

The Utilization of Abandoned Land in Indonesia: A Comparative Study on Malaysia in the Fulfillment of Human Rights



Rahayu Subekti^{1*}, Albertus Usada²

¹ Faculty of Law, Universitas Sebelas Maret, Surakarta 57126, Indonesia

² Mahkamah Agung Republik Indonesia, Jakarta Pusat, DKI Jakarta 10110, Indonesia

Corresponding Author Email: rahayusubekti0211@staff.uns.ac.id

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ABSTRACT

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Indonesia has established regulations on the location of Abandoned Land Utilization. However, the important question is whether the regulation is effective and whether the utilization has become a means of fulfilling human rights over land. This study aims to analyze the utilization of abandoned land that is an effort to fulfill human rights over land. This study is a normative legal study. It used secondary data with primary, secondary, and tertiary legal materials. It covers the mechanisms and procedures to eliminate and to utilize abandoned land, its social function, as well as the relationship and relevance between fulfillment of human rights to land and the utilization of abandoned land. It also compared the similar case to Malaysian case. The results show that the state must make efficient use of abandoned land and prioritize the principle of social function rather than to make land as merely an economic commodity owned by certain groups. Moreover, the amount of land is fixed but the demand continues to increase. Therefore, the efforts to utilize abandoned land are a progressive solution because the goal of agrarian reform is for equity and social justice, especially for the poor. The result of research shows that the regulation of abandoned land is carried out using Law and the land that has been determined as the abandoned one will be taken over by the state using simple mechanism and in Malaysia vertical attachment principle is used.

1. INTRODUCTION

Land is a natural source that must be maintained, cared for, cultivated, used, and managed properly to fulfill human needs [1] because land is a natural resource with many benefits. As part of the most important natural resources to provide for human life, land is also used to become a source of livelihood or income from crops either in the form of agriculture or plantations or from the rental of land or buildings on it in the sense of being made of economic value [2]. In addition to having benefits for the owner of the right, land also has benefits for the community which is also known as a social function. Therefore, the use of land must consider the interests of two parties, the rights holder and the people [3].

In terms of human life, land has a central role as a social asset and capital asset which is a consequence of land use which is not only guided by the interests of the right owner, but also considers the interests of the community [4]. It is in accordance with Article 33 paragraph (3) of the 1945 Constitution and the Law Number 5 of 1960 on the Agrarian Principles that the state controls the earth, water, and space, which means that Indonesia as a country that does not own land, such as a royal state whose power over the land domain is held by the king, such as Malaysia, England, and Saudi Arabia [5]. In relation to these regulations, land which in this case is used as a social asset is generally used for residence and as a place of livelihood. On the other hand, land as a capital asset is used for basic capital in development activities as well as accelerating economic growth. Therefore, accessibility and availability of land are very important to

achieve optimal productivity levels [6]. In addition, all forms of land abandonment must be prevented and regulated. Therefore, it can be used in line with the method and the purpose of the land rights that are granted by the Government [7].

The optimization of use, exploitation, and arrangement aim to ensure that people can avoid poverty and get decent jobs, as well as realizing government efforts to increase food and energy security. In land use to promote public welfare, the most important conditions are rational use and protection of rights by the state. It is because if there is uncultivated land, it will cause negative changes [8]. In some cases, neglect of land has negative effects on biodiversity, reducing the availability of water, increasing soil erosion, and increasing the risk of fire, causing a decrease in the benefits that nature provides to humans [9].

Nowadays, land is not only used as a social asset but also as a capital asset which also has an impact in the form of rising land prices. It increases land prices and will certainly be burdensome for people with low incomes [5] because some of the land in big cities in Indonesia is owned by private parties. On the other hand, the Government, in this case the Ministry of Agrarian Affairs and Spatial Planning, states that there are difficulties in carrying out land acquisition intended for the public interest [10] because the Indonesian people have an interest in land either in power or privately owned or in local control in certain areas [11].

Another fact states that there are still many people who have not or do not use their land or what is commonly known as land abandonment. The land abandonment is happened

because land is only considered as an investment object so that there are often violations of obligations by right-holders or parties who have the land tenure [12]. It makes the availability of land for development and public interest to fulfill human rights hampered; and encounters many problems [13].

The 2021 Data from the National Land Agency show that Indonesia has 1.2 million hectares of land that are indicated to be abandoned, with the majority having the status of Cultivation Rights [14]. The abandonment of land with cultivation rights is caused by several factors, namely soil conditions that are unfavorable for agricultural production and only a few people who own and/or control land with cultivation rights totaling hundreds of hectares. Thus, its utilization becomes not optimal. Furthermore, abandoned land can also be caused by two things: based on the condition of the land or originating from abandoned agricultural land [15].

The phenomenon of land abandonment has actually increased [16]. Surely, this phenomenon must be a concern because the estuary of land abandonment is that it can disrupt development and violate the principle of justice for people who in this case have a need for housing and agriculture [17]. It is also regulated by the Law Number 5 of 1960 on the Agrarian Principles which states that if the owner of land rights does not abandon his land because this action can cause his land rights to be null-and-void [18].

In line with the objective of research to analyze the utilization of abandoned land constituting the attempt of fulfilling the human rights to land that will discuss the existence of regulation about land utilization not only for personal purpose but also public interest based on the principle of land's social function. Based on the description above, it will be discussed about the mechanisms, procedures, elimination, and utilization of abandoned land. The second is the urgency of the social function of land. The third is land rights as fulfillment of human rights. The fourth is a comparison of the fulfillment of land rights with Malaysia.

2. METHODOLOGY

This study uses a type of legal research method. This research was descriptive in nature and is a qualitative research. The approach in this study uses a comparative approach, case studies and laws and regulations. The statutory approach aims to examine the entire statutory regulations relating to the legal issues being studied [19]. This study raises the problem of regulating land rights as a means of fulfilling human rights.

The comparative approach is a process of comparing the existing law in a country with the existing law in another country or the law at a certain time with the law at another time [20]. In this study, a comparison of laws regarding the arrangement of land rights as the fulfillment of land rights in Indonesia and Malaysia. Indonesia was chosen because it has the largest amount of abandoned land in Southeast Asia. Malaysia was chosen because it is the closest country to Indonesia socio-culturally but has a different legal system.

This type of data is legal material consisting of primary legal material and secondary legal material, collected through literature studies on journal articles, books, regulations, and other documents that are relevant to the utilization of abandoned land, the social function of land, and the fulfillment of land rights.

This research used primary and secondary law materials as the type of data. The law material used consisted of legislations enacted in Indonesia and Malaysia.

Indonesia uses Law No. 5 of 1960, Government Regulation No. 20 of 2021 about the Management of Abandoned Region and Land, the Minister of Agrarian Affairs and Spatial Planning/Head of National Agency of Land Affairs' Regulation No. 20 of 2021 about the Procedure of Managing and Utilizing the abandoned Region and Land.

In utilizing the abandoned land, Malaysia uses:

Land Code 1965 in Articles 103, 104, 105, 109, 110, 115, 116, and 117. These regulations govern the definition of land in Malaysia, and the types of right to land in Malaysia.

3. RESULTS AND DISCUSSION

3.1 Mechanisms, procedures, elimination, and utilization of abandoned land

The principles of land tenure and utilization in Indonesia have actually been formulated in Article 33 paragraph (3) of the 1945 Constitution which states that if the state has power over the earth, water, outer space, and the natural resources contained therein [21]. This is what makes land a legal object for the prosperity of the Indonesian people who are controlled by the state [22]. One way to realize this goal is to provide legal protection guarantees for owners of land rights. Providing legal protection guarantees related to land rights and land functions for individuals and groups in obtaining legal rights must be carried out directly or indirectly [23]. In this case the land has a strategic social function for the purposes of development and empowerment of natural resources both above and below the ground. Therefore, land needs to be controlled by the state in terms of regulation and protection of legal relations.

In land tenure, the state through the government and authorized officials has the right to grant land rights and management rights to appropriate right owners and in accordance with certain conditions to be managed and utilized properly with the aim of welfare for the right owners and community welfare as well followed by the implementation of the obligations as stated in the Law Number 5 of 1960 on the Agrarian Principles and the decree granting the rights [24]. In accordance with the provisions of the Law Number 5 of 1960 on the Agrarian Principles, the owner of the right can lose his land rights if the legal relationship is terminated and the land concerned is directly re-occupied by the state if land is abandoned. This is intended to prevent protected land tenure in certain individuals or groups with a very large area of coverage but the management is not optimal because it is used as an investment asset for future life [25].

The case of controlling abandoned land must be in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Chief of the National Land Agency. In this case, the Ministry of Agrarian Affairs and Spatial Planning has the authority to carry out an inventory, issue warnings of abandoned areas, and issue determinations of abandoned land. In addition, in the Government Regulation Number 20 of 2021, the authority to utilize abandoned land is the authority of a delegation from the President to the National Land Agency, which then reports the results of the control and utilization back to the President [26]. Furthermore, to realize land tenure and stewardship, a new institutional instrument was formed: The Land Bank.

The land bank has a role in program, acquisition, logistics, management, exploitation, and distribution of land [27]. In its

development, the Land Bank will register management rights certificates with the Land Office originating from certificates of cultivation rights, building rights, or usage rights that have been relinquished by the state in advance because the land object or the property on the land has a neglected status or because the period for granting the rights has expired [28]. Furthermore, the land bank will partner in managing or distributing its land either with the Government in implementing national strategic projects, building facilities and infrastructure for the public interest, to providing residential areas for the community and with private parties who are deemed appropriate in accordance with applicable requirements [29].

3.2 The urgency of the social function of land

Land is a profitable investment vehicle. It is because the selling value of the land will never decrease, and the owner has no obligation to improve the quality of the land, considering that the population is always increasing so that it has an impact on increasing human needs, especially land. With the high demand for land, which in this case has limitations in terms of quantity to meet various development interests, it has the consequence of shifting the social function of land and land eventually becoming an economic commodity whose price is determined by market mechanisms [12].

The social function of land rights is to provide guarantees for the just use of land to create the greatest possible prosperity for the people. In theory, the principle of the social function of land contains an explanation of good interests for individuals, social, and public interests. In the Law Number 5 of 1960 on the Agrarian Principles, the social function is one of the 3 (three) general obligations given to owners of land rights, namely prioritizing social interests, managing the land properly, and actively working the agricultural land themselves [30].

The importance of implementing the social function of land cannot be separated from the principle of social function which gives authority to the owner of the right to use the land he owns within certain limits by considering the interests of society and the state [31]. The consequence of this is the emergence of rights and obligations for owners of land rights so that land use is not solely for personal gain, especially to the detriment of other parties [32]. This is intended so that the inequality and the gap between the owners of land rights and the parties around them do not become wider.

Article 6 of the Law Number 5 of 1960 on the Agrarian Principles stipulates that all land rights have a social function. The social function of land rights highly values public interests rather than individual interests, but the balance between interests is emphasized [33]. If the public interest is urgent to be carried out, then individual interests can be released by providing proper compensation [34]. Adhering to the social function of land in the BAL also requires owners of land rights to use their land in accordance with the circumstances, nature, and purpose of granting land rights, for example farmers must maintain the fertility of their land. If this obligation is neglected, it can have implications for the abolition and/or cancellation of the land rights.

Under current conditions, land has a function as a social asset and capital asset, which means that land has a function to bind people and carry out their lives or land can become capital in development. However, in practice the two functions contradict one another. When referring to the urgency, the

social function must be the main function to be fulfilled first compared to the function of capital which tends to benefit certain groups. Therefore, the social function must be the basis for making and implementing land policies in Indonesia. This is because the goal of agrarian reform is for equity and social justice, especially for the poor [35].

3.3 Land rights as human rights

To sustain life, land is an important aspect for humans [36]. It is necessary for humans to protect their rights to their land as well as the authority to the owners of their rights to utilize and use the land that has become their rights [37]. These land rights will later be set forth in the Law Number 5 of 1960 on the Agrarian Principles to be precise in Article 20 paragraph (1), Article 28 paragraph (1), Article 31 paragraph (1), Article 41 paragraph (1), Article 44 paragraph (1) and Article 46 paragraph (1) [38]. Therefore, to provide protection and legal guarantees for the human rights of the Indonesian people to own land, land must be registered, the purpose of which is [39]:

- a. To provide guarantees in the form of certainty and legal protection for owners of land rights, housing units, flats and other rights that are registered as a means of proving the ownership of rights between the subject and the land object.
- b. To be a means of information for interested parties, including the government, in obtaining data for the purposes of procuring legal actions from land and flats.
- c. To realize orderly land administration.

In this regard, it can be ascertained that the orientation of all resources, especially land, is intended for the welfare of the people, and the state's authority is only limited to the part of setting allotments and determining legal relations. In line with this, the mechanism for land rights as human rights is the responsibility of the state, especially on matters relating to the community. This mechanism becomes a principle of duality which means that the state must provide legal protection to owners of land rights while carrying out development for the public interest in realizing social welfare [40].

3.4 Relationship and relevance of land use and fulfillment of human rights over land

The gap regarding land possession and injustice to access to land for the community raises thoughts that demand a sense of justice which has implications for the emergence of movements to change a new legal order that is more just and more in favor of the common people, the peasantry, and the workers [41]. Moreover, basically the Law Number 5 of 1960 on the Agrarian Principles is clearly the most basic regulation for equity and distribution of ownership structure of land rights for the benefit of society. In this context the state has an obligation to regulate land possession and lead its use, so that all land is used for the greatest prosperity of the people. The Law Number 5 of 1960 on the Agrarian Principles regulates the prohibition of land possession that exceeds the limit, the obligation for every person and legal entity who has land rights to work on or cultivate their land actively by preventing extortion, setting the maximum and/or minimum area of land that can be owned with any right by a person or legal entity [42]. Fulfillment of community land possession rights must be carried out with the paradigm of agrarian reform which not only provides access to the community, but also provides social space for welfare and justice [43].

Land rights give the owner of land rights the right to use the land. As explained in Article 10 of the Law Number 5 of 1960 on the Agrarian Principles, ownership of agricultural land obliges the owner of the right to work or actively work on it, including preventing extortion. Furthermore, in Article 15 of the Law Number 5 of 1960 on the Agrarian Principles, landowners are also required to carry out social functions on land, including increasing its fertility and preventing damage to the land by considering those who are economically weak. If the owner of the land rights does not carry out his obligations in accordance with the provisions of Article 27 letter a number 3, Article 34 letter e, Article 40 letter e which determines that all rights to the land will be nullified and their control will fall to the state if the land is abandoned [44].

In terms of utilization of abandoned land, the government has the authority to act against owners of land rights who have abandoned their land [45]. This is in accordance with Government Regulation Number 20 of 2021 on the Order and Abandoned Areas and Land which was followed up with Regulation of the Minister of Agrarian Affairs and Spatial Planning/Chief of the National Land Agency Number 20 of 2021 on the Procedures for Ordering and Utilization of Abandoned Areas and Land, which explains that if the utilization of abandoned land is carried out with the stages of transferring permits, concessions, and business permits and the designation of abandoned areas as Land Bank assets has been carried out. Furthermore, the parties to whom the land is distributed must have capabilities in the economic and human resource aspects.

Abandoned land that has been designated and becomes state land can be utilized by the community for their interests through land distribution. This is because the designation of control, ownership, use and utilization of state land originating from abandoned land is intended for the benefit of the community through agrarian reform, national strategic projects as well as for state reserve land for future use [46]. Utilization of abandoned land through land distribution certainly has a relationship and relevance to the fulfillment of human rights over land, considering that this step can reduce land possession inequality. Moreover, the land reserved by the land bank can be distributed to people in need, mainly for urban communities in order to meet the needs of land for residence and for rural communities in order to obtain productive agricultural land [47].

Furthermore, this distribution of land has implications for increasing the utilization of land resources, protecting the rights and interests of farmers, increasing the benefits of land use, and providing new momentum into rural revitalization. Of course, with the utilization of abandoned land, development, especially in villages, will be more efficient, considering that not only the owner of the right will be given the obligation to manage the land [48]. With the utilization of abandoned land, scale-and-conditions of agricultural production in rural communities can increase and, at the same time, encourage development. On the other hand, for urban communities, the utilization of abandoned land can have implications for creating new jobs, overcoming economic disparities in terms of housing and poverty alleviation [49].

3.5 Comparison of land rights as fulfillment of human rights in Malaysia and Indonesia

Malaysia has a Land Law which was formed based on discussions from the Land and Quarry Steering Officer, Johor

State Economic Design Unit (UPEN), Johor Bahru Regional Official and Paradise Realty Sdn, Bhd in Johor Bahru who is also a member of the Real Estate and Housing Developers' Association (REHDA) and the results obtained include [50]:

- 1) Based on The Land National Code (Act 56 of 1965), Malaysia divided its land rights into two, namely Freehold Title and Leasehold Title. For Malaysian citizens it is possible to have both types of land rights, while for Leasehold Title generally the land is owned by the State with a lease term of 30 years to 99 years and can be renewed.
- 2) Based on the National Land Code (Act No. 56 of 1965) states that Foreign Interests consisting of Foreign Citizens, Legal Entities established outside Malaysia, and Legal Entities established in Malaysia but more than 50% (fifty percent) of their shares are owned by foreign nationals or legal entities established outside Malaysia.

Arrangements regarding land in Malaysia are overshadowed by the State Kingdom based on the Malaysian Constitution where the State Authority (PBN) can have full control over all royal land including the natural wealth therein. Therefore, the Federal Government does not have authority regarding land in states in Malaysia, so if the Federal Government requires royal land for Federal/Federal purposes, the Federal Government through the Pesuruhjaya (Commission) of Federal Land must apply to the state government to grant ownership on condition that the Federal Government must pay the premium and land tax as agreed [51]. Likewise, if the Federal Government needs land, does it buy directly from the land owner or ask the State Government for help to take the land under the Land Acquisition Deed 1960 [52]. The basis for land acquisition in Malaysia is regulated in Case 13 of the Partnership Institution, which states that no one can have their property revoked except with sufficient compensation [53].

Malaysia's National Land Code states that land is the surface of the earth which includes rights over the body of the earth below and the air space above it within reasonable limits [54]. This is because Malaysia uses the *Accessie* Principle or commonly known as the Attachment Principle, namely the buildings and plants that are on the ground are one unit with the land and become part of the land in question [55]. As for Malaysia, there is a land classification regulated in the National Land Code, precisely in Article 52 jis. Articles 115, 116, 117 which broadly divide land use in most of the States of Malaysia. The land allotment is used for agricultural, industrial, and public housing purposes. The law also states that all land belongs to the state. Therefore, there are 2 (two) possibilities for the transfer of land rights, namely the possibility of Alienated Land in the form of Freehold Title and Leasehold Title or of Lease, to be precise in Lease for Fixed Term and Periodic Tenancies [56].

3.5.1 The regulation of abandoned land in Indonesia

Humans have always depended on the existence of land throughout their life. This dependence is based on the economic value factor inherent permanently so that the land is usually reserved for the future need and the price can increase. Because the need for land increases continuously along with the increase in the number of population and development, while the availability of land is relative stable, the land should be used for people's interest and prosperity [57]. It has been actually applied by Indonesia through the principle of land tenure and use, exactly governed in Article 33 clause 3 of 1945

Constitution [21]. The implication, of course, makes the state has the right to master the land intended for the prosperity of Indonesians [22].

In its development, Indonesia adheres to the concept of land law originating from the customary land law. Therefore, the Land Law in Indonesia is based on Religious Communalism, in which the rights to land are more personal in nature, but still contains social or communality elements [58]. As mentioned in UUPA, the concept of land is known to have some types of rights, including property rights, business use rights, building use rights, usage rights, and management rights. It leads the foreigners to have house with the use rights only.

In land tenure, the state, through government and the authorized official, is authorized to provide land and management rights intended to the owner of right appropriate and conforming to the certain preconditions to be exploited, used, utilized, and maintained well later, intended to achieve better prosperity to the owner of right, the people, the nation and the state by implementing the obligation as mentioned in UUPA and the decree of right granting [59]. The provision of UUPA (Basic Agrarian Law) states that the rights owner can be deprived from his rights to land if the corresponding land is owned directly by the state in the case of abandoning act making the land abandoned [25]. It is intended to prevent the possession of land from being concentrated on certain individual or group with broad scope but less maximal management because it becomes the investment asset for the future life.

In managing the abandoned land, according to the Minister of Agrarian Affairs and Spatial Planning/Head of National Agency of Land Affairs' Regulation the one authorized to do inventorying, giving warning about the abandoned region, and assigning the abandoned land is the Ministry of Agrarian Affairs and Spatial Planning/National Agency of Land Affairs. In addition, PP No. 20 of 2021 states that the authority of exploiting the abandoned land is the one delegated by the President to the Ministry of Agrarian Affairs and Spatial Planning/ National Agency of Land Affairs, and then the result of management and exploitation is reported again to the President [26]. Furthermore, in relation to the land abandonment, as governed in the PP No.20 of 2021, the abandoned land is defined as land with rights, land with management right, and land acquired based on the ownership of land, that is deliberately not cultivated, used, utilized or maintained. It indicated that the object of abandoned land management is the land with right, land with building use rights, land with cultivation right, land with use right, land with management right, and land acquired based on the Basis of Land possession (DPAT) [25].

Meanwhile, the object of abandoned land originating from the property rights can be managed when the owner of right deliberately neither uses, exploits, nor maintains it so that it is mastered by the community and becomes settlement area, mastered by other parties for 20 (twenty) consecutive years without legal effort made by the owner of right, and unfulfilled the social function of the land rights [60]. In addition to the land with property rights, the land with building use right, the land with use right, and the land with management right can also be the object of abandoned land management if the right owner deliberately does not cultivate, use, exploit, and maintain for 2 (two) years since the publication of right. Meanwhile, the land with cultivation right can be the object of abandoned land management if it is deliberately neither cultivated, used, nor exploited for 2 (years) since the

publication of rights [12].

Furthermore, the land acquired from the Basis of Land Possession can be the object of abandoned land if it is deliberately neither cultivated, used, utilized nor maintained by the right owner for 2 (two) years since the publication of the Basis of Land Possession. On the other hand, the land with management right can be excluded from the object of abandoned land management if it fulfills some conditions: the land with management right for customary law community and the land with management right becoming the Bank of Land's asset [61]. In addition, the abandoned land has some criteria [62]:

- a. There is an owner/holder of land rights
- b. There is an object in the form of land with right
- c. There is an action deliberately not using the land
- d. There is an action of neglecting the obligation
- e. There is a certain period of time in which the holder of right neglects his obligation

3.5.2 The regulation of abandoned land in Malaysia

The abandoned land in Malaysia is governed in Articles 103, 104, 105, 109, 110, 115, 116, and 117 of National Land Code 1965. The NLC 1965 governs definition, types of land right, the one authorized in managing abandoned land, and the procedure of managing abandoned land. Moreover, Malaysia has not had regulation specifically govern the abandoned land. Therefore, this regulation mentions that if the owner of land right (individual) does not fulfill the requirement as mentioned in the NLC 1965, the land can be the abandoned one and taken over by *Pihak Berkuasa Negeri Kementerian Pertanahan Malaysia* (State Authority of Malaysian Ministry of Land). This clause aims to avoid development overlapping. However, the owner of land still has the right to change land use, with the state government's approval [63]. Meanwhile, land can be called the abandoned one in Malaysia if the land is owned by people and not cultivated for three consecutive years for farmland category, not built within two years since the right is granted for the building land category, and not operated for industrial activity within three years since the right is granted for industrial land category [64].

In addition, the land administration factor existing in Malaysia closely related to the provision of housing is the possession of land. It is because the buyer of house pay much attention to the type of land right, either property right or leasehold right [65]. Property rights are of course preferred more than the leasehold right, but it is found rarely. In the term of leasehold right, the attention mainly focuses on the lease period, lease period extension and lease cost. Moreover, in Malaysian legal system, the lease period refers to 30 years, 60 years, and 99 years. To construct housing, of course, Malaysian Government has involved Private Developer in the attempt of providing the need for house and land [63].

If the expired period is not extended, the land with Leasehold Title should be returned. The legal subject of Leasehold Title should keep subjected to *Environmental and Town Control Planning* with obligation level as specified by the Law of Land (*UU Pertanahan*) in Malaysia [66]. The obligation is that this holder of right with Leasehold Title is obliged to participate in the process of planning the construction of housing in the attempt of construction development. It requires the transfer of land with Leasehold Title to be approved by the state, in this case government or the approval equal to the state's approval.

On the other hand, there is also a right to land in Malaysia

called lease. Lease is an interest in the land leased by lessor to lessee in certain period of time. The types of lease are [56]:

- a. Lease for Fixed Term is the type of Lease, the term of which is 99 years for entire object land area and 30 years for a portion of object land area. The holder of right to Lease for Fixed Term will be able to grant possession in another form to other parties, Leasehold Estate.
- b. Periodic Tenancies is the type of Lease, the term of which is implemented periodically, for example, month-to-month, year-to-year periods and automatically this period will be extended in the next term.

Both Federal Government and State Government of Malaysia exercise legislative power related to housing. In this case, the Federal Government exercises the power or authority over licensing for developer and parties related to house building industry for the uniform regulation and professional practice purpose. In the case of housing construction, both governments are involved in the construction of housing throughout Malaysia [63]. In the term of land, the State Government is responsible for land use for housing development and urban use under the Legislative power of State Government as specified in the Constitution. Furthermore, referring to the regional government order, the regional government is under the State Government's control and jurisdiction. It is because the establishment of Regional Government is carried out based on the State Government's wisdom [63] (Table 1).

Table 1. Comparison of abandoned land law in Indonesia and Malaysia

Item	Indonesia	Malaysia
Legal Foundation	<ul style="list-style-type: none"> - Law Number 5 of 1960 about Basic Agrarian Regulation - Government Regulation Number 20 of 2021 about the Management of Abandoned Region and Land - Minister of Agrarian Affairs and Spatial Planning/Head of National Agency for Land Affairs' Regulation Number 20 of 2021 about the Procedure of Managing and Exploiting Abandoned Region and Land 	National Land Code 1965
Principle	Horizontal Separation	Attachment Principle
Object	Land with property right, land with building use right, land with cultivation right, land with use right, land with management right, land acquired based on DPAT.	Individual land used for farmland, building land, and industrial land
Mechanism	<ul style="list-style-type: none"> - Inventorying the land indicated to be abandoned. - Identification and research - Warning against the holder of right. 	<ul style="list-style-type: none"> - Identification and Research - The assignment of abandoned land

	- The assignment of abandoned Land	
Authority	- Minister of Agrarian Affairs and Spatial Planning/Head of National Agency for Land Affairs	- Minister of Land Affairs
Acquisition	<ul style="list-style-type: none"> - Land with property right - Land with building use right - Land with cultivation right - Land with management right - Land with use right - Land with the right acquired based on Basis of Land Possession (DPAT) 	<ul style="list-style-type: none"> - Land with property right - Land for business activity - Land with building use right - Land belonging to farmland category

Indonesia adheres to the principle of horizontal separation originating from customary law. In this principle, land can be different from the object on it, so that the status of right holding can be different [67]. In other words, all legal actions concerning land cannot be said as the legal action over the material object on land such as building, plant, and other things [68]. The explanation about the principle of horizontal separation in national land law originating from customary law is not provided explicitly in the Basic Agrarian Law (UUPA), but the explanation in Articles 3 and 5 mention that customary law is used as the basis to construct agrarian law so that this principle of horizontal separation can be said as originating from customary law as well [69]. Meanwhile, Malaysia adhering to *common law* legal system, of course, uses attachment principle, the possession of land and building and plant on it is a unity. It means that all legal actions relating to the land has involved all objects on it. It is as mentioned in the *Federal Malay Code 1926* that is amended to with NLC 1965 stating that land consists of earth on earth surface and everything composing the earth surface, earth beneath the surface and everything composing it, all plants and natural products that are obtained by either cultivating or not cultivating it in its production and located above or beneath the earth surface and everything adhering or bond to the earth [56].

Meanwhile, in Indonesia the one authorized to deal with the problem of land affairs is the Chairperson of Regional Office of National Agency for Land Affairs and the Head of National Agency for Land Affairs now merged in 1 (one) ministry, the Ministry of Agrarian Affairs and Spatial Planning/ National Agency for Land Affairs; thus, it can be said that the authorized one is the Minister of Agrarian Affairs and Spatial Planning/ Head of National Agency for Land Affairs. Therefore, in the case of abandoned land, the Minister of Agrarian Affairs and Spatial Planning/ Head of National Agency for Land Affairs is entitled to conduct investigation in the form of identification and research to inventory the land indicated to be abandoned or to give warning to the holder of right and to take other firm measures, in the form of the assignment of land status as the abandoned land [70]. Therefore, the transfer of land and building previously is a part of government's asset should be carried out as specified in the regulation and policy existing [71]. Then, following the Bank of Land establishment, the abandoned land in Indonesia will be fully under the Bank of Land's authority.

On the other hand, in Malaysia the Minister of Land Affairs

is the one authorized to manage the abandoned land. However, for the use of abandoned land, the Ministry of Housing and Local Government (MHLG) is the institution responsible for managing and monitoring the development in Malaysia. It is because the institution is responsible for all delays that cannot be compensated due to the third party or incident out of owner or contractor's control. The worse case includes uncompleted building or abandoned building for some reasons in the end of contract period [72].

4. CONCLUSIONS

Land as human rights is guaranteed for its existence by the constitution. Land abandonment and land not used according to its allotment will make the land abandoned. Recalling that land is not only intended to personal interest but also has social function, more specific regulations are required to enable the land to fulfill the human right needs for land. In Malaysia, the regulation about land abandonment is governed in the Law, although it has not specifically governed the abandoned land and following the determination of land abandonment, the land will be returned to the state and used for the state's interest. Indonesia should have had a Law specifically governing the Abandoned Land, for the land to be exploited maximally. Given that this study is a normative research building on secondary data only and the author's limited time, further research may study this topic using comparison country that is more universal.

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