



The Impact Of Business Crimes Due To Abandoned Land Under The Right To Cultivate (HGU) In Indonesia: An Economic Analysis Of Law Approach

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Abstract:

Background. Richard Posner, in his Economic Analysis of Law, argues that business crimes involving the abandonment of concession lands (Hak Guna Usaha/HGU) reflect the existence of externalities and market failures, where corporate concession holders who neglect their lands cause substantial losses to both the State and society.

Aims. This study aims to evaluate the economic and legal impacts of business crimes arising from the abandonment of plantation concession lands (HGU) in Indonesia and to provide alternative policy solutions for resolving this issue.

Methods. The research employs a normative legal method with an evaluative approach, examining the phenomenon of abandoned plantation HGU lands from both regulatory and economic perspectives. The analysis seeks to produce concrete recommendations for optimizing the management of abandoned plantation lands through an integration of legal and economic principles.

Result. The findings reveal that, as of 2024, the Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN) recorded approximately 1,347,099 hectares of abandoned HGU lands across Indonesia, accumulated between 2020 and 2024. Under existing fiscal regulations, HGU concession holders are required to pay Non-Tax State Revenue (PNBP) of IDR 26,500 per 100 hectares annually. Based on this rate, the total potential State revenue loss due to abandoned HGU lands is estimated at IDR 356,981,235 (three hundred fifty-six million nine hundred eighty-one thousand two hundred thirty-five rupiahs).

Conclusion. The study concludes that the widespread abandonment of HGU lands represents a significant economic loss and legal inefficiency. Lands that should generate income for the State instead become sources of conflict, inefficiency, and administrative burden, illustrating the failure of both corporate governance and legal enforcement mechanisms.

Implication. The implications of this research emphasize the necessity of developing criminal, civil, and administrative law instruments to prevent and sanction corporate violations that cause State losses. The study proposes the formulation of a criminal law-based regulatory framework as a deterrent mechanism to ensure corporate accountability in land management and to restore the economic and social function of land in accordance with Indonesia's constitutional mandate.

Keywords: Impact; Business Crime; Abandoned Land; Hak Guna Usaha (HGU); Economic Analysis of Law



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INTRODUCTION

Crimes in the business sector, particularly those involving plantation lands under the Right to Cultivate (HGU), are crucial to evaluate because such offenses cause substantial losses—both from the regulatory perspective and the economic dimension—leading to welfare inequality and prolonged social conflict arising from such disparities (Alvian, Fitra, & Dian Aries Mujiburohman, 2022). The deliberate abandonment of HGU lands by corporations constitutes a form of business crime and a violation of constitutional principles (Waliyurrahman, Septian Joko, & Icha Cahyaning Fitri, 2024).

The economic dimension of law represents the reciprocal relationship between economic activity and the legal norms that regulate and influence it (Sulthonuddin, Bung Hijaj, & Enceng Iip Syaripudin, 2023). It ranges from the regulatory framework governing the allocation of authority for production, distribution, and consumption, to the manner in which law affects economic growth, investment, and social welfare through its policy mechanisms (Hafizd, Jefik Zulfikar, Yadi Janwari, & Sofian Al-Hakim, 2024). Indonesia, as a legal state that emphasizes social welfare, often carries the slogan of promoting investment for national revenue growth in various policy areas (Hutagalung, Siti Merida, 2017). This tendency suggests that material income has become a primary focus in state management (Kurniawan, Chandra, 2016). Consequently, the Economic Analysis of Law (EAL) theory serves as a fundamental framework within Indonesia's welfare state legal system (Muzaqqi, Fahrul, 2013). However, in practice, the government frequently fails in policy formulation, particularly concerning natural resource management, such as land allocation. The granting of HGU rights to corporations that lack the capacity or commitment to manage the land properly has resulted in widespread inefficiency (Roring, Edward Benedictus, Zul Amirul Haq, & Salman Alfarisi, 2025). Many of these lands remain unproductive despite being legally entrusted to private entities.

According to Szabo, business crime encompasses any violation central to a business's operations. Such offenses may be committed individually, professionally with partners, or even by state officials who breach their obligations (Zhang, Yue, Wenxiong Wang, & Yanfei

Feng, 2022). Although business is generally perceived as profit-oriented and part of the private law domain, the modern paradigm recognizes its intersection with public law, particularly in the realm of criminal accountability (Ferguson, James, 2013). The granting of HGU rights by the state inherently serves an economic objective, typically associated with agricultural, plantation, or aquacultural enterprises (Alberini, Anna, et al., 2018). In the plantation sector, however, numerous cases of mismanagement have been recorded, where HGU lands remain physically abandoned. Data show that by 2023, approximately 2.72 million hectares of HGU land were identified as abandoned (Ariza-Montobbio, Pere, et al., 2010). This figure far exceeds that of other land titles, such as Building Use Rights (82,037 hectares) and Usage Rights (7,080 hectares). In this regard, when viewed through the lens of Law No. 31 of 1999 on the Eradication of Corruption, one of the key elements of corruption is the existence of state losses. Therefore, in correlation with the findings of this study, business crime in this context manifests as state losses caused by corporate abandonment of HGU lands entrusted to them for productive use.

To date, no prior research has specifically examined the impact of business crimes on the abandonment of plantation HGU lands. This gap in scholarship is evidenced by previous studies with similar but not identical themes, as summarized in Table 1 below

Table 1. Previous Studies

No	Title	Ref
1	Impact of different models of rural land consolidation on rural household poverty vulnerability	Zhang, Yue, Wenxiong Wang, and Yanfei Feng
2	How to Do Things with Land: A Distributive Perspective on Rural Livelihoods in Southern Africa	Ferguson, James
3	Preferences for Energy Efficiency vs. Renewables: What Is the Willingness to Pay to Reduce CO2 Emissions?	Alberini, Anna, et al
4	The political ecology of Jatropha plantations for biodiesel in Tamil Nadu, India	Ariza-Montobbio, Pere, et al
5	Pola Pencucian Uang Hasil Perdagangan Narkoba dan Pembalakan Liar	Nurhadiyanto, Lucky
6	Pidana Okupasi Hak Guna Usaha (HGU) Tanpa Hak dan Melawan Hukum di Sektor Perkebun	Junaedi
7	Penyelesaian Sengketa Tanah Dengan Hak Guna Usaha dalam Penertiban Tanah Terlantar	Parihah, Vera Siti
8	Potensi dan permasalahan pulau sangiang sebagai objek tanah terlantar	Mujiburohman, Dian Aries
9	Menghitung Dampak Tanah Terlantar Terhadap Potensi Kerugian Ekonomi Di Indonesia	Sembiring, Benny Lala, and Yohanes N. Agung Wibowo
10	Some Uses and Abuses of Economics in Law	Posner, Richard A

The ten previous studies reviewed indicate that no existing research has specifically examined the impact of business crimes arising from the abandonment of plantation HGU lands. Therefore, the research gap identified in this study lies in the absence of a solution-oriented discussion addressing the legal and policy mechanisms for resolving abandoned HGU issues from a criminal law perspective. Accordingly, this study aims to evaluate corporate business crimes resulting from the neglect of land under the Right to Cultivate (HGU) in Indonesia and to propose alternative solutions to address such issues effectively. The novelty and main contribution of this research are embodied in its evaluation of both normative and economic losses resulting from corporate business crimes related to HGU management in Indonesia. Furthermore, this study seeks to formulate mechanisms through which such corporate misconduct can be addressed and sanctioned from criminal, civil, and administrative law perspectives by the state

LITERATURE REVIEW

Studies on the *Economic Analysis of Law* (EAL) in the context of agrarian issues and business crimes in Indonesia highlight that abandoned land—particularly under the *Right to Cultivate* (*Hak Guna Usaha*, or HGU) has significant economic, social, and legal impacts. The EAL framework views law as an instrument of economic efficiency that should correct *market failures* caused by unequal land ownership and misuse.

Posner (1973) established the foundation of EAL, emphasizing that law should aim to maximize social welfare by internalizing external costs arising from certain legal behaviors (Posner, 1973). In agrarian contexts, inefficient land utilization due to abandoned HGU properties creates economic losses because productive resources remain idle (Coase, 1960).

Studies have revealed that many corporations holding HGU rights engage in *land banking* or deliberate land abandonment for speculative gain. This behavior distorts both economic and social structures (Sitorus, 2019). From an economic-legal standpoint, such conduct constitutes a form of *economic crime* because it inflicts harm on the public and the state (Rahardjo, 2011)..

Institutional analysis by Ostrom (1990) stresses the importance of effective governance over *common-pool resources*. When the legal system fails to provide incentives for productive land use, misuse and neglect of rights often occur (Ostrom, 1990). Empirical research also points to corruption and irregularities in HGU licensing that contribute to the rise of abandoned lands (Hadiprayitno, 2020).

From the economic law perspective, abandoning land represents *opportunity cost inefficiency*, as the economic value of optimal land use outweighs speculative benefits (Becker, 1968). Hence, law should impose economic sanctions to deter non-productive behavior and prevent unjust enrichment (Shavell, 2004).

In Indonesia, policy reforms such as Government Regulation No. 20 of 2021 on the Control and of Abandoned Land illustrate the state's effort to address inefficiency. However, its implementation remains hindered by structural barriers and bureaucratic moral hazards (Harsono, 2018).

METHOD

The method used in this study is the normative legal method with an evaluative approach, which examines the issue of abandoned land under the Right to Cultivate (Hak Guna Usaha or HGU) from both regulatory and economic loss perspectives (Rosidi, Ahamad, Mukti Zainuddin, & Ismi Arifiana, 2024). This approach aims to produce an evaluation in the form of concrete recommendations for the comprehensive management of abandoned plantation HGU lands.

The research materials used are secondary sources, consisting of relevant academic writings and credible institutional data sources related to the economic statistics of HGU in Indonesia (Benuf, Kornelius, & Muhamad Azhar, 2020). The objective of this study is to provide a resolution framework for abandoned land disputes within the scope of corporate criminal law, particularly for corporations that—either intentionally or unintentionally—fail to manage the HGU lands granted by the state (Isnaeni, Diyan, 2017). The data analysis employed is qualitative analysis, as the research is primarily based on secondary legal materials. Therefore, the data are processed and interpreted qualitatively to derive descriptive and normative conclusions (Ardani, Mira Novana, 2021; Runtulalo, Pricillia Monica, 2023; Kafrawi, Rachman Maulana, Bambang Ariyanto, & Nikmah Mentari, 2022).

DISCUSSION

The issue of abandoned plantation lands under the Right to Cultivate (HGU) has yet to find a comprehensive policy framework capable of reducing the number of land abandonment cases (Isnaeni, Diyan, 2017). Recently, the government has initiated a program to allocate 79,925 hectares of abandoned plantation HGU land for the Ministry of Housing's plan to build three million subsidized housing units for Low-Income Communities (MBR). This initiative seeks to utilize unproductive plantation HGU lands for social and economic benefit. Data from the past four years indicate that this issue requires special attention and

policy intervention (Ardani, Mira Novana, 2021). Based on the author's examination, the data on abandoned plantation HGU lands across Indonesia, sorted by year, are presented in Table 2 below.

Table 2. Abandoned Land in Indonesia by Year and Designation

No	Year	Area (Hectares)	Description
1	2021	1,19 juta hektare.	Identified as potentially abandoned land
2	2022	6.894,03 hektare	Officially designated as abandoned land
3	2023	14.739,17 hektare	Officially designated as abandoned land
4	2024	1.347.099 hektar	Most recent inventory of abandoned plantation HGU lands

The dynamics of the data presented by the Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN) indicate a lack of uniformity in the documentation and classification of abandoned HGU lands in Indonesia, particularly between lands that are merely indicated as abandoned and those that have been formally designated as such through a Ministerial Decree (Runtulalo, Pricillia Monica, 2023). Nevertheless, when viewed from the available data, no significant progress has been made up to 2024 in mitigating the state's economic losses arising from the non-optimal utilization of HGU lands (Kafrawi, Rachman Maulana, Bambang Ariyanto, & Nikmah Mentari, 2022). This situation reflects a persistent inefficiency in land management and the limited enforcement of corporate accountability within Indonesia's agrarian policy framework. These findings are presented in Table 3, which outlines the distribution of abandoned lands by province across Indonesia.

Table 3. Area of Abandoned Land by Province in Indonesia

Province	Total Plantation Area (Thousand ha)	Abandoned Land Area (Thousand ha)	Percentage of Abandoned Land (%)
Aceh	1.051,3	35,34	3,4%
Sumut	2.502,6	56,99	2,3%
Sumbar	937,7	26,14	2,8%
Sumsel	2.426,6	162,37	6,7%
Riau	3.642,9	67,40	1,9%
Jambi	1.463,5	24,79	1,7%
Bengkulu	589,9	31,43	5,3%
Babel	360,5	9,47	2,6%
Lampung	931,0	48,50	5,2%
Kepri	95,0	5,17	5,4%
Banten	137,0	5,54	4,0%
Jabar	413.4	23.73	5.7%
Jateng	458.3	0.80	0.2%
DIY	68.6	-	0,0%

Jatim	846.3	4.89	0.6%
Kalbar	2.075.6	86.17	4.2%
Kalteng	1.851.3	74.73	4.0%
Kalsel	847.7	59.56	7.0%
Kaltim	1.220.3	211.55	17.3%
Sulut	377.0	10.90	2.9%
Gorontalo	150.3	1.04	0.7%
Sulteng	788.4	25.01	3.2%
Sulsel	625.6	72.23	11.5%
Sulbar	414.3	21.72	5.2%
Bali	149.0	0.62	0.4%
NTB	162.6	17.25	10.6%
NTT	453.9	33.09	7.3%
Maluku	249.6	8.46	3.4%
Papua	247.4	6.65	2.7%
Papua Barat	148.8	26.91	18.1%
Indonesia	26,559.5	1,194.37	4.5%

The total plantation area in Indonesia covers approximately 26.5 million hectares, of which 4.5% (around 1,192,500 hectares) is identified as abandoned land. Within the plantation subsector, the four provinces with the highest proportion of abandoned land relative to total plantation area are West Papua, East Kalimantan, South Sulawesi, and West Nusa Tenggara, each recording 18.1%, 17.3%, 11.5%, and 10.6%, respectively. Specifically, this corresponds to 4,870 hectares in West Papua, 36,598 hectares in East Kalimantan, 8,306 hectares in South Sulawesi, and 1,828 hectares in West Nusa Tenggara (Susilowati, Sri Hery, & Mohammad Maulana, 2012).

When mapped against these four provinces, a normative–economic evaluation suggests that the implementation of policy recommendations would be most effective if they consider local socio-cultural, economic, demographic, and ecological conditions, along with the accessibility factors that significantly influence the success of policy enforcement and rehabilitation (Mulyani, Anny, & Fahmuddin Agus, 2017). The summarized data are presented in Table 4 below.

Table 4. Economic Valuation Analysis of Abandoned Plantation Lands in Four Indonesian Provinces

No	District	Economic Valuation	Abandoned Land Area	PNBP Per 100 Hectare (Rp)	Total PNBP (Rp)
1	West Papua	- Non-timber forest products (rattan, agarwood)	4.870 Ha	26.500	1.290.550

2	East Kalimantan	- Expansion of palm oil plantations	36.598 Ha	26.500	9.698.470
3	South Sulawesi	- Cocoa, coffee, and nutmeg cultivation	8.306 Ha	26.500	2.201.090
4	West Nusa Tenggara	- Cattle and goat farming	1.828 Ha	26.500	4.844.200
Total			51.542 Ha		18.034.310

Several cases of business crimes in Indonesia’s plantation sector have not yet found practical and preventive solutions over the years. The implementation of policies related to the regularization of abandoned plantation lands (HGU) has also encountered significant challenges. The process of reclaiming abandoned corporate HGU lands as State Land without compensation has proven difficult to enforce, as corporations tend to retain ownership despite the land’s unproductive status. From a civil law perspective, such negligence results in corporate losses, while the state remains deprived of its rightful economic benefits. From a criminal law perspective, these practices constitute business crimes, often accompanied by land speculation and fraudulent claims by individuals or intermediaries (Ganindha, Ranitya, 2016).

Consequently, the issue of abandoned lands represents a critical intersection of legal and economic policy, affecting not only corporations and the state but also local communities that suffer from disputes and diminished access to land. Moreover, the concentration of plantation ownership in the hands of a small number of individuals and corporations further exacerbates the issue. This ownership disparity does not correlate with effective land management capacity, resulting in widespread underutilization and abandonment of granted HGU lands (Arifin, Zaenal, and Nikmatul Wachidah, 2023). As a result, land loses its economic and social function, leading to constitutional violations and prolonged land conflicts between communities and companies (Chandranegara, Ibnu Sina, 2016).

According to Richard Posner’s theory of Economic Analysis of Law, business crimes involving abandoned HGU lands illustrate the existence of externalities and market failures (Vatn, Arild, and Daniel W. Bromley, 1997). The failure of HGU holders to utilize the land productively imposes negative externalities—economic losses borne by the state and society. Posner (Kaplou, Louis, and Steven Shavell, 2002) argues that legal rules that create

disincentives should be re-evaluated and restructured to generate positive incentives, thereby enhancing both efficiency and social welfare.

CONCLUSION

Based on the results of the evaluation, it was found that the State has incurred significant economic losses in the management of plantation concession lands (HGU) in Indonesia. This is evidenced by the vast amount of abandoned plantation HGU areas, which reflects inefficiency and the absence of effective legal deterrence. Furthermore, the study reveals that Indonesia's current legal framework does not yet provide for criminal sanctions against corporations that deliberately abandon their concession lands. Law enforcement remains limited to administrative measures, such as warnings or revocation of land rights, which have proven ineffective in encouraging compliance. As a result, corporations are not deterred from neglecting their legal obligations, since such administrative sanctions carry no substantial economic or criminal consequences. In essence, the abandonment of HGU lands by corporate entities constitutes a form of business crime, as it generates both material and immaterial losses to the State. The government loses potential Non-Tax State Revenue (PNBP) that would otherwise have been obtained from productive land utilization. At the same time, this negligence triggers prolonged conflicts between corporations and local communities, which in turn imposes additional financial and social burdens on the State to mediate and resolve such disputes. The problem is therefore not only legal in nature but also deeply economic, as the unproductive use of land undermines national welfare objectives. For this reason, it is essential to formulate and enforce a criminal law-based regulation to govern cases of corporate land abandonment. Such regulation would restore the balance between economic efficiency and legal responsibility, reinforce the social function of land as mandated by the Constitution, and strengthen the State's capacity to ensure justice, accountability, and sustainable land management..

IMPLICATION

The implication of this study lies in the formulation of evaluative solutions aimed at preventing corporate violations of the law across the dimensions of criminal, civil, and administrative justice. The findings emphasize the need for a more comprehensive and integrated legal framework that not only regulates but also enforces accountability for corporations holding plantation concession rights (HGU). Through the lens of the Economic

Analysis of Law, this research provides a foundation for the State to design mechanisms that effectively deter corporate misconduct, particularly acts that result in state losses and social inequality. The formulation of such mechanisms would enable the State to take decisive legal action against corporations that neglect their economic and social obligations, ensuring that every act of land abandonment is met with proportional legal consequences. Ultimately, these implications serve as a blueprint for strengthening the relationship between law enforcement and economic governance, aligning corporate accountability with national welfare objectives..

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