

The Concept of Abandoned Land in Customary Law Communities as a Foundation of Indonesian National Land Law

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Abstract

In communities governed by customary law, the position of the land is crucial, so it is important to take care of any land that has been granted usage rights to its residents. The research objective is to analyze the concept of abandoned land in customary law communities as a foundation for national land law. The type of research used is normative legal research using secondary data to be further analyzed descriptively qualitatively. The results of the research show that the emphasis on abandoned land criteria in customary law is more on the length of time the land is not used, so that the physical land becomes unmaintained, as if it is no man's land. If the obligation to maintain and use the land is not fulfilled properly, accompanied by sanctions against some indigenous peoples, the party who neglects the land for some time will no longer be given management rights over customary land, even if they submit an application to the customary institution again. Meanwhile, customary lands that have been abandoned and returned to the control of the alliance are then used by customary institutions either by giving them to members of the customary law community or external parties who meet the requirements of the customary law community. The concept of abandoned land that exists in customary law is normalized in national land law, requiring that a new area of land rights can be declared abandoned if there is an element of intent. Even this is not instantaneous because through a series of processes to identify the land that was allegedly deliberately abandoned until the government issued a stipulation of the land as abandoned land.

Keywords: Abandoned Lands, Customary Law Society, National Land Law.

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INTRODUCTION

Land as a gift from the Almighty underlies the religious magical nature of the relationship between indigenous peoples and land. Taking care of land and using it according to its designation is a form of respect for customary law communities for land. Indonesian land law is regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) making customary law the basis of national land law. Customary law as the original law of the Indonesian people views land as a very important asset in communication and meeting the needs of human life. Soerojo Wignjodipuro stated that there are two reasons why land has a very important position in customary law, namely:

1. because of its nature that land is the only asset which, despite experiencing any circumstances, land is still in its condition, sometimes even more profitable;
2. because is a fact that the land:
 - a. It is the residence of the federation;

- b. Giving life to the community, fellowship members who died were buried; and
- c. It is the pattern of residence of the maids of honor and spirits of the ancestors [1].

The area of land has never increased but the increasing level of demand for land demands wise land management for the greatest prosperity of the people as mandated by Article 33 Paragraph (3) in the Constitution of 1945. A person's control over land parcels in the form of rights over places an obligation on the right holder to use or make good use of the land or have economic value because on the other hand there are still many people who do not own land. The phenomenon shows that there are still many private lands that are not properly utilized or even not utilized at all, which in the concept of national land law is called

¹Soerojo Wignjodipuro, 1982, *Pengantar dan Asas-asas Hukum Adat*, Gunung Agung, Jakarta, MCML, XXXII, hlm. 197

abandoned land. Philosophically abandoned land is very contrary to the principle which determines that land is an asset or capital, even land is a source of human life which functions for the welfare of human life [2].

Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) through the Directorate General of Land and Space Control and Order (PPTR) [3] claim that 12,442 hectares of abandoned land have been taken into account. In 2021, it is planned to discipline 10,000 to 11,000 hectares of abandoned land. Data for 2021 BPN records that 1.2 million hectares (ha) of land are indicated as abandoned in Indonesia, where land with Cultivation Right status dominates the amount of land indicated as abandoned, covering an area of 1.19 million ha and reaching 1,172 fields. Then land with the status of Right to Build is 67,605 ha or 3,113 plots and land with Right to Use for a certain period is 6,043 ha with 18 plots[4]. The existence of these abandoned lands is one of the land issues that always requires serious handling because they often hinder development goals and are prone to social conflicts over land tenure claims. The state with the right to control it should be able to regulate and take strict action against acts of not using or abandoning these lands. According to Drabkin, abandoned land in urban areas can drive up land prices. Then, according to Hallet, from an aesthetic point of view, abandoned land gives the impression of a city that is not well maintained, so it can reduce its beauty[5].

One of the things that can cause a break in the legal relationship between legal subjects and land is because land is abandoned. Abandoned land in customary law as the basis of national land law is interpreted as land that has been given the basis for mastery of rights, has changed its physical form as a result of being neglected for a certain time (3 to 10 years), then the rights are null and void and the land returns to the customary community's customary

rights[6]. The communal nature attached to customary law community lands called ulayat lands places obligations on those who have the opportunity from customary institutions to manage customary lands in accordance with the designation and nature of their rights. According to Farida Patittingi, in the context of a customary right, every citizen of the partnership has the same right to work the land in his legal community. The land handed over to him is to be worked on, and the results of this work are seen as an investment that creates a legal relationship between a cultivator and the land he cultivates[7].

Giving of obligation to use the land is in harmony with the social function of the land as stated in Article 6 of Law Number 5 of 1960 concerning the Basic Agrarian Regulations (UUPA), which means that there are still many lands with whatever land rights belong to a person, it cannot be justified, that the land it will be used (or not used) solely for personal gain, especially if it causes harm to society. The use of land must be adapted to its circumstances and the nature of its rights, so that it is beneficial both for the welfare and happiness of those who own it and for the benefit of society and the State[8]. Land use is an activity to get added value without changing the physical form of land use [9]. In relation to its social function, it is only natural that the land must be well looked after, so that its fertility increases and damage is prevented. The obligation to maintain this land is not only borne by the owner or right-holder concerned, but is also borne by every person, legal entity or agency that has a legal relationship with the land[10].

The term abandoned land is used in national land law as contained in several regulations, namely UUPA, in particular Articles 27, 34 and 40 and Government Regulation Number 20 of 2021 concerning Management of Abandoned Areas and Lands. In the customary law community, it is known by various terms according to the characteristics of the customary law community, such as in the Tapanuli area it is called salipi ni tartar, in Sulawesi people call it kebo land. In some literature there are those who use the term no-man's land or vacant land or reserve land for the State. For customary law communities, land is a source of life. The granting of rights to manage communal land establishes a legal relationship between rights holders and communal land without losing its communal nature

² Maria S.W. Sumardjono, 2009, *Tanah Dalam Perspektif Hak Ekonomi, Sosial Dan Budaya*, Kompas, Jakarta, hlm. 9.

³ Ardiansyah Fadli, 2021, *BPN Klaim 12.442 Hektar Tanah Telantar Telah Ditertibkan*, <https://www.kompas.com/properti/read/2021/02/16/180000621/bpn-klaim-12.442-hektar-tanah-telantar-telah-ditertibkan>, akses tanggal 21 Maret 2023.

⁴ CNN Indonesia, 2021, *BPN: 1,2 Juta Hektare Lahan RI Terindikasi Terlantar*, <https://www.cnnindonesia.com/ekonomi/20211214161122-92-733968/bpn-12-juta-hektare-lahan-ri-terindikasi-terlantar>, akses tanggal 21 Maret 2023.

⁵ Putu Gede Ariastita, 2009, *Tanah Terlantar di Perkotaan : Eksplorasi Permasalahan Tanah dan Upaya Penanganannya, dalam Resonanansi Reforma Agraria*, STPN, Yogyakarta, hlm. 107.

⁶ A.P. Parlindungan, 1990, *Berakhirnya Hak-Hak Atas Tanah (Menurut sistem UUPA)*, Mandar Maju, Bandung, hlm 17.

⁷ Farida Patittingi, 2012, *Dimensi Hukum Pulau-Pulau Kecil Di Indonesia*, Rangkang Education, Yogyakarta, hlm. 120

⁸ Penjelasan Pasal 6 UUPA

⁹ Pasal 1 angka 4 PP Nomor 16 Tahun 2004 tentang Penatagunaan Tanah.

¹⁰ Pasal 8 PP Nomor 16 Tahun 2004

because the granting of rights is only for management, not ownership. By him when the land is not utilized, the right to manage or use it is immediately erased and the land returns to the control of customary institutions. This arrangement is adapted to the characteristics of each customary law community. Customary law which forms the basis of national land law, as in the arrangement of abandoned land, is customary law that has been saneer, that is, it does not conflict with national interests, so that the normalization of customary law rules in national law continues to prioritize justice, benefits, and legal certainty primarily for holders of land rights. The concept of abandoned land in the national land law requires that an area of land rights can only be declared abandoned if there is an element of intent. Even this is not instantaneous because it goes through a series of processes to identify the land that is suspected of being deliberately abandoned until the government issues a stipulation of the land as abandoned land.

RESEARCH PROBLEM

1. What is the concept of abandoned land in customary law communities?
2. How is the implementation of the arrangement of abandoned land in customary law communities into national land law?

PURPOSE OF RESEARCH

1. To find out the concept of abandoned land in customary law communities.
2. To analyze the regulation of abandoned land in customary law communities into national land law.

LITERATURE REVIEW

1. Abandoned Lands

Article 1 number 2 PP No. 20 of 2021 concerning Management of Abandoned Areas and Land stipulates that abandoned land is private land, land with Management Rights, and land acquired on the basis of the Basic Tenure of Land, which is deliberately not cultivated, not used, not utilized, and/ or not maintained.

2. Customary Law Community

Article 1 point 31 of Law Number 32 of 2009 concerning Environmental Protection and Management stipulates that customary law communities are groups of people who have lived for generations in certain geographic areas because of ties to ancestral origins, a strong relationship with the environment, and the existence of a value system that determines economic, political, social, and legal institutions.

3. National Land Law

National land law is a single Indonesian land law structured in a system based on the natural thought of customary law concerning the legal relationship

between certain customary law communities and their customary lands [11].

RESEARCH METHOD

1. Research type. This research uses a normative legal research type. Normative legal research (legal dogmatics, rechtsdogmatiek), its scientific activities include inventorying, explaining, interpreting, and systematizing including evaluating the overall positive law (authoritative text) that applies in society or the state [12]. The focus of normative legal research is an inventory of positive law, legal principles and doctrine, legal discovery in in concreto cases, legal systematics, legal synchronization, comparative law and legal history [13].
2. Data Types and Sources. The type of data used is secondary data, namely research data is carried out using the documentation method, and the means of collecting data is carried out through document studies. The data sources refer to primary legal materials, secondary legal materials and tertiary legal materials.
3. Data analysis technique. The method used to analyze the data is a qualitative descriptive method, namely an in-depth and comprehensive analysis.

RESULTS AND DISCUSSION

The Concept of Abandoned Land in the Customary Law Society

The customary law society are groups of people who have lived in certain geographic areas for generations because of ties to ancestral origins, strong relationships with the environment, and a value system that determines economic, political, social and legal institutions. The area occupied by customary law communities in the form of land is called ulayat land. Ulayat lands are attached to customary law community customary rights. Ulayat rights are rights that are owned by certain customary law communities over certain areas which are the living environment of their citizens to benefit from natural resources, including land in these areas for their survival and livelihood [14]. The relationship between the customary law community and the territory, especially the land it occupies, is communal in nature, filled with a magical religious atmosphere that nature is a gift from the Almighty (the

¹¹ Hazairin, 1973, *Demokrasi Pancasila*, Tintamas, Jakarta, hlm 44.

¹² Bernard Arief Sidharta dalam Sulistyowati Irianto dan Shidarta (ed). *Metode Penelitian Hukum: Konstelasi dan Refleksi*, Yayasan Pustakawan Obor Indonesia, Jakarta, hlm. 142.

¹³ Abdulkadir Muhammad, 2004, *Hukum dan Penelitian Hukum*, PT Citra Aditya Bakti, Bandung, hlm. 52.

¹⁴ Muchsin dalam Hayatul Ismi, 2017, *Tinjauan Hukum Atas Hak Ulayat Dalam Sistem Hukum Pertanahan di Indonesia*, Forum Kerakyatan, hlm. 67.

supernatural being) which is jointly owned, cared for, and utilized by the customary law community. Arrangements for this matter are contained in customary rules or customary laws that apply and are obeyed by customary law communities. According to Snouck Hurgronje, customary law is a habit that applies to society in the form of unwritten rules [15].

Furthermore, Ter Haar explained that customary law is the entire regulation that is embodied in the decisions of legal functionaries (in a broad sense) that has authority (*macht*, authority) and influence and which in practice applies immediately and is obeyed wholeheartedly [16]. Compliance with customary law is not only due to awareness of the function of customary rules, but also because of the existence of sanctions that can be imposed on violators of customary rules. This is carried out and under the supervision of legal functionaries who have authority, namely customary institutions as the highest authority within the scope of customary law communities.

Customary law stipulates that customary law communities are a unit with the land they occupy. Between the two there is a very close relationship, namely a relationship that originates from a religious-magical view. This relationship causes indigenous peoples to acquire the right to control the land, use it, and collect products from the plants that live on the land as well as hunt the animals that are there [17]. Ulayat rights are synonymous with the existence of customary law communities. Article 2 Paragraph (2) PMNA/KBPN Number 5 of 1999 concerning Guidelines for the Settlement of Indigenous Peoples' Ulayat Rights Issues, stipulates that a customary right is declared to be still alive and valid if:

- a. there is a group of people who still feel bound by their customary legal order as joint citizens of a certain legal partnership, who recognize and apply the provisions of the partnership in their daily lives;
- b. there is a certain customary land which is the living environment for the members of the legal alliance and the place where they take their daily necessities of life, and
- c. there is a customary legal order regarding management, control and use of communal land that applies and is obeyed by the members of the legal alliance.

The conception of customary law can be formulated as a religious-communalistic concept, which

allows individual land tenure, with private land rights, as well as containing elements of togetherness. Ulayat land in its utilization by customary institutions can be given to members of the customary law community or outsiders. Fellowship members with the permission of customary institutions can take advantage of the natural resources in it for their survival.

In the context of utilizing customary land, several characteristics of customary rights are known, namely [18]:

- a. The association and its members have the right to use the land, collect results from everything that is in the land and that grows and lives on communal land.
- b. Individual rights are encompassed by community rights.
- c. The leadership of the association can decide to declare and use certain plots of land and it is determined for the public interest, and individual rights are not permitted to place on this land.
- d. Foreigners who wish to withdraw yields from ulayat lands must first ask permission from the head of the association and must pay an acknowledgment fee and after harvest must pay rent.
- e. The Alliance is responsible for everything that happens on the ulayat land environment.
- f. Prohibition of alienating land that is included in customary land.

The use of ulayat land is not only limited to consumption and economic needs as requested by those applying for ulayat land management, based on the agreement of the customary law community, ulayat land can also be used for rice fields, bengkok land and local burial areas [19]. The granting of management rights over customary land to members of the customary law community and outsiders is accompanied by the obligation to make the best use of the land. The sanction for violating this matter is that the land that is given can be taken back in the control of customary institutions and declared as abandoned land or other terms according to the characteristics of each customary law community which means the same, namely customary land that is not used properly or deliberately abandoned.

In the scope of customary law communities, abandoned land is land that has been cleared, worked on by the owner/cultivator for up to 1 or 2 harvests, then abandoned by the owner for a certain time until it becomes forest again. Juridically, this land then returns

¹⁵ Snouck Hurgronje dalam A. Soehardi, 1954, *Pengantar Hukum Adat Indonesia*, S-Gravenhage, Bandung, hlm. 45.

¹⁶ Imam Sudiyat, 1989, *Azas-Azas Hukum Adat*, Liberty, Yogyakarta, hlm. 7.

¹⁷ Sri Susyanti Nur, 2010, *Bank Tanah*, As Publishing, Makassar, hlm. 52.

¹⁸ Tolib Setiady, 2011, *Intisari Hukum Adat Indonesia Dalam Kajian Kepustakaan*, ALFABETA, Bandung, hlm. 289.

¹⁹ Muhammad Marizal, dkk, 2022, *Pemanfaatan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Umum di Indonesia*, Widya Pranata Hukum Vol. 4 No. 2 September (2022), hlm. 197.

to its customary rights [20]. According to customary law, land is said to have been abandoned if the criterion is that the land has been deliberately not worked on by the cultivator/owner for a certain time so that it then becomes a thicket again. To measure whether land can be said to be neglected or not according to customary law is to look concretely/concretely whether the land is deliberately not cultivated or actively cultivated by the cultivator/owner. So determining whether it has been abandoned or not depends on a certain period of time, but only by looking at the fact that if the land is allowed to swell again because it is no longer suitable for replanting, this can already qualify as abandoned. In line with the elucidation of Article 27 of the UUPA, it only states that land is abandoned if it is deliberately not used in accordance with its circumstances or the nature and purpose of its rights. So the neglected criteria are focused on the physical condition of the soil which is not maintained.

Land without a man's land or vacant land during the Dutch colonial period was known as *de woeste gronden*. During the Dutch colonial government, the term *clay* was replaced with the term *no-man's land* with the aim of developing its land policy to control native land [21]. Deliberately not using land or intentionally not wanting to get economic value from communal land can be considered as an act that does not respect management rights that have been entrusted by customary institutions. Land in the view of *adat* should always provide benefits to humans as creatures who appreciate the gift of the power because every determination of the area of customary land to be given management to members of the customary law community or outsiders has gone through the considerations of customary institutions and certain customary processions in determining the location of the land which is also a how to ask for permission from supernatural powers because there are parts of nature that will be used by humans (customary law communities).

Land in the customary law system has a special place, because it is not only seen as an object in a material sense. Individual rights to land are always placed within the framework of a legal partnership. The same goes for abandoned land. The act of abandoning land in the customary law system is considered an *asocial* act, which can result in the loss of people's rights to a piece of land²². Soekanto stated that a

member of the legal alliance had the right to clear land (*ontgin-ningsrecht*) and ultimately became the owner of the land parcels. But if the land is left neglected for many years, the ownership rights are lost and the land is again controlled by the legal alliance [23].

The reciprocal relationship between lordship rights and individual rights to land was argued by Ter Haar that the stronger community members deepen their relationship with the land, by cultivating the land covered by *beschikkingsrecht*, the stronger their rights to the land will be and the lordship rights will weaken. But if the individual relationship is reduced due to continuous neglect (neglect), gradually the rights of masters (community rights) will recover without interruption[24]. In some literature this reciprocal relationship is called the theory of expanding and closing.

Identification of several the customary law according to S.R. Nur said that in the Acehese community, a person loses the right to occupy the land (*woestheid*), that is, if the field is in the mountains, but by leaving it for 3 years, it becomes illegal land, causing the loss of the right to occupy, and the land returns to the community's customary rights. Then in Jambi according to A.P. According to Parlindungan, there is a rule that if a rice field is left for 5 years, a 3-year term and 3-year gutters will result in the loss of the right to it. Meanwhile, in the Bugis community (South Sulawesi), research conducted by Ahmad Manggau found that ownership rights to land that had been abandoned for a long time (*tana kabo*, a Bugis term) last a long time. In fact, in Pirang the rights to a land area of 93.70 hectares which had been abandoned due to *overmacht* for 30 years are still recognized by the community, the DPRD and the local district head. But in other places, still in South Sulawesi, according to S.R.Nur, for example in Enrengkang and Bantaeng, land that was abandoned for 3 years and turned into shrubs again, the owner loses the right to the land [25]. This shows that the determination of customary land to be declared neglected based on the time period may be different for each customary law community.

According to Soerjono Soekanto and Soleman B. Taneko and Soleman B. Taneko, other criteria for determining neglect of *ulayat* land in the customary law system are: (1) rice fields, the ownership rights to them will remain if left uncultivated so that the bunds are damaged; (2) the shed or pond which is a place for raising fish, the ownership rights to it will be lost if the water has dried up and the patch was covered with soil so that it is evenly distributed; (3) the yard of the house,

²⁰ Suhariningsih, 2009, *Tanah Terlantar*, Penerbit Prestasi Pustaka Raya, Jakarta, hlm. 245.

²¹ Suhaimi, 2017, *Kepemilikan Tanah Tak Bertuan (Studi Perbandingan Hukum Islam dan Hukum Positif)*, Skripsi, Banda Aceh: UIN Ar-ranry, <https://repository.ar-raniry.ac.id/id/eprint/1615/>, akses tanggal 22 Maret 2023.

²² Sudirman Saad, 1991, *Tanah Terlantar dalam Perspektif Hukum Adat, Hukum Islam, dan*

Yurisprudensi, February 1991 Jurnal Hukum dan Pembangunan 21(1):48.

²³*Ibid.*

²⁴*Ibid.*

²⁵*Ibid.*

the ownership right to it will be lost if the owner is unable to prove the boundaries of the plot of land again; and (4) in young plantations, the ownership rights to them will expire if the vegetation on them is no longer maintained, while in old plantations, the ownership rights to them are deleted, but the ownership rights to the plants are still recognized [26].

The determination of customary land that is neglected in customary law communities is not only based on the period of time the land is not utilized but also on the physical condition of the land. According to Sudirman Saad, the time limit criteria in the customary law system is also always associated with the real condition of the customary land, namely that it has become a thicket or has lost signs of its former cultivation. If the land has become neglected, its control returns to the legal community. What is categorized as abandoned land according to the customary law system is land left uncultivated for a certain period, so that the land becomes thickets again and does not provide benefits to the community [27]. So the emphasis on the criteria for abandoned land on customary law is more on the period of time the land is not used so that the physical land becomes unmaintained as if the land has no owner.

If the obligation to maintain and use the land is not fulfilled properly, accompanied by sanctions against some indigenous peoples, the party who neglects the land for some time will no longer be given management rights over customary land, even if they submit an application to the customary institution again. Whereas customary lands that have been abandoned and returned to the control of the alliance, their subsequent use is managed by customary institutions either by giving them to members of the customary law community or external parties who meet the requirements of the customary law community.

Implementation of Abandoned Land Arrangements in Customary Law Communities into National Land Law

Indonesian land law which is embodied in the UUPA makes customary law the basis of national land law because customary law is the original law of Indonesians and is adhered to by the majority of the Indonesian people. Boedi Harsono stated that what UUPA meant by customary law was that the original law of the indigenous people was a living law in an unwritten form and contained genuine national elements, namely the nature of community and kinship based on balance and encompassed by a religious atmosphere. This customary law conception of land by Boedi Harsono is formulated with the word religious

communalism [28]. Therefore customary law has a special position in the formation of agrarian law [29] as a result of the formulation of the Sadjarwo committee as one of the committees that included the BAL draft by making customary law the basis of Indonesian agrarian law.

The regulation of customary law regarding abandoned land, although there are still differences in some customary law communities as long as it is for national unity and building society, it is adopted in the written norms of Indonesian land law. Various types of rights regulated in Article 16 of the UUPA which can be given utilization by legal subjects are followed by the obligation to maintain their land as Article 15 of the UUPA that maintaining land, including increasing its fertility and preventing its damage is the obligation of every person, legal entity or agency that has a legal relationship with the land, taking into account the party whose economy is weak. The right to control the State which authorizes the State to: (a) regulate and administer the allotment, use, supply and maintenance of the earth, water and space; (b) define and regulate legal relations between people and earth, water and space; (c) determine and regulate legal relations between people and legal actions concerning earth, water and space. General explanation of PP Number 11 of 2010 concerning Controlling and Utilizing Abandoned Land which has been replaced by PP Number 20 of 2021 concerning Controlling Abandoned Areas and Land that based on the right to control the state, the State grants land rights or management rights to the right holders to cultivate, use, and properly utilized and maintained in addition to the welfare of the Rightholders, it must also be aimed at the welfare of the community, the nation and the State. When the State grants rights to a person or legal entity, it is always accompanied by the obligations set out in the BAL and the decree granting the rights.

Government Regulation Number 20 of 2021 emphasizes that land abandonment must be prevented and regulated to reduce or eliminate the negative impacts. At a time when there are many people who do not own land, those who own or control a plot of land should not make good use of it. Land that can be categorized as abandoned is not only land rights that have been or have not been registered, but also non-area areas that already have permits/concessions/permits for forest business. Abandoned land is private land, land with management rights, and land obtained under the basis of land tenure, which is deliberately not

²⁶ *Ibid*, hlm. 50-51.

²⁷ *Ibid*, hlm. 51.

²⁸ Boedi Harsono, 2008, *Hukum Agraria Indonesia Sejarah Pembentukan, Isi dan Pelaksanaannya*, Edisi Revisi Cetakan Keduabelas, Djambatan, Jakarta, hlm 206.

²⁹ Urip Santoso, 2005, *Hukum Agraria dan Hak-Hak Atas Tanah*, Kencana Perdana Media Grup, Jakarta, hlm. 65.

cultivated, not used, not utilized, and/or not maintained. The formulation of Article 1 number 11 PP Number 20 of 2021 requires intentionality as the main element to declare land abandonment. To prove this, a plot of land that physically looks unkempt can not necessarily be declared as abandoned land where the land is first declared as land that is indicated as abandoned, namely land that is suspected of not being cultivated, not used, or not utilized in accordance with the circumstances or nature and the purpose of granting rights or the basis for their control which has not been identified and researched.

Controlling Abandoned Land is carried out through stages [30]:

- a. Abandoned Land evaluation. This activity aims to ensure that the right holders, management rights holders, or basic land tenure holders exploit, use, utilize, and/or maintain the land they own or control. The evaluation is carried out within a period of 180 calendar days if the said period ends and the Rightsholders, Management Rights Holders, or Holders of Basic Tenure over Land still do not exploit, do not use, do not utilize, and/or do not maintain the land they own or control. then a warning process is carried out.
- b. Abandoned Lands memorial. In the event that based on the results of the evaluation it is concluded that there is Abandoned Land, the head of the Regional Office gives the first written warning to the Rights Holders, Management Rights Holders, or Holders of Basic Tenure over Land and other interested parties containing warnings so that these parties seek, use, exploit, and/or maintain the land within a maximum period of 90 (ninety) calendar days from the date of receipt of the first warning letter. If the first warning is not carried out, the head of the Regional Office will give a second written warning to the parties within 45 days. Furthermore, if it is still not implemented, a third warning will be given within 30 days. In the event that the Right Holder, Management Right Holder, or Land Tenure Holder does not carry out the third written warning, the head of the Regional Office within a maximum period of 30 (thirty) working days shall propose the determination of Abandoned Land to the Minister.
- c. determination of Abandoned Land. Determination of Abandoned Land is carried out by the Minister based on the proposal for the determination of Land.

The steps that must be taken before a parcel of land is declared neglected is to protect and provide legal certainty to the holders of land rights. The parties are given the opportunity to defend their rights or show good faith in making good use of the land by providing several opportunities to improve the conditions of the parties' relations with the land they own or control. The consequence of a plot of land that has been designated

as abandoned land is that the land is under the control of the State with the status of State land. Basically, the abandoned land in question is state land that has the right to use it, but is not utilized. Abandoned land occurs when the holder or owner of land rights or the holder of management rights does not carry out activities on the land. Allotment of control, ownership, use and utilization of state land, former derelict lands are utilized for the benefit of society and the state through agrarian reform and state strategic programs as well as for other state reserves.

Closing

Conclusion

- 1) The emphasis on the criteria for abandoned land on customary law is more on the period of time the land is not used so that the physical land becomes unmaintained as if the land is no man's land. If the obligation to maintain and use the land is not fulfilled properly, accompanied by sanctions against some indigenous peoples, the party who neglects the land for some time will no longer be given management rights over customary land, even if they submit an application to the customary institution again. Whereas customary lands that have been abandoned and returned to the control of the alliance, their subsequent use is managed by customary institutions either by giving them to members of the customary law community or external parties who meet the requirements of the customary law community.
- 2) The concept of abandoned land that exists in customary law is normalized in national land law, requiring that a new area of land rights can be declared abandoned if there is an element of intent. Even this is not instantaneous because it goes through a series of processes to identify the land that is suspected of being deliberately abandoned until the government issues a stipulation of the land as abandoned land.

Recommendation

Land always has a beneficial function that has high economic value if it is managed properly by utilizing and maintaining land according to the nature of its rights and designations. The situation is that not everyone can own or control a plot of land, so it is unethical if there are rights holders who do not use their land properly. The authority of the State to stipulate a change in the status of private land to become State land because it has been neglected should serve as a warning to rights holders to take good care of the land, either by themselves or authorized by another party as long as it can make the land not included in the category of abandoned land.

REFERENCES

- Ariastita, P.G. (2009). Tanah Terlantar di Perkotaan : Eksplorasi Permasalahan Tanah dan

³⁰PP Nomor 20 Tahun 2021

- Upaya Penanganannya, dalam Resonanansi Reforma Agraria, STPN, Yogyakarta.
- CNN Indonesia, (2021). BPN: 1,2 Juta Hektare Lahan RI Terindikasi Terlantar, <https://www.cnnindonesia.com/ekonomi/20211214161122-92-733968/bpn-12-juta-hektare-lahan-ri-terindikasi-terlantar>, akses tanggal 21 Maret 2023.
 - Fadli, A. (2021). BPN Klaim 12.442 Hektar Tanah Terlantar Telah Ditetapkan, <https://www.kompas.com/properti/read/2021/02/16/180000621/bpn-klaim-12.442-hektar-tanah-terlantar-telah-ditetapkan>, akses tanggal 21 Maret 2023.
 - Harsono, B. (2008). *Hukum Agraria Indonesia Sejarah Pembentukan, Isi dan Pelaksanaannya*, Edisi Revisi Cetakan Keduabelas, Djambatan, Jakarta.
 - Hazairin, (1973). *Demokrasi Pancasila*, Tintamas, Jakarta.
 - Ismi, H. (2017) Tinjauan Hukum Atas Hak Ulayat Dalam Sistem Hukum Pertanahan di Indonesia, Forum Kerakyatan.
 - Maria S.W. Sumardjono. (2009). Tanah Dalam Perspektif Hak Ekonomi, Sosial Dan Budaya, Kompas, Jakarta.
 - Marizal, M., Indrianingrum, A. P., & Nugroho, H. R. (2022). Dinamika Pemanfaatan Tanah Ulayat Masyarakat Hukum Adat Untuk Kepentingan Umum di Indonesia. *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum*, 4(2), 191-205.
 - Muhammad, A. (2004). Hukum dan Penelitian Hukum, PT Citra Aditya Bakti, Bandung.
 - Nur, S. S. (2010). Bank Tanah, As Publishing, Makassar.
 - Parlindungan, A.P. (1990). Berakhirnya Hak-Hak Atas Tanah (Menurut sistem UUPA), Mandar Maju, Bandung.
 - Patittingi, F. (2012). Dimensi Hukum Pulau-Pulau Kecil Di Indonesia, Rangkang Education, Yogyakarta.
 - Saad, S. (1991). Tanah Terlantar dalam Perspektif Hukum Adat, Hukum Islam, dan Yurisprudensi. *Jurnal Hukum dan Pembangunan*, 21(1), 48.
 - Santoso, U. (2005). Hukum Agraria dan Hak-Hak Atas Tanah, Kencana Perdana Media Grup, Jakarta.
 - Setiady, T. (2011). Intisari Hukum Adat Indonesia Dalam Kajian Kepustakaan, ALFABETA, Bandung.
 - Sidharta, B.A. (2001). dalam Sulistyowati Irianto dan Shidarta (ed). Metode Penelitian Hukum: Konstelasi dan Refleksi, Yayasan Pustakawan Obor Indonesia, Jakarta.
 - Soehardi, A. (1954). Pengantar Hukum Adat Indonesia, S-Gravenhage, Bandung.
 - Sudiyat, I. (1989) Azas-Azas Hukum Adat, Liberty, Yogyakarta.
 - Suhaimi. (2017). Kepemilikan Tanah Tak Bertuan (Studi Perbandingan Hukum Islam dan Hukum Positif), Skripsi, Banda Aceh: UIN Ar-ranry, <https://repository.ar-raniry.ac.id/id/eprint/1615/>, akses tanggal 22 Maret 2023.
 - Suhariningsih. (2009). Tanah Terlantar, Penerbit Prestasi Pustaka Raya, Jakarta.
 - Supriadi. (2006). Hukum Agraria, Sinar Grafika, Jakarta.
 - Supriyanto. (2010) Kriteria Tanah Terlantar dalam Peraturan Perundangan Indonesia, Jurnal Dinamika Hukum Vol. 10 No. 1 Januari 2010, <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/viewFile/139/90>, diakses tanggal 23 Maret 2023.
 - Wignjodipuro, S. (1982). Pengantar dan Asas-asas Hukum Adat, Gunung Agung, Jakarta, MCML, XXXII.