

Issues in the Application of the Principle of Diligence in Policies on the Designation of Abandoned Land in Indonesia

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Abstract : This study aims to identify the challenges in applying the principle of due diligence in policies regarding the designation of abandoned land in Indonesia and to examine the forms of legal protection available to land rights holders who have been harmed as a result of such designations. The urgency of this study stems from the high number of decisions designating abandoned land that have been overturned by the State Administrative Court (PTUN), indicating the presence of administrative defects, particularly regarding the disregard of the principle of due diligence as part of the General Principles of Good Governance (AUPB). This study employs a normative legal research method using a statutory approach, a case approach, and a conceptual approach. The legal materials utilized consist of primary, secondary, and tertiary sources, analyzed qualitatively through legal interpretation techniques. The research findings indicate that the application of the principle of due diligence in the designation of abandoned land has not been implemented optimally. This is attributed to three main factors: (1) a substantive legal factor, namely the absence of clear legal provisions regarding the principle of due diligence in land regulations, particularly in Government Regulation No. 20 of 2021; (2) structural legal factors, namely the weak capacity and professionalism of land administration officials in conducting comprehensive data verification; and (3) legal cultural factors, namely the low legal awareness among both officials and the public regarding the importance of the principle of due diligence. The forms of legal protection for land rights holders whose land has been designated as abandoned land include three main mechanisms: the evaluation stage, the warning stage, and the judicial review mechanism through litigation in the State Administrative Court (PTUN). Of these three mechanisms, judicial review is the most effective form of protection because it can correct and overturn administrative decisions containing legal defects, while simultaneously restoring the rights of landholders.

Keywords : Principle of Diligence, Abandoned Land, AUPB, Legal Protection, Administrative Law

Abstrak : Penelitian ini bertujuan untuk mengidentifikasi tantangan dalam menerapkan prinsip uji tuntas dalam kebijakan terkait penetapan lahan terlantar di Indonesia dan untuk mengkaji bentuk-bentuk perlindungan hukum yang tersedia bagi pemegang hak atas tanah yang dirugikan akibat penetapan tersebut. Urgensi penelitian ini muncul dari tingginya jumlah keputusan penetapan lahan terlantar yang telah dibatalkan oleh Mahkamah Tata Kelola Pemerintahan Negara (PTUN), yang menunjukkan adanya cacat administratif, khususnya terkait pengabaian prinsip uji tuntas sebagai bagian dari Prinsip-Prinsip Tata Kelola Pemerintahan yang Baik (AUPB). Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan hukum, pendekatan kasus, dan pendekatan konseptual. Materi hukum yang

digunakan terdiri dari sumber primer, sekunder, dan tersier, yang dianalisis secara kualitatif melalui teknik interpretasi hukum. Temuan penelitian menunjukkan bahwa penerapan prinsip uji tuntas dalam penetapan lahan terlantar belum diterapkan secara optimal. Hal ini disebabkan oleh tiga faktor utama: (1) faktor hukum substantif, yaitu tidak adanya ketentuan hukum yang jelas mengenai prinsip uji tuntas dalam peraturan pertanahan, khususnya dalam Peraturan Pemerintah Nomor 20 Tahun 2021; (2) faktor hukum struktural, yaitu lemahnya kapasitas dan profesionalisme pejabat administrasi pertanahan dalam melakukan verifikasi data yang komprehensif; dan (3) faktor budaya hukum, yaitu rendahnya kesadaran hukum di kalangan pejabat dan masyarakat mengenai pentingnya prinsip uji tuntas. Bentuk perlindungan hukum bagi pemegang hak atas tanah yang tanahnya telah ditetapkan sebagai tanah terlantar meliputi tiga mekanisme utama: tahap evaluasi, tahap peringatan, dan mekanisme peninjauan yudisial melalui litigasi di Mahkamah Tata Usaha Negara (PTUN). Dari ketiga mekanisme tersebut, peninjauan yudisial merupakan bentuk perlindungan yang paling efektif karena dapat mengoreksi dan membatalkan keputusan administratif yang mengandung cacat hukum, sekaligus memulihkan hak-hak pemilik tanah.

Kata kunci: Prinsip Uji Tuntas, Tanah Terlantar, AUPB, Perlindungan Hukum, Hukum Administrasi

INTRODUCTION

The existence of abandoned land in Indonesia through 2026 remains a complex structural issue, and its resolution tends to be protracted. Land abandonment not only reflects the unwise and unproductive use of agrarian resources but also contradicts the principle of social justice and the legal obligations inherent to land rights holders. From the perspective of national agrarian law, such actions can be classified as a violation of the obligation to utilize land as regulated under Indonesia's land law regime.¹

The latest data from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency indicates that by 2025, the area of land suspected to be abandoned in Indonesia will reach approximately ± 1.2 – 1.4 million hectares. These lands are predominantly classified under the status of Right to Cultivate (HGU) and Right to Build (HGB) that are not utilized in accordance with their designated purposes. Through its program to address abandoned land, the government continues to identify, verify, and designate abandoned land to be subsequently transferred to state ownership for the purposes of agrarian reform and equitable land access.²

This is supported by data from Forest Watch Indonesia (FWI), which in its latest publication (2024–2025) states that of the total approximately ± 4.3 million hectares of HGU land, only about ± 2.8 million hectares are actually utilized for plantation purposes.³ Thus, there are approximately ± 1.5 million hectares of HGU land that are indicated as unused or underutilized. Additionally, data from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) also indicates that land with HGB status that is suspected to be abandoned exceeds approximately 60,000 hectares, with thousands of land parcels remaining unutilized productively.⁴

¹ Uly Ngesti Pratiwi, "Weekly Issues in the Political, Legal, and Security Affairs Division of Commission II of the Indonesian House of Representatives: State Authority in the Acquisition of Abandoned Land," *Expert Committee of*, 2025, 1, https://berkas.dpr.go.id/pusaka/files/isu_sepekan/Isu%20Sepekan---IV-PUSLIT-April-2025-2504.pdf.

² Almadinah Putri Brilian, Read the detikproperti article, "BPN Prepares 79,000 Ha of Abandoned Land for 3 Million Homes, Here's the Data" in full at <https://www.detik.com/properti/berita/d-7673898/bpn-siapkan-79-ribu-ha-tanah-terlantar-buat-3-juta-rumah-ini-datanya>, and Download the Detikcom App Now <https://apps.detik.com/detik/>, <https://www.detik.com/properti/berita/d-7673898/bpn-siapkan-79-ribu-ha-tanah-terlantar-buat-3-juta-rumah-ini-datanya>, December 6, 2024.

³ Global Forest Watch Indonesia, "Report on the Status of HGU and Land Use 2024–2025," n.d., <https://www.globalforestwatch.org/dashboards/global/?category=forest-change&location=WyJnbG9iYWwiXQ%3D%3D>.

⁴ Rahayu Subekti, "The Utilization of Abandoned Land in Indonesia: A Comparative Study on Malaysia in the Fulfillment of Human Rights," *International Journal of Sustainable Development and Planning* 18, no. 10 (2023): 25, <https://doi.org/10.18280/ijstdp.181031>.

Economically, land abandonment results in massive losses for the state. Based on agrarian policy studies and estimates from various economic research institutions, *the potential opportunity loss* due to abandoned land is estimated to reach approximately Rp5,000–Rp5,700 trillion over a five-year period, reflecting the loss of potential state revenue, economic productivity, and optimal land use. This figure indicates that the issue of abandoned land is not merely an administrative matter but has evolved into a national strategic issue.⁵

The distribution of land currently identified as abandoned is also relatively widespread across various regions of Indonesia, particularly in areas with large plantation concentrations, industrial zones, and property development areas. This situation underscores that the regulation and utilization of abandoned land are a priority agenda in national agrarian policy. The government's efforts include inventorying, designating abandoned land, revoking land rights, and redistributing land within the framework of agrarian reform to achieve justice in land ownership and utilization.⁶

In order to prevent land abandonment, the government has issued various laws and regulations governing the legal provisions regarding the criteria for abandoned land, as well as the process of reclaiming and reusing such land.⁷ Regulations concerning land abandonment continue to evolve. By 2021, the Government had issued Government Regulation of the Republic of Indonesia No. 20 of 2021 on the Regulation of Abandoned Areas and Land, which repealed the substantive provisions of Government Regulation No. 11 of 2010 on the Regulation and Utilization of Abandoned Land. The agency authorized to carry out the regulation of abandoned areas and land is the National Land Agency (BPN).⁸

Based on the facts, the implementation of the regulation of abandoned land in Indonesia is not without various legal issues. Legal issues may arise when the regulation of abandoned land by the BPN often does not align with the substance and procedures outlined in the applicable regulations. These problems generally arise when the regulation actions carried out by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/) are deemed not fully in accordance with the substance or procedures established in the laws and regulations.

This is evident from the approximately 20–25 lawsuits filed by rights holders through the Administrative Court (PTUN) regarding the designation of abandoned land, encompassing both administrative and civil cases. Furthermore, of these approximately 20–25 cases, the majority of the lawsuits were granted by the court, meaning the government (ATR/BPN) was on the losing side in a significant proportion (around 70–80% of the total cases). This indicates serious issues regarding administrative legality—both procedurally and substantively—in the implementation of the regulation of abandoned land.⁹

These issues indicate that existing regulations, such as Government Regulation No. 20 of 2021 on the Management of Abandoned Areas and Land, have not yet been fully able to accommodate the complexities of implementation on the ground. Furthermore, there is a gap between legal norms (*das sollen*) and implementation practices (*das sein*), particularly at the

⁵ Heru Yudi Kurniawan and Tri Atika Febriany, “Legal Analysis of Plans for the Utilization of Land Indicated as Abandoned as a Preventive Measure to Reduce the Occurrence of Forest and Land Fires in the City of Pontianak,” *Res Judicata* 4, no. 2 (2021): 200–208, <https://doi.org/10.29406/rj.v4i2.3762>.

⁶ Ni Luh Ariningsih Sari, “The Concept of State Control Over Land in Land Law (Law No. 5 of 1960 on Basic Agrarian Principles) and the Constitution,” *Ganec Swara* 15, no. 1 (March 2021): 2, <https://doi.org/10.35327/gara.v15i1.202>.

⁷ Nur Kemala Putri *et al.*, “Disharmony in Indonesian Legislation: Causes and Solutions,” *Wathan: Journal of Social Sciences and Humanities* 1, no. 1 (May 2024): 3, <https://doi.org/10.71153/wathan.v1i1.17>.

⁸ Government Regulation No. 20 of 2021 on the Regulation of Abandoned Areas and Land. (2021).

⁹ Supreme Court of the Republic of Indonesia, “Directory of Administrative Court (PTUN) Decisions,” n.d., <https://putusan3.mahkamahagung.go.id/>.

operational technical level in the regions. Furthermore, several key factors contributing to the government's weak position in these disputes include the fact that some local enforcement officers responsible for managing abandoned land do not fully understand the procedures for carrying out such activities; there are cases where land identified as abandoned has undergone enforcement but remains unresolved for unclear reasons; inconsistencies between physical and legal data; the suboptimal digitization of land data; and other causes stemming from the fact that the procedures for designating abandoned land violate applicable laws and regulations and contravene the General Principles of Good Governance (AUPB), particularly the principle of due diligence.¹⁰

To prevent problems from arising in the issuance of decisions designating abandoned land, it is necessary to optimize the application of the principle of due diligence. In every process of designating land suspected of being abandoned, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency is required to make the principle of due diligence the guiding principle in administrative decision-making.¹¹ Article 10(d) of Law No. 30 of 2014 explains *that the Principle of Diligence is "a principle meaning that a Decision and/or Action must be based on complete information and documents to support the legality of the determination and/or implementation of the decision and/or action, so that the relevant decision and/or action is prepared with due diligence before such decision and/or action is issued and/or carried out."*¹² This principle requires that every decision be based on data, information, and verification processes that are complete, objective, and accurate, so that the fairest possible justice can be realized in every decision made.

Therefore, it is important to conduct a comprehensive study on the role of the principle of due diligence in the process of regulating and designating abandoned land. This issue not only has administrative implications but also causes tangible harm to the community. These losses arise due to the designation of abandoned land containing legal defects, which results in the revocation of land rights. In fact, under certain conditions, such land should be utilized for productive purposes, such as the development of industrial zones that have the potential to improve economic well-being for both the rights holders and the surrounding community.

Based on the above discussion, and given that the regulation of abandoned land is a critical issue with implications for both the public and the state, further in-depth discussion is needed to develop new approaches to resolving the problems that arise in the designation of abandoned land, particularly regarding the challenges in applying the principle of due diligence due to administrative errors by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, as well as the forms of legal protection for affected communities.

RESEARCH METHODOLOGY

This *study* is a normative legal *research* project aimed at examining the legal norms related to the application of the principle of due diligence in the designation of abandoned land in Indonesia. This study is descriptive-analytical in nature, meaning it provides a systematic overview of the legal issues under investigation while analyzing them to identify comprehensive legal

¹⁰ Arditya Wicaksono, *Study on Policies for the Regulation of Abandoned Land/Areas, Center for the Development and Standardization of Agrarian, Spatial Planning, and Land Policies, Ministry of Agrarian Affairs and Spatial Planning/BPN 2020* (Bogor, West Java, 2020).

¹¹ Devi Yulida, Kartika Widya Utama, and Xavier Nugraha, "Manual Verification of the Manifestation of the Principle of Diligence as a Litmus Test for Administrative Decisions," *USM Law Review* 5, no. 1 (2022): 35.

¹² Republic of Indonesia, Law No. 30 of 2014 on Government Administration, <https://peraturan.bpk.go.id/Details/38695/uu-no-30-tahun-2014>.

arguments.¹³ The approaches used in this study include three main approaches. *First, the statutory approach*, used to examine various regulations concerning the regulation of abandoned land. *Second, the case approach*, used to analyze court decisions and highlight issues regarding the application of the principle of due diligence in the designation of abandoned land and the factors influencing it. *Third, the conceptual approach*, which is used to examine the concept of the principle of due diligence as part of the General Principles of Good Governance (AUPB), as well as its relevance in ensuring the legality and legitimacy of state administrative decisions.¹⁴ Meanwhile, the technique for collecting legal materials was conducted through *library research*, in which the legal materials were analyzed qualitatively using legal interpretation methods to obtain a comprehensive understanding of the issue under study.

DISCUSSION

The Problem of the Principle of Diligence in the Designation of Abandoned Land in Indonesia

The validity of an Administrative Decision (KTUN), particularly in the designation of abandoned land, is fundamentally determined by two main aspects: compliance with laws and regulations, and non-contradiction with the General Principles of Good Governance (AUPB). These two parameters serve as fundamental benchmarks for assessing the legality of an administrative decision; however, in practice, there are still instances of abandoned land designations that fail to meet these criteria, particularly regarding the application of the principle of due diligence. The principle of due diligence is closely tied to the procedural stages in the regulation of abandoned land, particularly during the identification and investigation of land suspected of being abandoned. This process should be conducted comprehensively through the collection and verification of data, including the identity of the rights holder, the number and date of the rights grant, the location, area, status, or basis of land control, the physical condition of the land, as well as the factors causing the land to be categorized as abandoned. If these stages are not carried out meticulously and comprehensively, the resulting decision has the potential to contain administrative defects and conflict with the AUPB.¹⁵

The application of the principle of diligence, as emphasized in Article 10(d) of Law No. 30 of 2014 on Government Administration, requires that every administrative decision be based on information that is complete, accurate, and objectively verified. In this context, the principle of due diligence is not merely procedural but also substantive, as it determines the validity and legitimacy of a decision that directly impacts an individual's civil rights.¹⁶ However, in the practice of declaring abandoned land in Indonesia, the principle of due diligence has actually been diminished in meaning and tends to be treated merely as an administrative formality. This is reflected in various decisions by the State Administrative Court (PTUN) indicating that decisions declaring land abandoned are frequently overturned due to procedural and substantive defects directly related to the disregard of the principle of due diligence.

The challenges in applying the principle of due diligence are also reflected in the development of the case in the Jakarta Administrative Court Decision No. 204/G/2022/PTUN-JKT, which states that the BPN's Decision on the Designation of Abandoned Land is the subject of the lawsuit. The underlying grounds for the lawsuit are that, in determining the designation of

¹³ Muhaimin, *Legal Research Methods*, 1st ed. (Mataram: Mataram University Press, 2020), 48.

¹⁴ Peter Mahmud Marzuki, *Legal Research*, 15th ed. (Jakarta: Kencana Prenamedia Group, 2021), 47.

¹⁵ Amiratul Fatimah, "A Legal Study on the Regulation of Abandoned Land According to Government Regulation No. 20 of 2021 on the Regulation of Abandoned Land," *Jurnal Notarius* 2, no. 1 (2023): 1–14, <https://www.ncbi.nlm.nih.gov/books/NBK558907/>.

¹⁶ Republic of Indonesia, Law No. 30 of 2014 on Government Administration.

abandoned land, the BPN failed to follow the procedures for such designation—specifically, the conduct of identification and the issuance of warning letters—in accordance with the applicable regulations and procedures for identification. According to the Rights Holder, the BPN never notified them of any identification or investigation activities, so the rights holder never provided data or statements to Committee C; consequently, the identification and investigation stages violated the provisions of Government Regulation No. 11 of 2010 and Regulation of the Head of the National Land Agency No. 4 of 2010. Through these actions, the BPN violated the Principles of Good Administration (AUPB), including the following: the principle of legal certainty, the principle of diligence, the principle of accuracy, the principle of orderly state administration, and the principle of justice. Based on the decision, the principle of diligence is explicitly listed as one of the principles violated. The violation of the principle of diligence is evident because it was proven that the decision letter issued by the BPN was not based on complete supporting information and documents, as the BPN relied on the existence of warning letters without considering the follow-up letters from the BPN Regional Office, which were subsequently addressed through a re-examination. It was proven that the BPN failed to prepare diligently by reviewing in drafting and issuing the decision regarding the designation of abandoned land.¹⁷

Furthermore, Jakarta Administrative Court Decision No. 159/G/2019/PTUN-JKT also mentions the case of PT Taman Harapan Indah in Cilegon City against the South Jakarta National Land Agency. Decision Letter No. 1/PTT-HGB/KEMATR/BPN/IV/2019 designated the land covered by Building Use Right Certificate No. 17/Tegal Ratu, registered under PT Taman Harapan Indah, as abandoned land. PT Taman Harapan Indah feels aggrieved by this Decision because, as a result of this designation, the holder of the right to build can no longer use, utilize, develop, or manage the land rights in accordance with their intended purpose, namely for the development of residential areas (real estate and industrial zones). Through these actions, the National Land Agency violated the principle of due diligence because the process contained legal defects, namely that the rights holder in this case, PT. Taman Harapan Indah, was never requested to provide a statement—either in person () or in writing—by Committee C during the identification or investigation of the abandoned land, and the rights holder was never asked to sign the minutes of the hearing regarding the designation of the land as abandoned; therefore, the National Land Agency's decision contradicts applicable regulations. The rights holder also responded to Warning I, Warning II, and Warning III by holding a meeting with the Head of Land Empowerment at the Banten Provincial Land Office; however, the National Land Agency still recommended the land owned by the rights holder as abandoned land.¹⁸

This case demonstrates a failure to uphold the principle of due diligence in the designation of abandoned land. Based on the author's analysis, three factors were identified as causes of this issue, namely:

❖ Legal Substance Factors

First, the absence of the principle of diligence in Law No. 5 of 1960 on the Basic Agrarian Law (UUPA). The UUPA sets forth several provisions and legal principles regarding land that prohibit the abandonment of land. One of these is the social function of land.¹⁹ Substantively, the legal principle of the social function of land rights is embodied in various legal norms. However, the UUPA does not mention or regulate the principle of diligence. The UUPA only mentions the

¹⁷ Decision of the Jakarta Administrative Court No. 204/G/2022/PTUN-JKT (PTUN Jakarta).

¹⁸ Decision of the Jakarta Administrative Court No. 159/G/2019/PTUN-JKT (PTUN Jakarta).

¹⁹ Republic of Indonesia, Law No. 5 of 1960 on the Basic Agrarian Principles (UUPA), LN RI No. 104 of 1960, TLN RI No. 2043.

principle of prudence. Fundamentally, the principles of diligence and prudence share the same concept, namely requiring institutions to act with care and diligence. However, the UUPA also does not regulate the principle of prudence clearly and in detail. The UUPA does not explicitly mention the “codification” of either the principle of prudence or the principle of diligence. The UUPA contains principles that ideally are not divorced from elements of diligence or prudence; however, in its legal substance, it has not at all affirmed or established the principle of diligence as the normative basis for the regulation of abandoned land.²⁰

Second, the absence of the principle of diligence in Government Regulation No. 20 of 2021 on the Regulation of Abandoned Areas and Land. The process of regulating abandoned land is closely tied to the principles that form the foundation for such regulation. The principle of diligence is a key pillar of the successful implementation of abandoned land regulation. The principle of due diligence in the process of regulating abandoned land is intended to ensure that such regulation is conducted meticulously and carefully, thereby producing results that provide legal certainty and do not harm the rights holders of the land. The process of regulating abandoned land mandates that the implementing committee must apply the principle of due diligence in every action taken during this phase. Although the principle of diligence is implied and not explicitly stated in this government regulation, based on the above discussion, it can be affirmed that Government Regulation No. 20 of 2021 on the Regulation of Abandoned Areas and Land has not at all explicitly affirmed or established the principle of diligence. As far as the wording of the regulation is concerned, it can be said that Government Regulation No. 20 of 2021 on the Regulation of Abandoned Areas and Land only addresses the regulation and designation of abandoned land to fulfill the principle of the social function of land.²¹

Thus, this regulatory gap has a direct impact on the weak implementation at the legal structural level. The National Land Agency (BPN), as the authority responsible for managing abandoned land, should exercise its authority based on the principle of “ ” with a high degree of care and diligence. However, in practice, various cases indicate that procedural errors and administrative flaws persist, reflecting the suboptimal application of the principle of diligence. This suggests that weaknesses in the legal substance also influence institutional behavior in carrying out administrative functions.

❖ Legal Structure Factors

From a legal standpoint, the National Land Agency (BPN) cannot act arbitrarily when implementing policies regarding the regulation of abandoned land; rather, it must be guided by principles of administrative ethics that are acceptable to the public. In this case, the principle in question is the principle of due diligence. However, the cases mentioned above indicate that the exercise of this authority is still suboptimal, as evidenced by procedural errors in the process of regulating and designating abandoned land. This situation reflects that the principle of due diligence has not been consistently applied, thereby resulting in the poor quality of the administrative decisions produced.

Challenges related to legal structures or law enforcement include the following: *First*, a shortage of competent personnel with integrity to conduct research and verify land data means that the process of identifying abandoned land is not carried out thoroughly or comprehensively. *Second*, weak coordination among agencies involved in land data management results in information used for decision-making that is often inconsistent and inaccurate. *Third*, internal

²⁰ Wasis Susetio, “Disharmony in Agrarian Legislation,” *Lex Jurnalica* 10, no. 3 (2023): 3, <https://ejournal.esaunggul.ac.id/index.php/Lex/>.

²¹ Republic of Indonesia, Government Regulation No. 20 of 2021 on the Regulation of Abandoned Areas and Land.

institutional issues, such as a lack of oversight and the potential for abuse of authority, further increase the risk of careless decisions. *Fourth*, limitations in facilities and infrastructure, including a data digitization system that is not yet optimal, also hinder the verification process, which should be the core of applying the principle of due diligence. Based on this, the enforcement of abandoned land regulations will not run optimally if law enforcement officials continue to commit procedural errors or legal defects. Therefore, efforts are needed to improve the institutional quality and capacity of the National Land Agency (BPN) so that the enforcement of abandoned land regulations can be carried out professionally, accurately, and in accordance with applicable legal provisions.

❖ Legal Culture Factors

Cultural or legal culture factors play a significant role in influencing the dynamics of abandoned land issues. Legal culture reflects the attitudes, values, beliefs, and perspectives of the public and officials toward the law, including how the law is obeyed, ignored, or even abused. Thus, legal culture is not merely a complement to the legal system but also serves as an indicator explaining the effectiveness of law enforcement in social practice.

In the context of addressing abandoned land, cultural issues are evident in the still-low level of understanding and commitment among land administration officials regarding the importance of applying the principle of due diligence in every administrative decision and action. This is reflected in practices showing that the stages of evaluation, identification, and investigation are often not carried out optimally or comprehensively. Consequently, the resulting decisions risk disregarding factual conditions and reducing legal protection for land rights holders. On the other hand, the public's low legal awareness regarding the utilization, reporting, and defense of land rights also poses an obstacle in the land law enforcement process, indicating that the issues stem not only from officials but also from the public's legal behavior.

Therefore, systematic efforts are needed to enhance legal culture, both among officials and the public. Steps that can be taken include legal outreach involving various social strata, strengthening the integrity and professionalism of law enforcement officials, and formulating legal policies that are adaptive to social dynamics. Thus, the law is not merely normative but also effective as an instrument for regulating behavior in society, particularly in the management of abandoned land.

Forms of Legal Protection for Land Rights Holders Whose Land Has Been Designated as Abandoned Land

Legal protection is one of the essential elements of a rule-of-law state. It is crucial because the establishment of a state inherently involves the creation of laws governing each of its citizens. A state should have a reciprocal relationship between its citizens and the state itself.²² Consequently, rights and obligations arise between them, and it is from this that legal protection becomes a right of every citizen. The provision of legal protection for land rights, whether for individuals or business entities, must be optimized—through both direct and indirect mechanisms—to ensure legal certainty and the proper utilization of land in accordance with its intended functions.²³

In efforts to realize legal protection in a dispute, particularly regarding abandoned land, the stages derived from applicable legal provisions and regulations must be considered. Such legal protection is fundamentally a form of regulation arising from a social consensus to govern the

²² Philipus M. Hadjon, *Legal Protection for the People: A Study of Its Principles, Its Handling by Courts in the General Judicial System, and the Establishment of the State Administrative Court* (Surabaya: Bina Ilmu, 1987), 38–39.

²³ Erlina Maria Christin Sinaga and Muhammad Reza Winata, "Government Authority in Legal Protection for Community Rights Regarding the Redistribution of Abandoned Land Based on Law No. 5 of 1960," *Rechts Vinding Journal: A Forum for National Legal Development* 8, no. 3 (2023): 6, <https://doi.org/10.33331/rechtsvinding.v8i3.341>.

relationship between society and the government as the representative of public interests, thereby creating a balance in the protection of the rights and obligations of the parties involved.²⁴ It must be emphasized that in the effort to realize legal protection, the public fundamentally seeks the establishment of order and discipline grounded in the fundamental values of law, namely legal certainty, utility, and justice. Although in practice these three values often exist in tension or conflict, their application must still be pursued in a balanced manner so that legal objectives can be optimally achieved.²⁵

In the context of abandoned land, efforts to provide legal protection for land rights holders require the government not to immediately designate a piece of land as abandoned without first examining the causes and reasons underlying that condition. Therefore, the designation of abandoned land status must be based on clear criteria through an analysis of the elements inherent in the condition of the land. In this regard, Government Regulation No. 20 of 2021 on the Regulation of Abandoned Areas and Land has accommodated these legal protection efforts by establishing evaluation stages and the issuance of warnings prior to designation, serving as a precautionary measure and a safeguard for the rights of landholders.²⁶

First, the evaluation stage for abandoned land aims to ensure that the land rights holder continues to cultivate, use, utilize, and maintain the land under their control in accordance with the purpose for which the rights were granted. This stage essentially constitutes a form of legal protection through the “ ” principle by the government, as it provides land rights holders the opportunity to demonstrate that the land is still actively utilized and does not fall under the category of abandoned land. Thus, the evaluation process functions as a preventive mechanism to avoid unilateral designation of land as abandoned.²⁷ However, in its implementation, as reflected in the case analyzed in this study, this form of legal protection has not been fully and optimally carried out. This is evident from the lack of adequate notification from the National Land Agency (BPN) regarding the conduct of evaluation, identification, and research activities to the land rights holders. Consequently, the rights holders did not have the opportunity to provide relevant data or information to Committee C, resulting in the decision-making process not being based on complete and balanced information. This situation indicates a weakness in the application of the principle of due diligence, which has implications for the reduction of legal protection guarantees for land rights holders.

Second, the warning stage is a phase granted to holders of Building Use Rights (HGB) whose land is suspected of being abandoned before it is definitively designated as abandoned land. Pursuant to Article 23(3) and (5) and Article 25 of Government Regulation No. 20 of 2021, the issuance of warnings is carried out in three stages, particularly if the evaluation reveals that the rights holder has intentionally failed to cultivate, use, utilize, and maintain their land. This phased approach plays a crucial role as a legal safeguard, as it provides the landholder with an opportunity to rectify the situation or resume utilizing the land, while ensuring legal certainty and preventing the abuse of authority in the designation of abandoned land.²⁸ However, in practice, based on the

²⁴ Farhan Zarbiyani and Ahmad Sudiro, “The Designation of Abandoned Land as a Form of Legal Protection and Certainty in the Regulation of Abandoned Land Areas,” *UNES Law Review* 6, no. 2 (2023): 5, <https://doi.org/10.31933/unesrev.v6i2>.

²⁵ Philipus M. Hadjon, *Legal Protection for the People of Indonesia*, 1 (Surabaya: Bina Ilmu, 1987), 25.

²⁶ Republic of Indonesia, Government Regulation No. 20 of 2021 on the Regulation of Abandoned Areas and Land, LN RI No. 30 of 2021, TLN RI No. 6632 .

²⁷ Dinda Suciana Rambe, “Reconstruction of the Constitutional Court’s Authority Regarding Constitutional Complaints from the Perspective of Maqasid Al-Syari’ah” (Thesis, State Islamic University Sunan Kalijaga, 2024), 73.

²⁸ Republic of Indonesia, Government Regulation No. 20 of 2021 concerning the Control of Abandoned Areas and Land.

cases in the court decisions examined in this study, land rights holders did not directly receive warning letters from stages I through III; instead, they only received copies of the second and third warning letters, and in some cases, the first warning letter was never even delivered. This situation indicates a deviation from the procedures that should be carried out in a step-by-step and transparent manner. Consequently, the legal protection that should be provided to the land rights holders to the fullest extent is not fulfilled, and this potentially violates the principles of due diligence and legal certainty in the land administration process.

Third, legal protection is also provided through judicial review mechanisms, namely through the resolution of disputes by judicial bodies, including both the general courts in civil matters and the administrative courts. In this regard, the government guarantees legal protection to land rights holders whose land has been designated as abandoned land by providing access to file a lawsuit against a State Administrative Decision (KTUN) suspected of containing administrative or legal defects—whether procedural or substantive—with the State Administrative Court (PTUN). Administrative disputes are essentially disputes in the administrative sphere focused on testing the validity of a decision; thus, the subject of review in the PTUN pertains to the aspects of *rechtmatigheid* (validity) or *onrechtmatigheid* (invalidity) of a KTUN. Through this review mechanism, a lawsuit filed with the PTUN serves not only as a means of legal protection for citizens seeking justice but also as an instrument of corrective action () against administrative decisions that are erroneous or deviate from applicable legal provisions.²⁹

As stipulated in Regulation of the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 21 of 2020 on the Handling and Resolution of Cases, a legal instrument in the field of land affairs may be annulled if it contains a legal defect or based on a court decision declaring it null and void. Article 35 explicitly states that annulment may occur due to errors in the application of laws and regulations, including errors in processes or procedures by the National Land Agency, such as during the evaluation stage (identification and investigation), the issuance of warnings, or the determination in the regulation of abandoned land that does not comply with applicable provisions. Furthermore, Article 38(2)(g) provides that a court decision declaring a decision null and void, invalid, lacking legal force, or lacking binding force serves as the basis for the annulment of a decision regarding the designation of abandoned land.

Such annulment is carried out through the issuance of a decision by the Minister or the Head of the Regional Office in accordance with their attributive or delegated authority, particularly regarding legal instruments previously issued by the relevant agency. This mechanism is not merely administrative but also reflects a corrective function within administrative law to uphold the principle of legality regarding any decision containing legal defects, whether procedural or substantive. Therefore, if a decision is found to fail to meet validity standards, its annulment is an unavoidable legal consequence. In this context, the annulment of a decision designating land as abandoned serves as a form of legal protection for land rights holders, as it enables the restoration of their rights and legal standing to regain control of and utilize the land in accordance with its designated purpose, thereby ensuring that the principles of legal certainty, justice, and public benefit remain safeguarded.

CONCLUSION

²⁹ Elizabeth Liely Phinesia, “The Application of the Presumption of Legality (Vermoeden Van Rechtmatigheid / Presumptio Iustae Causa) in Testing for Abuse of Authority in the Administrative Court,” *Jurnal Darma Agung* 32, no. 5 (2024): 7, <https://dx.doi.org/10.46930/ojsuda.v32i5.4607>.

Based on the analysis of the discussion, it can be concluded that the application of the principle of due diligence in the designation of abandoned land in Indonesia has not been implemented optimally. This is reflected in various court rulings that have annulled administrative decisions of the National Land Agency (BPN) due to procedural or substantive defects. This suboptimal situation is caused by three main factors. *First*, the legal substance factor, namely the absence of clear regulations regarding the principle of due diligence in regulations related to the designation of abandoned land, thereby weakening the normative foundation for administrative decision-making. *Second*, the legal structure factor, evidenced by the still-weak capacity and professionalism of land administration officials in carrying out procedures for the regulation of abandoned land in a diligent and accountable manner. *Third*, the legal culture factor, reflected in the low awareness among both BPN officials and the public regarding the urgency of applying the principle of due diligence in every land administration action and decision.

Meanwhile, legal protection for land rights holders whose land has been designated as abandoned is fundamentally accommodated through three main mechanisms. *First*, through the evaluation stage, which provides an opportunity for rights holders to prove that their land is still being utilized in accordance with its designated purpose. *Second*, through the warning stage, which functions as a preventive measure by allowing rights holders to fulfill their obligations before a definitive designation is made. *Third*, through the mechanism of judicial review, namely by filing a lawsuit with the Administrative Court (PTUN) against decisions containing administrative or legal defects. Of these three mechanisms, judicial review has proven to be the most effective instrument of legal protection, as it is capable of correcting and overturning administrative decisions that do not meet the principles of validity, while simultaneously restoring the landholders' rights through legal means.

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