



LEGAL EFFORT OF THE GOVERNMENT AGAINST MISUSE OF GOVERNOR GROUND LAND REGARDING LAND FUNCTION TRANSFER

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ABSTRACT

Background. Governor Ground land refers to land without ownership rights, which can be interpreted as abandoned land. Abandoned land is land controlled by the state where the legal relationship between the landowner and the land has been severed, as regulated in Article 27(a) of the Basic Agrarian Law (UUPA). The government's authority over such land is specified in Article 2, paragraph (2) of the UUPA. This study aims to provide answers regarding the rights over Governor Ground land.

Research Methods. The research employs normative legal methods, using a conceptual, case, and legislative approach. Legal materials were collected through literature review and analysis of articles and opinions from previous researchers.

Findings. Governor Ground land can be owned or utilized if specific requirements are met and permission is obtained from the government, particularly the National Land Agency (BPN). Governor Ground is land that has no ownership rights and can be considered as abandoned land. The community can use it for the common interest in accordance with the procedures in the Law.

Conclusion. This land can have rights such as HGU, HGB, and Right to Use. If these rights are misused, they can be subject to criminal penalties with a sentence of three months or a fine of up to IDR 10,000. If the land is not maintained, the government can take back the land and demolish the buildings on it.

Keywords: Abandoned Land, Governor Ground, Land Misuse.

BACKGROUND

Indonesia is an archipelago located between the Indian Ocean and the Pacific Ocean and the Asian and Australian Continents. Indonesia is the 7th largest country in the world with around 17,504 islands and a total area, both land and sea, of around 8.3 million km². The vastness of the country makes Indonesia have a lot of land which is usually called land or earth. Land in Indonesia has laws that regulate it, while the law that is the main source influencing the land is customary law. National Land Development is based on the concept of customary law which contains the principle of religious Communalism which allows for the concept of individual land ownership with personal land rights while also containing elements of togetherness. Land plays a very important role in the lives of the Indonesian people so it is regulated in the Constitution of the State of Indonesia. For human life, because it has an important role and will always be related. For this reason, it can be described that the relationship between humans and land is very close and in Law Number 1 of 1960 concerning the Principles of Agrarian Principles, land is defined as the surface of the earth. In relation to the natural wealth in the earth and water, there is a need for an understanding and institution of the Exclusive Economic Zone, which includes land space, sea space, and air space, including space within the earth as a single territorial unit, where humans and living creatures maintain their survival[1].

In UUPA the scope of Agrarian includes, earth, water, space and the natural resources contained therein. Land (earth) is a small part of agrarian, society and the state can control land while in the implementation of the right to control the state over land can be authorized or delegated to the regional government and customary law communities with national interests according to the provisions of government regulations. The state is a legitimate subject that has a position to assist various commitments and freedoms of the population. State Property Rights or what can be called (HMN) is the power to control Agrarian Assets obtained by the state through the demonstration of public freedom from the state's privileges, because the state has the right to control land. Based on this power, the state issues an approach, takes action, supervises and manages control, ownership, use and use of regular assets. The interest in land for the local area is related to the freedom claimed by local individuals in the territory of Indonesia[2].

Governor Ground land is land that has no ownership rights or can be interpreted as abandoned land. Abandoned land makes the land under state control and the legal relationship between the owner of the rights and the land is broken. Regarding Governor Ground land or abandoned land, it is regulated in Government Regulation Number 36 of 1998 concerning the Order and Utilization of Abandoned Land which was later updated to Government Regulation Number 11 of 2010 concerning the Order and Utilization of Abandoned Land. In Government Regulation Number 11 of 2010 Article 2 states that "The object of the order of abandoned land includes land that has been granted rights by the State in the form of Ownership Rights, Cultivation Rights, Building Use Rights, Usage Rights, and Management Rights or the basis for control over land that is not cultivated, not used, or not utilized in accordance with its condition or the nature and purpose of granting rights or the basis for its control". The mechanism for the order of Governor Ground land or abandoned land is carried out through the stages of evaluating the area of abandoned land , warnings area land abandoned and determination area land abandoned . Abandoned land must also be used For interest public through reform agrarian , which is where land displaced can arranged return mastery as well as use the land so that achieved certainty clear law[3]. Based on power this , the country issued approach , make action , supervise and manage control , ownership , use and exploitation regular assets . Interest on land for local area That related with freedom claimed by individuals local in the territory of Indonesia. Certainty law right on land can obtained with method register matter owned by on the land at the National Land Agency office or which can be the call (BPN) which then will published certificate right on land . Certificate inside ownership land is very important especially inside matter settlement case in form criminal and civil , because proof letter is very important evidence in to obtain truth , certainty and justice in a dispute in ownership land[4].

Mandatory land have right property and rights owned by the can owned after do registration land as form certainty law . Meanwhile those who have right owned by only Indonesian citizens and legal entities appointed by the regulations government. Granting and cancellation Ownership Rights are carried out by the Minister of Agrarian Affairs and National Land Affairs. In regulation Constitution in the field land set method acquisition right on land. Transfer function land is the change One use land to use others, so that problems that arise Lots related with land use policy land. Abandoned land can be transferred function become A utilization for government, but Lots land abandoned used in a way free by society with to establish the building above it. For prevent expansion usage land by the community without permission the entrepreneur and for to finish question usage land that has been there is , take it out Constitution Emergency Number 8 of 1954 concerning Completion Question Use of Plantation Land by the People. Misuse land by the community listed in Article 18 UUPA, because can considered detrimental to the country. "To interest general, including interest nation and state and interest together from people, rights on land can revoked, with give change reasonable and justifiable loss the way it is arranged with law". All problem challenge land explained in a way Details in law agrarian. Agrarian Law Alone is a group from various field knowledge the laws that each regulate about rights mastery on source Power natural certain.

Related to the implementation of Governor Ground land in previous research conducted with the title: Legal Review of Abandoned Land Objects for Plantation Cultivation Rights (HGU) in Gowa Regency[5]. The main problem raised by the author is that the determination of abandoned land is carried out by means of an inventory of Cultivation Rights land that is

identified as abandoned and the community using Building Rights must have permission from the Building Rights holder. And also, with the title: Arrangement of Abandoned Land in the Framework of Land Management and Utilization[2]. The main problem raised by the author is regarding land order carried out without an inventory of land rights or the basis for control over land, identification and research of land, warnings to rights holders and determination of abandoned land.

In previous study no explained land displaced or Governor Ground land can utilized with accompanied permission from government local (custom) or with government authorities. Research This aims for readers know about conversion land Governor Ground land can be obtained utilized For interest general or individual. Neglect land in rural and urban areas is action that is not wise so that make the disappearance opportunity For realize potential land economy and not fair , and also constitutes violation to obligations that must be fulfilled run by the Holders Right or the party who obtains base mastery on land . Therefore that , neglect land must prevented and disciplined For reduce or delete impact negative , so that the government can also apply fair law for welfare public on public others who abuse Governor Ground land.

RESEARCH METHOD

This research is a type of normative legal research, because it is related to legal materials studied from literature or document studies. The approach to research problems is carried out using the statute approach, conceptual approach and case approach. The conceptual approach is used because to discuss research problems it is necessary to cite the opinions of legal scholars as a theoretical basis for studying existing legal issues. The legal materials used in this writing are primary legal materials, the 1945 Constitution, UUPA, and other relevant laws and regulations, as well as court decisions. Secondary legal materials, in the form of literature books, scientific articles in journals accessed from the internet. Non-legal materials such as the Indonesian dictionary are used to find meanings that are not found in regulations legislation. Materials law obtained through study literature Then processed and analyzed with method cite and examine articles regulation existing legislation its relevance with problem. Then theories or opinion of scholars (experts) law which is loaded in book text quoted and articles made into runway theory use answer issue relevant laws with discussion

FINDINGS

Government Authority in Regulating Control of Governor Ground Land Rights and Land Rights Holders of Governor Ground

The government is a representative of the people who has the task of regulating the welfare of the people and the state. In its implementation, the government has its own duties and functions according to its profession. The government also has the authority to regulate the state system in Indonesia, by accommodating all aspirations from the community or aspirations from members of the people's representatives which are then made into regulations[6,7]. The authority in Article 2 Paragraph (3) of Law No. 5 of 1960 concerning Basic Agrarian Principles states that the authority derived from the right to control from the State is used to achieve the greatest possible prosperity of the people, in the sense of happiness, welfare and freedom in society and the legal State of Indonesia which is Independent, sovereign, just and prosperous. According to Article 2 paragraph (2) of the UUPA, it is stated that the right to control from the state gives the authority to:

- a. Regulating and organizing the allocation, use of supplies, and maintenance of the earth, water and space
- b. Determining and regulating legal relations between people and the earth, water and space
- c. Determines and regulates legal relationships between people and legal actions concerning earth, water and space.

Authority in public law is the authority to cause legal consequences that are public law in nature, such as issuing regulations, making decisions and determining a plan with legal consequences[8]. While the nature of authority according to civil law in its implementation is based on and bound by the same rules and principles as apply to individuals. Authority in Article 2 Paragraph (3) of Law No. 5 of 1960 concerning Basic Agrarian Principles states that, authority that is based on the right to control from the State is used to achieve the greatest possible prosperity of the people, in the sense of happiness, welfare and freedom in society and the legal State of Indonesia which is Independent, sovereign, just and prosperous[9]. In a unitary state, the responsibility for carrying out government tasks basically remains in the hands of the Central Government, but because Indonesia adheres to a system of government and adheres to the principle of a decentralized unitary state, there are certain tasks that must be taken care of by itself, thus giving rise to a relationship of authority.

The scope according to UUPA is the surface of the earth, and the body of the earth beneath it and that which is in the water[10]. The surface of the earth including the part of the earth is called land. The land referred to in this discussion does not regulate land in all its aspects, but only regulates one of the aspects, namely land in the legal sense which is called the right to control land. The definition of control according to KBBI is a process, or way, act of controlling or authorizing. In UUPA Article 1 Paragraph (1) it explains that "The entire territory of Indonesia is the unity of the homeland of all Indonesian people, who are united as the Indonesian nation". It can be interpreted that the entire territory (earth) belongs to the state, the rest if the people do not have ownership rights. The state is the holder of full rights to Governor Ground land based on the understanding above, that Governor Ground land is land that has never been used or land that has been abandoned by its owner. According to Article 27 UUPA[11], ownership rights can be revoked if:

- a. The land falls to the state if it is due to the revocation of rights based on Article 18 of the UUPA, due to voluntary surrender by the owner, due to abandonment, and due to the provisions of Article 21 Paragraph (3) and Article 26 Paragraph (2) of the UUPA.
- b. The land was destroyed

Meanwhile, the Governour Ground land in its determination is stated as follows:

- a. If the Governour Ground land is in the form of land rights or land management rights and is the entire area, then the land rights or management rights will be revoked along with the severance of legal relations and confirmation as state land, former Governour Ground land which is directly controlled by the state.
- b. If the Governour Ground land is in the form of land rights or management land and is the entire expanse, then the land rights or management rights in the abandoned part will be removed along with the termination of the legal relationship between the rights holder or management and confirmation as state land, former Governour Ground land which is directly controlled by the state for the abandoned part of the land and an order to carry out a broad revision of the land rights or management rights.
- c. If the Governour Ground land is land with the basis of control over the land, then the legal relationship with the holder of the basis of control over the land will be terminated and the land will be confirmed as state land, the former Governour Ground land which is controlled directly by the state.

It can be concluded that land abandoned by its owner, land voluntarily given by its owner and abandoned land will be returned to the state. The abandoned land referred to is if it is intentionally not used according to its condition or the nature and purpose of its rights. Governour Ground has rights that can be used as regulated in UUPA.

DISCUSSIONS

Government Legal Action Against Misuse of Governour Ground

Land abuse can be followed up because it is included in harming the state for the granting of rights that should be utilized and maintained properly. Abuse is an activity of using rights

that is against the law[12]. The absence of an attitude of responsibility for the misuse of Governour Ground land can be further prosecuted through legal efforts. According to UUPA, the legal consequences if there is a neglect of land rights are the elimination of the rights to the land concerned and the termination of legal relations[13]. Regulation of the Minister of Agrarian Affairs Number 9 of 1965 regulates the conversion of management rights to state land that can be transferred as follows:

- d. The right to control state land granted to departments and directorates and autonomous regions which are only used for the interests of the agency itself will be converted into usage rights.
- e. If state land that is given to departments, directorates and regions is used for the interests of the agency itself or is intended to be given to a third party, then the ownership rights are converted into management rights.

Misuse of Governour Ground land often occurs in rural areas, because in the village there is still land that is not owned by individuals or companies[14,15]. According to PP Number 43 of 2014 concerning the Implementing Regulations of Law Number 6 of 2014 concerning Villages, the village government itself consists of the village head, village apparatus and the Village Consultative Body (BPD). In the history of the growth of village communities, the management of land rights (ulayat) can be used for the public interest by the community, for example for burials and for joint use. The form of the land in question can be dry land, rice fields, or forests or in the form of waters[16]. Village treasury land can only be used during the period of the government in question, the rest must be returned as follows:

- a. The land was given to residents who served as village officials or local village officials.
- b. The purpose of giving the land was as a reward for his services to support himself and his family.
- c. The land is village land or customary land. The granting of the land is only temporary as long as the party concerned is still serving as a village official.

Efforts that can be made by the government regarding the misuse of Governour Ground land are through supervision, regulation, administrative sanctions, mediation or alternative dispute resolution and criminal and civil law processes[17]. Rights in plantations are included in spatial planning according to Article 21 of the Plantation Law, according to the legal considerations of the Court, stating that everyone is prohibited from taking actions that result in damage to plantations or other assets, use of plantation land without permission or other actions that disrupt plantation businesses[18,19]. For people who use Governour Ground land as a Plantation, they must meet the requirements set by the government. The criminal threat if violating Article 21 of the Plantation Law is a maximum imprisonment of 5 (five) years and a maximum fine of Rp5,000,000,000, - (five billion rupiah) and due to negligence, they are threatened with a maximum imprisonment of 2 (two) years 6 (months) and a maximum fine of Rp2,500,000,000.00- (two billion five hundred million rupiah)[20].

According to UUPA, criminal provisions are stated in Article 52 paragraph (1) which states that, whoever intentionally violates the provisions in Article 15, which is meant in Article 15 is about maintaining land, increasing soil fertility, preventing land damage, if the Article is violated then it is punishable by a minimum sentence of 3 months or a maximum fine of Rp. 10,000. For HGU holders if it is not extended or renewed, the HGU holder is obliged to dismantle the building or objects on it and hand over the former HGU land to the state. This applies to holders of HGU, HGB or Rights of Use, if the rights holder does not use his land in accordance with the intended use of the land, so that the HGU, HGB or Rights of Use cannot be extended or renewed, then the income that has been paid in advance will belong to the state.

CONCLUSION

Governor Ground land is land that does not have ownership rights or can be interpreted as abandoned land or abandoned land. The community can use the land for the common good and through procedures that have been regulated in the Law. According to Article 33 Paragraph

(3) of the 1945 Constitution, Governour Ground land can have rights, namely consisting of HGU, HGB and Use Rights.

If people who have the right to use, HGU and HGB misuse the Governor Ground land, they can be punished according to the UUPA, the criminal provisions are stated in Article 52 paragraph (1). If this article is violated, they will be punished with a minimum sentence of 3 months or a maximum fine of IDR. 10,000,-. Meanwhile, according to PP Number 40 of 2014 concerning Villages, if the land is misused or not maintained or abandoned, the land will be taken back by the village or government and if the land has buildings or businesses on it, it must be demolished by the government with the burden of payment by the owner of the Rights.

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REFERENCES

- [1] Santoso, U. AGRARIAN LAW A COMPREHENSIVE STUDY (U. Santoso (ed.)). KENCANA. 2012. www.prenadamedia.com
- [2] Ramadhan, AR, Muntaqo, F., & RS, IR. Arrangement of Abandoned Land in the Framework of Land Management and Utilization. *Scientific Journal of Notary Law*. 2022.
- [3] Sinjar, MA, Yuli, Y., & Lewoleba, KK. Utilization of Abandoned Land and Its Legal Problems. *Proceedings of the National Seminar on Community Service*, 2023. 4 (1), NPPM2023SH-116
- [4] Haris, OK, Hidayat, S., & Sensu, L. Criminal Acts of Abuse of Authority in Issuing Land Title Certificates on Brimob Polda Sultra Land. *Halu Oleo Legal Research*. 2023. 5 (1), 250–262.
<http://journal.uho.ac.id/index.php/holresch/article/view/245%0Ahttps://journal.uho.ac.id/index.php/holresch/article/download/245/117>
- [5] Abdiansyah, R. Legal Review of Abandoned Land Objects for Plantation Cultivation Rights (HGU) in Gowa Regency. 2015 (131). <https://core.ac.uk/download/pdf/89562824.pdf>
- [6] Afiyah Siti & Hadi Abdul. CONSTITUTIONAL LAW (A. Fattah (ed.)). Academia. 2024. Publication. www.academiapublication.com
- [7] A l- Fatih , S. Testing Model Regulation One-Stop Legislation Through Court Constitution . *Legality: Journal Legal Science* , 2017. 25 (2), 247-260 .
- [8] Murni, CS, & Sulaiman, S. Land Ownership Certificate is Proof of Land Ownership Rights. *Lex Librum : Journal of Legal Studies*.2022.
- [9] Putu Diva Sukmawati. Agrarian Law in Land Dispute Resolution in Indonesia. *Journal of Sui Generis Law*.2022.
- [10] Ruswandi. The Impact of Agricultural Land Conversion on Changes in Farmer Welfare and Regional Development. *Journal of Agribusiness and Regional Development*.2005.
- [11] Santoso, U. Regional Government Authority Regarding Land Control Rights. *Journal of Legal Dynamics*.2012. <https://doi.org/10.20884/1.jdh.2012.12.1.115>
- [12] Agustin, YN. Uncertainty of Plantation Criminal Law, Constitutional Court Grants Petition of Four Farmers . *Mkri.Id* .2024. <https://www.mkri.id/index.php?page=web.Berita&id=5883&menu=2>
- [13] Arisaputra, MI. Agrarian Reform in Indonesia (Sari Maya (ed.)). Sinar Grafika Offset.2021. www.bumiaksara.co.id
- [14] Directorate of PPTR. Performance Report of the Directorate of Land Control, Ownership,

and Use. 2021. [https://ditjenpptr.atrbpn.go.id/pengendalian/dokumentasi/dokumen_buku/LKJ Dit. Land Control, Ownership and Use 2021.pdf](https://ditjenpptr.atrbpn.go.id/pengendalian/dokumentasi/dokumen_buku/LKJ%20Dit.%20Land%20Control,%20Ownership%20and%20Use%202021.pdf)

- [15] Kusuma, Putri Tiah Hadi. Complete! The Boundaries of the Territory of the State of Indonesia. Detikedu. 2023. <https://www.detik.com/edu/detikpedia/d-6504804/lengkap-batas-batas-wilayah-negara-indonesia>
- [16] Marfungah, L., Redi, A., Saly, JN, & Sudiro, A. Internalization of Pancasila Values Towards the Orderliness of Abandoned Areas and Land. *Pancasila: Jurnal Keindonesiaan*.2022. <https://doi.org/10.52738/pjk.v2i1.56>
- [17] Munawaroh, N. Does Abandoned Land Become State Property? .2024. [https://Hukum Online.Com](https://HukumOnline.Com). <https://www.hukumonline.com/klinik/a/apakah-tanah-terlantar-menjadi-milik-negara-lt60543ed4e6b17/>
- [18] Munir S, Afiyah S, Munir A. Forms of legal protection due to the conversion of agricultural land into residential and industrial land. *EQUALEGUM International Law Journal*. 2023 Jan 31:14-31.
- [19] Seno A, Wijaya A. STATUS OF MULTIPLE OWNERSHIP LAND CERTIFICATES ACCORDING TO GOVERNMENT REGULATION OF LAND REGISTRATION. *EQUALEGUM International Law Journal*. 2023 Dec 29:191-5.
- [20] Humantoro, LD. Control of Village Treasury Land (Tkd) by the Wonosobo Regency Government Which is Not in Accordance with its Designation Based on Law Number 41 of 2009 Concerning the Protection of Sustainable Food Agricultural Land. 2022. In Universitas Islam Indonesia.



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