



Client Alert April 2022 Indonesia's New Implementing Regulation on Control of Abandoned Area and Land

Government Regulation No. 20 of 2021 on Control of Abandoned Area and Land

Overview

The Job Creation Act No. 11 of 2020 ("**Job Creation Act**") has facilitated the Government's endeavor to solve the problem of unused, unutilized, and uncultivated land and areas. Article 180 Chapter XIII of the Job Creation Act has stipulated that any rights or concession on any land/area that are not utilized within 2 (two) years since its issuance would be revoked by the Government. Furthermore, the Government Regulation No. 20 of 2021 ("**GR 20/2021**") on Control of Abandoned Area and Land was enacted to serve as the implementation of Article 180 of the Job Creation Act, which carries the goal of increasing the land usage effectivity to enhance the Indonesia national economy.

In addition, it is noteworthy that GR 20/2021 has revoked and declared the Government Regulation No. 11 of 2010 on Control and Utilization of Abandoned Land ("**GR 11/2010**") to be null and void, albeit all existing implementing regulations on control and utilization of abandoned land shall remain applicable as long it does not contradict or being replaced by provisions on GR 20/2021.

Previously, GR 11/2010 never recognize the term of Abandoned Area, whereas GR 20/2021 introduces the term of Abandoned Area and differentiate the definition of Abandoned Area and Abandoned Land as follows:

- (a) Abandoned Area shall be a non-forest area which (i) has not been attached by any land rights; and (ii) have been granted a License/Concession/Business Licensing and deliberately not cultivated, used and/ or utilized;
- (b) Abandoned Land shall be (i) land under land rights title; (ii) right to manage land title and (iii) land acquired on a basis of control over such land, which is deliberately not cultivated, used, utilized, and/ or maintained.

To note that the examples of land acquired on a basis of control over such land can be evidenced by, among others, the following documents: (i) transfer agreement of certificated land without transfer of title; (ii) transfer documents of customary land rights; and/or (iii) occupancy permit.

| Subject | Previous Regulation | Key Changes |
|--------------------------|---|---|
| Object of Abandoned Area | Not regulated | <p>The objects of Abandoned Area are as follows:</p> <ul style="list-style-type: none"> • Mining area; • Plantation area; • Industrial area; • Tourism area; • Housing/ settlement area in a big/ integrated scale; or • Other areas which its cultivation, use and/ or utilization is based on License/Concession/Business Licensing related to the land and space utilization. <p>The objects that are exempted from the classification of Abandoned Area are as follows:</p> <ul style="list-style-type: none"> • Area that is an object of an ongoing court case; • There is a change in the spatial plan so that the area cannot be cultivated; • Declared as a conservation area; and/or • Cannot be cultivated, or utilized due to force majeure, including war, riots, natural disaster, and other disasters. |
| Object of Abandoned Land | <p>General provisions and/or normative definition on Abandoned Land</p> <p>No further provision on the Right to Manage Land Title</p> | <ul style="list-style-type: none"> • Land rights title in the form of rights of ownership (<i>hak milik</i>) shall become an object of control of Abandoned Land if it is deliberately unused, unutilized, and/ or not maintained and therefore: <ul style="list-style-type: none"> (a) It is controlled by the local community as well as becoming a village area; (b) continuously controlled by another party for 20 (twenty) years without any legal relations with the rights' holder; or (c) the social function of the land is unfulfilled, in despite of the land right's holder existence. |

- The land rights titles in the form of (i) lands with right to build (*hak guna bangunan*), right to use (*hak pakai*), and right to manage (*hak pengelolaan*); (ii) lands with right to cultivate (*hak guna usaha*); and (iii) land acquired on a basis of control over such land (*dasar penguasaan atas tanah*) shall be the object of control of Abandoned Land if it is deliberately not cultivated, used, utilized, and/ or maintained as of 2 (two) years since the issuance of right.
- Land title in the form of right to manage which are excluded from the object of control of Abandoned Land shall include, the following: (i) land title of right to manage of customary law community; and (ii) land title of right to manage that is a Land Bank's Asset.
- The objects that are exempted from the classification of Abandoned Land are as follows:
 - (a) Land that is an object of an ongoing court case;
 - (b) There is a change in the spatial plan so that the land cannot be cultivated;
 - (c) Declared as a conservation land; and/or
 - (d) Cannot be cultivated, or utilized due to force majeure, including war, riots, natural disaster, and other disasters.

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| Reporting Obligation | Not regulated | <ul style="list-style-type: none"> • Requires the holder of License/Concession/Business Licensing to cultivate, utilize, and/ or maintain the controlled area to submit a periodic report; and • Requires the holder of land rights, right to manage land title and land acquired on a basis of control over land to cultivate, utilize, and/ or maintain the controlled area to submit a periodic report. |
| Control of Abandoned Area | Not regulated | <ul style="list-style-type: none"> • Evaluation of Abandoned Area; • Warning of Abandoned Area; and • Designation of Abandoned Area <p>Warning of Abandoned Area is given gradually to the Area owner in 3 (three) stages with the opportunity for the Area owner to fulfill the requirements set out in each warning. In the event the Area owner fails to fulfill the requirement after 3 (three) sets of warning, the area will be designated as Abandoned Area.</p> |

The designation of Abandoned Area shall stipulate: (i) revocation of License/Concession/Business Licensing; and/ or (ii) conformity as the area directly controlled by the state.

Area that has been designated as Abandoned Area may be designated as an Asset of the Land Bank or transferred to other parties through a transparent and competitive mechanism.

Control of Abandoned Land General provision on the control of Abandoned Land, regulated further in detail in the new regulations

- Evaluation of Abandoned Land;
- Warning of Abandoned Land; and
- Designation of Abandoned Land.

Warning of Abandoned Land is given gradually to the Land owner in 3 (three) stages with the opportunity for the Land owner to fulfill the requirements set out in each warning. In the event the Land owner fails to fulfill the requirement after 3 (three) sets of warning, the land will be designated as Abandoned Land.

The designation of the Abandoned Land shall stipulate: (i) the nullification of land rights or right to manage; (ii) termination of legal relationship; and (iii) conformity as state land of former Abandoned Land directly controlled by the state.

Land that has been designated as Abandoned Land may become an Asset of the Land Bank and/ or State General Reserve Land (*Tanah Cadangan Umum Negara – TCUN*).

Transitional Provisions

As of GR 20/2021 comes into effect, the following shall apply:

- (i) result of the land inventory on the potentially abandoned land which carried out based on the previous regulations shall remain valid and be followed up based on GR 20/2021;
- (ii) activity for control and utilization of Abandoned Land shall be followed up based on GR 20/2021; and
- (iii) activity to control Abandoned Land which has been carried out based on the previous regulations but has yet complete the designation phase as Abandoned Land shall re-implemented from the initial phase based on GR 20/2021.

Full Indonesian language text of GR 21/2021 can be found through this link:
https://jdih.setkab.go.id/PUUdoc/176369/PP_Nomor_20_Tahun_2021.pdf

Key Takeaways

In view of the foregoing, some of the key takeaways which may be taken for consideration include:

- (i) Land rights title which are deliberately not used, utilized and/or maintained for 2 (two) years, with provision of 20 (twenty) years controlled by another party specifically for ownership title (*hak milik*), shall be the object of Abandoned Land and potentially be handed over to the Government on the basis of due process of law.

- (ii) Area attached with rights/license/concession/business licensing which are deliberately not cultivated, used and/or utilized shall be object of Abandoned Area and potentially be handed over to the Government or to other parties on the basis of due process of law.
- (iii) Evaluation of Abandoned Land and/or Abandoned Area by the authorized Government Institution shall take 180 (one hundred eighty) calendar days.
- (iv) Upon the evaluation, Land and/or Area owner shall be given warning in 3 (three) stages with the opportunity for Land and/or Area owner fulfill the requirement in each warning. The following timelines shall be noted:
 - a) upon the issuance of first warning, the opportunity to cultivate, use and/or utilize the Land and/or Area is within 90 (ninety) calendar days for the Land owner or 180 (one hundred eighty) calendar days for the Area owner;
 - b) in the event that Land and/or Area owner fails to fulfill requirement set out in first warning, the Land and/or Area owner shall be given second warning and has the opportunity to cultivate, use and/or utilize the Land and/or Area within 45 (forty-five) calendar days for the Land owner or 90 (ninety) calendar days for the Area owner; and
 - c) in the event that land and/or Area owner fails to fulfill requirement set out in second warning, the Land and/or Area owner shall be given third warning and has the opportunity to cultivate, use and/or utilize the Land and/or Area within 30 (thirty) calendar days for the Land owner or 45 (forty-five) calendar days for the Area owner.

For further information and/or inquiries related to this alert, you may contact:

Cornel B. Juniarto

Senior Partner

Hermawan Juniarto & Partners

Email: cbjuniarto@hjplaw-deloitte.com

Meidyna Budiarti

Senior Managing Associate

Hermawan Juniarto & Partners

Email: mbudiarti@hjplaw-deloitte.com

Abrori Charliene

Associate

Hermawan Juniarto & Partners

Email: acharliene@hjplaw-deloitte.com

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