh. Zeinudin, Dian Novita</i>	179
Reform Of Couple Sexual Rights Protection In Case Of Diseases Hiv / Aids In Indonesia <i>Nana Ruhyana</i>	186
Legal Protection Against Disability In Getting Work <i>Oktavianto Setyo Nugroho</i>	193
Reconstruction Of Authority To Arrest In Doing Judge Accused Of Value-Based Justice <i>Agus Sugiarto</i>	203
Enforcement Of Criminal Law In False News (Hoax) Management According To Law No. 11 In 2008 That Has Been Amended To Be Law No.19 Of 2016 Concerning Electronic Information And Transactions In Islamic Law And Positive Laws <i>Yanto Irianto</i>	208
Reconstruction Validity Legal Deeds Are Dealing With Children In The Process Of Law Criminal Justice System Based Child Justice <i>Asep Hermawan</i>	220
Reconstruction Of Performance Assessment Of Drinking Water Companies (Pdam) Based On Consumer Protection <i>Bustaman</i>	225
Reconstruction Legal Rights Associated With A Warranty Not A Bank Debt <i>Euislistianti</i>	229
Reconstruction Of Operational System As A Community Economic System Based On Welfare <i>Abbas Ibrahim Idris</i>	234
Reconstruction Of Criminal Responsibility For Actors Prostitutional Criminal Justice In The Criminal Justice Based On Value <i>Iwan Rasiwan</i>	242
Reconstruction Of Legal Drinking Water Management Company (Pdam) Based On Justice <i>Suharyadi</i>	248

Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice <i>Sumanto</i>	252
Reconstruction Of Justice Law Protection Law Protection <i>Wamyani</i>	260
Criminal Code Draft Law And Development In Indonesia <i>Nany Pujianti Suwigjo</i>	265
Deconstruction of the Principle of Legal Thinking <i>Sriyati</i>	270
Development Of The Law Of Complete Systematic Land Registration (Ptl) And Effect Of Conduct Values of Land Based On Dignify Justice In The District Of Kendal, Central Java <i>Desy Dwi Nurhayati Hartanti</i>	279
Interpretation Teaching Of Human Rights Laws Against Material In Corruption Provisions <i>Burham Pranawa, Hartiwiningsih, Hari Purwadi</i>	293
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice <i>Rahmatsyah</i>	301
Law Due To Delay The Registration Under Fiduciary Guarantee Pmk No 130 / Pmk.010 / 2012 <i>Jaenudin Umar</i>	307
The Effectiveness Of The Handling Of The Criminal Acts Of Light Tend To Be Settled Judicial Custom <i>Supena Diansah</i>	313
Interpretation Human Rights Law Against The Teaching Material In Corruption Criminal Offenses <i>Burham Pranawa, Hartiwiningsih, Hari Purwadi</i>	319
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights <i>Adhi Budi Susilo, Indra Yuliawan</i>	327
Independence Institute Of Justice And Judge In Perspective Judicial Reform Blueprint 2010 - 2035 <i>Ahmad Agus Bahaudin</i>	331

Policies Against Crime Criminal Law Made By Children <i>Achmad Arifulloh</i>	341
Law Enforcement Of Law Number 23 Of 2004 In Preventing Efforts Human Rights Violations In Indonesia <i>Andri Winjaya Laksana , Lathifah Hanim</i>	350
Position Of Agreement On Land Acquisition For Development For Public Interest <i>Djoni Sumardi Gozali</i>	359
The Village Fund As Indonesian Social Welfare Program: The Gap Between Regulatory And Practice (A Study On Penal Perspective) <i>Ifrani*</i>	367
The Finality Of Arbitration: The Pros And Cons Of The Court's Power To Setting Aside Arbitral Awards In Indonesia <i>Yati Nurhayati</i>	376
Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methods Based On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Soponyono, Nuridin</i>	382
Improvement of the Presidential System in Concurrent Elections <i>Endro Wibowo Aji</i>	391
Restorative Justice and Penal Mediation in Resolving Cases of Children Confronting the Law in Indonesia <i>Agustinus Dian Leo Putra</i>	398
Criminological Aspects of Corruption Crime <i>Angga Kusumah</i>	405
Policy Online Single Submission (OSS) System as a Public Service Innovation in the Field of Environmental Licensing <i>Haris Fadillah Harahap</i>	413
The Relevance of Civil Law and Common Law Systems in Regulating Standard Contract Law in Indonesia <i>Iman Fathurrahman</i>	421

Legal Politics In Erading Money Launching Criminal Actions In Indonesia <i>Abdul Haris</i>	427
The Legal Politics Of The State Defense Industry In Indonesia <i>Ade Christian Manapa</i>	433
Political Directions For Land Law On Land Property Rights For The People <i>Aga Wigana</i>	438
Political Form Of Pre-Justice Law In Law Enforcement In Indonesia <i>Apromico</i>	443
Inner Legal Political Strategy Prevention Of Radicalism In Indonesia <i>Beno</i>	448
The Government's Efforts Through Legal Politics In Hajj Management <i>Dhanar Dhono Vernandhie</i>	453
Political Law Of Regional Autonomy As The Management Of Local Government <i>Eka Damayanti</i>	458
Responsibility Of Corporate Crimes In Criminal Actions Of Narcotics <i>Himawan Aji Angga</i>	464
Juridical Review of The Existence of Notary Prohibitions on The Office of The Curator <i>Nurchahyo Pratomo Widodo</i>	469
The Legal Strength of Covernote and Notary Responsibility for The Making of a Covernote as a Legal Product Not Regulated by Notary Laws <i>Arif Bahtiar Jefry</i>	474
Role of Notary / PPAT in Making Authentic Assets Towards False Document Description <i>Kanzu Khirzul Yaman</i>	479
Legal Review of Personal Warranties Made Against The Notary of Lending <i>Nur Chamid</i>	484

Harmonization in Regulation of Heritage Certificate by Notary in Sociolegal Perspective <i>Desi Wulan Anggraini</i>	488
Legal Protection of The Wife's Property in Marriage by Making a Marriage Agreement Made in a Notary Provision <i>Nur Ismi Hanifah</i>	492
Legal Due To The Implementation Of Absolute Authorization In The Sale And Purchase Agreement Before The Development Of Sale And Purchases <i>Bayun Kismantoro</i>	496
Political Laws Notary Honor Assembly <i>Muhammad Wildan Mahindra</i>	500
Role of Notary in The Making of Deal of Sale and Buy Agreements to Support National Development <i>Ika Yulia Ningrum</i>	506
Legal Due to The Implementation of Public Business Credits with Guarantee of The Rights of Liability Made in Notary <i>Riska Fauziana</i>	511
Implementation of Credit Agreement Through Notary Notary And Its Legal Due When Performance Occurs <i>Iqbal Rino Akta Pratama</i>	515
Implementation of Court Determination on The Sell and Purchase Process Towards Officials of Land Associates who are Herities Under The Age <i>Zaenal Arifin</i>	519
Authority of The Notary Regional Supervisory Assembly to Issue a Client's Document Return Order <i>Adi Candra Saputra</i>	524
Implementation of Management and Environment of Damaged Land <i>Agil Aladdin</i>	528

Implementation Of Management And Environment Of Damaged Land

Agil Aladdin

Student of Master of Notarial Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA)
email agilaladdin@gmail.com

Abstract

This legal paper examines the Implementation of Control and Utilization of Abandoned Land in the Work Area of the Land Office of Demak Regency. Where in this paper there are problems that will be examined, including the criteria for abandoned land, the implementation of control and utilization of abandoned land by the Land Office of Demak Regency, the constraints and solutions of the Land Office of Demak Regency in carrying out control and utilization of abandoned land in Demak.

This research results that the criteria for abandoned land must have a legal subject and object (land rights), there must be a period of time and an act of neglecting the land, then for the implementation of this control, in this case the Land Office of Demak Regency conducts an inventory, identification and research of indicated abandoned land, a warning. and stipulation, then the former abandoned lands are utilized for the benefit of society through agrarian reform, state strategic programs and state reserves. Furthermore, the obstacles faced by the Land Office of Demak Regency in carrying out Control and Utilization of Abandoned Land in Demak are difficulties for right-holders to be contacted, limited human resources and budget for controlling.
Keywords: Implementation, Control, Utilization, Abandoned Land

A. INTRODUCTION

Human development is closely related to fulfilling the need to live properly. Basic human needs related to shelter, clothing and food are needs that need support in fulfilling them. One of the factors of this is the existence of land as a vehicle for interaction, so that these basic needs can be successful or vice versa. During its development, between humans and land there is a relationship that affects each other. For the Indonesian people, this is inherent as part of the life of the nation and state, so that it is eternal. This eternal relationship implies that land which is part of the face of the earth must be able to be used for the greatest possible benefit for the prosperity of the people.

Land is a gift from God Almighty for the people, nation and State of Indonesia, which must be cultivated, utilized and used for the greatest prosperity of the people. Soil is the surface of the earth with all the ingredients or ingredients in it. Land is an important resource for development activities. On the other hand, land is also a resource that

is needed by humans to meet their daily needs. In order to bring prosperity and fulfill all areas of need in human life, land must be cultivated, cultivated, utilized and used in accordance with the needs and objectives.

As a country with an agricultural background, land is something that has a very important value in people's lives in Indonesia, especially for farmers in rural areas. Land functions as a place where people live and land also provides a living for them.¹

In the development of land rights that have been granted for various purposes as mentioned above, it is not always followed by physical activities using the land in accordance with the nature and purpose of the rights or the spatial planning of the use and allotment of land, either because the right holder does not feel the need. use the land or the right holder does not have sufficient funds to carry out the development or use of the

¹ Soerjono Soekanto dan Soleman B. Taneko, 2001, *Hukum Adat Indonesia*, Cetakan Keempat, PT. Raja Grafindo Persada, Jakarta, p. 172

land or for other reasons.²As a result of the development or use of the land that has not been carried out in accordance with its designation, the land concerned can be considered as abandoned land by the right holder.³

Abandonment of land is a violation of the obligations that must be carried out by Rightsholders or parties who have obtained basic control over land. The State grants rights to land or Management Rights to Rightsholders to be cultivated, used, and utilized and maintained properly, in addition to the welfare of the Rightsholders, it must also be aimed at the welfare of the community, nation and state. Therefore, neglect of land must be prevented and controlled to reduce or eliminate its negative impacts. Thus the prevention, control and utilization of abandoned land are important steps and prerequisites for carrying out programs in national development.

Based on data obtained from the Land Office of Demak Regency, inventoried lands are indicated as abandoned or designated as abandoned land, among others: in 2014 as many as 15 fields, in 2015 there were 17 fields and in 2016 alone 17 plots, while from objects of land control 4 parcels of abandoned land have been designated.⁴

Based on the background description above, the main research problems can be formulated as follows:

1. Criteria, Implementation of Control and Utilization of Abandoned Land in the Work Area of the Land Office of Demak Regency?
2. How are the Constraints and Solutions in the Implementation of Control and Utilization of Abandoned Land in the Work Area of the Land Office in Demak Regency?

B. DISCUSSION

² Maria S.W. Sumardjono. *Kebijakan Tanah: Antara Regulasi dan Implementasi*, cetakan 1, (Jakarta : Kompas, 2001), p. 50

³Ibid. p. 52

⁴ Data from the Demak Regency Land Office

1. Criteria for Neglected Land, Implementation of Control and Utilization of Abandoned Land

Abandoned land is not regulated in the Government Regulation of the Republic of Indonesia Number 11 of 2010 concerning Control and Utilization of Abandoned Land, but is regulated in Article 1 number 6 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 4 of 2010 concerning Procedures for Control of Abandoned Land, namely:

"Abandoned land is land that has been granted rights by the state in the form of Property Rights, Business Use Rights, Building Use Rights, Use Rights and Management Rights, or basic control over land that is not cultivated, not used, or not utilized in accordance with its condition or nature and the purpose of granting rights or the basis of control".⁵

Basically abandoned land is state land that already has user rights, but is not used. So it can be concluded that the layered land occurs when the holder or who controls the rights to the land or the holders of management rights do not carry out activities on the land.⁶

Regarding Abandoned Land Objects Based on Article 1 point (6) of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 4 of 2010, it can be stated about objects of abandoned land, including: Property Rights, Business Use Rights, Building Use Rights, Use Rights, Management Rights, Basic Control over land.⁷ Whereas in Article 2 of Government Regulation Number 11 of 2010 concerning Control and Utilization of abandoned land, the objects of abandoned land include: "Land

⁵ Article 1 point 6 Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 4 of 2010 concerning Procedures for Controlling Abandoned Land

⁶ Supriyadi, 2006, *Hukum Agraria*, Sinar Grafika, Jakarta p. 124

⁷ Article 1, paragraph 6, Regulation of the Head of BPN RI Number 4 of 2010 concerning Procedures for Controlling Abandoned Land

that has been granted rights by the state in the form of Property Rights, Business Use Rights, Building Use Rights, Use Rights and Management Rights or basic control. land which is not cultivated, not used or not utilized in accordance with the circumstances or the nature and purpose of granting rights or the basis for control over it".⁸

Meanwhile, to determine the criteria for a land right, it can be said that abandoned land is by re-explaining it by making interpretations of the existing elements, with a focus on the purpose of granting land rights. So that when viewed from the physical condition it appears that the land is not maintained or not maintained, it means that it is not in accordance with the purpose of giving its rights. According to Fitri Adhi Nugroho, the criteria for abandoned land can be seen from:

- a. The existence of objects, including ownership rights, business use rights, building use rights, usage rights and management rights as well as land that already has a basis for control but the land is not requested for rights, is not cultivated, is not used, or is not utilized in accordance with the terms or conditions stipulated in location permit, decision letter granting rights, forest area release decision letter, and / or in a permit or other decree or letter from an authorized official.
- b. There is a subject, namely the owner or holder of land rights.
- c. There is an act that deliberately neglects the land.
- d. there is a certain period of time in which the land becomes unproductive.⁹

According to Rendy Octavianus Dumais, the criteria for abandoned land include:

- a. There must be an owner / holder of land rights (subject).
- b. There Must Be Land Rights (Objects)
- c. There must be deliberate action not to use

⁸ Article 2 of Government Regulation No.11 of 2010 concerning Control and Utilization of abandoned land

⁹ Fitri adhi Nugroho, Interview, section in the field of land control and community empowerment, land office in Demak district

the soil.

- d. There must be actions to ignore their obligations
- e. There must be a certain period of time during which the rights holder waives their obligations.¹⁰

The criteria for abandoned soil above are also in line with Suharningsih, where abandoned soil can be found by systematizing the elements present in abandoned soil. The elements that exist in abandoned land include:

- a. There are owners or holders of land rights (subject).
- b. The existence of private land that is cultivated or not (object).
- c. There is land that has been identified as having returned to forest or its fertility is not maintained.
- d. There is a certain period of time in which the land becomes unproductive.
- e. There is an act that deliberately does not use the land.
- f. Land status returns to customary rights or to the State.¹¹

2. Mechanisms for controlling and utilizing abandoned land

Demak Regency Land Office in carrying out the implementation of neglected land control is in accordance with the provisions in Government Regulation Number 11 of 2010 concerning Control and Utilization of Abandoned Land which is followed up by Regulation of the Head of the National Land Agency Number 4 of 2010 concerning Procedures for Control of Abandoned Land. With regard to the mechanism for controlling abandoned land, it can be seen in Article 3 of the Head of BPN Regulation Number 4 of 2010, where it is stated that the implementation of the control of abandoned land is carried out in several stages, namely an inventory of land rights or the basis for control over land that is indicated

¹⁰ Rendy Octavianus Dumais, "Pengaturan Hukum Terhadap Keberadaan Tanah Terlantar Di Indonesia", *Lex Et Societatis*, Vol. II/No. 5/Juni/2014, p.41-44

¹¹ Suharningsih, 2009, *Tanah Terlantar*, Penerbit Prestasi Pustaka Raya, Jakarta, p.119

to be abandoned, identification and research of indicated abandoned land, warning to rights holders, and designation of abandoned land.¹²

- a) Inventory of Land Rights or Basic Control over Land that is indicated as neglected;

This inventory activity is regulated in article 6 Regulation of the Head of the National Land Agency No. 4 of 2010 concerning Procedures for Controlling Abandoned Land¹³ that is:

- 1) The collection of data on lands that are indicated to be abandoned includes textual data and spatial data, namely:
 - (a) Textual data includes the name and address of the right holder, number and date of the decision to grant the title, number, date and expiration of the certificate, land location, land area, land use, and land area indicated as neglected.
 - (b) Spatial data is graphical data in the form of a map equipped with the coordinates of the position of the indicated land parcels.
- 2) The grouping of indicated abandoned land data that has been collected according to regency / municipal areas and types of land tenure rights / basis.
- 3) data administration on the results of the inventory of abandoned lands as referred to in letter a, is carried out in an orderly manner in the database for reporting purposes, material for analysis, and determination of further actions.¹⁴

- b) Identification and Research of Abandoned Indicated Land;

The indicated abandoned land that has been inventoried is then followed up by identification and research. This identification and research is carried out

3 (three) years after the issuance of certificates of ownership rights, rights to cultivate, rights to building and use rights, as well as land that has obtained a permit or decree or basic letter of control over land from the competent official as of the expiration of the basis. the mastery. Then the Head of the Regional Office of the National Land Agency sets a target for land rights that are indicated to be abandoned, taking into account the length of time the land has been neglected and / or the area of land indicated as neglected.¹⁵

As a basis for carrying out identification and research, the data for these activities are regulated in Article 8 Regulation of the Head of the National Land Agency No. 4 of 2010 concerning Procedures for Controlling Abandoned Land,¹⁶ including:

- 1) Verification of physical data and juridical data covering types of rights and location of land;
- 2) Checking land books and / or documents and other documents to determine the presence of imposition, including data, plans, and stages of land use and utilization at the time of submission of rights;
- 3) Request information from right holders and other related parties, if the right holder / power / representative does not provide data and information or is not available or cannot be contacted, then identification and research will still be carried out in other ways to obtain data;
- 4) Carry out physical examinations in the form of boundary location, use and utilization of land using existing technology;
- 5) Plotting the location of land use and utilization on a land map based on the results of physical inspection;
- 6) Making an analysis of the causes of

¹² Fitri Adhi Nugroho, Op.Cit,

¹³ Ibid

¹⁴ Pasal 6 Peraturan Kepala Badan Pertanahan Nasional No. 4 Tahun 2010 Tentang Tata Cara Penertiban Tanah Terlantar

¹⁵ Fitri Adhi Nugroho, Op.Cit,

¹⁶ Ibid

abandoned land, among others, regarding the problems that cause abandoned land, conformity to the rights granted, and suitability to spatial planning;

- 7) Prepare reports on the results of identification and research;

When the identification and research data are deemed sufficient as material for decision-making in an effort to control, the Regional Head of Regional Office forms Committee C, Committee C is a committee formed by the Head of the Provincial BPN Regional Office where the membership structure is regulated in article 8 while the functions and duties of committee C are two in chapter 7 Regulation of the Head of the National Land Agency No. 4 of 2010 concerning Procedures for Controlling Abandoned Land. After Committee C carries out a committee meeting using the concept of the report on the results of identification and research that has been carried out by the Head of the Regional Office of BPN, and if necessary, Committee C can conduct field checks. Then Committee C submits the final report on the results of identification and research as well as an Official Report to the Head of the Regional Office of BPN.¹⁷

- c) Warning Against Rightsholders

If based on the results of identification and research and recommendations from Committee C (Committee C's Minutes) it is concluded that there is land abandoned, then the Head of the Regional Office of the National Land Agency will notify the right holder and simultaneously give written warnings three times, this written warning is regulated in article 14. Regulation of the Head of the National Land Agency No. 4 of 2010 concerning Procedures for Controlling Abandoned Land,¹⁸ including:

- 1) The first warning, so that within 1 (one) month from the date of issuance of the warning letter, the right holder cultivates, uses and utilizes his land according to the circumstances or nature and purpose of granting his right or the basis of his control.

- 2) Furthermore, if the right holder does not carry out the first warning, after observing the progress of land use and utilization at the end of the first warning, the Head of the Regional Office of the National Land Agency will give a second written warning with the same timeframe as the first warning.

- 3) Then if the right holder does not carry out the second warning, after observing the progress of land use and utilization at the end of the second warning, the Head of the Regional Office of the National Land Agency will give a third written warning which is the last warning with a period of time equal to the second warning.

- d) Abandoned Land Designation

At the end of the third warning, after monitoring and evaluation, there is still abandoned land or in other words the right holder does not comply with the warning, the Head of BPN RI determines the abandoned land against the land proposed by the Head of the Regional Office.

Furthermore, with regard to lands that have been designated as abandoned land, it will then become state land. As a next step, these abandoned lands will be utilized for the benefit of the community (article 15 paragraph 1 PP No 11/2010).¹⁹ Based on Article 15 Paragraph (1) Government Regulation Number 11 of 2010, it is stated that:
"The designation of control, ownership, use and utilization of former state land

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid*

abandoned land is utilized for the benefit of the community through agrarian reform, state strategic programs, and for other State reserves".²⁰

2. Constraints and Solutions in the Implementation of Control and Utilization of Abandoned Land

Several obstacles in the implementation of control and utilization of abandoned land in the working area of the Land Office of Demak Regency, include:

- a. Lack of legal awareness and sensitivity of land rights owners on the importance of land use and use in accordance with the function and purpose of granting their rights and spatial planning.
- b. Land owners or rights holders are difficult to contact.
- c. Lack of human resources from the Land Office of Demak Regency to carry out activities both in inventory and identification of indications of abandoned land.
- d. Usually the obstacles that are encountered originate from within, such as the existence of an informal agreement between rights holders and land agency employees.
- e. Lack of budget to carry out control and utilization of abandoned land
- f. It is difficult to carry out the utilization of state land which is formerly abandoned land to the community, because there is no clear mechanism for exploiting abandoned land from the statutory regulations.²¹

In order to overcome the large number of lands that can be classified into the criteria for abandoned land, the Demak Regency Land Office provides several ways to overcome it as follows:

- a. To instill legal awareness and sensitivity of land rights owners on the importance of land use and use in accordance with the function and purpose of granting their

²⁰ Pasal 15 ayat 1 Peraturan Pemerintah Nomor 11 Tahun 2010 Tentang Penertiban Dan Pendayagunaan Tanah Terlantar

²¹ Fitri Adhi Nugroho, Op.Cit.

- rights and spatial planning.
- b. received reports from the community regarding abandoned land.
- c. Identifying the existence of land that can be declared abandoned land, this identification is carried out by the head of the Land Office.
- d. Whereas in the event that according to the identification results, the land in question is owned by an individual right holder who cannot use the land according to his circumstances or according to the nature and purpose of granting his right because in this case the right holder is economically incapable, the head of the Land Office proposes that holders of land rights are given guidance in order to utilize their land;
- e. Whereas in the event that according to the results of the identification, the land concerned is owned, controlled or acquired by a legal entity which does not use the land according to its circumstances or according to the nature and purpose of granting its rights, or does not properly maintain it or that if the land concerned is owned or acquired, the basis is control by an individual who does not use the land according to his circumstances or according to the nature and purpose of granting his right, or does not maintain it properly, the head of the Land Office proposes to the Head of the Regional Office that the right holder or the party who acquires the land is given a warning so that within time certain people have used their land in accordance with the circumstances or according to the nature and purpose of granting their rights.²²

C. CLOSING

Based on the results of research and discussion in the previous chapter, it can be concluded as follows:

1. The criteria for abandoned land include: 1. There must be an owner or holder of land

²² Ibid

- rights (subject), 2. There must be land rights (Ownership Rights, Business Use Rights, Building Use Rights, Management Rights, etc.) that are not well maintained so that the quality of soil fertility decreases, 3. There must be a certain period of time, 4. There must be an act which deliberately does not use the land according to the condition or nature and purpose of the right. Meanwhile, the mechanism for controlling abandoned land is carried out in stages, namely: 1. Inventory of land rights or the basis for control over land that is indicated as neglected, 2. Identification and examination of indicated abandoned land, 3. Warnings of rights holders, 4. Determination of abandoned land. Furthermore, abandoned lands are utilized for the benefit of society through Agrarian Reform, State Strategic Programs,
2. Obstacles in the implementation of control and utilization of abandoned land carried out by the Demak Regency Land Office include: lack of awareness, Land owners or rights holders are difficult to contact, Lack of human resources from the Demak district land office, there is an unofficial agreement between the right holder and the land agency employee, Lack of budget to carry out control and utilization of

abandoned land. It is difficult to carry out the utilization of state land which was formerly abandoned land to the community, because there is no clear regulation regarding the mechanism for utilizing abandoned land. Meanwhile, solutions or efforts to overcome abandoned land according to the Demak Regency Land Office are: Instilling legal awareness and sensitivity of land rights owners on the importance of land use and use in accordance with the function and purpose of granting their rights and spatial planning, receive reports from the community regarding abandoned land, Identify any land that can be declared abandoned land, this identification is carried out by the head of the Land Office, The Land Office proposes that the holder of land rights be given guidance in order to utilize the land, the head of the Land Office proposes to the Head of the Regional Office that the right holder or the party who acquires the land be given a warning so that within a certain time they have used the land according to their circumstances or according to their characteristics. and the purpose of granting rights.

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