
Jurnal Dinamika Hukum

Vol. 23 Issue 3, September 2023

E-ISSN 2407-6562 P-ISSN 1410-0797

National Accredited Journal, Decree No. 21/E/KPT/2018

DOI: [10.20884/1.jdh.2023.23.3.3505](https://doi.org/10.20884/1.jdh.2023.23.3.3505)

This work is licensed under a Creative Commons Attribution 4.0 International License (cc-by)

GRANTING PRIORITY RIGHTS AND COMPENSATION TO OWNERS OF DESTROYED LAND

Tri Cahya Indra Permana¹, Sri Wahyu Handayani², Kamilah Wati bt Mohd³
University of Muhammadiyah Tangerang¹, University of Jenderal Soedirman², Universiti Sains Islam Malaysia³

Abstract

Soil possesses unique properties. This is due to the fact that, on one hand, land is a non-biological resource, implying that it cannot naturally regenerate in abundance. This research aims to analyze the significance of granting priority right and compensation to owners of destroyed land. This research adopts normative legal research approach. The result of this research reveals that the Regulation of the Minister of ATR/Head of BPN Number 17 of 2021 was issued to regulate the procedure for determining the destruction of land. Nevertheless,, the Supreme Court opines that Article 15 paragraph (1) of the regulation fails to uphold a sense of justice and is contrary to higher laws and regulations. **Keywords:** Granting Priority Rights, Compensation, Owner of Destroyed Land.

Abstrak

Tanah adalah benda yang mempunyai sifat unik. Dikatakan demikian karena disatu sisi tanah adalah sumber daya non hayati, artinya bahwa tanah adalah suatu benda yang tidak dapat memperbaharui dirinya menjadi banyak. Hal ini mengakibatkan tanah sangat dibutuhkan oleh setiap manusia. Penelitian ini dilakukan untuk menganalisis pentingnya pemberian hak prioritas dan ganti rugi terhadap pemilik tanah musnah. penelitian ini menggunakan tipe penelitian hukum normatif. Hasil penelitian ini adalah Peraturan Menteri ATR/Kepala BPN Nomor 17 Tahun 2021 diterbitkan untuk mengatur prosedur dalam penetapan tanah musnah, namun demikian Mahkamah Agung berpendapat bahwa Pasal 15 ayat (1) peraturan tersebut dinilai tidak memenuhi rasa keadilan dan bertentangan dengan peraturan perundang-undangan yang lebih tinggi.

Kata kunci: Pemberian Hak Prioritas, Ganti Rugi, Pemilik Tanah Musnah.

Copyright©2020 Jurnal Dinamika Hukum. All rights reserved.

Introduction

As a container or facility, soil possesses unique properties. This is attributed to the fact that soil is a non-biological resource; in other words, soil is an entity that cannot regenerate itself. On the other hand, soil holds paramount importance for every human being. Nearly all human activities are intertwined with land. Humans require homesteads (residences), conveyances (mode of transportation), workplaces (business premises), leisure areas (recreational spaces), and sanctuaries (places of worship, education, etc). Put differently, human land needs encompass personal, business-related, specialized, and communal requirements. (Sihombing, 2017). In the juridical context, land can be defined as the Earth's surface. Furthermore, land boasts substantial economic value, thereby placing the responsibility on all to safeguard and preserve it as an economically valuable asset.

This is not only because land serves developmental purposes, but it also occasionally gives rise to various predicaments for humans. Hence, its utilization necessitates meticulous control to avert societal issues. (Muchsin, 2010).

The acquisition of land for public interest is executed based on principles encompassing humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability, and harmony. These principles are also pertinent to land that has been devastated and will be repurposed by the Government, as explored in this study. Several pertinent principles include humanity, justice, certainty, welfare, and openness.

Article 1 point 2 of Law Number 2 Year 2012 on Land Acquisition for development in the public interest stipulates that the method of granting compensation is to be carried out properly and fairly to the entitled parties. The provision of compensation is grounded in the principles of justice and certainty as outlined in Article 2 letters b and d. The term “feasible and fair”, which the principle of justice signifies, pertains to the assurance of substitute guarantees to entitled parties within the land acquisition process, affording them the opportunity for an improved quality of life. Meanwhile, the essence of the principle of certainty lies in bestowing legal assurance regarding land availability throughout the land acquisition process for development, as well as ensuring guarantees for parties entitled to compensation. From this explanation, one can infer that “decent and fair” within Law No. 2/2012 can only be interpreted in two aspects: (a) offering improved life prospects and (b) providing additional value. Nonetheless, explicit technical issues surrounding land acquisition for public interest and the compensation for destroyed land. (Sri, 2021).

The principle of humanity entails that land acquisition must ensure the safeguarding and respect of the human rights and dignity of every citizen and resident of Indonesia in an equitable manner. The principle of constitutes a necessary guarantee in furnishing compensation to entitled parties throughout the land acquisition process, enabling them to pursue improved livelihoods while

securing the rightful legal protection they deserve. Legal protection in itself, signifies actions taken to safeguard individuals, such as offering protection to vulnerable individuals or those with limited capacity to defend themselves. Law, defined as a collection of rules containing commands and prohibitions that regulate the societal order, necessitates compliance from the community. Hence, legal protection can be understood as the provision of safeguards bestowed by the law upon individuals who may be vulnerable in certain contexts. (Hidayah, 2004).

Furthermore, legal protection is divided into two types: preventive legal protection, used to prevent disputes over a problem and repressive legal protection aimed at resolving disputes after a problem arises (Hadjon, 1987).

Furthermore, the principle of certainty refers to ensuring legal assurance concerning land availability within the land acquisition process for development. This principle also encompasses providing assurances to entitled parties to receive appropriate compensation. The principle of openness denotes that Land Acquisition for development should be executed with public access to information related to land acquisition.

The principle of legal certainty finds its foundation in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution, which states "The State of Indonesia is a state of law", which means that the administration of government and state is based on law. Likewise, the relationship between the state, society, and land is based on the rule of law. Land as a gift of God Almighty is a gift that cannot be wasted because land has a very important meaning for human life. Land is the wealth of every country including Indonesia that must be utilized for the welfare and prosperity of its citizens. Land, in addition to being a source of livelihood, is a source of human life (Koeswahyono, 2010).

Furthermore, the principle of welfare signifies that land acquisition for development should yield added value for the well-being of entitled parties and the broader community. Certain regions in Indonesia are highly susceptible to

natural events or disasters, spanning plains, mountains, and coastal areas, which can result in land destruction. These natural occurrences encompass landslides, earthquakes, liquefaction, abrasion, erosion, among others.

The destroyed land itself is land that has changed from its original form due to natural events and can no longer be identified so that it cannot be functioned, used, or utilized properly (Article 2 paragraph (2) of the Regulation of the Minister of ATR/Head of BPN Number 17 of 2021 concerning Procedures for Determining Destruction Land). From the definition of the destroyed land, there are 3 (three) elements that are cumulative, such as land:

- a. Undergoing transformation from its initial form due to natural events.
- b. Losing its identifiable characteristics.
- c. Being unable to fulfill its intended functions, uses, and utility.

One crucial aspect to highlight within the definition is the term “natural events” used to describe destroyed land, which acts as a measure or criterion. Consequently, when pondering whether features such as ponds could be classified as destroyed land, a debate arises. On one hand, they might not fit the destroyed land categorization, given that ponds aren't typically a result of natural events but often constructed by human intervention. This implies that the land remains intact, and the area can be utilized by implementing measures like installing nets around the pond. However, on the other hand, an argument can be made that ponds whose land has been eroded due to abrasion might qualify as land destroyed by natural events if they meet the criteria of being unidentifiable and rendered unable to serve their intended functions, uses, and utility. .

Therefore, if there is a dispute in a concrete case, it needs to be proven whether or not the ponds designated as destroyed land have met the 3 (three) criteria mentioned above, so that a site review is necessary.

In concrete cases, there have indeed been several cases of land loss, such as in the city of Palu, Central Sulawesi Province, due to liquefaction, and in the city

of Semarang, Central Java Province, due to abrasion of the northern Java Sea. The case of destroyed land in Semarang even triggered a test of the Regulation of the Minister of ATR / Head of BPN Number 17 of 2021 concerning Procedures for Determining Destruction Land, particularly Article 15, by two (two) applicants named Munirul Hidayah and Samuri, whose land was determined to be destroyed land but did not receive priority rights or compensation due to the abrasion of the northern Java Sea.

Article 15 of the examined Regulation of the Minister of ATR/BPN Number 17 of 2021 on Procedures for Determining Land Destruction reads as follows:

- (1) If the land parcels as referred to in Article 14 paragraph (1) will be used and/or reconstruction or reclamation will be carried out by the Central Government/Regional Government or other parties in the context of development for the public interest, then :
 - a. Holders of Management Rights and/or Land Rights are not given priority to carry out reconstruction or reclamation; and
 - b. The land parcel is designated as destroyed land.
- (2) The holders of management rights and/or land rights as referred to in paragraph (1) shall be given assistance in the form of compensation funds.
- (3) The granting of compensation funds as referred to in paragraph (2) shall be carried out in accordance with the provisions of laws and regulations.

The reason for the issuance of Regulation of the Minister of ATR/Head of BPN Number 17 of 2021 on Procedures for Determining Land Destruction is to implement Article 66 of Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Flat Housing Units, and Land Registration which stipulates: "If reconstruction or reclamation is carried out by the Central Government, Regional Government or other parties, then holders of management rights and/or land rights are assisted in the form of leniency funds".

Article 66 of Government Regulation No. 18 of 2021 does not mention whether reconstruction or reclamation carried out by the Central Government, Regional

Government or other parties is after the owner/right holder is unable to carry out reconstruction/reclamation or not, but it should be interpreted that reconstruction or reclamation carried out by the Central Government, Regional Government or other parties is after the owner/right holder is unable to carry out reconstruction/reclamation so that it fulfills a sense of justice if the previous owner/right holder is only given a compensation fund.

Thus, the issue of destroyed land will only arise if the destroyed land is needed by the Government and reconstructed or reclaimed by the Central Government, Regional Government, or other parties, and the holders of management rights and/or land rights will only be given compensation funds and not compensation.

In the end, the application of Munirul Hidayah and Samuri as mentioned above was partially granted by the Supreme Court through decision Number 23 P/HUM/2022 which was decided on April 7, 2022, by canceling part of Article 15 of the Regulation of the Minister of ATR / Head of BPN Number 17 of 2021 concerning Procedures for Determining Land Destruction.

, Building upon the aforementioned issues and research concepts, this study employs normative legal research methodology. The research methodology encompasses a statutory approach, a comparative approach, as well as an analytical and conceptual approach to address the research questions. The research is reliant on secondary data sources, including court rulings, legislative documents, academic journals, books, and other relevant materials.

Research Problems

Based on these issues, the problems that will be researched are as follows:

1. What is the impact of the Supreme Court's decision on the procedure for determining land destruction?
2. What should the Minister of ATR / Head of BPN do in response to the Supreme Court's decision that partially canceled Article 15 of the Regulation of the Minister of ATR / Head of BPN Number 17 of 2021 concerning Procedures for Determining Land Destruction?

Discussion

The impact of the Supreme Court's decision on the Procedure for Determination of Land Destruction

Article 66 paragraph (5) of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flat Housing Units, and Land Registration stipulates that to determine the destruction of land, it is necessary to regulate the Minister of Agrarian and Spatial Planning/Head of the National Land Agency's Regulation on Procedures for Determining Destruction of Land.

What is the procedure for declaring land destroyed in accordance with the Ministerial Regulation on Procedures for Determining Land Destruction, namely the following procedures:

1. Determination of Land Locations Indicated as Destroyed

/. The Head of the Regency/City Land Office holds the authority to designate the locations of land parcels identified as destroyed land. This determination is rooted in the outcomes of assessment and monitoring activities or notifications received from Ministries/Institutions, Local Governments, communities, or other relevant entities. These determinations must be accompanied by location maps and preliminary data concerning the marked destroyed land.

The initial data must include the name of the right holder, the type and number of the right, the number of the measurement letter, the identification number of the land parcel, the land area, the use or utilization of the land, and registration records or other records.

2. Establishment of Land Destroyed Research Team

After determining the location of land parcels indicated as destroyed land, the Head of the Regency / City Land Office establishes a destroyed land research team consisting of a land office team and elements of the Regional Government and can involve experts/academics with a maximum working period of 90 (ninety) calendar days from the date of the decision to form the team.

The duties of the team include: conducting socialization in the context of determining the destroyed land, identifying and inventorying evidence of ownership/land tenure, field inspection, conducting coordination meetings,

compiling minutes, and monitoring and implementing reconstruction or reclamation.

3. Socialization

Socialization is carried out at least 1 (one) time at the Village/neighborhoods office at a predetermined place to notify all holders of management rights and/or land rights or other parties with an interest in the land parcels indicated as destroyed land.

4. Identification, Inventory, and Assessment

The process of identifying and inventorying evidence of land ownership involves the collection of pertinent ownership evidence, on-site inspections, coordination meetings to evaluate both the physical and legal data related to land parcels, the compilation of minutes by the land destruction research team, and the integration of findings from on-site inspections into the Field Inspection Minutes

Furthermore, the research team compiles minutes that contain the legal basis for the abolition of rights, a description of the rights to be determined as extinct land, a description of the supporting land data, studies and conclusions and recommendations for land parcels that are determined as extinct land either partially or completely.

5. Announcement

The Head of the District/City Land Office announces the land parcels to be designated as destroyed land within 14 (fourteen) calendar days in writing and openly at the Village/Neighborhoods office or through the Ministry's website to give priority to holders of management rights and/or land rights to carry out reconstruction or reclamation.

During the announcement period, holders of management rights and/or land rights who will carry out reconstruction or reclamation must make a statement letter. If during the announcement period, the holder of the management right and/or land rights does not make a statement that it will carry

out reconstruction or reclamation, it is deemed that it will not carry out reconstruction or reclamation, and the land plot is designated as destroyed land.

6. Implementation of Reconstruction or Reclamation upon Landowner's Declaration

In the event that the holder of the management and/or land rights states that they will carry out reconstruction or reclamation, a maximum period of 1 (one) year will be given and the implementation will be monitored by the research team of the destroyed land. In cases where within 1 (one) year the holder of the management right and/or the land does not carry out reconstruction or reclamation, the land parcel shall be declared as destroyed land.

7. Registration of Rights' Expiry

As a result of the determination that the land has been destroyed, a record of the extinguishment of the right is made in the land book, certificate, measurement letter, name register, and/or other public registers for either part of the field or the entire field of land, which is written up in the form of a decree. The decree is then delivered to the management right holder and/or the right holder. Based on the delivery of the decree, the right holder is obliged to hand over the land certificate.

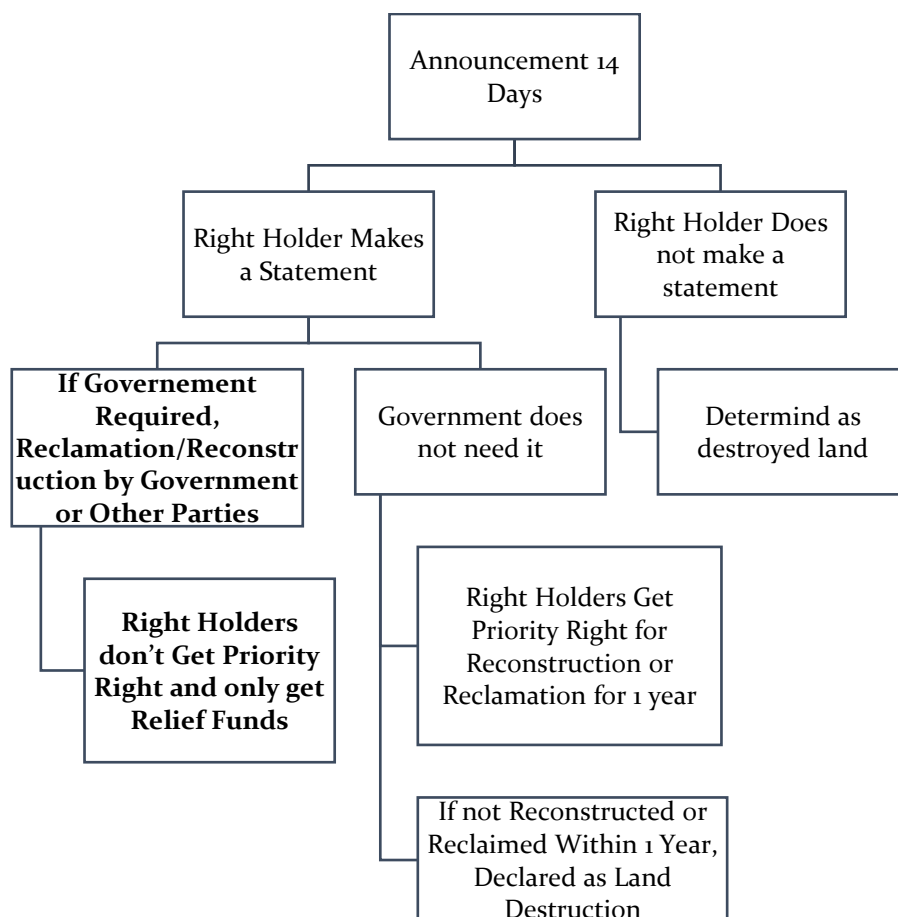
8. Notification of Rights Removal

In cases where the land title certificate is not surrendered by the landowner, the Head of the District/Municipal Land Office shall notify the former owner or title holder of the extinguishment of the right and shall announce the extinguishment at the Neighborhoods/Village office or other name of the location of the land or on the Ministry's website. The object (object) of the mortgage right in the APHT has been destroyed by a natural disaster so the binding and executorial power of the mortgage right certificate whose object is destroyed by a natural disaster is nullified. Thus, the abolition of land rights results in the abolition or loss of mortgage rights as well (Tarigan, 2015).

1. Material Test Application and Supreme Court Decision

On January 1, 2022, an application for judicial review was filed in the Supreme Court against Article 15 of the Regulation of the Minister of ATR/Head of BPN Number 17 of 2021 concerning Procedures for Determining Destruction Land which contains stages which, if described in general, the stages after the announcement of land parcels to be determined as destruction land are as follows:

The Plaintiffs objected to the stages specified in Article 15 because if the Government needed, reconstruction/reclamation was carried out by the Government, Regional Government, or other parties, then the Plaintiffs were not given priority rights to reconstruct/reclaim and were only given assistance from the leniency fund. The petition for judicial review from the Plaintiffs to the Supreme Court uses several means of test (toetsing gronden), among others, because the provisions of Article 15 are considered contrary to several provisions as follows:



1. Article 33 of Law No. 2/2012 on Land Acquisition for Development in the Public Interest.

2. Article 594 of the Civil Code.

3. Article 66 point 3 of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Unit Rights, and Land Registration.

Moreover, the Minister of ATR / Head of BPN asserts that these provisions are consistent with and do not contradict the intentions behind the application of the material test. Article 66, paragraphs (3) and (4) of Government Regulation Number 18 of 2021, which are cited as testing mechanisms, articulate the following:

(3) Prior to being designated as Land Destruction, holders of Management Rights and/or Land Rights are given priority to carry out reconstruction or reclamation of land utilization.

(4) In the event that the reconstruction or reclamation as referred to in paragraph (3) is carried out by the Central Government, Regional Government, or other parties, the holder of the Management Rights and/or Land Rights shall be assisted in the form of a compensation fund.

The Supreme Court after receiving the Respondent's answer, considering the arguments and evidence of the parties, then decided to grant a partial material test submitted by the petitioner. In the decision, the Panel of Judges considered the following:

That the content material in Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Housing Units, and Land Registration, Article 66 paragraph (3) regulates the granting of priority rights for landowners to carry out reclamation to seek benefits for their land. So that these efforts have an adverse impact, they can avoid the qualification and determination of land destruction, where this priority right is also interpreted and given regardless of the condition of the community-owned land plot to be used for the public interest or not. Meanwhile, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2021 as a derivative regulation has regulated a new norm that differs in material content from the provisions of Article 66 paragraph (3), namely by raising the norm of limitation and eliminating priority rights for landowners as represented in Article 15 paragraph (1) letter a above;

This situation has led to legal uncertainty and disparities between the norms outlined in Article 66, paragraph (3) of Government Regulation of the Republic of Indonesia Number 18 of 2021, and the provisions articulated in Article 15, paragraph (1) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2021, addressing Procedures for Determining Land Destruction. This inconsistency has resulted in adverse consequences, particularly for the Plaintiffs

and the wider community. The specific norm stated in Article 15, paragraph (1), letter a, explicitly nullifies the priority right (right of preference) for the Plaintiffs or the community to undertake reconstruction and/or reclamation of their land parcels. Consequently, this overrides the principles of justice and legal certainty, negatively impacting the Plaintiffs' interests

With this decision, the meaning of Priority Right is the right to take precedence in carrying out reconstruction or reclamation. The right is given to holders of management rights and/or land rights who have made a statement during the announcement period that they will carry out reconstruction or reclamation within 1 (one) year.

It is this right of priority that is eliminated by the Minister through Regulation of the Minister of ATR/Head of BPN Number 17 of 2021 concerning Procedures for Determining Land Destruction if the government needs the land indicated as destroyed, but according to the Supreme Court, the right of priority is not lost even if the government needs the land indicated as destroyed.

Priority rights to holders of management rights and/or land rights are only lost, in case within 1 (one) year the holders of management rights and/or land rights are unable to carry out reconstruction or reclamation as stated in their statement.

In addition, Article 66 of Government Regulation (PP) No. 18 of 2021 on Management Rights, Land Rights, Flat Units, and Land Registration states that:

- (1) If there is a land parcel that has lost its identifiability due to a change from its original form caused by natural events, rendering it incapable of proper functionality, utilization, and registration, it shall be designated as Land Destruction. Consequently, the Management Rights and/or Land Rights attributed to that land shall be revoked and declared null and void.
- (2) Determination of Land Destruction as referred to in paragraph (1) shall be carried out in paragraph (1) shall be carried out with the stages of identification, inventory, and assessment.
- (3) Prior to being designated as Land Destruction, holders of Management Rights and/or Land Rights shall be given priority to undertake reconstruction or reclamation of the utilization of the Land.
- (4) In the event that the reconstruction or reclamation as referred to in paragraph (3) is carried out by the Central Government, the Regional Government, or other parties. Central Government, Regional Government, or other parties, the holder of the Management Rights and/or Land Rights shall be given assistance in the form of a compensation fund.
- (5) Further provisions regarding the determination of Land is regulated by Ministerial Regulation.

. Article 66 of the aforementioned Government Regulation unequivocally outlines that the regulation does not specify whether the reconstruction or reclamation undertaken by the Central Government, Regional Government, or other parties occurs subsequent to the owner's/right holder's inability to engage in reconstruction/reclamation. Consequently, the owner/right holder would only receive compensation funds. However, the interpretation should lean towards understanding that the reconstruction or reclamation executed by the Central Government, Regional Government, or other parties follows the owner's/right holder's incapacity to conduct reconstruction/reclamation. This approach serves to uphold a sense of justice, ensuring that the previous owner/right holder was provided only with compensation funds."

2. Nature and Implementation of the Supreme Court's Judicial Review Decision

According to Wahiduddin, the nature of the decision of the Material Test Rights, when discussing the decision of the Constitutional Court, is generally divided into at least two types. First, decisions that can be directly implemented since the decision has permanent legal force (self-executing). This means, he continued, that the decision will be immediately effective without the need for follow-up in the form of the need to implement changes to the law that has been tested. The character of such a decision is generally a decision that only negates a new law, because its existence is not related to concrete cases.

Secondly, decisions that necessitate specific follow-up (non-self-executing) (Supreme Court 2023). In the case of land destruction, the impact of the Supreme Court's decision requires certain follow-up in the form of the issuance of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency on Changes in the Procedure for Determining Land Destruction, especially as contained in Article 15.

The Supreme Court's decision in the case of Material Test Rights is the first and last level of decision so that it is final and binding and the Judge's Decision that has permanent legal force is in concrete law for the realization of the Supremacy of Law in the State of Law, so the parties to the case must comply with the decision that has legal force and there should be no defiance of the Court's decision.

The further impact of the Supreme Court's decision, then in the new Ministerial regulation, changes must be made to the procedure for determining the land destroyed after the Supreme Court Decision by using legal products that are at the same level or even the same as the object of the dispute being tested, namely the Regulation of the Minister of ATR / Head of BPN while still providing priority rights and compensation for former owners or rights holders.

According to Article 8 paragraph (2) of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2011 concerning the Right to Material Test, it is stated "In the event that 90 (ninety) days after the Supreme Court's decision is sent to the State Administrative Body or Official who issued the Legislation, it turns out that the Official concerned does not carry out his obligations, by law the Legislation concerned has no legal force".

Procedure for Determination of Land Destruction after the Supreme Court Decision

Not all procedures in the determination of land destruction are canceled by the Supreme Court Decision. The most important thing is the improvement of procedures after the announcement in the event that the Government needs the land indicated as destroyed, namely by continuing to give priority rights to the owner / right holder to carry out reconstruction / reclamation for 1 (one) year. If within 1 (one) year they do not carry out reconstruction/reclamation, then the land will be declared as destroyed land.

If the Minister feels that this provision is very burdensome because if the Government needs land for the public interest, it cannot wait too long and will spend a large budget to pay compensation, then the provisions that must be changed are the provisions in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Housing Units, and Land Registration, because the Ministerial Regulation only implements Government Regulations so that it cannot create new norms that conflict with higher norms.

Thus, what must be done by the Government, in this case the Minister of ATR / Head of BPN, to implement the Supreme Court Decision after the annulment of Article 15 paragraph (1) of the Regulation of the Minister of ATR / Head of BPN Number 17 of 2021 concerning Procedures for Determining Land Destruction is to revise Article 15 paragraph (1).

The trick is to revoke the provisions of Article 15 paragraph (1) of the Regulation of the Minister of ATR / Head of BPN Number 17 of 2021 concerning Procedures for Determining Destruction Land by issuing a Ministerial Regulation on amendments to the Regulation of the Minister of ATR / Head of BPN Number 17 of 2021 concerning Procedures for Determining Destruction Land, especially Article 15 paragraph (1). There should be no defiance of the law in concrete cases, in this case the Supreme Court's decision.

Furthermore, the amendment of the Ministerial Regulation on the amendment of Article 15 paragraph (1) of the Regulation of the Minister of

ATR/Head of BPN Number 17 of 2021 concerning Procedures for Determining Neglected Land which states that:

- (1) In the event that the Land Parcels as referred to in Article 14 paragraph (1) will be used and/or reconstruction or reclamation will be carried out by the central government / regional government or other parties in the context of development for the public interest, then: a. holders of Management Rights and/or Land Rights shall not be given priority to carry out reconstruction or reclamation; and b. Land Parcels shall be designated as destroyed land.
- (2) Holders of Management Rights and/or Land Rights as referred to in paragraph (1) shall be given assistance in the form of a leniency fund.
- (3) The provision of compensation fund as referred to in paragraph (2) shall be implemented in accordance with the provisions of laws and regulations.

Based on what is described by the article above, it is submitted to the Minister of Law and Human Rights of the Republic of Indonesia to be promulgated in the State Gazette of the Republic of Indonesia with the aim of being publicized to the wider community, emphasizing that holders of Management Rights and/or Land Rights are not given priority to carry out reconstruction or reclamation; and their Land Parcels are designated as destroyed land.

Conclusion

The Regulation of the Minister of ATR/Head of BPN Number 17 of 2021 concerning Procedures for Determining Abandoned Land was issued to regulate the procedures for determining abandoned land, but the Supreme Court found that Article 15 paragraph (1) of the regulation did not fulfill a sense of justice and contradicted higher laws and regulations. The Supreme Court's The Supreme Court's verdict necessitates revisions to the procedures for determining destroyed land. These changes should reflect a fairer approach and uphold the principles of land acquisition for public interest, preserving priority rights and anti-deprivation measures for former landowners or right holders, thus moving beyond mere compensation provision. The way to implement the Supreme Court's decision for the Minister of ATR/Head of BPN is to issue a new Ministerial Regulation on amendments to the Ministerial/Head of BPN Regulation on Procedures for Determining Land Destruction which contains new procedures that are more equitable and can fulfill the rights of the owners of the destroyed land and then send it to the Ministry of Law and Human Rights to be promulgated in the state news.

Suggestion

It is recommended that the Minister of ATR/Head of BPN promptly release a Ministerial Regulation amending the Ministerial Regulation/Head of BPN on the Procedure for Determining Land Destruction. This revision should include alterations to Article 15, paragraph (1), within the 90-day timeframe following the Supreme Court's decision. This prompt action will help prevent a legal vacuum. Subsequently, the amended regulation should be expeditiously forwarded to the Ministry of Law and Human Rights for official publication in the state gazette."

References

- Hadjon, P. M. (1987). *Perlindungan Hukum Bagi Rakyat di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*. Surabaya: Bina Ilmu.
- Handayani, Sri Wahyu, Amardiyasta Galih Pratama, Abdul Aziz Nasihuddin, Supriyanto. (2021). *Equality Guarantee of Human Rights in Land Acquisition for Development in The Public Interest After The Law on Job Creation in Indonesia*. ICOBAB : Malaysia.
- Hidayah, Siti Hidayatul (2004). *Perlindungan Hukum di Negara Republik Indonesia*, Surabaya : Pukad Hali.
- Koeswahyono, Imam. (2010). *HukumaAgraria Indonesia Perspektif Sejarah*. Bandung : Refika Aditama.
- Mahkamah Agung Republik Indonesia. (2023) www.mahkamahkonstitusi.go.id (accessed on January 24, 2023)
- Muchsin, Imam Koeswahyono. (2010). *Hukum Agraria Indonesia Perspektif Sejarah*. Bandung : Refikaa Aditama, .
- Peraturan Menteri ATR/Kepala BPN Nomor 17 Tahun 2021 tentang Tata Cara Penetapan Tanah Musnah.
- Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah.
- Sihombing, Irene Eka. (2017). *Segi-segi Hukum Tanah Nasional Dalam Pengadaan Tanah Untuk Pembangunan*. Jakarta : Penerbit Universitas Trisakti.

Tarigan, D. (2015). Kewajiban Debitur untuk Mengasuransikan Barang Agunan dengan Hak Tanggungan dalam Perjanjian Kredit di Bank Pemerintah dan Swasta. *Premise Law Journal*, 3, 1-20.