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Legal consequences of classifying abandoned land on business use rights as mortgageable assets

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Abstract
The Right to Cultivate (HGU) is regulated in Articles 28-34 of Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA). HGU can be encumbered with a Mortgage as mentioned in Article 4 paragraph (1) of Law Number 4 of 1996 concerning Mortgages on Land and Objects Related to Land. In reality, HGU land that is not optimally managed by its owner is designated as abandoned land. Regulations related to the designation of abandoned land are governed by Government Regulation No. 20 of 2021 concerning the Designation of Abandoned Land and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 20 of 2021 concerning the Procedures for the Regulation and Utilization of Abandoned Areas and Land as official operational guidelines. This research aims to analyze and explain the legal implications of the designation of abandoned land on the right to cultivate as an object of collateral. The research method used is normative juridical, with a case approach, statute approach, and conceptual approach. The data sources for this research were obtained thru a literature review of secondary data, which consists of primary, secondary, and tertiary legal materials. The research data were analyzed qualitatively. The research results show that the mechanism for the designation of abandoned land for Business Use Rights burdened with a Mortgage is normatively based on Article 33 paragraph (3) of the 1945 Constitution and Government Regulation No. 20 of 2021 concerning the Designation of Abandoned Land and the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 20 of 2021 concerning Procedures for the Orderly Management and Utilization of Abandoned Areas and Land. The designation of abandoned land for HGU objects burdened with a mortgage results in several legal consequences, namely: the cancellation of HGU and the transfer of land to state-controlled land, and the termination of the mortgage by law.

Keywords: Legal consequences, abandoned land, rights, mortgageable assets

Introduction

Regulations related to the determination of abandoned land have been nationally regulated thru Government Regulation No. 20 of 2021 concerning the Determination of Abandoned Land and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 20 of 2021 concerning Procedures for the Orderly Management and Utilization of Abandoned Areas and Land as official operational guidelines. This regulation aims to provide legal certainty and a formal mechanism for the determination of abandoned land status. However, in practice, this determination process still faces various challenges, such as incomplete data, suboptimal data verification mechanisms, and a lack of legal protection for land rights holders and mortgage holders.

Preliminary research shows that there are cases in the field that indicate a discrepancy between formal legal norms and reality on the ground, academically known as the gap between *das Sollen* (norms) and *das Sein* (reality).[1] Several studies, including those by Harris, mention that the main factors causing abandoned land are legal uncertainty regarding land status, lack of economic incentives for land management, and unresolved social conflicts.[2] In the context of Aceh, prolonged conflict factors, especially those related to the principle of justice in Islamic law, also influence the community's perception of abandoned land and the mechanism for determining its status.

Estimates from the literature also mention that the phenomenon of abandoned land will greatly affect the effectiveness of asset management and the sustainability of safe and fair economic transactions. Abandoned land, if not managed and handled with the appropriate legal framework, has the potential to become a new source of conflict, especially in the context of encumbering land rights with mortgage rights. This is because the uncertainty of land status, particularly for abandoned land, can reduce financial institutions' trust in the collateral object and the execution of mortgage rights in the event of default or foreclosure.[3]

This study needs to be conducted in-depth in a normative juridical manner regarding the process of determining abandoned land according to the provisions of Government Regulation No. 20 of 2021 and ATR/BPN Ministerial Regulation No. 20 of 2021, considering the complexity of the issues that arise. It is necessary to understand the implications for the validity of land rights and collateral rights as credit guaranties. If the process of determining abandoned land is carried out correctly, the rights related to the existence of land, including collateral rights, can be legally protected and can serve as a strong basis for execution in the event of credit default. The reality on the ground shows that this process often encounters obstacles, such as the lack of accurate data regarding the existence of abandoned land, slow verification processes, and insufficient legal protection for landowners whose land is in the process of being designated as abandoned. This phenomenon indicates a gap between the legal norms regulated normatively (das Sollen) and the actual implementation in the field (das Sein), where the reality has not fully supported or upheld the existence of the rights to the land indicated as abandoned. One of the cases that is the focus of this research is the land use rights of PT. TN located in East Aceh Regency, where the land that has been granted land use rights by PT. TN is not cultivated, utilized, and used according to the given Decree. The process of designating the abandoned land on that object faced obstacles because the object of the business use right had been encumbered with problematic collateral or Non-Performing Loan (NPL).

Research Method

The type of research used is normative juridical, a normative juridical study where law is conceptualized as what is written in legislation (law in books) or law is conceptualized as rules or norms that serve as guidelines for human behavior deemed appropriate.[4] In normative legal research, it includes the study of legal principles, the study of legal systematics, the study of the level of legal synchronization, the study of legal history, and the study of comparative law.[5] The approaches used to address the issues in this writing include the statute approach, case approach, and conceptual approach. The data sources in this research consist of primary legal data and secondary legal data. The primary legal data in this research are supporting data collected in the field thru direct interview techniques with informants.[6] The informants selected in this study are parties deemed capable of providing answers to the research problems. The secondary and primary data obtained are then organized in a sequential and systematic manner to be subsequently analyzed qualitatively to provide descriptions in words of the findings.

Results and Discussions

a. Mechanism for Determining Abandoned Land

The mechanism for determining abandoned land is detailed in Government Regulation Number 20 of 2021 concerning the Orderly Management of Areas and Abandoned Land. This process is carried out thru a series of administrative stages that take a total of 587 days from the initial notification to the definitive determination. Before the designation of abandoned land, the Ministry of ATR/BPN conducts inventory, identification, and research on land that is indicated to be abandoned. The evaluation process is carried out by the Identification and Research Committee, hereinafter referred to as Committee C, which is tasked with thoroughly investigating the condition of the land and the reasons provided by the rights holders.

The Head of the Public Relations Bureau of the ATR/BPN Ministry, Harison Mocodompis, explained that they do not immediately take over the land when they find it vacant. They will check first, for example, whether the owner has a justifiable technical reason, such as a measurable business plan or force majeure. If there is a justifiable explanation, then the land will not be designated as abandoned land. [7] This evaluation is important in the context of HGU burdened with a Mortgage Right because the creditor holding the Mortgage Right has an interest in ensuring that the designation of abandoned land is not done hastily without considering the objective circumstances affecting the debtor's ability to cultivate the land.

The right holder who is dissatisfied with the designation of abandoned land can file an objection or lawsuit with the State Administrative Court (PTUN). This is proven in practice, as in Decision Number 150/G/2019/PTUN-JKT, which annulled the Decree on the Designation of Abandoned Land against HGB whose rights had not yet expired. In that case, although the BPN had followed the procedures according to regulations, the judge annulled the determination because the BPN could not prove every document required in the stages of the abandoned land determination process. This decision shows that although the determination mechanism has been procedurally regulated, legal certainty still requires strong evidence at every stage. This is in line with Radbruch's teaching that legal procedures must be carried out in good faith and based on adequate evidence, not merely as administrative formalities.

b. Legal Implications of the Designation of Abandoned Land on Business Use Rights as Objects of Mortgage Rights

The theory of legal consequences (*rechtsgevolg*) in legal science refers to all consequences arising from a legal act or event recognized and regulated by the legal system. J.J.H. Bruggink explains that a legal event results in legal consequences in the form of the birth, change, or termination of a legal relationship. The designation of abandoned land by the state is a legal event in the realm of public law that directly causes legal consequences in the field of private law, particularly concerning the property rights attached to the HGU object. Mukmin Zakie, in his research, comprehensively analyzes the legal implications of the designation of abandoned land. According to him, the designation of abandoned land results in at least three main legal consequences: first, the extinguishment of land rights designated as abandoned; second, the severance of the legal relationship between the rights holder and the land in question; and third, the change in the status of the land to land directly controlled by the state or state reserve land.[8] Article 27, letter a, number 3 of the UUPA states that land rights are extinguished by revocation for public interest, including land abandonment. The legal consequence of the termination of that right is that all burdens attached to the land right in question, including the Mortgage Right, also come to an end. Article 18 of the Mortgage Law explicitly states that a mortgage is extinguished due to: (a) the extinguishment of the debt secured by the mortgage; (b) the release of the mortgage by the mortgage holder; (c) the cancelation of the mortgage based on the ranking determination by the Chief of the District Court; and (d) the extinguishment of the land rights burdened by the mortgage. Thus, when the HGU that is the object of the Mortgage is designated as abandoned land and its rights are subsequently revoked, the Mortgage burdening it also legally terminates.

Agus Yudha Hernoko explained that the termination of the Mortgage due to the loss of the land rights that are the object of the Mortgage does not relieve the debtor from the obligation to pay their debt. This is because the termination of the Mortgage only implies the end of the creditor's preferential right, not the end of the principal obligation between the creditor and the debtor. In other words, the credit granted remains payable, but the creditor loses their privileged position as a separatis creditor and becomes a concurrent creditor.[9] Referring to one of the cases that is the subject of this research, namely the case of PT. TN in Aceh. The legal issues arising in the PT. TN case are actually manifestations of a norm conflict (*normenkonflikt*) between public land law, which seeks to regulate abandoned land, and property security law, which provides strong protection to creditors holding a Mortgage Right. Mochtar Kusumaatmadja and B. Arief Sidharta explain that norm conflicts cannot be avoided in a dynamic positive legal system, and their resolution requires an appropriate legal principle approach.[10] Article 21 of PP 20/2021 stipulates that in the case of land designated as abandoned land burdened by a Mortgage Right, the designation process must consider the interests of the mortgage creditor. This means that there is a procedural obligation for the government to coordinate with the creditor before issuing a decision on the designation of abandoned land. Rosmidah, in her research on the position of Mortgage Rights over land designated as abandoned land, identifies a legal vacuum (rechtsvacuum) in the regulation of mechanisms for resolving conflicts of interest between the government, as the party designating the land as abandoned, and the creditors holding Mortgage Rights. According to her, PP 20/2021 has not comprehensively regulated the procedures for protecting the rights of mortgage creditors in the process of designating abandoned land, thereby causing legal uncertainty for banking institutions.[11] Procedurally, after the designation of abandoned land and the cancelation of the HGU, the land in question becomes state reserve land. Furthermore, the land can be utilized for the benefit of the community and the state based on the applicable laws and regulations, including for land redistribution within the framework of agrarian reform. PT TN has been designated as a Non-Performing Loan (NPL) or Problematic Credit company. NPL is defined as credit whose interest and principal payments cannot be fulfilled according to the agreed credit agreement terms, or credit that has quality issues requiring special attention, is less smooth, doubtful, or in default. The Financial Services Authority (OJK) Regulation Number 40/POJK.03/2019 classifies credit quality based on business prospects, debtor performance, and payment ability.

Andrian Sutedi stated that NPL is one of the main indicators of banking health, and if it exceeds the threshold set by the banking supervisory authority, it will seriously impact the bank's liquidity and solvency. In the context of the PT. TN case, the non-performing loan status attached to the HGU makes the collateral object legally very vulnerable, on one hand threatened with confiscation due to neglect, and on the other hand an asset collateral that is in the process of resolving a bad loan.[12] Sentosa Sembiring explains that in the context of rescuing problematic loans, banks have several legal instruments, including loan restructuring, collateral execution, and the sale of collateral under hand with the debtor's approval. The implementation of these instruments becomes severely hindered if the collateral object is classified as abandoned land or is in the process of being designated as abandoned land, as it creates uncertainty regarding the existence and value of the collateral.[13] Iswi Hariyani identified that non-performing loans secured by HGU face layered problems. Not only facing the risk of a decrease in collateral value due to neglect, but also the possibility of losing the collateral entirely if the government designates the land as abandoned land. This condition significantly harms creditors who have provided credit in good faith based on the collateral value deemed adequate at the time of granting the credit.[14] Edy Putra Tje'Aman reminds us that the legal relationship between the bank as the creditor and the debtor in a credit agreement secured by HGU contains a fundamental element of trust (*vertrouwen*). This trust is built on the belief that the collateral provided will offer adequate protection to the creditor if the debtor fails to fulfill their obligations. If the collateral is then removed due to reasons beyond the creditor's control, such as the designation of abandoned land, the principle of trust in the banking credit relationship is disrupted.[15]

Analyzing the case of PT. TN in East Aceh Regency, from the perspective of the theory of legal consequences, there are two series of legal events that interact with each other and result in complex legal consequences. First, the imposition of a Mortgage Right on the HGU object that has occurred previously creates a legal relationship between PT. TN as the debtor, the creditor holding the Mortgage Right, and the HGU object as collateral. Second, indications of neglect of the HGU by PT. TN trigger the government's process of reclaiming abandoned land. Neni Sri Imaniyati emphasized that banking institutions, as the largest creditors receiving HGU as collateral, have significant legal interests in the process of reclaiming abandoned land. The bank cannot be automatically categorized as negligent just because the debtor neglects the HGU object that is pledged, as the neglect is entirely the action or negligence of the debtor, not the creditor.[16] In the jurisprudence of the Supreme Court, there is a ruling that states the termination of the Mortgage Right due to the loss of land rights does not automatically eliminate the debtor's obligation, but the creditor is entitled to compensation equivalent to the value of the lost collateral. This shows that the Indonesian legal system recognizes the state's responsibility in providing adequate protection for creditors who lose their collateral due to government legal actions.[17] Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 20 of 2021 concerning Procedures for the Control and Utilization of Abandoned Areas and Land stipulates that before the issuance of a decision on the designation of abandoned land, the authorized agency is required to conduct socialization and notification to all interested parties, including creditors holding a Mortgage Right. Ellyne Dwi Poespasari, in her research, examines the obstacles to the regulation of abandoned land encumbered by a mortgage and identifies that one of the main obstacles is the absence of a clear legal mechanism regarding the replacement of collateral or compensation to creditors if the HGU object is designated as abandoned land. The absence of regulations causes land agencies to be cautious in issuing decisions on the designation of abandoned land for objects burdened with a Mortgage Right, especially those classified as Non-Performing Loans (NPL).[18] Frieda Husni Hasbullah argues that in facing the conflict between the interest of regulating abandoned land and the protection of Mortgage Right creditors, a balanced approach is needed that considers all conflicting interests, namely the state's interest in realizing the social function of land, the creditor's interest in obtaining protection for their receivables, and the broader community's interest in the abandoned land.[19] The General Explanation of the UUHT emphasizes that the main purpose of establishing the UUHT is to provide legal certainty for all parties interested in the imposition of the Mortgage Right. That legal certainty requires clear, consistent, and predictable rules in regulating the interaction between Mortgage Rights and other legal instruments, including the regulation of abandoned land.

Supriyadi, in his critical study on the normative conflict between abandoned land regulations and mortgage rights, recommends the need to amend PP 20/2021 to include provisions that comprehensively regulate the protection of mortgage creditors in the process of abandoned land enforcement. The protection mechanisms can take the form of: (1) an obligation to notify the mortgage creditor from the stage of identifying land suspected of being abandoned; (2) providing the creditor with the opportunity to execute the mortgage before the determination decision is issued; and (3) a compensation mechanism for the creditor if the determination of abandoned land results in the removal of the mortgage object.[20] Within the framework of agrarian reform, which is a strategic policy of the Indonesian government as outlined in Presidential Regulation Number 86 of 2018 on Agrarian Reform, the regulation of abandoned land is a vital instrument for obtaining land for agrarian reform objects (TORA) that will subsequently be distributed to the needy community. Therefore, the existence of the NPL Mortgage Right over the HGU object should not be an absolute barrier to the rectification process, but should be resolved simultaneously thru a fair and structured legal mechanism. Imam Koeswahyono emphasized that the principle of constitutionalism in Indonesian agrarian law, as stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, places the state as the highest authority over land, water, and natural resources contained therein, which must be used for the greatest prosperity of the people. This principle serves as a legitimate constitutional basis for the state to regulate abandoned lands, even if they are encumbered by property rights in the form of a Mortgage Right. However, the exercise of that authority must still adhere to the principle of due process of law and provide proportional legal protection to all interested parties.[21] Based on the above description, it can be concluded that the designation of abandoned land on HGU objects burdened with a Mortgage has dual legal consequences: in public law, it results in the cancelation of the HGU and the transfer of the land to state control, while in private law, it results in the automatic termination of the Mortgage as regulated in Article 18 letter d of the UUHT. The NPL status of the Mortgage attached to the HGU object of PT. TN in East Aceh Regency exacerbates the complexity of this issue, as on one hand, the state has an interest in regulating abandoned land, while on the other hand, the creditor has a legitimate and legally protected right over the collateral object. A fair and legally certain resolution requires a normative reconstruction that integrates the mechanism for the regulation of abandoned land with instruments for the protection of mortgage creditors, so that the goals of agrarian reform and legal certainty in banking can be achieved simultaneously.

Conclusion

In conclusion, the mechanism for the determination of abandoned land against the Business Use Rights burdened with a Mortgage is normatively based on Article 33 paragraph (3) of the 1945 Constitution and Government Regulation No. 20 of 2021 concerning the Determination of Abandoned Land and the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 20 of 2021 concerning the Procedures for the Orderly and Utilization of Abandoned Areas and Land. However, its implementation still leaves issues of certainty and justice for creditors holding a Mortgage Right, because the cancellation of the HGU results in the cancellation of the Mortgage Right without the settlement of the guaranteed debt. The designation of abandoned land for HGU objects burdened with a Mortgage Right creates dual legal consequences: in public law, it results in the cancellation of the HGU and the transfer of the land to state-controlled land, while in private law, it results in the automatic termination of the Mortgage Right as regulated in Article 18 letter d of the UUHT.

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