

THE PROCEDURE OF MAKING EFFECTIVE USE OF STATE LAND FROM ABANDONED LAND (Regulation of the National Agrarian Agency No. 5/2011 dated July 14, 2011)

BY THE GRACE OF GOD ALMIGHTY
THE HEAD OF THE NATIONAL AGRARIAN AGENCY
OF THE REPUBLIC OF INDONESIA,

Considering :

That to make effective use of state land from abandoned land as provided for in Article 15 of Government Regulation No. 11/2010 on the Control and Effective Use of Abandoned Land, it is necessary to stipulate a Regulation of the Head of the National Agrarian Agency on the Procedure of Making Effective Use of State Land from Abandoned Land;

In view of :

1. Law No. 5 /1960 on the Basic Regulation of Agrarian Principles (Statute Book of 1960 No. 104, Supplement to Statute Book No. 2043);
2. Law No. 51/Prp./1960 on Ban on the Use of Land without Permit from Its Owner or Proxy (Statute Book of 1960 No. 158. Supplement to Statute Book No.r 2106);
3. Law No. 41/1999 on Forestry as already amended by Law No. 19/2004 on the Passage of Government Regulation in lieu of Law No. 1/2004 on Amendment to Law No. 41/1999 on Forestry

into Law (Statute Book of 2004 No. 86, Supplement to Statute Book No. 4412);

4. Law No. 1/2004 on State Treasury (Statute Book of 2004 No.5, Supplement to Statute Book No. 4355);
5. Law No. 18/2004 on Plantations (Statute Book of 2004 No. 84, Supplement to Statute Book No. 4411);
6. Law No. 32/2004 on Regional Governments (Statute Book of 2004 No. 125, Supplement to Statute Book No. 4437), as already amended by Law No. 12/2008 on Second Round of Amendment to Law No. 32/ 2004 on Regional Governments (Statute Book of 2008 No. 59, Supplement to Statute Book No. 4844);
7. Law No. 26/2007 on Spatial Layout (Statute Book of 2007 No. 68, Supplement to Statute Book No. 4725);
8. Law No. 41/2009 on the Protection of Sustainable Farm Land (Statute Book of 2009 No. 149, Supplement to Statute Book No. 5068);
9. Government Regulation No. 224/1961 on the Distribution of Land and the Granting of Compensation (Statute Book of 1961 No. 280, Supplement to Statute Book No. 2322);

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10. Government Regulation No. 40/1996 on Long Lease Right, Building Right and Use Right (Statute Book of 1996 No. 58, Supplement to Statute Book No. 3643);
11. Government Regulation No. 24/1997 on Land Registration (Statute Book of 1997 No. 59, Supplement to Statute Book No. 3696);
12. Government Regulation No. 38/2007 on the Sharing of Government Affairs among the Government, Provincial Governments and Regency/Municipal Governments (Statute Book of 2007 No. 82, Supplement to Statute Book No. 4737);
13. Government Regulation No. 11/2010 on the Control and Effective Use of Abandoned Land (Statute Book of 2010 No. 16, Supplement to Statute Book No. 5098);
14. Government Regulation No. 13/2010 on the Types and Tariffs of Non-Tax State Revenues at the National Agrarian Agency (Statute Book of 2010 No. 18, Supplement to Statute Book No. 5100);
15. Presidential Regulation No. 10/2006 on National Agrarian Agency;
16. Regulation of the Agrarian Minister/Head of the National Agrarian Agency No. 3/1997 on Provisions on the Implementation of Government Regulation No. 24/ 1997 on Land Registration;
17. Regulation of the Agrarian Minister/Head of the National Agrarian Agency No. 9/1999 on the Procedures of Issuing Land Titles and Management Rights;
18. Regulation of the Head of the National Agrarian Agency No. 3/2006 on the Organization and Work Mechanism of the National Agrarian Agency;
19. Regulation of the Head of the National Agrarian Agency No. 4/2006 on the Organization and Work Mechanism of Regional Offices of the National Agrarian Agency and Land Offices;
20. Regulation of the Head of the National Agrarian Agency No. 4/2010 on the Control of Abandoned Land;
21. Regulation of the Head of the National Agrarian Agency No. 1/ 2011 on the Delegation of Authority to Issue Land Titles and Register Certain Land;

DECIDES :

To stipulate :

REGULATION OF THE HEAD OF THE NATIONAL AGRARIAN AGENCY ON THE PROCEDURE OF MAKING EFFECTIVE USE OF STATE LAND FROM ABANDONED LAND.

CHAPTER I

GENERAL PROVISIONS

Article 1

Referred to in this regulation as :

1. State land from abandoned land is land which has been declared abandoned, has its right abolished, has its legal ties severed, and is declared as land directly controlled by the state as state public

reserve land, hereinafter called TCUN.

2. National team for the control and effective use of abandoned land, hereinafter called national team, is a team tasked with assisting the Head of the National Agrarian Agency in controlling and using effectively TCUN.
3. The public is an individual or a group of individuals.
4. Head is the Head of the National Agrarian Agency.
5. Head of regional office is the head of the provincial office of the National Agrarian Agency.
6. Head of Office is the head of the reGENCY/municipal agrarian office.

CHAPTER II

SCOPE

Article 2

- (1) This regulation deals with the procedure of making effective use of TCUN.
- (2) The procedure of making effective use of TCUN as referred to in para (1), covers:
 - a. the availability of TCUN;
 - b. the certainty about TCUN objects;
 - c. the safeguard of TCUN;
 - d. the appropriation and control of appropriation of TCUN;
 - e. TCUN database;
 - f. the supervision and control of TCUN;
 - g. the reporting of TCUN; and
 - h. fees.

CHAPTER III

THE AVAILABILITY OF STATE PUBLIC RESERVE LAND

Article 3

TCUN is obtained from state land from abandoned land decided by the Head based on Government Regulation No. 11/2010 on the Control and Effective Use of Abandoned Land and Regulation of the Head of the National Agrarian Agency No. 4/2010 on the Procedure of Controlling Abandoned Land.

Article 4

- (1) Within the framework of appropriation and control of appropriation, control, ownership, use and utilization of TCUN, the Head shall decide abandoned land and abolish land titles, sever legal ties and affirm it as land directly controlled by the state.
- (2) TCUN is allocated nationwide to public and state interests through :
 - a. agrarian reform;
 - b. strategic state program; and
 - c. other state reserves.
- (3) The allocation of TCUN shall be adjusted to the availability of land.

Article 5

TCUN will be allocated if the land is not in a physical dispute and a judicial dispute.

CHAPTER IV

CERTAINTY ABOUT LAND OBJECTS AS STATE

PUBLIC RESERVES

Article 6

- (1) Certainty that object is not in a dispute is needed to ensure the effective use of TCUN.
- (2) The certainty of object as referred to in para (1) is needed to ensure that TCUN is not in a physical dispute and judicial dispute.

Article 7

The certainty that object is not in a physical dispute as referred to in Article 6 para (2) is that :

- a. TCUN is not being cultivated and controlled by other parties;
- b. there is a group of individuals registered by the National Agrarian Agency as old cultivators in TCUN.

Article 8

The certainty that object is not in a judicial dispute as referred to in Article 6 para (2) is that :

- a. TCUN is not being tried in a court;
- b. TCUN is being tried in a court and no court verdict with fixed legal force is issued in favor of plaintiff.

Article 9

- (1) If a group of individuals has cultivated abandoned land when declared TCUN, an effort shall be made to prevent old cultivators from cultivating more land and new cultivators from entering TCUN.

- (2) The prevention effort as referred to in para (1) shall be made to ensure that the area of TCUN and the area of land controlled by cultivators will remain unchanged until it can be used effectively.
- (3) The prevention effort as referred to in para (1) shall be contained in a written statement made by each cultivator as stated in Attachment 1.
- (4) The written statement as referred to in para (3) states that the cultivators:
 - a. will not expand the area of land cultivated;
 - b. will not transfer the land to other party; and
 - c. are ready to comply with provisions on the effective use of TCUN.

CHAPTER V

THE SAFEGUARDING OF
STATE PUBLIC LAND RESERVE

Article 10

The safeguarding of TCUN is designed to :

- a. protect and prevent TCUN from being occupied, cultivated, and controlled by new cultivators;
- b. prevent a dispute when the land is to be allocated and used effectively; and
- c. facilitate and smoothen the allocation and effective use of the land.

Article 11

The safeguarding of TCUN as referred to in Article 10 covers administrative and physical safeguarding conducted since the land is declared abandoned until the land is used effectively.

Article 12

- (1) The administrative safeguarding as referred to in Article 11 covers:
- a. the special keeping of documents related to decisions declaring abandoned land and other data related to TCUN;
 - b. the safeguarding of data secrecy;
 - c. the back up of data; and
 - d. the prevention of data manipulation.
- (2) The documents related to decisions declaring abandoned land and other data as referred to in para (1) letter a must not be given to unauthorized parties.

Article 13

The physical safeguarding as referred to in Article 11 is done by:

- a. putting up an announcement board that the land is directly controlled by the state in the location of TCUN as contained in Attachment 2;
- b. maintaining boarder marks and coordinate data;
- c. banning other parties from occupying and/or cultivating TCUN;
- d. involving police and other related agencies to protect TCUN from new cultivation; and
- e. involving local people to protect TCUN from new cultivation.

Article 14

- (1) The physical safeguarding of TCUN is done by the Head of Regional Office assisted by the Head of

the Office concerned.

- (2) In conducting the physical safeguarding of TCUN as referred to in para (1), the Head of Land Office shall :
- a. coordinate with police and related agencies;
 - b. empowering the public to participate in the safeguarding of TCUN.

Article 15

- (1) The Head of Office shall periodically report developments in the safeguarding of TCUN to the Head of Regional Office at least once every month.
- (2) In the event of an action disrupting TCUN, the Head of Office shall coordinate with police and other related agencies according to their authority and report it to the Head of Regional Office.

CHAPTER VI

APPROPRIATION AND CONTROL OF APPROPRIATION OF STATE PUBLIC LAND RESERVES

Part One

General

Article 16

- (1) The appropriation of control, ownership, use and utilization of TCUN shall be used effectively in the interests of the public and the state through :
- a. agrarian reform program;
 - b. allocation of strategic state program; and
 - c. appropriation of other state reserves.
- (2) The appropriation of control, ownership, use and utilization of TCUN as referred to in para (1) is

done by the Head based on technical considerations from the national team.

- (3) The technical considerations from the national team as referred to in para (2) shall be based on :
- a. national strategic interest;
 - b. general spatial layout plan;
 - c. the size of TCUN resulting from measurement in a circle; and
 - d. the appropriateness of land and regional carrying capacity for each type of appropriation as referred to in para (1).
- (4) Data and information used in technical considerations as referred to in para (3) are obtained from the Provincial Office of the National Agrarian Agency, Land Office and related agencies.

Part Two

National Team

Article 17

- (1) The national team as referred to in Article 16 para (2) is stipulated by the Head.
- (2) The national team as referred to in para (1) is led by the Head assisted by the Deputy for Land Control and People's Empowerment as day-to-day chief.

Article 18

- (1) The national team shall assist the Head in controlling and using effectively abandoned land.
- (2) In making effective use of TCUN, the national team shall :

- a. plan activities for the appropriation and control of appropriation of TCUN;
- b. coordinate with related agencies;
- c. make an analysis, give technical considerations for the control of appropriation, ownership, use and utilization in the form of appropriation of TCUN to the Head; and
- d. carry out other tasks given by the Head.

- (3) The Head shall decide the appropriation of TCUN as referred to in Article 16 para (1) based on technical considerations from the national team as referred to in para (2) letter c.

- (4) The appropriation of TCUN as referred to in para (3) shall be put in the decision of the Head on the appropriation of TCUN, along with the appropriation map of TCUN as contained in Attachment 3, containing :

- a. agrarian reform program;
- b. allocation of state strategic program; and/or
- c. appropriation of other state reserves.

Article 19

- (1) To help carry out the tasks of the national team, the day-to-day chairman as referred to in Article 17 para (2) shall form a secretariat.
- (2) The secretariat as referred to in para (1) shall be stipulated by the day-to-day chief and tasked with :
- a. helping the day-to-day chairman prepare data and information;
 - b. carrying out other administrative tasks; and

- c. assisting the national team in carrying out other tasks.

Part Three

Appropriation of TCUN

Paragraph 1

Agrarian Reform Program

Article 20

- (1) The appropriation of TCUN for the public through an agrarian reform program shall be used for agricultural and non-agricultural purposes by observing the technical considerations from the national team.
- (2) The appropriation of TCUN for the public through an agrarian reform program as referred to in para (1) shall administratively be done through agrarian programs.
- (3) The appropriation of TCUN as referred to in para (2) shall be done by the Head of Regional Office after receiving a decision from the Head on the appropriation of TCUN.

Paragraph 2

Strategic State Program

Article 21

- (1) The appropriation of TCUN for a strategic state program shall be used among others to develop the food, energy, and public housing sectors in an effort to improve the public welfare.
- (2) The appropriation of TCUN as referred to in para (1) shall be used for:

- a. the public;
- b. legal entities; and/or
- c. cooperation between the public and legal entities;

- (3) The appropriation of TCUN as referred to in para (2) shall be done based on technical considerations from the national team as referred to in Article 16 para (2).

Article 22

The appropriation of TCUN for the public as referred to in Article 21 para (2) letter a shall be done through an agrarian reform as referred to in Article 20, particularly by developing the food, energy and public housing sectors.

Article 23

The appropriation of TCUN for legal entities as referred to in Article 21 para (2) letter b shall be done in phases as follows:

- a. announcement on the availability of TCUN for a strategic state program on the print and/or electronic media in a transparent way;
- b. the filing of applications, along with proposal and feasibility study results by legal entities as would-be recipients of TCUN, to the Head as contained in Attachment 4;
- c. the presentation of proposal and feasibility study results by legal entities as would-be recipients of TCUN before the national team;

- d. the conveyance of technical considerations resulting from the evaluation of the presentation by legal entities as would-be recipients of TCUN by the national team to the Head.

Article 24

- (1) Legal entities as would-be recipients of TCUN through a strategic state program shall meet the following qualifications:
 - a. not being former holder of abandoned land titles;
 - b. having no legal ties with former holder of abandoned land titles.
- (2) The legal ties as referred to in para (1) letter b comes in the form of :
 - a. relations between 2 (two) legal entities, with 1 (one) or more members of the same board of directors or commissioners;
 - b. relations between legal entity and other party, directly or indirectly, controlling or controlled by the legal entity;
 - c. relations between 2 (two) legal entities controlled, directly or indirectly, by the same party;
 - d. relations between legal entity and preferential shareholder.
- (3) If the recipient of TCUN later turns out to have relations as referred to in para (2), the status as the recipient of TCUN shall be cancelled and the land shall be controlled again by the state.

Article 25

The Head shall decide legal entities as recipients of TCUN based on technical considerations from the national team.

Article 26

- (1) The appropriation of TCUN for the public and legal entities through cooperation as referred to in Article 21 para (2) letter c shall be done in stages as follows:
 - a. filing applications for TCUN, along with proposals to the Head;
 - b. making the presentation of proposals before the national team;
- (2) The national team shall convey technical considerations resulting from the evaluation of the presentation as referred to in para (1) letter b to the Head.
- (3) The cooperation as referred to in para (1) shall be put in a cooperation agreement under the principles of :
 - a. supporting strategic state program; and
 - b. mutual benefit;

Paragraph 3

Appropriation of Other State Reserves

Article 27

- (1) The appropriation of TCUN for other state reserves is done by considering the availability of land, the appropriateness of land, and the capacity of land for national interests.

- (2) The appropriation of TCUN for other state reserves is done to meet land needs in the interests of the government, defense and security, land needs to relocate and resettle the public affected by natural disasters or development projects in the interests of the public.
- (3) The Head shall have the authority to manage TCUN as referred to in para (1) before being used effectively for national interests.
- (4) The Head shall decide the recipients of TCUN as referred to in para (2).

Article 28

The process of granting rights, types of rights, and period of rights to TCUN as referred to in Article 24, Article 26, and Article 27 para (2) shall be based on the law and regulation.

Part Four

Obligations of and Ban and Sanctions on the Recipients of TCUN

Article 29

- (1) The recipients of TCUN shall have the obligation to:
 - a. manage their land themselves;
 - b. increase production;
 - c. keep and improve land fertility and conserve land.
- (2) The recipients of TCUN for the allocation of strategic state programs are not allowed to change the specified development sector.

- (3) Violation of the provisions in para (1) and para (2) leads to cancellation of land titles for the sake of law and the land is controlled again by the state.

CHAPTER VII

DATA BASE OF STATE PUBLIC LAND RESERVES

Article 30

- (1) To support smooth processing of data on the effective use of TCUN, TCUN database covering textual and spatial data is built.
- (2) Any change in the appropriation of control, ownership, use and utilization of TCUN shall be recorded in the data base.
- (3) The TCUN data base management system as referred to in para (1) is integrated with the data recording system at the National Agrarian Agency.
- (4) The building of textual and spatial data base is done in stages from Regional Offices to the National Agrarian Agency.
- (5) The keeping of textual and spatial data as referred to in para (1) is done according to the law and regulation in force.

Article 31

- The TCUN data base as referred to in Article 30 covers:
- a. status of land titles before being declared TCUN;
 - b. location, borders and size of land;
 - c. use and control of land;
 - d. administrative map;
 - e. regional spatial layout plan;

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- f. land capacity;
- g. land registration map;
- h. cultivation; and
- i. other agrarian data.

Article 32

The TCUN data base as referred to in Article 31 is used to support :

- a. analysis of the appropriation of TCUN in the interest of agrarian reform program, strategic state program and appropriation of other state reserves;
- b. analysis of the use of TCUN for the public, the government and legal entities;
- c. drawing up of TCUN;
- d. naming of would-be recipients of TCUN, determination of location and size of land to be received, and location and size of public facilities and social facilities;
- e. distribution of TCUN to would-be recipients;
- f. facilities for the supervision, control and reporting of TCUN; and/or
- g. other purposes according to the law and regulation in force.

CHAPTER VIII

SUPERVISION AND CONTROL OF STATE PUBLIC LAND RESERVES

Article 33

- (1) Supervision and control of effective use of TCUN is done in stages from the central government down to regions.

- (2) The Head through the national team shall supervise and control the effective use of TCUN.
- (3) The Deputy for Agrarian Control and Public Empowerment shall coordinate supervision at central level.
- (4) Heads of Regional Offices shall supervise and control the effective use of TCUN in their respective region.
- (5) The supervision and control shall be done by involving public participation.

Article 34

- (1) Supervision and control shall be done through :
 - a. periodic and incidental data reporting system;
 - b. supervision by the national team to regional offices;
 - c. periodic and incidental inspection to regional offices; and
 - d. periodic and incidental technical meeting.
- (2) The supervision and control shall be done by taking advantage of information technology system particularly land program quality control system.

CHAPTER IX

REPORTING OF STATE PUBLIC LAND RESERVES

Article 35

- (1) Heads of Regional Offices shall report TCUN to the Head attn. the national team every month, quarter and year according to formats as contained in Attachment 5 and Attachment 6.
- (2) The Head shall report the effective use of TCUN

to the President.

Article 36

No any form of permit/decision/letter other than those stipulated by the Head may be issued with regard to TCUN.

CHAPTER X

EXPENSES

Article 37

All expenses arising from the implementation of this regulation shall be borne by the state budget and other legal sources according to the law and regulation.

CHAPTER XI

CONCLUSION

Article 38

(1) When this Regulation begins to take effect, Decree of the Head of the National Agrarian Agency

No. 24/2002 on the Implementation of Government Regulation No. 36/1998 on the Control and Effective Use of Abandoned Land, and other regulations contradicting this Regulation shall be revoked and declared null and void.

(2) This Regulation shall come into force as from the date of stipulation.

Stipulated in Jakarta

On July 14, 2011

THE HEAD OF THE NATIONAL
AGRARIAN AGENCY OF
THE REPUBLIC OF INDONESIA,
sgd.

JOYO WINOTO, Ph.D.

Editor's Notes :

- Attachments are not carried for technical reasons.

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