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Legal Consequences of Designating Cultivation Rights as Abandoned Land in the Context of Credit Collateral Objects

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Article	Abstract
<p>Keywords:</p> <p>Abandoned Land; Cultivation Rights Title; Credit Agreement; Mortgage Rights.</p> <p>Article History Received: Aug 22, 2024; Reviewed: Jan 23, 2025; Accepted: Jan 28, 2025; Published: Jan 31, 2025.</p> <p>DOI: 10.28946/slrev.Vol9.Iss1. 4029.pp157-172</p>	<p>Land rights under the Cultivation Rights Title (HGU) can serve as collateral in credit agreements through the imposition of a mortgage right. However, legal challenges arise when the status of HGU land as collateral changes, particularly due to its designation as abandoned land by the Indonesian Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). Such status changes have significant legal implications for credit agreements, mortgage rights, and the economic value of collateralized land. This study analyses the legal framework governing the determination of abandoned land status, examining statutory regulations and their impact on credit agreements and collateral objects. Employing a normative legal research methodology, the study utilises statutory analysis, conceptual exploration, and interpretative approaches to assess the legal consequences of such status changes. The findings reveal that the designation of land as abandoned results in the termination of cultivation rights and the extinguishment of mortgage rights. While the credit agreement itself remains legally binding, the loss of economic value in the collateral renders it non-executable, leading to financial losses for both creditors and debtors. To address these legal uncertainties, the study recommends amendments to the regulatory framework governing abandoned land to enhance legal certainty, ensure fairness, and provide adequate protection for both creditors and debtors.</p>

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INTRODUCTION

Land is a gift from God Almighty and constitutes one of the essential elements in all human activities. Every aspect of human life requires land. As a natural resource, land holds economic value, making land policy an integral part of national development policy. The demand for land has significantly increased due to development and population growth. Uneven population distribution and relatively fixed land area have cumulatively led to increasingly complex land

issues. To be utilised to its maximum potential, land must be managed, planned, coordinated, and integrated.¹

From a normative legal perspective, the principles of land ownership and utilisation are governed under Article 33, paragraph (3) of the 1945 Constitution², which stipulates: "The earth, water, and natural resources contained therein shall be controlled by the State and utilised for the greatest welfare of the people." This provision mandates the State to exercise control over the earth, water, outer space, and natural resources to realise the welfare of all Indonesian people.³

The tendency toward concentrated land ownership over vast areas has resulted in suboptimal land use. Large tracts of land are often abandoned, rendering them ineffective and economically unproductive for the landholders, the government, and surrounding communities.⁴ For land that is left unused by its owners, the government must take steps to regulate and optimise the use of abandoned land.⁵ Government actions to regulate abandoned land are essential measures for controlling land ownership and its utilisation.⁶ Community participation is needed in the process of controlling abandoned land to ensure spatial sustainability, which is a component that is directly affected by spatial dynamics, especially land use activities.⁷ Land that is not used or cultivated by its rights holders will be subject to regulation and may subsequently be allocated to other parties—be they business entities, the government, or individuals—so that such land can yield optimal benefits for society and the State.⁸

In addition to Indonesia, government actions to regulate abandoned land also occur in Malaysia and Japan. Although they share a general objective, the concepts underlying the regulation of abandoned land differ among these countries. For comparison, the regulation of abandoned land in Indonesia, Malaysia, and Japan can be seen in Table 1 below:

Table 1: Abandoned Land in Indonesia, Malaysia and Japan

Indonesia	Malaysia	Japan
Abandoned land refers to land granted rights by the State but not cultivated, utilised, or managed in accordance with the conditions,	Abandoned land also includes land owned by individuals that remains uncultivated for three consecutive years for agricultural land, is not developed	The concept of "abandoned land" is not always explicitly

¹ Petunjuk Teknis Pendayagunaan Tanah Terlantar, *Direktorat Penertiban Dan Pendayagunaan Tanah Terlantar & Direktorat Jenderal Pengendalian Pemanfaatan Ruang Dan Penguasaan Tanah Kementerian Agraria Dan Tata Ruang/ Badan Pertanahan Nasional* (Jakarta, 2022).

² Farhan Zarbiyani and Amad Sudiro, "Penetapan Tanah Terlantar Sebagai Bentuk Perlindungan Dan Kepastian Hukum Dalam Penertiban Kawasan Tanah Terlantar," *Unes Law Review* 6, no. 2 (2023): 5195–5201, <https://doi.org/https://doi.org/10.31933/unesrev.v6i2>.

³ Saripudin, "Konsep Penertiban Dan Pendayagunaan Tanah Terlantar Dalam Perspektif Reforma Agraria," *Jurnal Ilmu Hukum* 11, no. 22 (2025): 111.

⁴ Lusya Savitri Diah Candrasari and Lego Karjoko, "The Principle of Social Function of Land Cultivation Right in Agritourism Accommodation in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 5, no. 2 (2018): 271, <https://doi.org/10.18415/ijmmu.v5i2.374>.

⁵ Cornelis Van Vollenhoven and R Soewargono, *Orang Indonesia Dan Tanahnya (Pusat Pendidikan Departemen Dalam Negeri, 1975)*, 1975.

⁶ Denis Dobrynin, Alexander Vorbrugg, and Teppo Hujala, "Forestry on Abandoned Agricultural Land: Future Options for Russia," *Land Use Policy* 150, no. November 2024 (2025), <https://doi.org/10.1016/j.landusepol.2024.107435>.

⁷ Samba Habib Hauri and Agam Marsoyo, "Kurangnya Partisipasi Masyarakat Dalam Upaya Penertiban Tanah Terlantar Di Kabupaten Demak," *Jurnal Multidisiplin West Science* 2, no. 05 (2023): 345–53, <https://doi.org/10.58812/jmws.v2i5.325>.

⁸ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Genta Pub., 2009).

characteristics, or purposes of the granted rights or basis of ownership within the following timeframes: 1) Ownership Rights (Hak Milik) for 20 years; 2) Cultivation Rights (HGU) for 2 years; 3) Building Use Rights (HGB) for 2 years; and 4) Management Rights for 2 years. ⁹	within two years after granting rights for building land, and is not utilised for industrial activities within three years after granting rights for industrial land. ¹⁰	defined in law ¹¹ but is recognised by terms such as <i>kisonchi</i> (referring to neglected land) ¹² In Japan, abandoned land refers to properties or plots that are unmanaged, unused, or left idle by their owners for extended periods. ¹³
Committee C, the head of the Regional Office of the National Land Agency, and the head of the National Land Agency exercise the authority to regulate abandoned land based on the Regulation of the Head of the National Land Agency.	The authority to regulate abandoned land is the State Authority corresponds to the land category ¹⁴ as follows: 1) For agricultural land, the authority lies with the Ministry of Agriculture and the Agricultural-Based Industrial Ministry; 2) For building land, the authority lies with the Ministry of Housing and Local Government; 3) For industrial land, the authority lies with the Ministry of Primary Industry. ¹⁵	In Japan, the authority to regulate neglected land (<i>kisonchi</i>) ¹⁶ or abandoned properties (including vacant buildings or <i>akiya</i>) primarily rest with the local government (prefecture or municipal authorities) where the land or property is located. ¹⁷

Source: Analysed by the author, Oktober 2024

The implementation of abandoned land regulation in Indonesia, Malaysia, and Japan reflects government efforts to oversee the function of land so that it is managed and utilised for the benefit of society. This includes the management and utilisation of land rights, particularly Cultivation Rights (HGU), which are intended to realise a just and prosperous society¹⁸ as mandated by the constitution while maintaining the sustainability of economic development, especially village development around the land.¹⁹ In such management and utilisation, business actors require funds

⁹ “Pasal 7 PP Nomor 20 Tahun 2021 Tentang Penertiban Kawasan Dan Tanah Telantar” (n.d.).

¹⁰ Rahayu Subekti and Albertus Usada, “The Utilization of Abandoned Land in Indonesia: A Comparative Study on Malaysia in the Fulfillment of Human Rights.,” *International Journal of Sustainable Development & Planning* 18, no. 10 (2023).

¹¹ A George Mulgan, “Where Tradition Meets Change: Japan’s Agricultural Politics in Transition. *The Journal of Japanese Studies*,” 2005.

¹² K Yamashita, “A First Step toward Reform of Japan’s Agricultural Cooperative System. Nippon Communications Foundation,” accessed November 13, 2024, <http://www.nippon.com/en/currents/d00169>.

¹³ Hanno Jentzsch, “Abandoned Land, Corporate Farming, and Farmland Banks: A Local Perspective on the Process of Deregulating and Redistributing Farmland in Japan,” *Contemporary Japan* 29 (2017): 31–46, <https://doi.org/https://doi.org/10.1080/18692729.2017.1256977>.

¹⁴ Sa’adatud Daroini and F.X Arsin Lukman, “Comparison Of Abandoned Land Laws in Indonesia and Malaysia,” *Legal Brief* 11, no. 2 (2022): 1143.

¹⁵ Fransiscus Xaverius Arsin Lukman, “Comparison of Abandoned Land Laws in Indonesia and Malaysia,” *Legal Brief* 11, no. 2 (2022): 1140–47.

¹⁶ M Andō, “Nōchi Chūkan Kanri Kikō Wa Kinō Suru Ka? Kadaï to Tenbō [Do Intermediary Farmland Management Organizations Work? Issues and Prospects],” 2014, <http://www.jpri.org/publications/workingpapers/wp41.htm>.

¹⁷ Kokoro JP, “Penyebab Akiya Bertebaran Di Japan,” n.d., <https://www.detik.com/properti/berita/d-6844676/>.

¹⁸ Elin Slätmo, “Preservation of Agricultural Land as an Issue of Societal Importance,” *Rural Landscapes: Society, Environment, History* 4, no. 1 (2017): 1–12, <https://doi.org/10.16993/rl.39>.

¹⁹ Rohan Nelson and David Cook Steve Hatfield-Dodds, “Property Rights, Land Fragmentation and the Emerging Structure of Agriculture in Central and Eastern European Countries,” *AgEcon Search*, 2007, 18, <https://doi.org/10.22004/ag.econ.112607>.

to operate their companies and manage the land.²⁰ For these purposes, banking institutions strategically provide funding by extending credit to individuals or companies (debtors).²¹ One form of this funding is through loans provided by banking institutions.²²

Bank credit is a financial instrument widely utilised by individuals and businesses to support the continuity of their operations.²³ In practice, it is rare for business owners to use their own capital exclusively in conducting business activities. Instead, they typically require capital loans facilitated by banks.²⁴ According to Article 3 of Law Number 7 of 1992 concerning Banking, "The function of banks is to distribute funds to the public in the form of credit or loans."

Every credit facility approved and agreed upon between the creditor and the borrower must be formalised in a document known as a credit agreement.²⁵ According to Sutan Remy, a credit agreement with a bank has three characteristics: it is consensual in nature; the credit must be utilised in accordance with the purposes specified in the agreement; and the disbursement of credit by the bank does not always involve real transfer but can also be conducted through checks and/or transfer orders.²⁶ The credit agreement is accompanied by an object used as collateral.²⁷ The most common collateral in credit agreements is land rights, including land with Cultivation Rights Title (HGU). Once an agreement between the creditor and the debtor is established, the collateral is then encumbered with a Mortgage Right.²⁸ Referring to the provisions of Law Number 4 of 1996 on Mortgage Rights (hereinafter referred to as the Mortgage Rights Law or UUHT), land with Cultivation Rights can be encumbered as a Mortgage Right to secure credit agreements.²⁹

In credit agreements, the granting of a Mortgage Right includes clauses or stipulations limiting the authority of the grantor of the Mortgage Right to alter the form or composition of the mortgaged object, as stipulated in Article 11, Paragraph 2, Letter b of the UUHT.³⁰ Thus, based on Article 11, Paragraph 2, Item 2 of the UUHT, the debtor is prohibited from modifying the object of the Mortgage Right or altering its status. Changes in the object's status under a Mortgage Right are carried out by the government, specifically through the Ministry of Agrarian

²⁰ Annalisa Yahanan, Sri Turatmiyah, and Tongle Si, "Hasanuddin LawReview Notarial Challenges for Aircraft Deeds: Unlocking the Potential of Aircraft as Collateral" 3, no. 3 (2024): 304–21, <https://doi.org/10.20956/halrev.v10i3.4818>.

²¹ Muh Husein Ahmadi, Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "Validity of Mortgage Rights Based on Credit Agreement Aspects," *KnE Social Sciences* 2022 (2022): 671–78, <https://doi.org/10.18502/kss.v7i15.12141>.

²² Priyo Handoko, "Lembaga Jaminan Hak Tanggungan Atas Tanah Sebagai Pengaman Perjanjian Kredit Bank, Disertasi" (Airlangga, 2003).

²³ R.Setiawan, *Pokok-Pokok Hukum Perikatan* (Bandung: Bina Cipta, 1994).

²⁴ Mariam Darus Badruzaman, *Kompilasi Hukum Perikatan* (Bandung: PT. Citra Aditya Bakt, 1991).

²⁵ Sutan Remi Sjahdein, *Kebebasan Berkontrak Dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia*, Cetakan I (Jakarta: Institut Bankir Indonesia, 2009).

²⁶ Sutan Remi Sjahdein.

²⁷ Ika Atikah, "The Urgency of Mortgage Agreement As an Effort To Realise the Trust By Bank As Creditor," *Jurnal Hukum Dan Peradilan* 10, no. 1 (2021): 31, <https://doi.org/10.25216/jhp.10.1.2021.31-63>.

²⁸ Pedro Olinto Michael R. Carter, "Getting Institutions 'Right' for Whom? Credit Constraints and the Impact of Property Rights on the Quantity and Composition of Investment," *American Journal Of Agricultural Economics*, 2003, 173–86, <https://doi.org/https://doi.org/10.1111/1467-8276.00111>.

²⁹ "Article 4 of Law No. 4 of 1996" (n.d.).

³⁰ "Article 11 Paragraph (2) Letter b of Law No. 4 of 1996" (n.d.).

Affairs and Spatial Planning/National Land Agency (ATR/BPN).³¹ The government's actions (through the Ministry of ATR/BPN) to regulate abandoned land are necessary steps in controlling land rights and ensuring the productive use of such land. Land that is unused or not cultivated by its rights holders will be subject to regulation and may subsequently be allocated to other parties—whether business entities, the government, or individuals³²—to ensure that the land generates optimal societal and State benefits.³³

A significant issue arises when, in a credit agreement where the collateral is encumbered with a Mortgage Right and consists of land with a Cultivation Rights Title (HGU), the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) changes the status of the collateral to Abandoned Land.³⁴ Such a change in the status of the mortgaged object to Abandoned Land can undoubtedly harm the holder of the Mortgage Right, namely the bank as the credit provider.³⁵ In practice, the status of the collateral can change, where the initially collateralised HGU land certificate is indicated as abandoned or partially designated as abandoned land by the ATR/BPN. This process is carried out by the ATR/BPN through its authority to identify and declare land abandoned or partially abandoned.

This study is therefore crucial, as the change in the status of collateral under a credit agreement with a Mortgage Right, in the form of HGU land, to abandoned or partially abandoned land is not intentionally caused by the debtor. Instead, the change in status is undertaken by ATR/BPN, which designates the land as abandoned through an indication process and/or a Ministerial Decree declaring it as abandoned land. The change in the status of collateral land (HGU) to abandoned land inevitably results in legal consequences. It causes significant harm, particularly to the bank as the credit provider and to the debtor as the credit recipient.

In this regard, the study aims to analyse, both *de jure* and *de facto*, the change in the status of collateral under a credit agreement with a Mortgage Right (HGU) that is subsequently designated as abandoned or partially abandoned land through the authority of ATR/BPN in the regulation of abandoned land. Additionally, this study explores the legal consequences of the designation of collateral land (HGU) as abandoned or partially abandoned by ATR/BPN. These legal consequences include impacts on the credit agreement itself, the rights and obligations of the bank as the credit provider (creditor), the debtor as the credit recipient, and the collateral object (HGU land).

RESEARCH METHODS

This study employs a qualitative legal research approach, combining legislative, conceptual, comparative, and interpretative methodologies. This type of research is categorised as socio-legal

³¹ Lianton Vicco Yuniur, "Wewenang Pemerintah Dalam Penentuan Kriteria Tanah Terlantar," *Jurist-Diction* 2, no. 6 (2019): 2175, <https://doi.org/10.20473/jd.v2i6.15948>.

³² Heryanti Heryanti et al., "Determination of Land Identified as Abandoned for Legal Security of Land Right Holders in Southeast Sulawesi," *Scholars International Journal of Law, Crime and Justice* 7, no. 08 (2024): 303–9, <https://doi.org/10.36348/sijlcj.2024.v07i08.003>.

³³ "Government Regulation of the Republic of Indonesia No. 20 of 2021" (n.d.).

³⁴ Herawan Sauni, "KONFLIK PENGUASAAN TANAH PERKEBUNAN" 1, no. 1 (2016): 45–67, <https://doi.org/https://doi.org/10.33369/ubelaj.1.1.45-67>.

³⁵ Agus Suprihanto, "Disertasi: Perlindungan Hukum Kreditor Pemegang Hak Tanggungan Atas Hak Guna Bangunan Di Atas Tanah Hak Pengelolaan" (Universitas Hasanuddin, Makassar, 2021).

research, which focuses on regulating and applying law within its societal context.³⁶ The study investigates the process of designation and issuance of decrees by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) that alter land status to Abandoned Land and analyses the resulting legal consequences of such changes.

ANALYSIS AND DISCUSSION

Indication and Designation of Cultivation Rights Title (HGU) as Abandoned Land

The change in the status of HGU land, which serves as collateral in credit agreements, to Abandoned Land³⁷ is critically significant in terms of its area and the urgency of its utilisation, particularly when viewed against the backdrop of land ownership inequality in Indonesia.³⁸ Such changes result in the loss of the land's economic and social functions and, in many cases, lead to prolonged conflicts in areas designated as Abandoned Lands.³⁹

Pursuant to Government Regulation No. 20 of 2021 on the Regulation of Areas and Abandoned Land (hereinafter referred to as GR-PKTT), in conjunction with the Ministerial Regulation of Agrarian Affairs and Spatial Planning/National Land Agency No. 18 of 2021 on the Procedures for Regulation and Utilisation of Areas and Abandoned Land (hereinafter referred to as Ministerial Regulation No. 18 of 2021), the types of land rights and the basis of land control (HAT/DPAT)⁴⁰ subject to regulation as specified in Abandoned Lands. One such type includes the Cultivation Rights Title (HGU), which may be designated as abandoned if it is deliberately left uncultivated, unused, and/or unutilised for a period of two (2) years from the issuance of the title.^{41,42}

The designation of land as Abandoned Land is formalised through the issuance of a Decree by the Minister of ATR/BPN.⁴³ For land rights and land control bases (HAT/DPAT) that meet the criteria as objects of abandoned land regulation, the Ministry of ATR/BPN carries out the regulation process, which is implemented by the Provincial Land Office, with the involvement of Committee C comprising representatives from relevant technical agencies.⁴⁴ During the process, land identified as abandoned is recorded in the abandoned land database. Land under HGU, serving as collateral in credit agreements secured by a Mortgage Right, may be subjected to the abandoned land regulation by the Ministry of ATR/BPN. The data on HGU lands identified as potentially abandoned remains substantial. This information can be observed in Table 2.

³⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Pranada Media Group, 2016).

³⁷ Government Regulation of the Republic of Indonesia No. 20 of 2021.

³⁸ Ahmad Nashih Luthfi, Farhan Mahfuzhi, and Anik Iftitah, "Menerjemahkan Secara Teknis: Kendala Penertiban Tanah Terlantar Di Kabupaten Blitar," 2013.

³⁹ Dian Aries Mujiburohman and Endriatmo Soetarto, "Penegakan Hukum Penertiban Dan Pendayagunaan Tanah Terlantar" (Yogyakarta: STPN Press, 2019).

⁴⁰ "Direktorat Penertiban Penguasaan Pemilikan Dan Penggunaan Tanah Direktorat Jenderal Pengendalian Dan Penertiban Dan Ruang, Petunjuk Teknis Pendayagunaan Tanah Terlantar," 2022.

⁴¹ "Article 7, Paragraph (4) of Government Regulation No. 20 of 2021" (n.d.).

⁴² Supriyanto Supriyanto, "Kriteria Tanah Terlantar Dalam Peraturan Perundangan Indonesia," *Jurnal Dinamika Hukum* 10, no. 1 (2010): 51–59, <https://doi.org/10.20884/1.jdh.2010.10.1.139>.

⁴³ "Article 10 of the ATR/BPN Ministerial Regulation No. 18 of 2021" (n.d.).

⁴⁴ Taufani Yunithia Putri et al., "PENERTIBAN DAN PENDAYAGUNAAN TANAH TERLANTAR," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 12, no. 2 (2023): 134–45.

Table 2: Cultivation Rights Title (HGU) Land Indicated as Abandoned

No.	Provincials	Area of land rights	
		Area of land rights (hectare)	Area of Indication of Abandonment (hectare)
1	Aceh	28.955,52	21.820,88
2	North Sumatra	31.512,38	15.539,70
3	West Sumatra	132.157,91	24.441,76
4	South Sumatra	319.414,49	99.344,03
5	Riau	109.377,83	58.105,03
6	Jambi	39.051,30	9.744,65
7	Bengkulu	31.663,65	17.524,56
8	Bangka Belitung	18.732,43	1.876,55
9	Lampung	36.408,26	34.863,99
10	Riau Islands	3.994,69	2.894,49
11	Banten	6.384,78	6.000,77
12	West Java	33.496,00	29.717,79
13	Jakarta	117,19	115,84
14	Central Java	781,78	739,94
15	Yogyakarta	49,93	44,52
16	East Java	14.806,15	5.638,62
17	West Kalimantan	74.553,14	38.727,31
18	Central Kalimantan	459.869,14	50.194,93
19	South Kalimantan	39.477,12	27.713,28
20	East Kalimantan	357.577,67	192.598,82
21	North Sulawesi	11.330,21	11.244,54
22	Gorontalo	4.403,29	996,19
23	Central Sulawesi	50.648,32	24.848,39
24	Southeast Sulawesi	12.776,59	12.746,39
25	South Sulawesi	59.510,02	53.396,46
26	West Sulawesi	35.788,49	9.241,99
27	Bali	1.125,78	1.138,91
28	West Nusa Tenggara	6.210,48	6.104,48
29	East Nusa Tenggara	27.291,71	27.138,01
30	Maluku	11.117,40	8.812,97
31	North Maluku	11.334,41	11.318,01
32	Papua	25.116,67	8.422,25
33	West Papua	27.683,67	27.674,03
Total		2.002.718,37	840.730,32

Source: Author's Empirical Research Data at the Ministry of ATR/BPN in October 2024

Cultivation rights land recorded in the database of land indicated as abandoned exists in every province in Indonesia. The designation process for HGU land indicated as abandoned is conducted by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) through stages regulated by legal provisions.⁴⁵ These stages must be completed before the HGU land is officially designated as Abandoned Land through a decree issued by the Minister of ATR/BPN.⁴⁶ Table 3 shows the percentage of HGU land included in the abandoned

⁴⁵ “Articles 9 to 21 of Government Regulation No. 20 of 2021” (n.d.).

⁴⁶ “Article 29 of Government Regulation No. 20 of 2021” (n.d.).

land indication database officially designated as Abandoned Land through the Ministerial Decree of ATR/BPN.

Table 3: Percentage of HGU Land Indicated as Abandoned and Designated as Abandoned Land by ATR/BPN

No	Description	Area (Ha)	% HGU
1	HGU land that has been designated as Abandoned Land	14.739,1700	2%
2	HGU land that is indicated as Abandoned Land and has not been designated as Abandoned Land	825.991,1500	98%
HGU land indicated as Abandoned Land		840.730,3200	100%

Source: Author's Research Data at the Directorate General of Land Control, Ownership and Use of the Ministry of ATR/BPN on August 26, 2024.

From the data in Table 3, only 2% of HGU land has been officially designated as abandoned land through a decree issued by the Minister of ATR/BPN. This percentage is significantly small compared to the total database of land indicated as abandoned by ATR/BPN. Consequently, 98% of HGU land listed in the abandoned land indication database remains legally uncertain and carries the potential for legal disputes.

ATR/BPN does not consider the legal status of HGU land, whether it serves as collateral for a loan agreement secured by a mortgage right or not, when conducting abandoned land management. This is because ATR/BPN's focus is solely on the management and utilisation of HGU land.⁴⁷ As a result, the legal implications for loan agreements secured by mortgage rights are borne exclusively by the debtor and creditor.

An example illustrating legal uncertainty involves HGU land used as collateral in a loan agreement and indicated as abandoned by ATR/BPN. This case pertains to HGU land owned by PT. PHML. On November 26, 2011, ATR/BPN South Sumatra designated PT. PHML's HGU land is indicated as abandoned land. Following this indication, ATR/BPN South Sumatra proposed to the Ministry of ATR/BPN on January 27, 2012,⁴⁸ that the land be designated as abandoned land. This involved two HGU certificates held by PT. PHML: 1) The first HGU certificate, located in Jaya Loka and Muara Kelingi Subdistricts, Musi Rawas Regency, South Sumatra Province, covering 8,813 hectares; 2) The second HGU certificate, located in Jaya Loka and Muara Kelingi Subdistricts, Musi Rawas Regency, South Sumatra Province, covering 2,170.8 hectares. Of these two HGU certificates, 2,612.29 hectares were indicated as abandoned land, though only part of the total area.

The problem arises because, despite being indicated as abandoned in 2011 and proposed for designation as abandoned land in 2012, the status of the land has yet to be finalised as abandoned land even by 2024. The delay of 12 years represents an administrative process that fails to uphold the Principles of Good Governance (AAUPB)⁴⁹, and it does not provide justice, legal certainty, or legal protection for the HGU owner (debtor) or the HGU holder (creditor). This prolonged process results in losses for both the guarantor and the mortgage right holder.⁵⁰

⁴⁷ Moh. Saleh Fatkhiyatus Sa'adah, Habib Adjie, "Hilangnya Hak Kepemilikan Atas Tanah Yang Terlantar (Analisis Peraturan Pemerintah Nomor 20 Tahun 2021)," *Unes Law Review* 6, no. 2 (2023): 7789, <https://doi.org/https://doi.org/10.31933/unesrev.v6i2>.

⁴⁸ "Surat Nomor 310/500-16/I/2012 Perihal Usulan Penetapan Tanah Telantar" (n.d.).

⁴⁹ Ridwan HR, "Hukum Administrasi Negara," Edisi Revi (Jakarta: Rajawali Press, 2011), 234.

⁵⁰ Collected by the author in PT. PHML on 14 October 2024

A similar issue arose with HGU land owned by PT. CSUB, located on Geronggang Island, Ogan Komering Ilir Regency, South Sumatra Province, covers an area of 3,223.10 hectares. Since 2012, 2,550.54 hectares of this land were indicated as abandoned by ATR/BPN South Sumatra. A proposal to designate this land as abandoned was submitted on January 25, 2012. However, the official decree designating PT. CSUB's HGU land as abandoned was only issued 11 years later, on March 6, 2023. This process took an excessively long time.⁵¹

In both cases, the abandoned land management conducted by ATR/BPN in South Sumatra requires criticism and review, especially regarding the mechanism for issuing written notifications to HGU holders and other relevant parties. Article 25 of Government Regulation No. 20 of 2021 (PP No. 20/2021) emphasises the principle of publicity that ATR/BPN must uphold in managing abandoned land. Therefore, ATR/BPN South Sumatra should have also notified the creditors (banks) in addition to PT. PHML and PT. CSUB, as the HGU land indicated as abandoned, was bound as collateral for mortgage rights. In the cases involving PT. PHML and PT. CSUB, ATR/BPN South Sumatra's failure to provide written notifications to the HGU holders (creditors/banks) during the abandoned land management process raises concerns about procedural and/or authority violations, particularly violations of Article 25, paragraph (5) of PP No. 20/2021.

Criticism and review are also warranted regarding the certainty of timeframes for each stage of abandoned land management. Article 25 of PP No. 20/2021 regulates the issuance of the First Warning Letter, Second Warning Letter, Third Warning Letter, and the Proposal for Abandoned Land Designation, all of which must be addressed to the HGU holders. These stages are subject to specific timeframes:

1. First Warning Letter: Issued by the Provincial ATR/BPN Office to the HGU holder and other interested parties⁵² within 90 calendar days of receipt of the letter.
2. Second Warning Letter: Issued within 45 calendar days if the first warning letter is not acted upon.⁵³
3. Third Warning Letter: Issued within 30 calendar days if the second warning letter is not acted upon.⁵⁴

However, the timeframe between the proposal for abandoned land designation and the issuance of the official decree by the Minister of ATR/BPN remains unclear. Article 27 of PP No. 20/2021 stipulates that if the HGU holder or other relevant parties fail to comply with the third warning letter, the Provincial ATR/BPN Office must submit a proposal for designation to the Minister within 30 working days. In the case of PT. PHML and PT. CSUB, even though ATR/BPN South Sumatra submitted the proposals for designation to the Minister of ATR/BPN, the absence of a clear deadline for issuing the decree resulted in prolonged delays. Thus, the prolonged process caused significant legal uncertainty and financial losses for PT. PHML and PT. CSUB are HGU owners (debtors), and the banks are HGU holders (creditors). The most tangible loss is the lack of legal certainty regarding the status of HGU land used as collateral in

⁵¹ Collected by the author in PT. CSUB on 14 October 2024

⁵² "Article 25, Paragraph (5) of Government Regulation No. 20 of 2021" (n.d.).

⁵³ "Article 25, Paragraph (3) of Government Regulation No. 20 of 2021" (n.d.).

⁵⁴ "Article 25 Paragraph (4) of Government Regulation No. 20 of 2021" (n.d.).

credit agreements. This uncertainty undermines both the economic value of the land and the legal protection for all parties involved.

According to Gustav Radbruch, legal certainty is the certainty of law itself, where laws or regulations are based on facts or realities.⁵⁵ In light of Radbruch's perspective, the legal events involving PT. PHML and PT. CSUB—specifically, the lack of a decree designating the land as abandoned over an excessively long period—highlights the absence of legal certainty caused by regulatory gaps in juridical provisions. Article 28 of Government Regulation No. 20 of 2021 (PP No. 20/2021) states that HGU land proposed for designation as abandoned land cannot be subjected to any legal actions until the Ministerial Decree is issued. This means that HGU land serving as collateral for credit agreements and indicated as abandoned by ATR/BPN cannot be legally acted upon until legal certainty is established through the decree issuance.⁵⁶ This implies that HGU land serving as collateral in credit agreements and indicated as abandoned by ATR/BPN cannot be subjected to any legal actions until legal certainty is achieved through issuing a Ministerial Decree. However, the legal framework lacks a definitive provision regarding the timeframe between submitting a proposal for the designation of abandoned land (vide Article 27 of Government Regulation No. 20 of 2021) and issuing the Ministerial Decree by the Minister of ATR/BPN. As a result, the inability to undertake legal actions concerning such HGU land deprives both creditors and debtors of justice and legal certainty.

Legal Consequences of Changing the Status of Collateral Objects (HGU Land) to Abandoned Land

The procedural aspect of managing abandoned land becomes critical if there are legal challenges to its designation.⁵⁷ In many cases, procedural violations during the designation process lead to the annulment and revocation of decrees declaring land as abandoned.⁵⁸ If the procedure is deemed legally flawed, the court often does not consider the substantive aspects⁵⁹, as the decree on abandoned land is presumed to violate the principles of good governance.⁶⁰

The government's policy of issuing regulations on the Management of Abandoned Areas and Land—where the core principle is the potential nullification of land rights⁶¹ grants the State the authority to declare land as abandoned, resulting in the forfeiture of those rights.⁶² However,

⁵⁵ Gustav Radbruch et al., “The Legal Philosophies of Lask,” in *Legal Philosophy* (Massachusetts: Harvard University Press, 1950), 112.

⁵⁶ “Article 28 of Government Regulation No. 20 of 2021” (n.d.).

⁵⁷ Vera Siti Parihah, “Penyelesaian Sengketa Tanah Dengan Hak Guna Usaha Dalam Penertiban Tanah Terlantar,” *Administrative Law and Governance Journal* 5, no. 3 (2022): 205–15.

⁵⁸ “Laporan Kinerja Direktorat Jenderal Pengendalian Dan Penertiban Tanah Dan Ruang, Kementerian Agraria Dan Tata Ruang Badan Pertanahan Nasional Tahun 2023” (n.d.).

⁵⁹ Sulis Anita, “Penyelesaian Sengketa Tanah Telantar Melalui Pengadilan Oleh Pemegang Hak Guna Usaha (HGU)” 6 (2022): 581–93, <https://doi.org/https://doi.org/10.33474/hukeno.v6i1.11302>.

⁶⁰ Mujiburohman, Dian Aries, and Endriatmo Soetarto, *Penegakan Hukum Penertiban Dan Pendayagunaan Tanah Terlantar* (Yogyakarta: STPN Press, 2019).

⁶¹ “Article 30 Paragraph (2) of Government Regulation No. 20 of 2021” (n.d.).

⁶² M Yoga Jusri Pratama, “Implementasi Peraturan Pemerintah Republik Indonesia Nomor 20 Tahun 2021 Tentang Penertiban Kawasan Dan Tanah Terlantar Di Provinsi Sumatera Selatan,” *Jurnal Ilmu Administrasi Dan Studi Kebijakan (JIASK)* 5, no. 1 (2022): 117–34.

the primary agreement (e.g., a credit agreement between debtor and creditor) remains valid, though the extinction of the mortgage (Hak Tanggungan) has significant legal implications.⁶³

The annulment or extinction of a mortgage when HGU land serving as collateral is declared abandoned affects the credit agreement between the creditor and the debtor, particularly if only a portion of the HGU land is designated as abandoned, for instance, in the case of PT. CSUB, only a portion of the HGU land—approximately ±2,505.51 hectares out of a total of 3,223.10 hectares—was designated as abandoned. However, due to the designation being tied to the parent HGU certificate number, the ATR/BPN system flagged the entire HGU parcel as restricted. As a result, PT. CSUB, as the grantor of the mortgage (the debtor), and the bank, as the holder of the mortgage (the creditor), were unable to undertake any legal actions concerning the collateralised land. This included modifications to the credit facility, such as increasing or decreasing credit limits or conducting takeovers.

Although in practice, the mortgage (Hak Tanggungan) does not automatically become nullified upon the designation of HGU land as abandoned, any portion designated as abandoned land should be properly marked and recorded in the HGU land register. Additionally, the HGU certificate should be subdivided (in-clave), separating the area designated as abandoned from the remaining HGU land. The residual HGU land recorded in the parent certificate would thus be freed from the abandoned land database, allowing for any lawful transactions involving the land. This ensures that the bank, as the holder of the mortgage (creditor), and PT. CSUB, as the mortgage (debtor) grantor, does not suffer financial losses.

Given that the primary agreement (i.e., the credit agreement between creditor and debtor) remains intact⁶⁴, coordination and communication between creditor and debtor are crucial in seeking a resolution to the legal challenges arising from the designation of the credit collateral⁶⁵ as abandoned land. One potential resolution is to amend the credit agreement (via an addendum) to provide legal protection for the creditor (bank). Such an approach aligns with the position of the mortgage holder, which retains its preferential nature,⁶⁶ even though this status has been legally affected since the enactment of the Government Regulation on the Management of Abandoned Areas and Land.⁶⁷ The position of the mortgage holder (creditor), previously recognised as preferential, is downgraded to a concurrent status when the mortgage's collateral is declared abandoned land by ATR/BPN. This shift creates significant obstacles for the creditor, as they can no longer execute the collateralised credit object due to the designation of the land as abandoned.

The change in the status of HGU land, which serves as credit collateral, to abandoned land by ATR/BPN has far-reaching legal implications for the credit agreement, affecting the creditor

⁶³ “Article 18 Paragraph (1) of Law No. 4 of 1996” (n.d.).

⁶⁴ Aslan Noor et al., “Legal Status Of Abandoned Land Pursued As Guarantee Under Law Number 4 Of 1996 Concerning Holding Rights” 4, no. 5 (2024): 1699–1705.

⁶⁵ Ana Silviana, “Hak Guna Usaha (HGU) Hapus Karena Diterlantarkan (Studi Kasus HGU PT Bali Anacardia/BA Di Kabupaten Sumba Timur, Provinsi Nusa Tenggara Timur),” *Law, Development and Justice Review* 2, no. 2 (2019): 212–32, <https://doi.org/10.14710/ldjr.v2i2.6323>.

⁶⁶ Indra Ardiansyah, “Akibat Hukum Bagi Pemegang Hak Atas Tanah Dalam Kaitannya Dengan Pengaturan Tanah Terlantar (Studi Pada Wilayah Cisarua Kabupaten Bogor)” (UNIVERSITAS DIPONEGORO, 2010).

⁶⁷ Atik Rochaeni, “Penertiban Tanah Terlantar Dan Pendayagunaan Tanah Negara Bekas Tanah Terlantar Di Indonesia,” *Jurnal Ilmiah Magister Ilmu Administrasi* 13, no. 1 (2019).

(the bank), the debtor (the HGU holder), the collateral object (HGU land), and the associated mortgage rights. This issue remains inadequately addressed in the current statutory framework under the Mortgage Law (UUHT). Consequently, a legal vacuum persists, and normative conflicts arise between the provisions of the Mortgage Law and the Government Regulation on the Management of Abandoned Areas and Land. To ensure justice and legal certainty, it is imperative to incorporate clear provisions addressing these issues into the relevant statutory regulations.

CONCLUSION

The land management process conducted by ATR/BPN produces legal outcomes affecting the status of land rights. Specifically, this process often changes the status of HGU land (Hak Guna Usaha) to abandoned land. However, the application of legal provisions in the management of abandoned land, particularly when HGU land serves as collateral in credit agreements secured by mortgage rights, fails to provide legal certainty for both the mortgage holder (the creditor) and the grantor of the mortgage (the debtor). Notably, the lack of clarity regarding the timeline for the abandoned land management process—from the inclusion of HGU land in the database of potentially abandoned land to the issuance of the Minister of ATR/BPN's decree—results in prolonged delays, sometimes extending up to 12 years. The change in the status of HGU land serving as credit collateral to abandoned land creates significant legal consequences. These include the extinguishment of land rights, the nullification of mortgage rights, and the loss of the ability to perform legal acts concerning the credit collateral (HGU land). Nevertheless, the transformation of the collateral's status does not nullify the primary credit agreement between the creditor and the debtor. However, the creditor's preferential position is effectively weakened, as the creditor loses the ability to execute the credit collateral (HGU land). Both the creditor (mortgage holder) and the debtor (mortgage grantor) suffer losses due to the status change imposed by ATR/BPN.

The author recommends implementing changes to the legal framework governing the management of abandoned land conducted by ATR/BPN. Specifically, amendments should be made to Article 28 of Government Regulation No. 20 of 2021 on the Management of Abandoned Areas and Land. These amendments should establish a clear time limit for the process, from submitting a proposal to issuing the Ministerial Decree designating the land as abandoned. Such changes are crucial to ensure legal certainty regarding the duration of the abandoned land management process. Additionally, there is a need to enhance the Mortgage Law (UUHT) by introducing specific provisions that impose obligations on mortgage grantors when land used as mortgage collateral is declared abandoned by the government. This would help ensure fairness and utility while providing legal certainty for both creditors and debtors. The legal status of HGU certificates also requires particular attention. To guarantee legal certainty, the portion of HGU land designated as abandoned by the Ministerial Decree must be recorded in the land book. Subsequently, the HGU certificate should be promptly subdivided (in-clave), allowing the remaining HGU land to be removed from the abandoned land database. This would ensure that the unaffected portion of HGU land remains eligible for legal transactions by the debtor and creditor. Furthermore, to enhance fairness in the abandoned land management process, there is a pressing need for a legal regulation that imposes sanctions for procedural or substantive

irregularities during the process. Such regulations would provide a mechanism for oversight and control, ensuring ATR/BPN exercises its authority responsibly and transparently. These legal reforms are essential to provide justice, utility, and legal certainty for all stakeholders involved in land use and credit transactions, particularly when HGU land is subject to management as abandoned land.

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