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The Control of Abandoned Zones and Land

The implementing regulations of Law No. 11 of 2020 on Job Creation (“**Job Creation Law**”) have been issued, and there are several interesting updates on land issues. One of them is due to the issuance of Government Regulation No. 20 of 2021 on the Control of Abandoned Zones and Land (“**GR 20/2021**”), which came into effect on 2 February 2021. In this advisory we focus on some new regulations on abandoned land compared to the older ones, mainly Government Regulation No. 11 of 2010 on the Control and Utilization of Abandoned Land (“**GR 11/2010**”).

Definitions

GR 20/2021 introduces a term not recognized before in GR 11/2010, Abandoned Zone (*Kawasan Terlantar*), which is different from “Abandoned Land”.

- **An Abandoned Zone** is defined as a zone which is a non-forest zone, which does have attached to it a Right to Land under a License/Concession/Business License, is deliberately not being exploited, used, or utilized.
- Meanwhile, **Abandoned Land** is defined as land under a right, land under a Right to Manage, and land acquired under Grounds for Control over Land (a decision/letter from the relevant authority which serves as the grounds for a person or a legal entity to acquire, control, use or utilize the land), that is deliberately not exploited, not used, not utilized, and/or not preserved.

GR 11/2010 used to define “Abandoned Land” very broadly, as the land over which rights have already been granted by the state in the form of a Right of Ownership, a Right to Cultivate, a Right to Build, a Right to Use, and a Right to Manage, or grounds for controlling land which is not being exploited, not used, or not utilized according to the circumstances or nature and the purpose of granting the rights or the grounds for control. Therefore, previously, if the land was not exploited, used or utilized accordingly, the land could be considered Abandoned Land (subject to identification and research). Now it seems that under GR 20/2021, the Government wishes to emphasize that only land which is **deliberately** not being exploited, not used, not utilized, and/or not preserved can be considered Abandoned Land.

The Obligations of a License/Concession/Business License Holder

The principal reason land may be considered Abandoned Land, given the definition of Abandoned Land, is the failure of the right holder to comply with the requirements for obtaining the land right. GR 20/2021 specifically addresses the obligation of the holder of the license/concession/business license, right to land, Right to Manage or grounds for controlling the land to exploit, use, utilize and/or preserve the land owned or controlled, **and to report on its exploitation, use, utilization and/or preservation regularly**. This obligation was not expressly imposed under GR 11/2010.

GR 20/2021 also re-emphasizes that the exploitation, use, utilization and/or preservation of the land must also consider its social function.

The Object of Abandoned Land Control

Article 7 of GR 20/2021 explains the kinds of right to land and the circumstances which make land an object of Abandoned Land control as follows:

a. Land under a Right of Ownership

Land under a Right of Ownership will become an object of Abandoned Land control if it is deliberately not used, utilized or preserved and:

- becomes controlled by local communities and then becomes a settlement area;
- is controlled by a different party continuously for 20 (twenty) years without any legal ties to the Right Holder; or
- the social function of the Right to Land is not performed, whether the Right Holder still exists or not.

b. Land under a Right to Build, Right to Use or Right to Manage

Land under a Right to Build, Right to Use or Right to Manage will become the object of Abandoned Land control if it is deliberately **not exploited, not used, not utilized, and/or not preserved** starting 2 (two) years after the issuance of the right.

However, there is an exception for land under a Right to Manage of a customary community (*masyarakat hukum adat*) and land under a Right to Manage which is an asset of the Land Bank (*Bank Tanah*) which cannot be regarded as Abandoned Land despite not being exploited, used, utilized or preserved.

c. Land under a Right to Cultivate

Land under a Right to Cultivate will become an object of Abandoned Land control if it is **not exploited, not used, and/or not utilized** starting from 2 (two) years after the issuance of the right.

d. Land acquired on Grounds for Control Over Land

Land acquired on Grounds for Control Over Land will become the object of Abandoned Land control if it is deliberately **not exploited, not used, not utilized, and/or not preserved** starting from 2 (two) years after the issuance of the Grounds for Control Over Land.

Inventory of Zones and Land Indicated to be Abandoned

The inventory of zones and land indicated to be abandoned is covered in more depth in GR 20/2021.

a. The Inventory of zones indicated to be abandoned (Abandoned Zones)

The inventory is conducted by the head of the agency which issues the relevant License/Concession/Business License according to their respective authorities. The inventory of Licenses/Concessions/Business Licenses will cover:

- for those issued **after** the issuance of GR 20/2021: 2 (two) years after the issuance of the License/Concession/Business License;
- for those issued **before** the issuance of GR 20/2021: upon the issuance of GR 20/2021

The inventory of zones indicated to be abandoned will be conducted based on a report or information from the License/Concession/Business License holder, the agency that issued the License/Concession/Business License, or the public. If the head of the agency does not conduct the inventory within 90 (ninety) days of receipt of a report or information, the inventory will be taken over by the Minister of Agrarian Affairs/Head of the National Land Agency.

b. The Inventory of land indicated to be abandoned (Abandoned Land)

The inventory of land indicated to be abandoned will be conducted by the Land Office, at the soonest 2 (two) years after the issuance of the right. The inventory will be conducted based on a report or information from the right holder, the result of monitoring and evaluation of the right or grounds for control over the land by the regency/municipality Land Office, the National Land Agency's Regional Office or the Ministry of Agrarian Affairs, another ministry/institution, the regional government, or the public. GR 20/2021 lists more sources of reports/information than GR 11/2010.

The Revision of the Land Area

Under GR 11/2010, the right holder could propose a revision of the area of land under a Land Right or Right to Manage by if the abandoned area constituted 25% (twenty-five percent) of the whole land area. However, now under GR 20/2021 the percentage of the abandoned area required to apply for a revision is not stated. Moreover, under GR 20/2021 if the land area is not revised by the right holder within 180 (one hundred and eighty) days of the issuance of the determination of Abandoned Land by the Minister of Agrarian Affairs/Head of National Land Agency, then the un-abandoned part of the land will be regarded as integral with the abandoned part and considered Abandoned Land, too.

Transferring a License/Concession/Business License

GR 20/2021 now allows the transfer of a revoked License/Concession/Business License over an Abandoned Zone to another party, through a transparent and competitive mechanism. This transfer will be conducted by the head of the agency which issued the License/Concession/Business License. If the head of the agency does not transfer the License/Concession/Business License within 30 (thirty) calendar days of the determination of the Abandoned Zone, the Minister of Agrarian Affairs/Head of the National Land Agency must report it to the President.

The new GR 20/2021 presents interesting new provisions that holders of land rights /zone licenses must take into account to prevent their land being deemed abandoned. It seems that GR 20/2021 is intended to persuade the land title/ zone license holders to utilize the land that they have rights over. GR 20/2021 is also intended to provide a legal basis for the Land Bank to acquire and manage abandoned land/sites.



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