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Comparison of Abandoned Land Laws in Indonesia and Malaysia

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Abstract

According to Government Regulation Number 11 of 2010 and the National Land Code of 1965, in general, abandoned land is land that is intentionally not used, cultivated, and utilized according to its intended use of the land. The issue raised is the comparison of abandoned land laws in Indonesia and Malaysia. The main problem in this study is about how positive law regulates abandoned land in Indonesia and Malaysia and what factors cause differences in positive law governing abandoned land in Indonesia and Malaysia. By using normative juridical research methods, it can be concluded that first, positive laws governing abandoned land in Indonesia are Law Number 5 of 1960, Government Regulation Number 11 of 2010, Regulation of the Head of the National Land Agency Number 4 of 2010 and Regulation of the Head of the National Land Agency Number 5 of 2011. While the positive law governing abandoned land in Malaysia is the National Land Code 1965. After knowing the positive law governing abandoned land in Indonesia and Malaysia, you will see similarities and differences. The similarity is regarding the meaning of land and the concrete needs of the community for land. While the differences are in the form of the definition of abandoned land, the criteria for abandoned land, the authorities in controlling abandoned land, the stages of determining abandoned land and the utilization of abandoned land. Second, the factors that cause differences in positive land law regarding abandoned land in Indonesia and Malaysia are differences in the conception of land law and differences in regulations governing abandoned land.

Keywords: Land Law Comparison; Abandoned Land.

A. Introduction

Indonesia is a country that has an agrarian background. In this case, realise the importance of the land is as a person who has value in community life. Both rural and urban livelihoods.¹ Therefore, in general, land is a source of life for the people of Indonesia who have a function both as a natural resource and as a space for development.

Basically, the state gives land rights to the rights holders to be cultivated, used, and utilized and maintained properly. In addition to welfare for the rights holders must also be aimed at the welfare of the community, nation and state. Any granting of land rights by the state to individuals or legal entities shall be together with the obligations that must be carried out by the rights holder in accordance with the designations and requirements as stipulated in the decision granting their rights.² Therefore, any land rights holder is prohibited from abandoning his land.

The thing to note here because it is very basic is that in using or taking advantage of land rights there is a very important principle in our land law, namely all land rights have the social function mentioned in Article 6 of the UUPA. This function basically provides arrangements on the prohibition of land use for solely individual interests without regard to the interests of the community and the state. The interests of society and the interests of individuals must offset each other until finally achieved the main goal of prosperity, justice and happiness for all

¹ Soerjono Soekanto; Soleman B, *Hukum Adat Indonesia, Cetakan Keempat* (Jakarta: PT. Raja Grafindo Persada, 2001).

² Suhariningsih, *Tanah Terlantar* (Jakarta: Penerbit Prestasi Pustaka Raya, 2009).

people. Currently, land that has been controlled and / or owned in some places is still a lot in a state of abandonment, so the lofty ideals to increase the prosperity of the people are not optimal. Therefore, it is necessary to realign the land as a source of people's welfare and to realize a more just life.³

The consequences of abandoned land in Indonesia can be seen in Uupa Article 27, one of the causes of the removal of Property Rights is if the land is abandoned, Article 34 of the UUPA also mentions one of the causes of the removal of Business Use Rights is if the land is abandoned and Article 40 of the UUPA also mentions one of the causes of the removal of Building Use Rights is if the land is abandoned. This abandoned land itself does not only exist in Indonesia, in Malaysia there is also abandoned land or commonly referred to as "land scattered".

The National Land Code of 1965 is the highest land regulation in Malaysia. *The National Land Code* was issued in Malaysia under Number 56 of 1965 and is the highest land regulation in Malaysia, but *the National Land Code* 1965 does not apply to Sabah and Sarawak because the two parts of the territory have their own land laws. So, *the National Land Code* 1965 only applies in Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu, and Kuala Lumpur. Discussion of abandoned land can be found in the National Land Code 1965 Article 103, 104, 105, 109, 110, 115, 116, and 117.⁴

Based on the background outlined above, the author will analyze the positive laws governing abandoned land in Indonesia and Malaysia, for the country of Malaysia the author only analyzes the positive laws governing abandoned land in the parts of Malaysia that are subject to the National Land Code 1965. The main issues discussed in this study are about the positive laws governing abandoned land in Indonesia and Malaysia and the factors that cause positive legal differences governing abandoned land in Indonesia and Malaysia.

B. Literature review

The type of data used in this research is secondary data obtained through document studies or literature studies. Secondary data is classified in 3 (three) legal materials, namely:

1. Primary Legal Materials

Primary Law materials are binding legal materials. In this study, the primary legal material used is Law No. 5 of 1960 concerning the Basic Rules of Agrarian Principles or commonly called UUPA; National Land Code 1965; Government Regulation No. 11 of 2010 concerning The Control and Utilization of Abandoned Land; and Regulation of the Head of the National Land Agency Number 4 of 2010 concerning Procedures for The Control of Abandoned Land.

2. Secondary Legal Materials

Secondary Legal Materials are materials that provide information or matters related to the content of the primary source, as well as its implementation. Secondary legal sources used in this study include literature related to the regulation of abandoned land in Indonesia and Malaysia such as books, journals, papers, articles and other data.

³ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Universitas Trisakti, 2016).

⁴ Maidin; et. al, *Principles of Malaysian Land Law* (Malaysia: LexisNexis, 2008).

C. Research Methods

The writing of this research uses normative juridical methods, namely methods or methods used in legal research conducted by researching existing library materials.⁵ This study included legal comparison research, which compares positive laws governing abandoned land in Indonesia and Malaysia. The type of research used in this study is to include prescriptive research, namely to get suggestions to solve or overcome a problem.

The data analysis method used in this research is a qualitative method, namely to get systematic answers and also so that readers gain a deeper understanding by prioritizing the quality of the data source obtained over the quantity.⁶

D. Results and Discussion

1. Positive Laws Governing Abandoned Land in Indonesia and Malaysia

Positive laws governing abandoned land in Indonesia are contained in several laws and regulations:

- a) Law No. 5 of 1960 concerning the Basic Rules of Agrarian Principles, namely in Article 6, Article 27 letter a number 3, Article 34 letter e, and Article 40 letter e.
- b) Government Regulation Number 11 of 2010 concerning The Control and Utilization of Abandoned Land is Article 2, Article 7 paragraph (1), Article 8, Article 8 paragraph (6), Article 9, Article 11 paragraph (1), Article 14, Article 17.
- c) Regulation of the Head of the National Land Agency Number 4 of 2010 concerning Procedures for The Control of Abandoned Land, namely Article 1 number 6, Article 3, Article 4 paragraph (2), Article 5 paragraph (1), Article 6 letter c, Article 8 paragraph (3), Article 8 paragraph (4), Article 9, Article 10 paragraph (1), Article 11 paragraph (1), Article 15 paragraph (2), Article 19, Article 20 paragraph (1), Article 20 paragraph (2), Article 20 paragraph (3), Article 20 paragraph (4).

In the above rules, it is regulated regarding:

- 1) Understanding land in Indonesia.
- 2) Types of land rights in Indonesia.
- 3) Understanding abandoned land in Indonesia.
- 4) Authorities in land control in Indonesia.
- 5) Stages of land acquisition in Indonesia.

a. Positive Laws Governing Abandoned Land in Malaysia

The arrangements regarding abandoned land in Malaysia are contained in *The National Land Code* 1965 Articles 103, 104, 105, 109, 110, 115, 116, and 117. In this regulation is regulated regarding:

- a) Understanding land in Malaysia.
- b) Types of land rights in Malaysia.
- c) Understanding abandoned land in Malaysia.
- d) Authorities in the control of abandoned land in Malaysia.
- e) Stages of land acquisition in Malaysia.

Positive legal differences in Indonesia and Malaysia can be analyzed as follows:

⁵ Soerjono Soekanto; Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat, Cetakan Ke-11* (Jakarta: PT Raja Grafindo Persada, 2009).

⁶ Soekanto Soerjono, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1989).

- a) In Indonesia in addition to land law in general, regulations regarding abandoned land in Indonesia are regulated more specifically in government regulations and regulations of the head of the National Land Agency. While in Malaysia the regulation on abandoned land follows the land law in general, namely *The National Land Code 1965* and follows the ministry's rules in accordance with the established land category.
- b) The positive legal differences between Indonesia and Malaysia can be seen that the regulations governing abandoned land in Indonesia are quiet a lot because there are government regulations regarding abandoned land, and there is also a regulation by the Head of the National Land Agency, which is a regulation made by the authorities in land affairs in Indonesia. Although the rules governing abandoned land in Indonesia are quiet, they are not in the form of laws. Where in Indonesia itself, the law is more potent than government regulations. So in Indonesia, if a land has been designated as abandoned land or there has been a decision to establish abandoned land against the ground, the landowner can file a lawsuit if the owner does not accept the decision on the determination of abandoned land issued by *the Head of the National Land Agency*. This can happen because the regulations governing abandoned land in Indonesia are government regulations and not laws. So, it would be better if the regulations governing abandoned land in Indonesia are upgraded to law so that the position is stronger and minimizes the existence of lawsuits by landowners who have been determined by abandoned land decisions.

While in Malaysia, the regulations governing abandoned land are only contained in *The National Land Code 1965* where in the Malaysia National Land Code 1965 is a land law in general. In Malaysia there are no regulations governing abandoned land specifically because the government in Malaysia has not paid attention to making regulations specifically for abandoned land. But in Malaysia if a land that has been given property to individuals but does not meet the requirements set out in Article 115, Article 116 and Article 117 of *The National Land Code 1965* where the requirements are in accordance with each category of land use, namely Article 115 for agricultural category land, Article 116 for land in the building category and Article 117 for land in the industrial category.

Then land that does not meet these requirements can become abandoned land and taken by the State Authority (Ministry) by the land category. In Malaysia, if a land has been designated as derelict land, the landowner cannot file a lawsuit if the objection to the determination of abandoned land because Article 46 of the National Land Code 1965 it is stated that land that does not meet the requirements can become a wasteland and the state takes the land. The land owner cannot file a lawsuit. But even so, it would be better if special regulations governing abandoned land in Malaysia.

After knowing the positive laws governing abandoned land in Indonesia and Malaysia, it will be seen the following similarities and differences:

a) Equation

- 1) Understanding land in Indonesia and Malaysia both means that the soil is the surface of the earth.
- 2) Similarities in Indonesia and Malaysia are the concrete needs of the people of Indonesia and Malaysia. Where both in Indonesia and Malaysia the amount of land will not increase, while the population in Indonesia and Malaysia will always increase over time so that land needs will continue to increase then everyone who owns the land must not abandon the land and must use the land in accordance with the provision of the land use concerned.

b) Difference

1) Types of Land Rights

In Indonesia, the types of land rights are regulated in Law No. 5 of 1960 concerning the Basic Rules of Agrarian Principles. These rights are Property Rights, Business Use Rights, Building Rights, and Right to Use. While in Malaysia the types of land rights are regulated in *The National Land Code* 1965. These rights are *Freehold Title* (Property Rights) and *Leasehold Title* (LeaseHold). Property Rights are divided into two, namely Temporary Property Rights and Primary Property Rights.

2) Understanding Abandoned Land

Abandoned land is land that is granted rights by the state kberupa Property Rights, Right to Business, right to use, right to use and management rights where all these rights are the basis of land tenure that is not cultivated, used or utilized in accordance with the circumstances and nature and purpose of granting rights or the basis of control. While in Malaysia Abandoned land is land owned by people and not processed for three consecutive years for agricultural category land, not built within two years since it was granted the right to land category building, and not operated industrial activities within three years of being granted the right to land in the industrial category.

3) Authorities in the Control of Abandoned Land

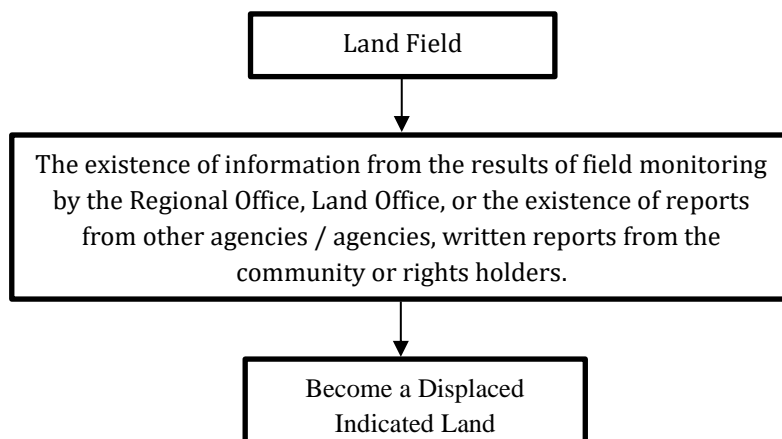
In Indonesia, based on the Regulation of the Head of the National Land Agency, the implementation of the control of abandoned land is carried out by Committee C, the Head of the Regional Office of the National Land Agency, and the Head of the National Land Agency. While in Malaysia, the authorities in the control of abandoned land are the State Authorities who fit the land category. The State Authority for agricultural category land is the Ministry of Agriculture and Agriculture Asas Tani Industry, while the State Authority for land building category is the Ministry of Housing and Regional Government, and for land in the industrial category the State Authority is the Ministry of Primary Industry.

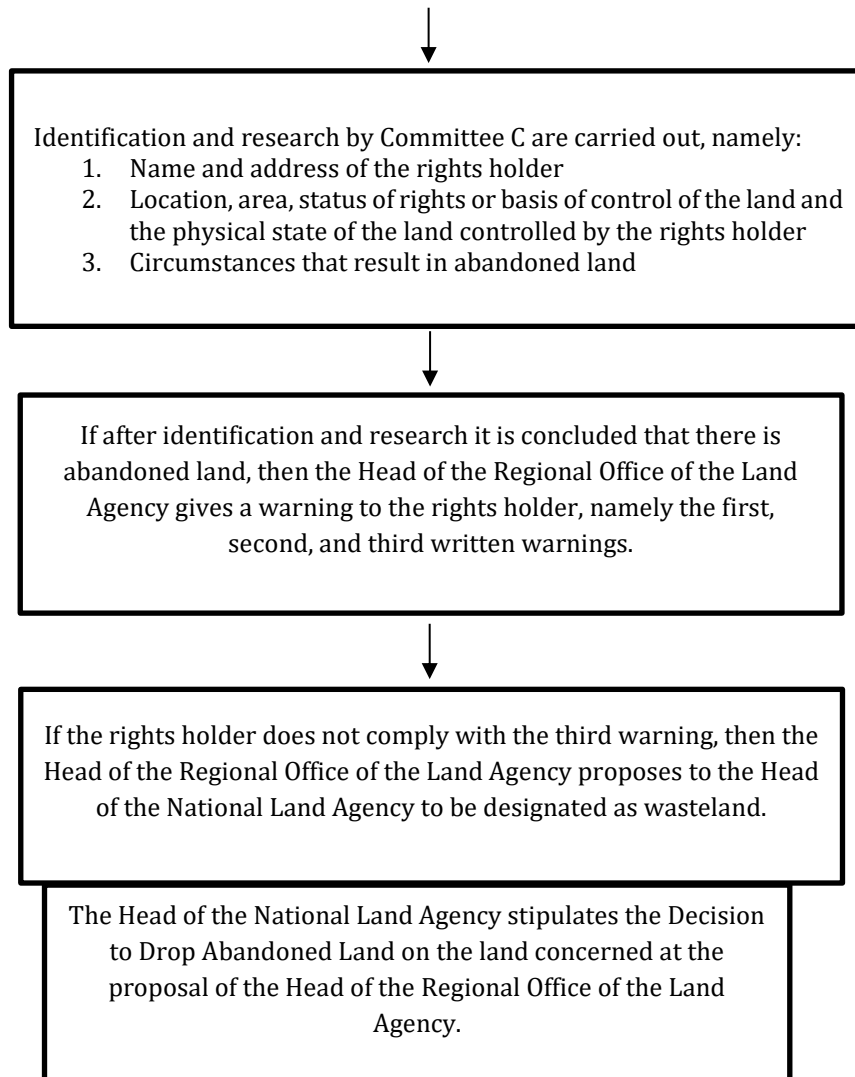
4) Stages of Abandoned Land Control in Indonesia and Malaysia

In Indonesia, the stages of land acquisition are:

- i. Inventory of land indicated abandoned;
- ii. Identification and research;
- iii. Warning to rights holders;
- iv. Determination of abandoned land.

Chart/Scheme of Stages of Land Control in Indonesia



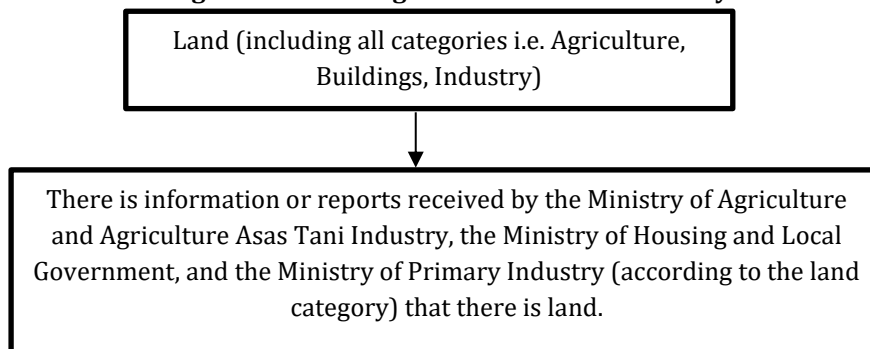


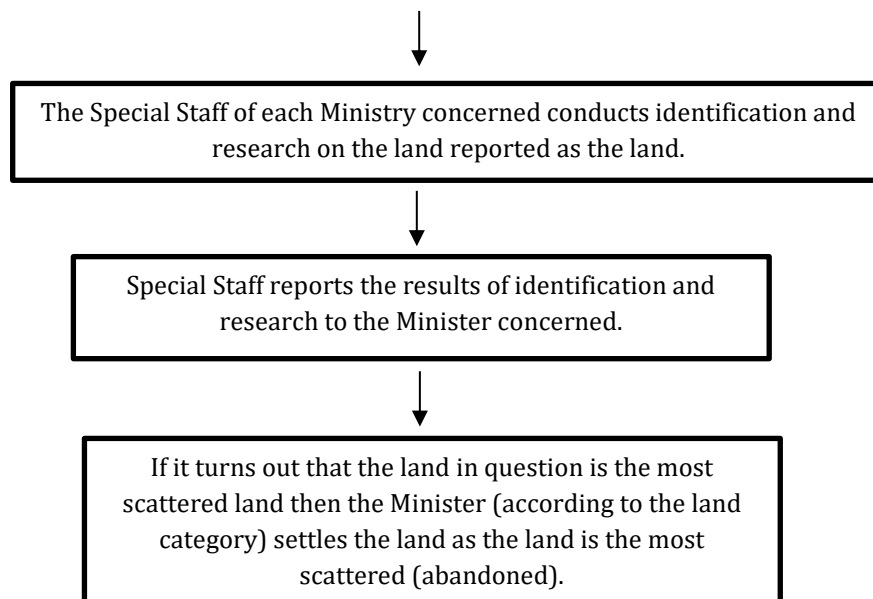
While in Malaysia the stages of land control are abandoned there are 2 (two) namely:

- i. Identification and research;
- ii. Determination of abandoned land.

The land acquisition is based on identification and research which then after being identified, then the land will be made a determination which will be explained as in the scheme below:

Chart Stages of Controlling Abandoned Land in Malaysia





2. Factors That Cause Positive Legal Differences Governing Abandoned Land in Indonesia and Malaysia

a. Differences in Conception of Indonesian and Malaysian Land Law

The conception of land law in Indonesia is called the Conception of National Land Law. The conception of the National Land Law is based on its conception of Customary Law, which is communalistic religious. In the National Land Law, all land in the territory of the Indonesian state is a common land belonging to all Indonesian people who have united into the Indonesian nation. Indonesian citizens are each possible to control parts of the land together individually, with land rights that are private as well as the element of togetherness. Malaysia adheres to feudal conceptions. In feudal law of land, the highest right of land tenure is the Property of the King. All land belongs to the State/King, of which the King is lord. However, in this case the State / King still gives ownership of land ownership (land rights) individually to its people in the form of property rights and rental rights.

b. Differences in Governing Arrangements Regarding Abandoned Land

Indonesia has regulations governing abandoned land specifically, while Malaysia has no regulations governing abandoned land specifically. In addition to the Indonesian land law, regulations regarding abandoned land in Indonesia are regulated more specifically in Government Regulation No. 11 of 2010 concerning The Control and Utilization of Abandoned Land, Regulation of the Head of the National Land Agency Number 4 of 2010 concerning Procedures for The Control of Abandoned Land. In Malaysia there are no regulations governing abandoned land specifically. In Malaysia, positive laws governing abandoned land follow the land law in general, namely the National Land Code 1965 and follow the ministry's rules in accordance with the established land category.

E. Conclusion

1. Positive laws governing abandoned land in Indonesia are regulated in several laws and regulations, namely:
 - a. Law No. 5 of 1960 concerning The Basic Rules of Agrarian Principles.

- b. Government Regulation No. 11 of 2010 concerning The Control and Utilization of Abandoned Land.
- c. Regulation of the Head of the National Land Agency Number 4 of 2010 concerning Procedures for The Control of Abandoned Land.

While in Malaysia the positive law governing abandoned land is the *National Land Code* 1965. In Malaysia there are no specific regulations governing abandoned land. In the laws and regulations that apply in Indonesia and Malaysia, it is regulated regarding:

- a. Types of land rights.
 - b. Understanding of abandoned land.
 - c. Authorities in the control of abandoned land.
 - d. The stages of the control of abandoned land.
2. After knowing the positive laws governing abandoned land in Indonesia, there will be similarities and differences. From the positive legal differences governing abandoned land in Indonesia and Malaysia, it can be put forward factors that cause positive legal differences governing abandoned land in Indonesia and Malaysia, namely:
- a. There is a difference from the conception of Indonesian and Malaysian land law;
 - b. Differences in regulations governing derelict land.

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