

DOI: <https://doi.org/10.31933/unesrev.v5i4>

Accepted: 01/07/2023, Fixed: 16/07/2023, Published: 17/07/2023

THIRD PARTY LEGAL PROTECTION AS A GOOD-INTENTION BUYER OF LAND WHICH IS INDICATED ABANDONED

Agus Haryono Saputro¹, Fokky Fuad², Suartini³

¹ Al-Azhar University, Indonesia.

Email: agusbemo@gmail.com

² Al-Azhar University, Indonesia.

Email: fokkyf@gmail.com

³ Al-Azhar University, Indonesia.

Email: suartini@uai.ac.id

Corresponding Author: Agus Haryono Saputro

ABSTRACT

The problem studied in this final assignment is legal protection for third parties as buyers with good intentions for indicated abandoned land, so that it is known how the procedures for possession of abandoned indicated land are known, what are the legal consequences for land indicated as abandoned if it is sold by the right holder to a third party, and what is the legal protection for third parties as a willing buyer either on land indicated as abandoned. Based on this research, it was found that the government's authority regarding state rights in carrying out control of abandoned land is the duty and function of the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. Land becomes an object of abandoned land tenure if it is deliberately not cultivated, used and utilized in accordance with the purpose of granting the rights obtained. The process of controlling abandoned land is carried out in several stages, including: evaluation of abandoned land, notification, warning of abandoned land, proposal for designation of abandoned land if after the expiration of the third warning period the land remains abandoned, and determination of abandoned land which includes abolition of land rights, termination of law between land rights holders and their land, and affirmation that the land is directly controlled by the state. The legal consequences for third parties who acquire land through buying and selling plots of land that are indicated as abandoned are because there is no prohibition in the implementation of land registration, where the prohibition on legal action only applies to objects that have been proposed to be designated as abandoned land.

Keywords: Legal Protection, Abandoned Land, Third Party, Goodwill.

INTRODUCTION

Land has become a basic need for mankind, such as a place to live, a place of business and other economic activities as well as an important life resource that influences human life. Soil media that does not increase while humans increase so that its existence is most important in the survival of Indonesia as *welfare statistics*. (Budiardjo, 2005) Soil is in the sense of the surface/topmost layer. Indonesia is a country based on law as stated in the 1945 Constitution Article 1 paragraph (3) that "Indonesia is a country based on law", automatically legal protection becomes an essential element of the consequences of a state based on law. Legal protection according to Satjipto Raharjo¹ is the protection of human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.

The law is an order of laws and regulations that binds both the judicial process and the consideration of judges, as well as religious norms and rules as well as rules issued by the legislative government. (Budiardjo, 2005) As stipulated The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) is further regulated by Law Number 5 of 1960 Concerning Basic Agrarian Regulations (UUPA). The UUPA regulates the hierarchy of land tenure rights in the national land law.² Land law that is widely known by the public relates to the meaning of land registration and land registration.

The basic rule for the distribution of land for the community as stated in Article 28A of the 1945 Constitution that "Every person has the right to live and has the right to defend his life and life," is the basis for guaranteeing the right to life of the Indonesian people but as a basic rule it is necessary to establish a law to implement the basic rules (Harsono, 2005).

Land registration has a purpose, namely the existence of legal certainty from the ownership of land rights, as stipulated in Government Regulation Number 24 of 1997 concerning Land Registration, to be precise, among others, that the purpose of land registration is as stipulated in Article 3 where the purpose of land registration includes:

1. To provide legal certainty and legal protection to rights holders over a parcel of land, apartment units and other registered rights so that they can easily prove themselves as the holder of the rights in question.
2. To provide information to interested parties, including the government, so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units.
3. For the implementation of orderly land administration.

Certificates as proof of ownership of land rights owned by individuals are proof of land ownership issued by the government upon applications for land registration for those who control the land. The right to land gives the authority to use certain plots of land in order to fulfill needs. In essence, the use of land is limited to two objectives. The first is to fulfill the purpose of being cultivated, for example for agriculture, plantations, fisheries, maybe also animal

¹ Satjipto Raharjo, *Maintenance of Justice in a Changing Society*. 1993, Journal of Legal Issues.

² Boedi Harsono, *On. city*, hlm.24

husbandry. The second is that land can be used to build something for various purposes. named Right of Ownership, Right of Cultivation, Right of Building, and Right of Use(Harsono, 2005).

Land rights are rights as stated in Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, namely primary (originair) land rights are land rights that are directly granted by the state to subject rights such as property rights, usufructuary rights. Business, Building use rights, secondary land rights. Secondary land rights are rights to use land belonging to other rights, such as building use rights, usufructuary rights, profit-sharing business rights, building rights(Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, 21 C.E.).

The government is obliged to provide legal certainty regarding registered land rights and on the other hand the government is also obliged to carry out the order and utilization of abandoned land. The obligation to control abandoned land is based on the importance of land which is one of the basic assets in development to improve people's welfare. Therefore land must be cultivated, utilized and used for the greatest prosperity of the people. The occurrence of neglected land has widened the gap in social, economic and people's welfare and has become one of the main sources of environmental degradation. Because of these things, it is necessary to regulate the management of abandoned land by the state. One of the initial steps to control indications of abandoned land is the activity of inventorying indicated abandoned land which is the responsibility of the Directorate for Controlling Tenure, Ownership and Use of Land at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, as well as at the Regional Offices of the Provincial National Land Agency, the task and this responsibility is borne by the Dispute Control and Handling Sector, while at the Regency/City Land Office it is located in the Dispute Control and Handling Section which is a unit of the vertical agencies of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.

As explained in CHAPTER I, General Provisions of Government Regulation Number 20 of 2021 concerning Order Management of Abandoned Areas and Land, the definition of abandoned land is private land, land with Management Rights, and land acquired on the basis of Land Tenure, which is intentionally left uncultivated, not used, not utilized, and/or not maintained. So then, are the government's efforts to control land that is indicated to be abandoned, which ends with the designation of abandoned land, then collides with the issue of legal protection which is the obligation of the state to make it happen so that every citizen gets legal protection as stated in the 1945 Constitution in Article 1 paragraph (3) that "Indonesia is a constitutional state. Means that Indonesia is a state based on law "so that it becomes a very essential factor for the implementation of these activities with the consequence that Indonesia is a state of law.

RESEARACH METHOD

Study *empirical juridical* will be applied in this study, research method *sempirical juridical* in simple terms is interpreted as research that examines and analyzes the legal behavior of individuals or society with the law using primary data sources obtained directly, Wignjosuebrotto termed non-doctrinal legal research because "the studies are *later* (Sugiyono, 2019).

This means that ideas and theories come later, while facts and data will appear first. His thinking strategy is inductive. An idea that is only a hypothesis must be supported by data evidence so that it is raised as a thesis. This type of empirical research in this research is about the effectiveness of law where legal research is *sociological* and *empirical* which includes, research on legal identification (unwritten) and research on *effectiveness* law (Lexy J. Moleong, 2018).

RESULT AND DISCUSSION

The parties as legal subjects who carry out the sale and purchase of abandoned land are indicated as a legal entity (*the right people*) as a legal subject. Legal subjects are supporters of rights and obligations, therefore legal entities can enter into agreements for sale and purchase, leasing, exchange and all kinds of actions in the field of assets. Legal entities are distinguished from public legal entities and private legal entities (Soekamto, 1983).

The first legal subject who has land rights that are indicated as abandoned, whose stages have not yet been completed, up to the stage of proposing the designation of abandoned land, then selling the land that is indicated as abandoned, no longer has the obligation to use and utilize the rights to the land that has been sold. Land objects indicated as abandoned can be sold and even rights registered with a third party as the new owner occur because when the transfer was taking place the old legal rules regarding abandoned land did not have a blocking device/blocking record in its implementation. Prohibition of new legal actions is enforced after the object is proposed to be designated as abandoned land.

The buyer in good faith as a third party who has obtained land rights based on the transfer from the previous right holder as explained in Article 531 of the Civil Code: “Own in good faith occurs when the holder obtains the item by obtaining ownership rights without knowing any blemishes in it.” Based on this explanation, the process of transferring rights has been carried out in accordance with the provisions of the applicable laws and regulations, both in the process of buying and selling with a deed drawn up by the PPAT or in connection with the registration of the transfer of rights over the land to the Land Office.

Warning III is included in the final stage of controlling abandoned land, but in fact the prohibition on legal action is ordered during the stage of proposing abandoned land, which does not include information in the land registration information service at the land office which informs prospective land buyers that the land is in the stage of control of abandoned land. In terms of the transfer of land rights is a side of the form of control and ownership related to the relationship with the subject, while the control of abandoned land is a form of evaluation from the side of the use and utilization of land in relation to the object.

The crucial aspect is that if there is a lawsuit for the determination of abandoned land and there are many cases of lawsuits in the procedural aspect, the steps that are not complied with result in the cancellation and revocation of the decision for the determination of abandoned land, if the procedure contains a juridical defect, the court will not consider it again in substance and it will be considered a decision for the determination of abandoned land. violates the general principles of good government (Syahrani, 2013).

Explaining the problem of land buyers with good intentions, we will first discuss the term buyer, closely related to the term buying and selling, in which there are two parties acting respectively, namely the party as the seller and the party as the buyer. We can assume that the buyer is the party who obtains goods or objects in exchange for the payment he made.

In practice in the field, buying and selling, especially in this case buying and selling of land parcels, must be accompanied by cash and clear principles as stipulated in the provisions of laws and regulations. Based on the provisions of Article 1457 of the Civil Code, buying and selling is an agreement, in which one party binds himself to surrender an object, and the other party to pay the price that has been promised.

The implementation of the sale and purchase of a plot of land is carried out by making an authentic deed in the form of a sale and purchase deed between the parties which is legalized by the authorized official, in this case the Land Deed Making Officer, based on Government Regulation No. 37 of 1998 concerning Regulations for the Position of Officials for Making Land Deeds (PPAT) are referred to as public officials who are authorized to make authentic deeds regarding certain legal actions related to land rights or ownership rights to flat units.

A sale and purchase deed made by the Land Deed Making Officer (PPAT) or the Temporary Deed Making Officer (PPATS) on land parcels to which land rights have been attached has a function, namely as evidence that certain legal actions have been carried out regarding land rights or property rights. of flat units and functions, namely as a basis for registration of changes in land registration data to the Regency/Municipal Land Office.

In the process of buying and selling transactions, both parties who have bound themselves must have good faith so that later they will not harm each other. This is as explained in Article 1388 of the Civil Code paragraph 3:., namely: "An agreement must be carried out in good faith". A buyer with good intentions is a buyer who does not know and cannot be presumed to have known of defects in the process of transferring rights to the land he has purchased;

A good faith buyer is interpreted as an honest buyer, not knowing any defects in the goods purchased (Subekti, 2015). The definition of a buyer with good intentions according to R. Subekti formulates that a buyer with good intentions is a buyer who does not know at all that he is dealing with a person who is not actually the owner, so he is seen as the owner and whoever obtains an item from him is protected by law (Subekti, 2016). Other expert opinions regarding the definition of a good faith buyer were also put forward by Rachmadi Usman. He then gave a definition of a Good Faith Buyer by linking it to Article 531 of the Civil Code concerning *owner* in good faith (Subekti, 2014).

Own is '*in good faith*' (in good faith), if the *bezogter* obtains a material by way of obtaining property rights, while he does not know the defects contained therein. It means, *owner* the honest one is *owner* who thinks he is the real owner of the property he controls or occupies (Subekti, 2014).

And vice versa, *own* That '*in bad faith*' (bad faith), whenever *owner* knows that he is not the real owner of the property that he controls or occupies, but he still controls or occupies it. *Owner* dishonest or in bad faith *owner* who knows that he is not the true owner of the object under his

control, but that the object belongs to someone else (Subekti, 2015). Good faith in relation to land objects is indicated to be neglected in relation to land tenure rights which contain authority, obligations and prohibitions for the right holders to do something about the land they are entitled to, so something that may be obligatory and prohibited to do is the content of tenure rights which is the starting point for differentiating between tenure rights over land regulated in land law.

The fact that land that is suspected of being abandoned cannot be separated from the consequences of deviations from land use according to the RTRW on current land use and data on land that has been converted is not in accordance with its designation based on the RTRW with efforts to control it by the government which is important to study in efforts to reform in the agrarian sector with the aim of legal consequences will provide guarantees for each land use is an important thing to do first. The concept of land which is a derelict object itself has exceptions, namely ownership rights and building use rights in the name of individuals which are accidentally not used in accordance with the circumstances or the nature and purpose of granting the rights because they do not have the capacity in terms of the economy and the land is controlled by the government either directly or indirectly and has the status or not the status of state/regional property which is not intentional due to the limitations of the state/regional budget (Subekti, 2014).

Land has a social function explained in Article 6 of the UUPA, namely "All land rights have a social function". The social function as in Article 6 of the UUPA means that people with their property rights cannot act arbitrarily if the public interest so desires, then the land can be revoked in the public interest and in the Basic Agrarian Law, especially in Article 18 which states that "For the public interest, including the interests of the nation and the state as well as the common interests of the people, land rights can be revoked by providing appropriate compensation and in a manner regulated by law".

CONCLUSION

The process of controlling land that is indicated to be abandoned is the authority of the government, namely the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency as the duties and functions in the field of controlling and controlling land and space which is a mandate from Government Regulation Number 20 of 2021 concerning Controlling Abandoned Areas and Land and Regulations Minister of Agrarian Space and Land Number 20 of 2021 concerning Procedures for Controlling and Utilizing Abandoned Areas and Land. Whereas land rights or land obtained on the basis of the Basic Tenure over Land become the object of controlling Abandoned Land if it is deliberately not cultivated, not used, not utilized, not maintained as early as 2 (two) years from the issuance of land rights or the Basis of Tenure Over Land. Controlling abandoned land is carried out in stages starting from the Land Office as the executor of the inventory of abandoned land indications, then the Regional Office of the Provincial National Land Agency as the executor of the stages of controlling abandoned land starting from the evaluation stage of abandoned land which aims to ensure that land rights holders seek, use, exploit, and/or maintain the land. The evaluation of abandoned land is carried

out by a committee formed and determined by the Head of the Regional Office of the Provincial National Land Agency. Evaluation of abandoned land is carried out within a period of 180 (one hundred and eighty) calendar days. The next stage is the notification period conveying the results of the evaluation of abandoned land to the holders of land rights to exploit, use, utilize and/or maintain the land within a maximum period of 180 (one hundred and eighty) calendar days. Next is the warning stage for abandoned lands, which amounts to 3 (three) times and each warning has a period of 90 (ninety) calendar days, 45 (forty five) calendar days and 30 (thirty) calendar days. The last stage is the proposal for the designation of abandoned land by the Head of the Regional Office of the Provincial National Land Agency to the Minister. Then based on the proposed determination of abandoned land, the Minister determines abandoned land.

The legal consequences for land that is indicated as abandoned is sold by the right holder to a third party in this study for land that is indicated as abandoned which has not yet reached the stage of proposing the determination of abandoned land is that there is no prohibition on the implementation of the sale and purchase of the land parcels. As the legal provisions of Article 1457 of the Civil Code that buying and selling is an agreement in which one party binds himself to surrender an object and the other party pays the promised price, but the seller can be held accountable by a good-intentioned buyer, Land Deed Making Officer (PPAT) here serves to provide evidence that a transitional legal act has been held which will be used as the basis for registering changes to land registration data to the District/City Land Office. Buying and selling must be in good faith so that later it will not harm each other as Article 1388 of the Civil Code paragraph (3) states that an agreement must be carried out in good faith "and a buyer in good faith is a buyer who does not know and cannot be deemed to have known any defects In the process of transferring rights to the land purchased, good faith is interpreted as an honest buyer, not knowing the defects of the goods purchased. Regarding objects of land rights, it is not known that there is information on recording land status that indicates neglect, so that when the certificate checking process is carried out for registration of the transfer of rights in the framework of maintaining land registration administration data it continues and can be carried out, because in regulations related to controlling abandoned land, the prohibition of acts the new law was enacted when the object was proposed by the Head of the Provincial National Land Agency Regional Office to the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. The third party as the new land owner, has an obligation in law as a result of the legal relationship arising from the sale and purchase, namely if he does not exploit, use and utilize his land in accordance with the decree granting rights to his land, then based on the provisions of the transition article of Government Regulation of the Republic of Indonesia Number 20 2021 concerning Controlling Abandoned Areas and Lands jo. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 20 of 2021 concerning Procedures for Ordering and Utilization of Abandoned Areas and Land, can be followed up again starting from the initial stage based on the Government Regulation.

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