UTILIZATION OF Abandoned LAND FOR PUBLIC INTEREST DEVELOPMENT IN INDONESIA

IN THE PERSPECTIVE OF AL-QURA'N AND HADITH

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Abstract

The need for land is increasing over time to meet basic human needs and on the other hand there is no increase in land area in Indonesia. However, there are also many individuals and legal entities who control land that is not utilized in accordance with the nature of the land rights and the purpose of granting the rights, which results in abandoned land. Reviving abandoned land or dead land from the perspective of the Qur'an and Al-Hadith in the study of land theology is an effort to protect the environment so that it avoids damage. The context of the hadith of reviving dead land (Ihya al-mawat) in Indonesia in the current conditions of course must look at the existing conditions so that its application is more beneficial for the general public by utilizing abandoned land for development in the public interest. Legal protection for parties who control abandoned land in good faith is also provided with compensation if the land becomes the object of land acquisition for development in the public interest. Of course, to utilize abandoned land, you must follow the positive legal provisions governing land regulations in Indonesia.

I. Introduction

Infrastructure development in Indonesia is currently very intensive, especially to catch up with developed countries which are already very extraordinary with well-established arrangements in various fields including the field of transportation facilities and in other fields. To increase economic growth between regions in Indonesia, connectivity between regions is needed by building roads including freeways (toll roads) which facilitate the delivery of goods and the movement of people between regions.

The main component in infrastructure development is the availability of land as a development
object. The need for land is increasing due to very dynamic development, but on the other hand, the land area is not increasing or even decreasing due to landslides, abrasion, floods and other natural disasters.

Ownership of land by the public and by legal entities in Indonesia as immovable property is limited by statutory regulations with the aim that the land can be utilized in accordance with the type of rights that can be owned so that it is effective in the function of the designation of the land rights. Another aim of limiting land ownership is so that the land is not neglected. We recognize the existence of Ownership Rights, Building Use Rights, Use Rights and Cultivation Rights as primary rights to land and secondary land rights which are superimposed on Management Rights land such as Building Use Rights above Management Rights, Use Rights on Management Rights land, Cultivation Rights over Management Rights and Building Use Rights over Ownership Land and Use Rights over Ownership Rights.

The holder of land rights, both primary and secondary land rights, has an obligation to maintain the land, increase its fertility and prevent damage and utilize the land in accordance with the nature and purpose of the land rights, limited by the social function of land rights. Thus, if the state's interests require the use of the land for development in the public interest, it must be handed over to the state with compensation.

On the other hand, there is a lot of abandoned land owned by individuals and legal entities in Indonesia which is not utilized in accordance with the nature and purpose of the land rights they own, while development in the public interest really needs this land. Therefore, in this journal the author will discuss how abandoned land is used for development of public interests in Indonesia from the perspective of the Al-Qur'an and Hadith.

1. Research Methods

Based on the problem formulation as stated in the introduction to this journal, a normative juridical approach will be used by examining the main legal sources in the form of theories, concepts, legal principles and regulations to discuss how to use abandoned land for development of the public interest in Indonesia from the perspective of the Qur'an and Hadith.

2. Discussion

A. Land from the perspective of economic rights.

The comparison between the availability of land as a scarce natural resource on the one hand, and the increase in population with its various needs for land on the other hand, is not easy to find a common ground. In relation to land availability, Article 11 paragraph (1) of Law Number 11 of 2005 concerning ratification of the International Covenant on Economic, Social and Cultural Rights states that every person's right to a decent standard of living for themselves and their families, including the right to obtain food, clothing and housing, and for the continuous
improvement of living conditions. Furthermore, paragraph (2) emphasizes the recognition of the fundamental right of every person to be free from hunger, and to support this right the state must take the necessary steps to improve the methods of production, consumption and distribution of food so as to achieve development and utilization of natural resources. efficient natural power.

Economic growth and the increase in the economic value of land have resulted in increasingly sharp social disparities between those who have access that allows land control beyond reasonable limits and those who need land the most, but are in a cornered position. In society, land is a type of property that occupies a special position. The more and more land a person owns, the more respected he is in society. Therefore, it is natural that people compete to own and control as much land as possible. Land ownership by a person or a legal entity in Indonesia is limited in its extent with the aim that the land owned can be utilized optimally in accordance with the nature and purpose of the land rights owned. Thus, a person or legal entity that owns land also has control rights over the land which contains a series of authorities, obligations and/or prohibitions for the right holder to do anything regarding the land they own. Something that is permissible, obligatory, or prohibited to do, which is the content of tenure rights, is the criterion or benchmark for differentiating between other land tenure rights.

Social justice is not only the state's responsibility to realize it, but is a collective responsibility, namely the state, economic actors and the people as a whole. The state is a facilitator and regulator, as well as a good referee, if necessary, to intervene so that access to ownership and control of land for farmers and farm workers is more widely open and better available. In this way, great attention is shown to the search for the right formulation, how the relationship shows balance in the ownership, control and use of objects and services so as to bring happiness and prosperity to society as a whole.

That every Indonesian citizen, both men and women, has the same opportunity to obtain rights to land and to obtain the benefits and results, both for themselves and their families. We can understand this from the contents of Article 9 paragraph 2 of the Basic Agrarian Law Number 5 of 1960. The words to obtain benefits and results, both for oneself and one's family, indicate the personal nature of land rights in national land law. Land rights are not absolute, because the authority of the rights is limited. Limitations on the exercise of land rights authority by the rights holder are limited by several principles, including:

a. All land rights have a social function
b. Every person or legal entity that has rights to agricultural land is basically obliged to carry out or cultivate it actively by themselves by preventing extortion methods.

c. Every person or legal entity that has land rights is obliged to maintain its land, including increasing its fertility and preventing damage.

d. Every holder of land rights is prohibited from abandoning the land.
To look further at the economic rights attached to land owned by individuals or legal entities, we must understand the differences in the nature of land rights and the purpose of granting these rights as explained as follows:

RIGHT OF OWNERSHIP

Property Rights (HM) according to Article 20 paragraph (1) of the Basic Agrarian Law (UUPA) Number 5 of 1960 are hereditary, strongest and fullest rights that a person can have by remembering the provisions of Article 6 of the UUPA, namely the social function of land rights. Hereditary means that the ownership rights to land can continue continuously as long as the owner is still alive and if the owner dies, the ownership rights can be continued by his heirs as long as they fulfill the requirements as subjects of ownership rights. Strongest means that land ownership rights are stronger than other land rights, do not have a specific time limit, are easy to defend against interference from other parties, and are not easily erased. Full means that ownership rights over land give the owner the broadest authority compared to other land rights, can be the parent of other land rights, are not parented by other land rights and the use of the land is wider than other land rights. Ownership rights to land can be owned by individual Indonesian citizens and legal entities appointed by the Government. When using land ownership rights, you must pay attention to the social function of land, namely that when using land you must not cause harm to other people, the use of land must be adapted to the circumstances and nature of the rights, there is a balance between personal interests and the public interest, and the land must be well maintained to increase fertility and prevent damage.

CULTIVATION RIGHTS

Provisions regarding Business Use Rights (HGU) are stated in Article 16 paragraph (1) letter b UUPA. Specifically regulated in Articles 28 to 34 of the UUPA. Then according to Article 50 paragraph (2) UUPA, further provisions regarding Cultivation Rights are regulated by statutory regulations. The latest statutory regulation is Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration, specifically regulated in Articles 19 to Article 33.

According to Article 28 paragraph (1) of the UUPA, what is meant by Cultivation Rights is the right to cultivate land that is directly controlled by the state, within the time period as stated in Article 29 of the UUPA, for agricultural, fishery, livestock and plantation companies. Then, in its development, Cultivation Rights apart from state land can also be granted on Management Rights land, this is stated in Article 21 PP Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration. Furthermore, in Article 22 paragraph (1) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration, it is stated that the term of Cultivation Rights is granted for a maximum period of 35 (thirty five) years, extended for a maximum period of 25 (twenty five) years and renewed for a
maximum period of 35 (thirty five) years. The area of Cultivation Rights land controlled by individuals is a minimum of 5 hectares and a maximum of 25 hectares, while that controlled by legal entities is a minimum of 5 hectares and the maximum area is determined by the Head of the National Land Agency (Article 28 paragraph (2) UUPA in conjunction with Article 5 Government Regulation Number 40 1996). Meanwhile, the subjects holding Cultivation Rights are Indonesian citizens and legal entities established according to Indonesian law and domiciled in Indonesia (Article 30 UUPA in conjunction with Article 19 Government Regulation Number 18 of 2021).

BUILDING RIGHTS

Provisions regarding Building Use Rights (HGB) are stated in Article 16 paragraph (1) letter c UUPA. Specifically regulated in Articles 35 to 40 UUPA. According to Article 50 paragraph (2) UUPA, further provisions regarding Building Use Rights are regulated by statutory regulations. The latest statutory regulations are Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration, specifically regulated in Article 34 to Article 48.

Article 35 of the UUPA provides the definition of building use rights as the right to erect and own buildings on land that is not one's own. Subjects holding building use rights are regulated in Article 34 PP Number 18 of 2021, namely Indonesian citizens and legal entities established according to Indonesian law and domiciled in Indonesia. This is further explained in Article 36 PP Number 18 of 2021 which states that land that can be granted with building use rights is state land, land with management rights, and land with ownership rights. The term of Building Use Rights is granted for a maximum period of 30 (thirty) years, extended for a maximum period of 20 (twenty) years, and renewed for a maximum period of 30 (thirty) years.

USE RIGHTS

Provisions regarding Use Rights (HP) are stated in Article 16 paragraph (1) letter d UUPA. Specifically regulated in Articles 41 to 43 UUPA. According to Article 50 paragraph (2) UUPA, further provisions regarding Building Use Rights are regulated by statutory regulations. The latest statutory regulations are Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration, specifically regulated in Articles 34 to Articles 49 to Articles 63.

Article 41 paragraph (1) UUPA, provides the definition of Hak Pakai as the right to use and/collect the proceeds from land directly controlled by the state or land belonging to another person, which gives the authority and obligations specified in the decision to grant it by the official authorized to grant it or in an agreement with the land owner, which is not a rental agreement or land management agreement, as long as it does not conflict with the spirit and provisions of the UUPA. The word "use" in the Hak Pakai refers to the meaning that the Hak Pakai is used for the purposes of building buildings, while the words "collect the proceeds" in the Hak Pakai are used for purposes other than
building buildings, for example agriculture, fisheries, animal husbandry and plantations. Then it is stated in Article 49 paragraph (1) PP Number 18 of 2021 that the Right to Use consists of the right to use for a period of time and the rights during use.

The subject of Right to Use is further mentioned in Article 49 paragraph (2) and paragraph (3) PP Number 18 of 2021 which is divided into 2 (two) as follows:

a. The right to use for a certain period of time is granted to:
   1. Indonesian citizen
   2. Legal entities established according to Indonesian law and domiciled in Indonesia
   3. Legal entities that have representatives in Indonesia
   4. Religious and social bodies and
   5. Foreigner

b. The right to use during use is granted to:
   1. Central Government Agencies
   2. Regional Government
   3. Village Government

4. Representatives of foreign countries and representatives of international bodies.

It is further explained in Article 51 paragraph (1) PP Number 18 of 2021 which explains that land that can be granted Use Rights is State Land, Freehold Land and Management Rights Land for use rights for a certain period of time, while use rights are for use as long as the land is used. can be granted including State Land and Management Rights Land.

The term of the Right to Use is further explained in Article 52 PP Number 18 of 2021, in paragraph (1) it is stated that the Right to Use on State Land and Land Management Rights is granted for a maximum period of 30 (thirty) years, extended for a period of time. a maximum of 20 (twenty) years, and is valid for a maximum period of 30 (thirty) years. Then in paragraph (2) it is stated that the Right to Use during use is given for an unspecified period of time as long as it is used and exploited and in paragraph (3) the Right to Use with a period of time on Land of Ownership, is given for a maximum period of 30 (thirty) years and can be upheld by a deed granting Usage Rights on Freehold land.

By understanding the nature and purpose of granting land rights as mentioned above, we can see that there are differences in economic rights to land between each land right in Indonesia. Obligations towards holders of land rights from Ownership Rights, Cultivation Rights, Building Use Rights and Usage Rights include using and exploiting the land given in accordance with its intended purpose, maintaining the land, including increasing its fertility and preventing damage as well as preserving the environment and the existence of prohibitions. to abandon the land to which the above land rights have been granted.
Conclusion

From the discussion above, the author can conclude as follows:

1. Abandoned land is land of rights, land of Management Rights, and land obtained based on the Basis of Land Tenure, which is intentionally not cultivated, not used, not exploited, and/or not maintained by the owner in accordance with the nature of the land rights and the purpose of the land, granting these rights.

2. The context of the Hadith Ihya al-mawat which means reviving sleeping (dead) land in the current conditions is more appropriate to maximize idle land which physically cannot be planted or used as agricultural land due to limited water resources as a supporting capacity for utilization. With these conditions, it is more appropriate for it to be used as a location for development of public interest which has an impact on improving the economic welfare, especially of the community around the development site, such as educational infrastructure, public markets, airports and so on as well as increasing the economic welfare of the wider community in general.

3. Utilization of abandoned land that has been designated as State Reserve Public Land (TCUN) can be utilized through Agrarian Reform, National Strategic Projects (PSN), Land Banks and other State Reserves. For certainty and legal protection, parties who have utilized abandoned land are provided with proof of ownership in the form of a certificate of land rights.

4. That the party who controls the land in good faith, among other things, makes use of abandoned land has the right to receive compensation in procuring land for public purposes. This proves that legal protection for parties who use abandoned land in good faith is also given legal protection by the state and their rights are not removed if they are affected by development projects for the public interest.
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