

THE LEGAL CONSEQUENCE OF BUILDING RIGHTS TITLE ABOLITION DUE TO ABANDONED LAND BY LAND OWNERS

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ABSTRACT

Abandoned Building Rights Title is due to the lack of use and utilization of the rights granted. Many Building Rights Titles are issued in a fairly large business designation. Yet, it would be very unfortunate if it was abandoned by the owner. Thus, the use of these rights does not run according to its designation. As a result of such abandonment, the Building Rights Title attached to a plot of land can be removed. The research problems are how the procedure for determining the abolition of building use rights due to neglect by the owner and how the legal analysis due to the abolition of Building Rights Title abandoned by the owner. The research method used was normative juridical research, with a statute approach. The results of the research showed that the process of determining the abolition Building Rights Title abandoned by the owner conducted by parties from the Regional Office of the National Land Agency (BPN) would carry out a land inventory of land indicated as abandoned land based on Article 4 and Article 9 of the Regulation of the Head of the National Land Agency No. 20 of 2021 concerning Procedures for Controlling Abandoned Land. The abolition was due to Abandoned Building Rights Title by the Owner by not carrying out the obligations of the land right holder. If an object of control had gone through the stages of examination and becomes a proposal from the Head of the Regional Office to the Minister of Agrarian Affairs or the Head of the National Land Agency (BPN), then based on the results of the resume that has been made, the Minister of Agrarian Affairs will issue a Decree on the Determination of Abandoned Land. Stochastic model checking is the extension and generalization of the classical model checking. Compared with classical model checking, stochastic model checking faces more severe state explosion problem, because it combines classical model checking algorithms and numerical methods for calculating probabilities. For dealing with this, we first apply symmetric assume-guarantee rule symmetric (SYM) for two-component systems and symmetric assume-guarantee rule for n-component systems into stochastic model checking in this paper, and propose a compositional stochastic model checking framework of probabilistic automata based on the NL algorithm. It optimizes the existed compositional stochastic model checking process to draw a conclusion quickly, in cases the system model does not satisfy the quantitative properties. We implement the framework based on the PRISM tool, and several large cases are used to demonstrate the performance of it.*

Keywords: Legal consequences, abolition of building rights title, abandonment

1. PREFACE

Land is part of the earth created by Only One God Almighty. Land serves as a place where people live and land also provides a livelihood [1]. At this current time and in the future, land that has been controlled and owned has various kinds of land rights on it. The acquisition of these rights can be carried out in various ways, which of course must be procedural. With this process, land rights are guaranteed and legal certainty is created for the community. In some cases, based on the acquisition of land rights in some places, many are still left abandoned [2]. Therefore, the noble ideals of improving people's welfare are not optimal.

Land registration is a series of activities conducted by the state or government continuously and regularly, in the form of collecting certain information or data regarding land in a certain area, processing, storing, and presenting for the benefit of the people in order to guarantee legal certainty in the land sector including the issuance of evidence and maintenance [3]. A large amount of abandoned land is not followed by control measures and optimal utilization, adding to the problems in the land sector that are increasingly complicated. It requires the government's

alertness in dealing with this matter and is assisted by the attention of the community, to immediately resolve land problems appropriately and accurately.

The abandoned land is philosophically contrary to the principle that determines that land has a social function [4]. In addition, the land is a source of human life that will not run out. One of the state's authorities to implement individual rights over land use is the Right to Build / Building Rights Title. Building Rights Title is specifically regulated in Articles 35 to 40 of the Basic Agrarian Law Jo. Articles 19 to 38 of Government Regulation Number 40 of 1996 [5] concerning Cultivation Rights Title, Building Rights Title, and Usufructuary Right. The abolition of the Usufructuary Right of a building is regulated in Article 40 paragraph (5) of Law Number 5 of 1960 [6] of the Agrarian Fundamental Law which states that the right to use a building is abolished, because it is abandoned.

The abolition of the Usufructuary Right of the building is also regulated in the provisions of Article 35 paragraph (1) of Government Regulation Number 40 of 1996 [5] due to abandonment. Besides, abandonment of land is a wrong act because of the negative impact that will be caused, namely increasing social inequality, due to the lack of development or use of the land following its designation, the land in question can be considered as abandoned land by the right holder [7]. There is a difference between abandoned land and land indicated as abandoned. Based on the description above, which prompted the author to raise it in a written form with the title Legal Analysis Due to the Abolition of Building Rights Title Due to Abandonment Performed by the Owner.

2. RESEARCH METHOD

The method used in this research was normative juridical research or library law research in the form of secondary data consisting of literature books and laws and regulations related to legal analysis due to the abolition of Building Rights Title due to abandonment by the owner.

3. RESULT AND DISCUSSION

The definition of abandoned land according to Government Regulation Number 20 of 2021 [8] Article 1 paragraph (2) which reads: Abandoned land is land with rights, land with management rights, and land obtained based on the basis of control over land, which is intentionally not cultivated, not used, not utilized, and/or not maintained. The abolition of building rights title, the building is also regulated in the provisions of Article 35 paragraph (1) of Government Regulation Number 40 of 1996 [5] due to neglect. As for the explanation of article by article related to monitoring and control activities, it is determined that Management Rights or rights over Management Rights have not been used or utilized under the intent and purpose of granting rights. Furthermore, Management Rights holders or Land Rights holders can be given a warning and subject to the Abandoned Land mechanism.

In the explanation of article by article, article 25 Paragraph (2) In the first warning letter, it is necessary to mention concrete things that must be done by the Right Holder, Management Right Holder, or Basic Land Ownership Holder and the sanctions that can be imposed if the Rightsholder, Management Rights, or the Basic Ownership of Land Ownership does not heed or does not carry out the written warning. Paragraph (3) In the second warning letter, after observing the progress of the first written warning letter, reiterate the concrete things that must be done by the Right Holder, Management Right Holder, or Basic Land Ownership Holder and the sanctions that can be imposed if the Right Holder, Holders of Management Rights, or Holders of Basic Land Tenure do not heed or did not carry out the written warning in question.

Paragraph (4) In the third warning letter as the last warning, after paying attention to the progress of the second written warning letter, mentioning concrete things that must be done by the Right Holder, Management Right Holder, or Basic Land Ownership Holder and sanctions that can be imposed if The Right Holder, Management Right Holder or Basic Land Ownership Holder does not heed or does not carry out the written warning.

Regarding the Inventory of land indicated to be abandoned, it is regulated based on Article 4 and Article 9 of the Regulation of the Head of the National Land Agency Number 20 of 2021 [9] concerning Procedures for Controlling Abandoned Land. Article 4 explains that the Head of the National Land Agency Regional Office will carry out a land inventory of land indicated as abandoned land. The inventory is carried out based on information regarding the existence of abandoned land that can be obtained from several sources from the results of field monitoring by the regional office or land office, reports from other agencies or agencies, written reports from the community, and written reports from rights holders. Furthermore, Article 9 explains that the inventory of abandoned areas is carried out by the Head of the Agency following their authority.

Collecting data on land indicated as abandoned, where at this stage the National Land Agency Regional Office will collect textual data on land indicated as abandoned which includes the name and address of the right holder, date of granting rights, location and area of land, land use, land area indicated abandoned and the end of the land certificate. In addition, spatial data will also be collected in the form of a map equipped with coordinates of the position of the plot of land which is indicated as abandoned land.

Grouping of land data indicated as abandoned, at this stage the head of the regional land office will group the land data indicated as abandoned land obtained based on the district/city area and the type of rights / basic control. Administration of data from the inventory of abandoned land is indicated after the data is grouped. The data resulting from the inventory of abandoned land indicated will be administered in an orderly manner for reporting purposes, analysis material and determining further action. Furthermore, Article 8 paragraph (1) of the Regulation of the Head of the National Land Agency No. 4 of 2010 stipulates that the Head of the Regional Office of the National Land Agency will analyze the results of the above-mentioned inventory to prepare and set targets for identification and research on abandoned land. To determine the target in question, the Head of the Regional Office will prepare data and information on land indicated as abandoned.

Based on Article 8 paragraph (2) of the Regulation of the Head of the National Land Agency No. 4 of 2010 [10] stipulates that the data and information preparation activities will include several activities, namely verification of physical data and juridical data covering types of rights and location of land; Checking the land book and/or *warkah* (a collection of documents containing physical data and juridical data) and other documents to find out the existence of encumbrances, including data, plans, and stages of land use and utilization at the time of application for rights; Requesting information from the right holder and other related parties, if the right holder/ proxy/ representative does not provide data and information or is not available or cannot be contacted, identification and research will continue to be carried out by other means to obtain data; Carry out physical inspections in the form of boundary location, use and utilization of land using existing technology; Carry out plotting of the location of the use and utilization of land on the land map based on the results of the physical examination; Make an analysis of the causes of abandoned land, among others concerning the problems causing the occurrence of abandoned land, conformity with the rights granted, and conformity with spatial planning; Prepare a report on the

results of identification and research with an attachment format.

Article 9 of the Regulation of the Head of the National Land Agency Number 4 of 2010 [10] stipulates that after the data from the identification and research above are deemed sufficient as material for decision-making efforts to control efforts, the Head of the Regional Office will form a Committee C consisting of elements from the regional office, land office, regional government, and agencies related to the allotment of the land concerned. Committee C is the party that will directly communicate with the right holder to examine whether the land can be designated as abandoned land. Thus, the author can conclude from the description of the articles above that the roles and responsibilities of Committee C in principle have a statistical and important role in determining the status of the land as regulated in the provisions of the Regulation of the Head of the National Land Agency (BPN) Number 4 of 2010 concerning Procedures for Issuance Abandoned Land. [10] So in this case, a professional and responsible Committee C officer or team is needed. Thus, it does not cause new problems in the land sector. In the process of determining abandoned land explained during the interview by Mr. MLR, the 4 (four) stages of controlling abandoned land were further divided into sub-steps that must be carried out before concluding that land is designated as abandoned land, which basically namely Inventory of abandoned land; Identification and research; Warnings and Notifications; Determination of abandoned land. The concrete example given by Mr. Manan in the interview he conducted was looking at the abandoned land case against PT. ABC Light Source as the holder of Building Use Rights Number 92/HGB/BPN/99 dated 6 October 1999 based on the conclusion that PT. XYZ has not utilized the entire land following the Right Certificate for an area of 2,000 Ha.

After the first warning was carried out on October 4, 2018, with Number 873/16-64/X/2012. After the warning period ended, monitoring and evaluation activities were carried out which showed that no land had been used according to the HGB SK. Then at the second warning stage on November 12, 2012, with Number 1009/16- 64/XI/2019 in the results of monitoring and evaluation activities, there was also no land used, until the third warning on December 12, 2019, with Number 1153/16- 64/XII /2019. Furthermore, the right holder utilizes the land according to the Freehold Title Certificate, but only covers an area of 2,000 ha. In this case PT. XYZ in conveying historical reasons and reasons for not using it, one of which is the company's financial condition because it requires quite a lot of costs in the extension process and other administrative processes. Thus, with the description of the case, the warning within one month can be considered to be illogical in the sense that the right holder finds it difficult to cultivate his land. This also does not aim to side with the right holder, but to achieve a fair result, the process must also be fair.

In an interview conducted by Mr. M, he stated that, although there are still some shortcomings in the regulation, it does not mean that the problem regarding abandoned land is difficult to overcome. In fact, some lands have been declared abandoned, because in its implementation, it is under the regulation and the implementing regulations or other related regulations and in the process must be democratic which involves an active role for rights holders so that later they will produce responsive decisions.

The legal consequences of not using the land following the circumstances and nature of its rights, so that it does not provide benefits and happiness for the community and the State, if viewed from the perspective of the National Land Law, it is categorized as abandoned land according to the explanation of Article 27 of Law Number 5 of 1960 [6]. It expressly states that land is abandoned if it is intentionally not used following its circumstances or the nature and purpose of its rights and the rights are nullified under Article 34 and Article 40 of Law Number 5 of 1960 which affirms

that the Right to Cultivate and the Right to Build are nullified. When the term expires; terminated before the term expires because a condition is not fulfilled; released by the right holder before the term expires; revoked in the public interest; abandoned; the land is destroyed; provisions in article 30 paragraph 2.

If an object of control has passed the inspection stages and becomes a proposal by the Head of the Regional Office to the Minister of Agrarian Affairs or the Head of the National Land Agency, then based on the results of the resume that has been made, the Minister of Agrarian Affairs will issue a Decree on the Determination of Abandoned Land. With the issuance of the Decree, by law, as regulated in the provisions of Law Number 5 of 1960 jo, Government Regulation No. 40 of 1996 jo, Government Regulation Number 11 of 2010 is no longer considered to be the holder of legal land rights in the sense that it no longer has legality or has a legal relationship to claim control over its land, and regarding the status of land control fully under the control of the State or Government [5], [6], [11]. After the land has been designated as state land, the state land will be reused or can be given to applicants who have met the requirements. The results of the interview with Mr. Manan stated that land designated as abandoned land which later became state land would be given to the local government. Giving to (Regional Government) to be able to use the land in terms of public interest or use it in other ways to achieve the goals of people's welfare.

State land is used or allocated nationally for the benefit of the community and the state through agrarian reform programs. It is not only allocated through agrarian reform programs but can also be allocated through state strategic programs that are utilized for sector development, food, energy, public housing in order to improve people's welfare. To former rights holders whose land is designated as abandoned land, the former rights holders can't reapply the land. However, it can be applied for other lands, or by buying and selling or in other ways following the statutory regulations.

If a plot of land is declared abandoned, it can only be done by the Head of the National Land Agency. The head of the regional office only provides suggestions in the form of a compiled resume report. Article 20 of the Regulation of the Head of the National Land Agency Number 4 of 2010 states that the percentage of the area of determination of abandoned land is grouped into:

(a) 100 percent abandoned:

If the entire expanse of land has been abandoned, then the decision to determine the abandoned land is applied to the entire stretch of land rights.

(b) More than 25 percent to less than 100 percent abandoned:

If only part of the land is abandoned, then the decision to determine the abandoned land is applied to all rights to the land and then to the right holder. Part of the land is actually cultivated, used, and utilized following the decision to grant the right, through the procedure for applying rights. above ground.

(c) Less than or equal to 25 percent abandoned:

If the expanse of abandoned land rights is less than or equal to 25 percent, then the decision to determine the abandoned land is applied only to the abandoned land. Besides, the right holder submits a request for revision of the area of the right plot of land.

If the expanse of abandoned land rights is less than or equal to 25 percent, the decision to determine the abandoned land is applied only to the abandoned land. Furthermore, the right holder submits a request for revision of the area of the right plot of land.

4. CONCLUSIONS AND RECOMMENDATIONS

The process of determining the abolition of building right title due to abandoned land by the owner. Regarding the Inventory of land indicated to be abandoned, it is regulated based on Article 4 and Article 9 of the Regulation of the Head of the National Land Agency Number 20 of 2021 concerning Procedures for Controlling Abandoned Land. Article 4: The Head of the BPN Regional Office will carry out a land inventory of land indicated as abandoned land. The inventory is carried out based on information regarding the existence of abandoned land that can be obtained from several sources from the results of field monitoring by the regional office or land office, reports from other agencies or agencies, written reports from the community, and written reports from rights holders. Article 9 states that the inventory of abandoned areas is carried out by the Head of the Agency following their authority. Due To The Abolition Of building right title Abandoned By The Owner. By not carrying out the obligations of the holder of land rights as confirmed in the provisions of Article 30 of Government Regulation Number 40 of 1996, the legal consequence that occurs is that the rights to the land are nullified, and this has been stipulated in the provisions of Article 35 letter e of Government Regulation Number 40 of 1996. 1996 which states that the building right title is abolished because it is neglected. If an object of control has passed the inspection stages and becomes a proposal by the Head of the Regional Office to the Minister of Agrarian Affairs or the Head of the National Land Agency, then based on the results of the resume that has been made, the Minister of Agrarian Affairs will issue a Decree on the Determination of Abandoned Land. If a plot of land is declared abandoned, it can only be done by the Head of the National Land Agency. The head of the regional office only provides suggestions in the form of a compiled resume report. Article 20 Regulation of the Head of the National Land Agency Number 4 of 2010.

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REFERENCES

- Government Regulation Number 20 of 2021 concerning Control of Abandoned Areas and Lands
Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles
Minister of Agrarian Regulation/Head of BPN No. 20 of 2021 concerning Procedures for Control and Utilization of Abandoned Areas and Lands.
Regulation of the Head of the National Land Agency Number 4 of 2010 concerning Procedures for Controlling Abandoned Land.
Regulation of the Head of the National Land Agency Number 4 of 2010 concerning Procedures for Controlling Abandoned Land.
S. Enemark, R. McLaren, and C. Lemmen, "Fit-for-purpose land administration: guiding principles for country implementation," 2016.
T. Lasanta, J. Arnáez, N. Pascual, P. Ruiz-Flaño, M. P. Errea, and N. Lana-Renault, "Space-time process and drivers of land abandonment in Europe," *CATENA*, vol. 149, pp. 810–823, Feb. 2017, doi: 10.1016/j.catena.2016.02.024.
T. Moreda, "Listening to their silence? The political reaction of affected communities to large-scale land acquisitions: insights from Ethiopia," in *Global Land Grabbing and Political Reactions 'from Below'*, Routledge, 2017, pp. 51–74.
T. Rejekiingsih, "Asas fungsi sosial hak atas tanah pada negara hukum (suatu tinjauan dari teori, yuridis dan penerapannya di indonesia)," *Yustisia Jurnal Hukum*, vol. 5, no. 2, Aug. 2016, doi: 10.20961/yustisia.v5i2.8744.
Tanah. Government Regulation (PP) Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Rights.

Y. Liu, J. Li, and Y. Yang, “Strategic adjustment of land use policy under the economic transformation,” *Land Use Policy*, vol. 74, pp. 5–14, May 2018, doi: 10.1016/j.landusepol.2017.07.005.