



## ARRANGEMENT OF ABANDONED LAND IN INDONESIA

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**Abstract:** Land in a country cannot be owned, controlled, and used freely by humans but is bound by the provisions stipulated by the government or the State as the ruler of general rights regulated by the State in the agrarian law. The granting of rights by the State in the form of certificates of land rights must be balanced with strict provisions on the obligations of the holder of land rights. Rights and obligations appear together. Rights and obligations appear at the same time. Although their nature is different and opposite, their existence cannot be separated. The State has experienced many difficulties in controlling the neglect of land rights, especially those with certificates of ownership. There is much speculation by individuals or legal entities that make Land an object of investment, especially land with property rights, because legally, it has a more substantial and fuller legal force than other land rights recognized by the State. It was not utilizing the Land optimally because it is used as an investment object, so it is neglected. Abandoned Land is a violation of the law, so the form of controlling abandoned Land is the principle of legal certainty. Law enforcement on abandoned Land is the personification of the State for law violators who are detrimental to the nation, State, and people of Indonesia. Private rights granted by the State are more substantial and fuller in terms of property rights granted by the State because of their nature regulated by law. The ambiguity of the norms governing the criteria for abandoned land results in the difficulty of the State being able to prove a land as abandoned Land. The State is still focused on controlling other primary land rights. This can be seen from the different criteria for controlling land ownership rights with other primary land rights when viewed from the arrangement. It is necessary to regulate abandoned Land, that is more emphasized in land laws and regulations under the principles of good legislation so that it can be implemented as a form of law enforcement by the State. Whereas the purpose of the stipulation of abandoned Land is that Land that is not cultivated according to the granting of its rights can be used as an asset of the Land Bank and Land Reserves for the State to ensure an even distribution of optimization of land use, thereby creating prosperity for all Indonesian people.

**Keywords:** *Controlling; Abandoned Lands; Certificates of Property Rights; Land Laws*

### 1. Introduction

Land is valuable in terms of function and economic value in various aspects of human life, and Land is one of the most absolute and vital human needs. Land in a country cannot be owned, controlled, and used freely by humans. But it can be control, use, and ownership of Land take into account the optimal utilization of Land based on the provisions stipulated by the government or the State as the general rights holder which the State in the enactment of the law regulates No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA. Therefore the State has the right to regulate Land's existence, ownership, and use.

With the promulgation of the UUPA, the Indonesian people already have national agrarian laws. National agrarian law must provide for the possibility of achieving the functions of earth, water, space, and the natural resources contained therein for the greatest possible

prosperity of the Indonesian people, must follow the interests of the people and the State, and meet their needs according to the demands of the times in all agrarian matters.

UUPA authorizes the State as the powerful organization of the Indonesian nation, at the highest level, to control and regulate all allotment of Land. The definition of "controlled by the State" is interpreted to include the meaning of control by the State as Regulation (regelendaad), namely regulating the administration where what is regulated is in the form of allotment, use, supply, and maintenance of the land sector, and the State is given the authority to determine and regulate legal relations between people and Land, determines and regulates legal relations between people and legal actions concerning Land. This aligns with the values embodied in the Pancasila idea, which is spelled out in Article 33 of the 1945 Constitution and meant for the greatest possible goal of people's prosperity.

Based on the State's right to control, the State determines various land rights that can be controlled by legal subjects, both individuals and legal entities. Land rights granted to legal subjects originate from the State's right to control Land. The granting of land rights to individuals or legal entities also raises the rights and obligations of the recipient of the rights so that the use rights granted by the State can be used properly without neglecting the obligations. Due to the nature of land ownership rights which are the most potent land rights among all land rights granted and regulated by the State, the community has increasingly sought ownership of land rights, both for personal needs and as an investment in their daily lives. day

The granting of land ownership rights by the State to individuals and legal entities creates legal consequences in the form of rights and obligations that each party must fulfil in order to create justice and legal benefits. Philosophically, the granting of land ownership rights granted by the State is a form of embodiment of the delegation of authority from the right to control the State regulated by the 1945 Constitution to Indonesian citizens who control Land to be able to utilize and manage Land which is a gift from God Almighty.

Abandoning Land is a violation of the law against the granting of land rights. Land abandonment can be fatal and detrimental, leading to land disputes and the loss of land rights that the State has granted. Whereas, as already quoted in the opinion of Maria S.W. Sumarjono by Suhariningsih in his book entitled *Abandoned Land, Principles and Renewal of the Concept Towards Controlling*, the principle of the social function of land rights (Article 6 of the UUPA) includes the obligation to maintain for every person and legal entity holding land rights. The definition of a contrario soil maintenance means preventing neglect of Land.

Based on the law on government administration, the authority of the State in carrying out law enforcement includes monitoring and determining abandoned Land regulated in the UUPA and its derivative regulations, which are a function of government, related to the function of sturen. The authority of the State for the management of abandoned Land often clashes between private law and public law. The granting of land rights, especially land ownership rights, often collides with reasons for civil rights from landowners. The State experienced many difficulties in controlling the neglect of land rights, especially those with the status of certificates of ownership. Even though it has been regulated in various

regulations, the State often has to clash between the authority of public law or private law, which regulates, especially in terms of controlling abandoned Land, which already has the status of a certificate of ownership rights over Land. The granting of rights by the State in the form of certificates of land rights must be balanced with strict provisions regarding the obligations of land rights holders. Rights and obligations appear simultaneously. Despite their different and opposite nature, their existence cannot be separated.

The elimination of land ownership rights has been regulated based on Law Number 5 of 1960 concerning Basic Agrarian Regulations, namely Article 27 in letter three states that "property rights are deleted if the land falls to the State because it is abandoned". The elimination of land ownership rights also regulated in the latest government regulation, namely Government Regulation Number 20 of 2021, concerning the Management of Abandoned Land and Areas, as a substitute for the previous Government Regulation concerning Abandoned Land, namely Government Regulation Number 38 of 1998 concerning Management and Utilization of Abandoned Land, and Government Regulation Number 11 of 2010 concerning Control and Utilization of Abandoned Land.

Observing the provisions in Article 7 PP Number 20 of 2021 above, the legal issues that are the focus of this research are: First, why are there differences in the criteria for abandoned Land with the status of Property Rights (HM) and Building Use Rights (HGB), Usage Rights (HP)? ), Management Rights (HPL), Cultivation Rights (HGU), and rights based on Tenure over Land (DPAT)? What are the considerations underlying this difference? Second, is the criterion in Article 7 paragraph (2) for privately owned Land that still needs to have a certificate or privately owned Land that has been certified? This is because, in contrast to the provisions on HGB, HP, HPL, and HGU Land in Article 7, paragraph (3) and paragraph (4), it is stated explicitly that the objects are HGB land, HP land, HPL land, and HGU land that already have certificates (issuance of land rights). ).

Meanwhile, there is no such confirmation for Land with ownership rights in Article 7 paragraph (2), so there is a blurring of norms (vague norm). Furthermore, what and how do explain the meaning of the criteria "controlled by the community and become a village area"? What about the meaning of "continuously controlled by another party for 20 (twenty) years without any legal relationship with the Right Holder"? Third, can the norms for abandoned land criteria in Article 7 paragraph (2) PP Number 7 of 2020 for Land with ownership certificates be implemented in the field? What is the implementation mechanism? Based on the theory of the formation of laws and regulations, one of the principles that must be guided by is the "Principle of Execution", which means that every norm in laws and regulations must consider its effectiveness in society, both philosophically, sociologically, and juridically

## 2. Research methods

The method used in this study is a normative juridical research method. In this research, legal issues related to Land will be studied normatively or will be carried out in a substance review of the legal issues to be resolved. In particular, this research will examine the Land's legal status, which the owner has neglected for years, and how the Land is managed.

### 3. Discussion

#### 3.1. Controlling Abandoned Land with a Certificate of Ownership Status is a Form of Legal Certainty

Titled Land is Land that has been registered and has received a land registration number with the classification and type of rights determined by the National Land Agency with conclusive evidence from the land registration process, known as a Land Title Certificate.<sup>1</sup> The right to control by the State, which is basically formulated in Article 2 of the UUPA, gives the authority to regulate and determine various aspects of land tenure, which from the beginning, according to their nature, have always been considered the task of the central government.<sup>2</sup> The right to control Land by the State is absolute. Without this type of control, fair and equal welfare will not be achieved. However, the right to control Land by the State is impossible to achieve while the State, through the government, does not create legal certainty as the basis and guidelines for its control.<sup>3</sup> Abandoned Land is a violation of the law, so the form of controlling abandoned Land is the principle of legal certainty. Enforcement of the law on abandoned Land is the personification of the State for lawbreakers who harm the nation, State, and people of Indonesia.<sup>4</sup>

Even though property rights are the highest and most vital type of land rights, property rights can be abolished due to certain conditions. Abandonment is a condition that can cause land ownership rights to be removed. This is in line with the provisions of Article 27 of the UUPA. This is a form of controlling administrative violations. A certificate of ownership that can provide strong evidence of the Land owned can only prevent the abolition of ownership rights if the Land owned is addressed.<sup>5</sup> Suppose the existence of abandoned Land is not handled with full attention. In that case, this will disrupt the course of development, considering that land supplies are increasingly limited and the need for Land for development is increasing. Lokadata. Id's search results for the 2017-2020 National Socioeconomic Survey (Susenas, BPS) results from the total number of households holding SHM until 2020 reached 57.8 percent (33.7 million households). When the ATR/BPN Ministry's website was accessed on June 17, 2021, it showed that 74.5 million land certificates had been issued. As for the details, 68.1 million SHM, 16.2 thousand SHGU, 5.3 million building use rights, and 839 thousand usufructuary rights.<sup>6</sup> This data shows that the ownership of certificates of ownership rights is more numerous than the ownership of

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<sup>1</sup> Romi Sihombing. *Cacat Administrasi Pembatalan Sertifikat Tanah Oleh BPN Tanpa Putusan Pengadilan*. Jakarta: Penerbit Kencana, 2022. Hlm. 100.

<sup>2</sup> Arie Sukanti Hutagalung dan Markus Gunawan. *Kewenangan Pemerintah Di Bidang Pertanahan*. Jakarta: Rajagrafindo Persada, 2008. Hlm. 57.

<sup>3</sup> Winahyu Erwiningsih. *Pelaksanaan Pengaturan Hak Menguasai Negara Atas Tanah Menurut UUD 1945*. Yogyakarta: Disertasi, Doktor Pascasarjana Universitas Islam Indonesia, 2009, Hlm. 7.

<sup>4</sup> Gunanegara, *Tanah Terlantar Melanggar Hukum*, Gunanegara, Jakarta, 2020. Hlm. 53.

<sup>5</sup> Elbert dan Gustianus Fernando. *Analisa Hukum Atas Tanah Hak Milik Yang Terlantar Berdasarkan Peraturan Pemerintah No. 20 Tahun 2021 Tentang Penerbitan Kawasan Dan Tanah Terlantar*. *Jurnal Hukum Adigama, Volume 4 Nomor* (2021). Hlm. 2960. DOI: <https://doi.org/10.24912/adigama.v4i2.17877>.

<sup>6</sup> *Ibid.*

certificates of other land rights, so it becomes an object that must be of concern to the State in controlling abandoned Land.

There is much speculation by individuals or legal entities that make Land an object of investment, especially Land with the status of private property because legally, it has more powerful and fuller legal force than other land rights recognized by the State. The condition of neglected Land can occur because there are small groups of people who have much capital to expand their land ownership but need to be used, and the result is that the Land is abandoned.<sup>7</sup> UUPA is the basis for the birth of other legislation and supporting regulations in regulating policies in the land sector.<sup>8</sup> In the UUPA regarding abandoned Land, it is included in the provisions on the expiration of land rights, namely in article 27e, that property rights are deleted because they are neglected.<sup>9</sup> One of the institutions in customary law adopted in national agrarian law, especially land law, is the institutional/ *processing*, namely a principle in agrarian law that states that a land owner who leaves his Land uncultivated within a certain period and allows other people to occupy and take advantage of it will cause the original owner to lose his rights to his Land.<sup>10</sup>

The legal principle contained in the concept of abandoned Land can be used as a basis for equalizing perceptions among officials, officers, and even the public in interpreting the concept of abandoned Land.<sup>11</sup> The legal principle determines the rules, the source of all derived rules. It also simultaneously functions as an evaluative standard which is a reference for assessing the existence of deviant rules or rules.<sup>12</sup> The crucial legal issue is how philosophically, juridically, and sociologically legal principles as objective legal principles are translated into legal norms in the form of laws or at least government regulations that regulate administrative aspects as objective principles that must be guided.<sup>13</sup> Juridically, the abandonment of this Land is a form of lawlessness in society, a nature of opposition to the rule of law in force. Therefore any violation of the law will impact disharmony in society.<sup>14</sup> Following the spirit and spirit of the UUPA, especially article 6 regarding the social function of land rights and the obligation to manage and maintain Land to benefit from Land, the institution's *legal processing* in the future its effectiveness will be tested through various problems that have started to emerge since the reformation began, namely in the form of

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<sup>7</sup> Elbert and Gustianus Fernando, *Op. Cit.* Hlm. 2956-2957.

<sup>8</sup> Suhariningsih. Tanah Terlantar Asas dan Pembaharuan Konsep menuju Penertiban. Jakarta: Prestasi Pustakakarya, 2009. Hlm. 88

<sup>9</sup> *Ibid.*

<sup>10</sup> Sri Hajati, Sri Winarsi, dan Oemar Moechtar. Eksistensi Lembaga Rechtverwerking di Indonesia, Surabaya: Airlangga University Press, 2022. Hlm. 87.

<sup>11</sup> Suhariningsih, *Op. Cit.* Hlm, Hlm. 241.

<sup>12</sup> *Ibid.*

<sup>13</sup> Elita Rahmi. Pembuktian Sertifikat Tanah & Kapita Selektu Hukum Agraria. Jakarta: Pentas Grafika, 2021. Hlm. 55

<sup>14</sup> Saharjo. Pelaksanaan Peraturan Pemerintah Nomor: 36 Tahun 1998 Tentang Penertiban Dan Pendencygunaan Tanah Terlantar Di Kawasan Pariwisata Kuta Kabupaten Lombok Tengah. Semarang: Tesis, Program Pascasarjana Universitas Diponegoro. 2003. Hlm. 86

illegal occupation by parties who claim to be the owners of the Land with various reasons put forward.<sup>15</sup>

The job of identifying is not an easy job because it requires clarity on the concept and criteria of abandoned Land.<sup>16</sup> Regarding what criteria determines whether a parcel of Land is declared as abandoned Land, it is not easy to decide.<sup>17</sup> According to Maria SW. Sumardjono that there are at least five criteria that can determine the abandoned Land, which is seen from the subject, the object, the period, the institution that has the right to declare, and the procedure for determining it. In order to prove that a land title that has been granted is in a well-maintained condition, an evaluation must be carried out by the State as the grantor of the right within the appropriate time limit after the Land being requested is granted the rights by the State. The form of land tenure can be proven by several criteria relating to the obligations of the holder of land rights. In setting boundaries on land parcels, the system is used *contradictory delimitation*, in Government Regulation No. 24 of 1997 concerning Land Registration referred to as *Principle Contradictory Delimitation*, namely the principle that the determination of the boundaries of land parcels that are being registered in the study of biological data in the field must be witnessed by the owners of adjacent land rights through the installation of common boundary signs.

The installation of boundary markers is a form of the obligation of the holder of land rights, especially Land for which a certificate of land rights has been issued, which is regulated under statutory regulations. The obligation to install boundary markers and physical control is regulated in Government Regulation Number 24 of 1997 concerning Land Registration, namely Article 17 paragraph (3), which reads: "*Placement of boundary markers, including their maintenance, must be carried out by the holder of the land title in question.*"

The occurrence of land ownership rights is the basis for the emergence of a relationship between the subject and the Land as an object of rights.<sup>18</sup> The criteria for the type of proprietary Land can be found based on Article 3 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 concerning Delegation of Authority for Granting Land Rights and Land Registration Activities, which regulates the type of non-agricultural Land with an area of no more than 3,000 M<sup>2</sup> and types of agricultural Land not more than 50,000 M<sup>2</sup> which can be given a decision on the granting of property rights. Regarding the occurrence of a right, changes are made related to when a land right was born. This amendment emphasizes that land rights are juridically born when granted, as stipulated in the Decree on the Granting of Rights (SKPH). The reason is that with SKPH, the legal relationship between the person and the Land in question in the form of granting certain land rights is approved by the state/government. Initially, the

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<sup>15</sup>Arie S. Hutagalung. Penerapan Lembaga "*Rechtsverwerking*" Untuk Mengatasi Kelemahan Sistem Publikasi Negatif Dalam Pendaftaran Tanah. *Jurnal Hukum & Pembangunan*, Vol 30, No 4 (2000). Hlm.340. DOI: <https://dx.doi.org/10.21143/jhp.vol30.no4.319>.

<sup>16</sup>Suhariningsih, *Op. Cit*, Hlm. 20.

<sup>17</sup> R. Moenindra Anita Yoga. Penguasaan Tanah Yang Diterlantarkan Menurut Undang-Undang Pokok Agraria. Surabaya: Tesis, Program Magister Kenotariatan Fakultas Hukum Universitas Airlangga, 2006. Hlm 46.

<sup>18</sup> Aslan Noor. Konsep Hak Milik Atas Tanah Bagi Bangsa Indonesia Ditinjau Dari Ajaran Hak Asasi Manusia. Bandung: Mandar Maju, 2006. Hlm. 83-84.

relationship was only valid/knowable by the government and the applicant. Thus, for the legal relationship between people and land rights to be known to the public, it must be registered. Besides the registration of rights is the fulfillment of administrative obligations, the right holders are also burdened with administrative obligations that are included in the SKPH, which are accompanied by sanctions. If these obligations are not fulfilled, the rights that have been granted will automatically fall.

Physical mastery of land rights following juridical data is the main criterion in proving land rights. It must be proven by the installation of land parcel boundary signs that bordering parties have determined. Failure to meet the criteria for physical possession of a land parcel is a form of violation of the obligations of the holder of land rights, which will result in many losses for both the holder of land rights and other parties. Not adequately installed boundary signs will result in boundary and ownership disputes over Land that are not maintained, resulting in the form of land abandonment. The arrangement of certificates of ownership rights to become the object of controlling abandoned Land in the Land Law Regulations should be the primary reference for orderly land registration, which must be carried out as a principle of legal certainty. Land legislation guides the community so that land ownership is orderly and implemented so that disputes and conflicts do not arise in land ownership in Indonesia. The criteria for determining the management of abandoned Land must be established in such a way that it can be used as a reference for controlling) the State, because judging from the nature and level of the certificate of ownership rights to Land, which is the strongest and most complete compared to other land rights granted by the State.

According to Bagir Manan, three foundations need to be fulfilled as a condition for the quality of regulation: philosophical, juridical, and sociological.<sup>19</sup> Quoting from a journal written by, Sociologically, the law of controlling and utilizing abandoned Land can be analyzed juridically. Are all the rules relating to the acquisition and use of governmental authority by public law subjects in public law relations.<sup>20</sup> Abandonment of Land is an unwise, uneconomical act (loss of Land's economic potential), unfair, and a violation of the obligations that must be carried out by the right-holders or parties who have obtained the essential land tenure. When the State has granted land rights, it becomes private or personal rights. The Indonesian constitution and law guarantee and protect the ownership and exercise of these private rights from interference by anyone.<sup>21</sup> Abandoned Land is the gateway for the land bank to enter because of the abandoned land mechanism that has been determined and revoked by the owner of land rights who has been proven to have abandoned their Land. Article 33 Government Regulation No. 20 of 2021 concerning Management of Abandoned Areas and Lands).

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<sup>19</sup>Sukaryanto. Konflik Tanah Surat Ijo Di Surabaya (Sebuah Perspektif Teoretik-Resolutif). *Bhumi: Jurnal Agraria dan Pertanahan*, Vol. 2 No. 2 (2016). Hlm. 172. DOI: <https://doi.org/10.31292/jb.v2i2.68>

<sup>20</sup>Andi Rendra Rangkuti. Efektivitas Penertiban Dan Pendayagunaan Tanah Terlantar Di Kota Batam. *Journal Of Law And Policy Transformation Volume 1, Number 2* (2016). Hlm. 158. <https://journal.uib.ac.id/index.php/jlpt/article/view/66>.

<sup>21</sup>Ahmad Redi, et al. *Op. Cit.* Hlm. 53



In carrying out land administration following the provisions of the General Principles of Good Governance, the government, where the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (BPN) is mandated to implement it, must prioritize the principle of prudence and the principle of accuracy. Wrong determination of land status, wrong assessment of rights, wrong choice of law, or wrong procedure and authority have an impact on the imposition of sanctions.<sup>22</sup> The State is given the authority to grant Land rights *contrary to the act*. The State has the authority to annul, abolish, and revoke the land rights of people who violate the abandoned land law. Legal enforcement of abandoned Land theoretically goes hand in hand with the granting of land rights in order to ensure that the use of rights is appropriate and does not conflict with laws and regulations.<sup>23</sup>

### 3.2. Implementation of Controlling Abandoned Land with Certificate of Property Rights Carried out by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency

The implementation of controlling abandoned Land as studied from its philosophical, sociological, and juridical basis can be described as follows. The Land is a gift from God Almighty for mankind on this earth. For the Indonesian people, Land is a place of life that must be cultivated, utilized, and utilized for the greatest prosperity of the people. Article 33 Paragraph 3 of the 1945 Constitution states that "Earth, water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people ."Article 1, paragraph (3) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) states that "the relationship between the Indonesian people, the earth, water, and space is eternal. This eternal relationship means that the relationship between the Indonesian people is not only in the present generation but for future generations for our children and grandchildren; therefore, natural resources must be protected, not damaged or neglected.

Controlling abandoned Land is very important to be carried out in line with the facts on the ground where an increasing number of lands need to be cultivated, used, utilized, and maintained. Control over abandoned Land is carried out to realize life, ensure the sustainability of the Indonesian social and national system, ensure environmental sustainability and sustainability, and strengthen social harmony. In addition, optimizing the tenure, use, and utilization of Land in Indonesian territory is necessary to reduce poverty, create jobs, and increase food and energy security. Ordering and utilization of abandoned Land must prioritize the principle of prudence, thoroughness, and seriousness, considering that in its implementation, it is still found or there are deficiencies in understanding and implementing the regulations so that in the event of a lawsuit from the right holder and it is resolved through court, the Ministry of Agrarian Affairs and Spatial Planning / The National

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<sup>22</sup>Gunanegara. Hukum Pidana Agraria. Jakarta: PT. Tatanusa. 2017. Hlm. 5

<sup>23</sup>Gunanegara. Tanah Terlantar Melanggar Hukum, *Op.Cit.* Hlm. 4..



Land Agency (BPN) has suffered more defeats, especially in the State Administrative Court (PTUN).<sup>24</sup>

Controlling and Utilization of Abandoned Land is carried out starting by the District/City Land Office, Regional Offices of the Provincial National Land Agency, and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (through the Directorate of Controlling, Controlling, Controlling, Ownership and Use of Land, Directorate General of Control and Control of Land and Spatial ).

The implementation of controlling abandoned Land with the status of a certificate of ownership is carried out based on an inventory by the Head of the Land Office following Article 11 of Government Regulation of the Republic of Indonesia Number 20 of 2021 concerning Controlling Abandoned Areas and Land Jo. Article 17 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 20 of 2021 concerning Procedures for Ordering and Utilization of Abandoned Areas and Land. After the inventory is carried out, a report will be made to the Head of the Regional Office. It will be continued as a record in the database as a report to the Minister through the Director General under Article 13 Paragraph (1) Government Regulation of the Republic of Indonesia Number 20 of 2021 concerning Controlling Abandoned Areas and Lands Jo. Article 19 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 20 of 2021 concerning Procedures for Ordering and Utilization of Abandoned Areas and Land, and continued with recording in the database at the Ministry and the land book at the Land Office following Article 13 paragraph ( 2) Government Regulation of the Republic of Indonesia Number 20 of 2021 concerning Management of Abandoned Areas and Land Jo. Article 20 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 20 of 2021 concerning Procedures for Ordering and Utilization of Abandoned Areas and Land.

Land that has been included in the data indicated as abandoned is followed up by controlling abandoned Land following Article 22 paragraph (1) of Government Regulation of the Republic of Indonesia Number 20 of 2021 concerning Control of Abandoned Areas and Land, by carrying out three stages, namely based on Article 22 paragraph (2) of the Regulation Government of the Republic of Indonesia Number 20 of 2021 concerning Controlling Abandoned Areas and Lands Jo. Article 41 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 20 of 2021 concerning Procedures for Ordering and Utilization of Abandoned Areas and Land, namely:

- a) Evaluation of Abandoned Lands;
- b) Memorial of the Abandoned Land;
- c) Designation of Abandoned Land.

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<sup>24</sup>Kementrian Agraria dan Tata Ruang. Kajian Kebijakan Penertiban Tanah/Kawasan Tanah Terlantar, Pusat Pengembangan dan Standarisasi Kebijakan Agraria, Tata Ruang dan Pertanahan Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional. 2020. Hlm. 21.

Evaluation of abandoned Land is carried out within 180 days by way of the Head of the Regional Office notifying in writing regarding the implementation of the evaluation of Abandoned Land as referred to in paragraph (1) to the Right Holders/Management Right Holders/DPAT Holders. Evaluation of Abandoned Land, as referred to in Article 42, is carried out by Committee C, which is formed and determined by the head of the Regional Office, with the composition of Committee C members. The evaluation results carried out by Committee C are reported to the Head of the Regional Office and copied to the Minister and Director General. The Head of the Regional Office notifies the right holder. The right holder is obligated to exploit, use, utilize, and maintain the Land that is owned or controlled within a maximum period of 180 (one hundred and eighty) calendar days from the date of issuance of the notification following Article 48 of the Regulation. Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 20 of 2021 concerning Procedures for Ordering and Utilization of Abandoned Areas and Land, and is required to report every 30 working calendar days.

If the permanent right holder does not heed the notification based on Article 51 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 20 of 2021 concerning Procedures for Controlling and Utilizing Abandoned Areas and Land, the Head of the Regional Office will issue a warning in stages three times during, as the first warning for 90 days, the second for 45 days and the third for 30 calendar days. If the warning is still not heeded by the rights holder, then based on Article 55 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 20 of 2021 concerning Procedures for Controlling and Utilizing Abandoned Areas and Land, a sanction will be imposed in the form of private Land which will be determined to be Abandoned Land, whose rights are abrogated, legal relations are broken, and/or the Land is confirmed to be controlled directly by the State.

The action than to give real sanctions to the Head of the Regional Office within a maximum period of 30 (thirty) working days proposes the Stipulation of Abandoned Land to the Minister through the Director General. Determination of abandoned Land can be carried out either for all Land or part of private Land which is designated as abandoned Land, as stipulated in Article 60 paragraph (2) and paragraph (3) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 20 2021 concerning Procedures for Controlling and Utilizing Abandoned Areas and Land. Arrangements for abandoned Land have been regulated with reasonable procedures. However, in practice, it turns out that the application of sanctions against the legal consequences of land abandonment is still weak because until now, the National Land Agency has never carried out any control over abandoned Land, because so far, the National Land Agency has only been waiting for reports or complaints from the public, the land party is less active in carrying out field supervision.<sup>25</sup>

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<sup>25</sup>Putri Aleydia Ardiana. Akibat Hukum Penguasaan Tanah Terlantar Terhadap Proses Penguasaan Hak Atas Tanah (Studi di Desa Jatiguwi Kecamatan Sumberpucung Kabupaten Malang). *Dinamika: Jurnal Ilmiah Ilmu Hukum*, Vol 27, No 12 (2021). Hlm. 1722. <https://garuda.kemdikbud.go.id/documents/detail/2957616>.

One of the most essential and decisive obstacles in the effort to control is the existence of juridical issues, namely regarding the status or position of Land that is suspected of being abandoned, who has the authority to determine it, and when a parcel of Land is declared neglected.<sup>26</sup> Experience so far shows that it is not easy to apply provisions regarding revocation of land rights, so it is better to refer to the provisions in the BAL alone regarding matters that cause the end of a Land right (including revocation of land rights).<sup>27</sup>

### 3.3. Legal Implications of Controlling Abandoned Land in Land Laws and Regulations

The implementation of the law must pay attention to its usefulness or use for society (the basis for applying law sociologically) because the law is actually made for the benefit of society (humans). Therefore the implementation of the law must provide benefits to society.<sup>28</sup> One of the most essential and decisive obstacles in the effort to control is the existence of juridical issues, namely regarding the status or position of Land that is suspected of being abandoned, who has the authority to determine it, and when a parcel of Land is declared neglected.<sup>29</sup>

The principle of optimal use of Land, balanced by the principle of good faith in controlling it, will be of use value in handling abandoned Land. According to research conducted, by Utilization of abandoned Land are a strategic stage, and the mechanism must ensure that efforts to control abandoned Land must be returned to the greatest prosperity of the people. With effective utilization of Land, controlling abandoned Land will be helpful. Prioritizing utilization efforts also means minimizing conflicts and disputes that have the potential to occur.<sup>30</sup>

Internally, the inhibiting factor for controlling abandoned Land is that, in general, the Land Office experiences technical, administrative, and financial support problems in implementing these provisions.<sup>31</sup> Determination of the criteria for abandoned Land that has ownership rights to the Land that is owed in Article 7 points 2 a and b of Government Regulation No. 20 of 2021 concerning Procedures for Controlling and Utilizing Abandoned Areas and Land, in terms of the criteria that form the basis for land abandonment if another

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<sup>26</sup>Suhariningsih, *Op. Cit.*, Hlm 20.

<sup>27</sup>Ida Nurlinda. Telaah Atas Materi Muatan Rancangan Undang-Undang Pertanahan. *Jurnal Bina Mulia Hukum Volume 1, Nomor 1* (2016). Hlm. 10. <https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/12>.

<sup>28</sup>Anik Iftitah. Konflik Agraria, Seri Pelaksanaan Hukum Tanah Terindikasi Terlantar Di Blitar. Blitar: Guepedia, 2021. Hlm. 96.

<sup>29</sup>Suhariningsih, *Op. Cit.*, Hlm 20.

<sup>30</sup>Ida Nurlinda, Yani Pujiwati, dan Marenda Ishak. Perbandingan Penanganan Tanah Terlantar di Kabupaten Tasikmalaya dan Kabupaten Sukabumi dalam Mewujudkan Ketahanan Pangan Provinsi Jawa Barat. *Jurnal Hukum Ius Quia Iustum No. 1 Vol. 21* (2014). Hlm. 132. DOI: <https://doi.org/10.20885/iustum.vol21.iss1.art7>.

<sup>31</sup>Gusti Ayu Kade Komalasari. Pengaturan Dan Kriteria Penertiban Tanah Terlantar Di Indonesia. *Raad Kertha, Vol. 02, No. 02* (2019). Hlm. 7. DOI: [10.47532/jirk.v2i2.157](https://doi.org/10.47532/jirk.v2i2.157).

party controls it will lead to the perception that the Land will result in land disputes and conflicts.

Land abandonment usually occurs because the recipients of land rights that the State has given, after they get land rights, then they abandon the Land because it is not being used. Many people want to use the Land by force (right grabbing).<sup>32</sup> As M. Yazid Fathon and Diangsa Wagian have conducted research, if there is a conflict/dispute, the BPN only records it in the land book, then summons and brings together the parties who own or are in conflict directly at the BPN office, usually up to 3 times, and if up to 3 times, there is no meeting point or way out, then BPN delegates it or submits the case to court.<sup>33</sup>

The arrangement for the settlement of land cases is under Article 44 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning the Handling and Settlement of Land Cases, which still regulates the settlement of land cases in communities in their working areas which are still minimal and are passive. Suppose no agreement is reached between the parties to the dispute or conflict. In that case, the Ministry/Regional Office/Office of Land Affairs will submit the decision to resolve the case to the parties.

If it is related to abandoned Land, which leads to its being used as a TCUN object, setting the criteria for Article 7 points 2 a and b PP No. 20 of 2021 concerning Procedures for Controlling and Utilizing Abandoned Areas and Land, which results in the non-implementation of Article 69 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 20 of 2021 concerning Procedures for Controlling and Utilization of Derelict Areas and Land, which regulates certainty that the TCUN object may not be in a state of physical dispute and juridical dispute, or a lawsuit in court, this will result in a blurring of norms (*vague norm*), this will also result in the inability to implement a statutory regulation if it is related to Article 5 Letter D of Law Number 12 of 2011 Concerning the Formation of Legislation. Law is a political product, but compiling a regulation, whatever its form, needs to refer to existing provisions, in this case, Law no. 11 of 2012 concerning the Formation of Legislation.<sup>34</sup>

#### 4. Conclusion

Each grant of rights by the State to individuals or legal entities must be accompanied by obligations that must be carried out by the right holder according to the designation and requirements as stipulated in the decision to grant the rights. Neglecting the obligation to use, and manage properly, in this case, means according to their rights, is an act of violation of the principle of social function, the principle of rights processing, and the denial of aspects of land philosophy. The criteria for abandoned Land regulated in the land legislation in the Republic of Indonesia still lead to a blurring of norms. Setting criteria that can be used

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<sup>32</sup>M. Yazid Fathon dan Diangsa Wagian. Peran Bpn Lombok Barat Dalam Penyelesaian Sengketa Hak Atas Tanah Antara Masyarakat Dengan Investor Di Atas Tanah Yang Terindikasi Terlantar. *Jurnal Jatiswara Vol. 33 No.2* (2018). Hlm.6. <https://jatiswara.unram.ac.id/index.php/js/article/view/163>.

<sup>33</sup>*Ibid.*, Hlm. 14.

<sup>34</sup>Ida Nurlinda. Telaah Atas Materi Muatan Rancangan Undang-Undang Pertanahan. *Op.Cit.* Hlm 12.

as a basis for determining abandoned Land should be emphasized so that there are no difficulties or multiple interpretations in its application. Experience so far shows that it is not easy to apply provisions regarding the revocation of land rights, so it is best to refer to the provisions in the BAL alone regarding matters that cause the termination of a land right (including revocation of land rights). The obligations of holders of land rights must be upheld as rules that must be obeyed by holders of land rights, especially holders of certificates of ownership of Land, so that it must be more emphasized in the form of criteria for the obligations of holders of certificates of ownership rights to Land, which are regulated hierarchically by laws and regulations.

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