

Implementation of Social Function and Legal Protection in HGU Abandonment Cases

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Abstract. This study examines the legal tension surrounding the designation of abandoned land on parcels held under the Right to Cultivate (Hak Guna Usaha/HGU), a domain where the certainty of proprietary rights intersects with the constitutional mandate of land's social function. The research aims to provide a systematic formulation of legal protection available to HGU holders and to analyze how the social function principle is operationalized in determining abandoned land. Employing a normative-juridical approach, the study relies on statutory regulations, doctrinal analysis, and jurisprudence—particularly the Supreme Court Decision No. 137 PK/TUN/2016—to construct a comparative framework. The findings reveal a multi-layered structure of legal protection: preventive safeguards embedded in Government Regulation No. 20/2021 and Ministerial Regulation of ATR/BPN No. 20/2021, which require clarification procedures, tiered warnings, and field inspections; administrative safeguards grounded in the General Principles of Good Governance (AUPB) and the right to file objections; and repressive safeguards through judicial review of administrative decisions before the Administrative Court. Substantively, HGU is characterized as a conditional and limited right, inherently subject to the land's social function. Consequently, the classifications of land as “unutilized” or “neglected” must be contextually assessed with reference to licensing documents, development obligations, and verifiable field conditions. Through qualitative and prescriptive analysis of legal sources, this study formulates recommendations aimed at strengthening legal certainty while ensuring alignment with the state's authority to regulate land use in the public interest.

Keywords: HGU, Abandoned Land, AUPB, Due Process, Government Regulation 20/2021, Legal Protection

Abstrak. Penelitian ini mengkaji ketegangan hukum seputar penunjukan tanah terlantar pada bidang tanah yang dipegang berdasarkan Hak Guna Usaha (HGU), sebuah domain di mana kepastian hak milik bersinggungan dengan amanat konstitusional fungsi sosial tanah. Penelitian ini bertujuan untuk memberikan formulasi sistematis perlindungan hukum yang tersedia bagi pemegang HGU dan untuk menganalisis bagaimana prinsip fungsi sosial dioperasionalkan dalam menentukan tanah terlantar. Dengan menggunakan pendekatan normatif-yuridis, penelitian ini bergantung pada peraturan perundang-undangan, analisis doktrinal, dan yurisprudensi—khususnya Putusan Mahkamah Agung No. 137 PK/TUN/2016—untuk membangun kerangka perbandingan. Temuan-temuan tersebut mengungkapkan struktur perlindungan hukum berlapis-lapis: perlindungan preventif yang tertanam dalam Peraturan Pemerintah No. 20/2021 dan Peraturan Menteri ATR/BPN No. 20/2021, yang memerlukan prosedur klarifikasi, peringatan berjenjang, dan inspeksi lapangan; perlindungan administratif yang berlandaskan Asas-asas Umum Pemerintahan yang Baik (AUPB) dan hak untuk mengajukan keberatan; serta perlindungan represif melalui peninjauan kembali atas putusan-putusan administratif di Pengadilan Tata Usaha Negara. Secara substantif, HGU dicirikan sebagai hak yang bersyarat dan terbatas, yang secara inheren tunduk pada fungsi sosial tanah. Akibatnya, klasifikasi tanah sebagai “tidak dimanfaatkan” atau “terlantar” harus dinilai secara kontekstual dengan mengacu pada dokumen perizinan, kewajiban pembangunan, dan kondisi lapangan yang dapat diverifikasi. Melalui analisis kualitatif dan preskriptif terhadap sumber hukum, studi ini merumuskan rekomendasi yang bertujuan untuk memperkuat kepastian hukum sekaligus memastikan keselarasan dengan kewenangan negara untuk mengatur pemanfaatan tanah demi kepentingan umum.

Kata kunci: HGU, Tanah Terlantar, AUPB, Proses Hukum, Peraturan Pemerintah 20/2021, Perlindungan Hukum

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INTRODUCTION

Land is one of the basic human needs and holds a fundamentally important position in national life, serving as a dwelling, a means of production, and an instrument of economic development. For an agrarian country like Indonesia, the control and utilization of land possess strategic value, not only for individuals but also for the interests of the broader community.¹ Therefore, the foundational agrarian legislation, Law Number 5 of 1960 concerning the Basic Provisions of Agrarian Principles (UUPA), affirms in Article 6 that every right to land must embody a social function. This principle is constitutionally rooted in Article 33 paragraph (3) of the 1945 Constitution, which mandates that land, water, and natural resources shall be controlled by the State and utilized for the greatest prosperity of the people.²

In the context of Indonesian agrarian law, the Right to Cultivate (Hak Guna Usaha/HGU) Certificate is a strong form of right, providing legal certainty and protection for its holder.³ However, the operationalization of land rights frequently leads to problems when the holder fails to utilize the land in accordance with its designated purpose. The state, deriving its power from the Right to Control the State, possesses the authority to designate non-utilized land as abandoned land. This designation carries serious implications as it can result in the lapse of legally certified land rights.

The central tension of this issue lies in the contradiction between legal certainty (*das Sollen*), guaranteed by the HGU Certificate as authentic proof of ownership, and the state's authority (*das Sein*), grounded in the constitutional mandate of the social function principle. The state's determination of abandoned land functioning as a corrective measure against the non-fulfillment of the social function carries a high potential for administrative conflict and disputes over rights, as it may result in the

¹ Retno Sulistyarningsih, "Reforma Agraria Di Indonesia," *Perspektif* 26, no. 1 (2021), <https://doi.org/10.30742/perspektif.v26i1.753>.

² Valenta Audrey Christy Sibuea, "Implementasi Peraturan Pemerintah Nomor 20 Tahun 2021 Terhadap Pemanfaatan Dan Penerbitan Tanah Terlantar Yang Berasal Dari Tanah Hak Guna Usaha Melalui Pemberian Hak Milik Untuk Mewujudkan Reforma Agraria Di Kabupaten Kuantan Singingi Provinsi Riau" (Universitas Atma Jaya Yogyakarta, 2023).

³ Sutaryono et al., "Land Rights and Agrarian Reform in Forest Areas: A Basis for Sustainable Development," *International Journal of Sustainable Development and Planning* 19, no. 1 (2024), <https://doi.org/10.18280/ijstdp.190122>.

revocation of rights despite a valid certificate. This potential conflict is further exacerbated by practices in the field that often reveal non-transparent and non-participatory processes in land determination. While legal protection mechanisms exist, their implementation is often inconsistent, reflecting a gap between the normative framework intended to safeguard rights (*das Sollen*) and the actual occurrence of rights violations in practice (*das Sein*).

The necessity for such a robust, multilayered legal protection framework is vividly illustrated in the Supreme Court of the Republic of Indonesia Decision No. 137 PK/TUN/2016. In this case, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) designated land under HGU status as abandoned. Factually, the decision was issued on the grounds that the land in question was not actively utilized according to its intended purpose, a claim subsequently contested by the HGU certificate holder who asserted continued lawful control over the property.⁴ This dispute serves as the research's analytical point of departure to examine how the legal status of HGU certificates is treated when confronted by public authority, and to what extent administrative procedures—such as clarification and tiered warnings—are strictly observed as prerequisites for the validity of such determinations.⁵

The regulation governing the determination process has undergone a significant procedural improvement, shifting from Government Regulation (PP) No. 11 of 2010 to PP No. 20 of 2021. PP No. 20/2021 strengthens the principles of transparency and due process by explicitly outlining more detailed and tiered stages, including inventory, clarification, tiered warnings, and field inspection (BAPL).⁶ Critically, the regulation also clarifies that the indicator of "unutilized land" must be assessed contextually by referring to licensing and planning documents, rather than mere physical appearance. These enhancements aim to mitigate administrative disputes

⁴ Elmadiantini et al., "Legal Consequences of Designating Cultivation Rights as Abandoned Land in the Context of Credit Collateral Objects," *Sriwijaya Law Review* 9, no. 1 (2025), <https://doi.org/10.28946/slrev.Vol9.Iss1.4029.pp157-172>.

⁵ Peraturan Pemerintah Republik Indonesia Nomor 11 Tahun 2010 Tentang Penertiban Dan Pendayagunaan Tanah Terlantar, Pub. L. No. 11 (2010).

⁶ Faizal Amir P Nasution et al., "Transformation of the Labor Inspection System in Indonesia: Towards an Effective Centralized Model," *Jurnal Ketenagakerjaan* 19, no. 4 (2024), <https://doi.org/10.47198/jnaker.v19i3.434>.

and ensure that the designation of abandoned land serves strictly as an administrative ultimum remedium – a last-resort sanction applied only after the landholder has been given a genuine and documented opportunity to restore the land's productive use.

Based on the description above, previous studies have predominantly examined the legality of abandoned land determination norms from a purely normative standpoint, focusing on the definition of "abandoned" and the state's right of control. Yet, few have explicitly explored how procedural safeguards can effectively operationalize the balance between the social function of land and the essential requirement of legal certainty for right holders.

RESEARCH METHOD

This study employs a normative juridical method, namely a legal research approach grounded in the examination of statutory regulations, legal doctrines, and relevant court decisions. This method is chosen because the focus of the research is to analyze the legal standing of Right to Cultivate (HGU) certificates for land designated as abandoned by the state, based on positive legal provisions and jurisprudential practice, without conducting empirical field data collection.⁷ The primary objects of analysis are agrarian and administrative law regulations, as well as Supreme Court Decision No. 137 PK/TUN/2016.

RESEARCH RESULTS AND DISCUSSION

Legal Protection for Holders of HGU Certificates Designated as Abandoned Land by the State

The Right to Cultivate (HGU) is a land right derived from the state's inherent authority to control (Hak Menguasai dari Negara/HMN) and is established as a time-bound and conditional right. It is tied to the purpose for which it is granted, its duration, and the obligation to utilize the land, all of which are subject to periodic

⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Universitas Indonesia, 2018).

evaluation. This normative configuration has been reinforced through the regulatory restructuring introduced by Government Regulation No. 18 of 2021, which consolidates and modernizes earlier provisions, including mechanisms for granting, extension, and renewal that may operate within a long-term horizon while remaining incremental and conditional.⁸

As a result, the legal certainty provided by an HGU certificate coexists with the conditionality of utilization obligations, ensuring that the legal relationship over the land is not absolute. This system essentially maintains a balance between business certainty and the social function of land as regulated under Law No. 6 of 2023 and Government Regulation No. 18 of 2021. Within the administrative framework – based on Government Regulation No. 18 of 2021 and Law No. 30 of 2014 – the relationship that emerges is not merely private in nature, but public-regulatory.⁹ Land administration officials possess the authority to supervise, assess, and correct patterns of land use that deviate from approved plans or permits. In the post-Job Creation Law policy landscape, the state’s authority over land is oriented toward achieving socio-economic utility while upholding administrative order that can be judicially reviewed in the event of a dispute.

This paradigm underscores a fundamental distinction from Ownership Rights (Hak Milik), which are doctrinally characterized as “the strongest and most complete” form of land rights. HGU does not fall within such an absolute domain; its nature is bound by a defined term and by performance in land utilization. Failure to meet material requirements – such as not utilizing the land in accordance with the approved plan – opens the door to administrative evaluation and, at a certain threshold, corrective measures up to the designation of the land as abandoned, as regulated under Government Regulation No. 20 of 2021.¹⁰ Accordingly, legal protection for HGU holders must be understood as a pendulum-type protection: one that guarantees legal

⁸ “Land Rights and Agrarian Reform in Forest Areas: A Basis for Sustainable Development.”

⁹ Aulia Fitri Rahdania and Benny Djaja, “Implementation of Land Registration Procedures in Indonesia Based on Government Regulation No. 18 of 2021,” *Journal of Social Research* 2, no. 7 (2023), <https://doi.org/10.55324/josr.v2i7.1141>.

¹⁰ Santo Yosep Anggles et al., “The Nature of Abandoned Land Control Regulation,” *TECHNIUM Social Sciences Journal* 32 (2022), <https://doi.org/10.47577/tssj.v32i1.6557>.

certainty while simultaneously enabling correction of deviations that contravene the land's social function.

The obligation to utilize HGU land is grounded in the purpose for which the right is granted and in the approved land-use plan, as well as in the licensing framework – including confirmation of spatial-use conformity – which is now integrated into the risk-based business licensing system under Government Regulation No. 18 of 2021 and Law No. 6/2023. The standard of utilization is not assessed through the reductionist criterion of whether the land appears “empty or not,” but rather through compliance with permits, designated purposes, and development plans that can be audited through documentary records and field inspections. This integration facilitates administrative tracking of violations while also supporting evidentiary processes should a dispute arise.

Nevertheless, theoretical and practical debates remain open regarding quantitative indicators: the minimum threshold of land utilization required to avoid being classified as “unutilized” often varies across commodities, ecological regions, and investment cycles. Recent literature highlights the existence of interpretive gaps that may give rise to disputes, thereby requiring evaluation to be grounded in development plans, permits, and properly documented field inspection results.¹¹ A case-by-case approach becomes necessary to assess the rationality of state policy and to prevent arbitrary categorization.¹²

Government Regulation No. 20 of 2021, which expressly repeals Government Regulation No. 11 of 2010, directs a corrective-preventive mechanism through a sequential chain of actions: inventory and identification of the object, clarification to the right holder or basis of control, tiered warnings, field investigation and inspection, determination, and post-determination utilization. Ministerial Regulation of

¹¹ Nabila Gina Dinulhai, “Penerapan Asas Kepastian Hukum Atas Tanah Terlantar Pada Pemilik Sertipikat Hak Milik Dihubungkan Dengan Peraturan Pemerintah Nomor 11 Tahun 2010 Tentang Penertiban SAN Pendayagunaan Tanah Terlantar” (Skripsi, UIN Sunan Gunung Djati, 2021); Elbert and 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* 4, no. 2 (2021).

¹² Putri Nadhira et al., “Pembatalan Keputusan Tentang Penetapan Tanah Terlantar Atas Hak Atas Tanah,” *LOCUS: Jurnal Konsep Ilmu Hukum* 4, no. 1 (2024).

ATR/BPN No. 20 of 2021 further details the procedures, formats, and documentation that officials must follow at each stage. Its essential substance is that warnings are not mere formalities but function as a “proportionality filter,” providing a genuine opportunity for the holder to restore proper land utilization before the imposition of the maximum sanction.

The effectiveness of preventive protection is highly dependent on the documentary record: valid proof of warning delivery, minutes of clarification meetings, and field inspection reports. Administrative inaccuracies at these points frequently become grounds for litigation before the Administrative Court (PTUN). Contemporary administrative law literature emphasizes that failure to meet due process standards—particularly transparency, accuracy, and legal certainty—can undermine the legitimacy of an administrative determination.¹³ Thus, procedural quality influences not only the formal validity of the decision but also constitutes a prerequisite for the procedural justice recognized by the judiciary.

Law No. 30 of 2014 incorporates the General Principles of Good Governance (AUPB) into the formulation of administrative decisions and actions. These principles—which include legality, utility, the prohibition of abuse of power, transparency, and proportionality—serve a dual function: they operate as guidelines for administrative officials and as normative benchmarks for judges of the Administrative Court. Recent scholarly developments indicate that the AUPB has evolved from an ethical framework into binding legal parameters for assessing the legality of administrative decisions.

In the context of abandoned land, the proportionality test occupies a central position. When a holder of a Right to Cultivate (HGU) faces external constraints—such as spatial planning moratoria, social conflict, intersectoral licensing barriers, or force majeure—proportionality requires a balanced assessment between the policy objective of ensuring land utilization and the burdens imposed on the rights holder. A designation that disregards such external factors risks exceeding the policy’s

¹³ Putri Nadhira et al., “Pembatalan Keputusan Tentang Penetapan Tanah Terlantar Atas Hak Atas Tanah,” *LOCUS: Jurnal Konsep Ilmu Hukum* 4, no. 1 (2024).

intended purpose and undermining the legitimacy of the decision. Accordingly, administrative remedies (objections or formal clarifications) should be fully utilized to document factual objections, recovery plans, and improvement commitments before the dispute proceeds to judicial review.¹⁴

When administrative avenues fail to restore the situation or when preventive stages have not been lawfully executed, an administrative decree designating land as abandoned may be subjected to judicial review before the Administrative Court. The contested act must satisfy the requirements of finality, concreteness, and individual application; the claimant's legal standing must be clearly established; and the filing period must be observed in accordance with the procedural regime of the Administrative Court. Contemporary practice shows that disputes over abandoned land frequently turn on the burden of proving procedural compliance: (i) the existence and validity of graduated warnings, (ii) documentation of clarifications and on-site inspections, and (iii) the rationality of the "non-utilization" assessment in relation to applicable permits and development plans.

The legality review conducted by the Administrative Court functions as a mechanism of checks and balances over administrative action, particularly in cases involving alleged abuse of authority and violations of the General Principles of Good Governance. Recent empirical developments highlight challenges related to the duration of proceedings and the quality of access to administrative evidence, yet the Court's corrective role remains essential—especially in uncovering procedural and substantive defects that affect rights to land.

The parameter of "non-utilization" or "non-cultivation" constitutes a critical point that often gives rise to multiple interpretations. A uniform, commodity-wide quantitative approach risks overlooking agroecological diversity, cultivation cycles, and investment characteristics. Conversely, a case-by-case approach requires more rigorous evidentiary governance so as not to allow excessive subjectivity.

¹⁴ Valenta Audrey Christy Sibuea, "Implementasi Peraturan Pemerintah Nomor 20 Tahun 2021 Terhadap Pemanfaatan Dan Penerbitan Tanah Terlantar Yang Berasal Dari Tanah Hak Guna Usaha Melalui Pemberian Hak Milik Untuk Mewujudkan Reforma Agraria Di Kabupaten Kuantan Singingi Provinsi Riau" (Skripsi, Universitas Atma Jaya, 2023).

Contemporary literature recommends evaluative standards that are transparent and that bind officials to verifiable parameters derived from development plans, licensing frameworks, and field data. External factors must be assessed explicitly within the proportionality test. For instance, delays in land utilization caused by social conflict or spatial-planning moratoria should be evaluated differently from pure neglect without lawful justification. Evidence-based administrative reasoning—documented in clarification minutes and official records of field inspections—is essential to ensuring that the maximum sanction (designation as abandoned land) is genuinely a proportionate measure of last resort. Thus, legal protection concerns not merely the availability of judicial remedies but the quality of deliberative processes at the administrative level.

The regime for designating land as abandoned operates as an administrative corrective mechanism for duly proven non-compliance in land utilization, rather than as a form of land acquisition for public purposes. Under positive law, this mechanism does not entail an automatic obligation to provide compensation, in contrast to the expropriation or land-acquisition regime, which is subject to compensation schemes (outside the context of abandoned land). The concept of equity-based compensation may be advanced as a policy recommendation under specific circumstances—such as where significant external constraints can be demonstrated and the failure to utilize the land is not entirely within the control of the HGU holder—yet such proposals remain prescriptive rather than descriptive of the applicable rules. In the context of post-Job Creation Law policy reforms, non-compensatory remedies may be considered as proportionality instruments, including limited and measurable extensions of compliance deadlines, consolidation of multisectoral licensing processes, or field-verified remedial plans. Such arrangements preserve the social function of land without undermining the legal certainty essential to the broader investment policy framework.

As comparative jurisprudence, Supreme Court Decision No. 137 PK/TUN/2016 illustrates the tension between the certainty afforded by an HGU certificate and the land's social function when the interpretation of “non-utilization” becomes contested.

The Court's reasoning underscores the obligation to cultivate as the core of time-bound land rights, while also affirming the availability of a repressive avenue for HGU holders to challenge procedural regularity and the rationality of administrative determinations. Under the post-Government Regulation No. 20 of 2021 regime, this decision serves as a reference point that reinforces the importance of graduated warnings, meaningful clarification, and on-site inspections as prerequisites for designation, and it highlights the strengthened role of the General Principles of Good Governance as a legality test. By positioning this decision as a comparative benchmark, the normative analysis remains anchored in the contemporary regulatory framework, while jurisprudence is employed to assess the consistency of its application.

The quality of legal protection afforded to HGU holders in the context of abandoned land is shaped by the preventive architecture—graduated warnings, meaningful clarification, and on-site inspections—together with procedural regularity in evidentiary documentation and the effective application of the General Principles of Good Governance in both administrative and judicial forums. Government Regulation No. 18 of 2021 affirms the HGU as a time-bound and conditional right; Government Regulation No. 20 of 2021 and Ministerial Regulation No. 20 of 2021 establish a corrective pathway that demands meticulous proof; Law No. 30 of 2014 provides the AUPB matrix and administrative remedies; and the Administrative Court serves as the corrective backstop when internal controls fail. The principal challenges lie in standardizing utilization indicators, maintaining robust administrative records, and applying proportional reasoning to external constraints. Within this framework, Supreme Court Decision No. 137 PK/TUN/2016 is relevant as a comparative compass—rather than the center of analysis—to ensure that policy implementation remains aligned with legal certainty and the land's social function.

Implementation of the Land's Social Function Principle in the Context of Abandoned Land Designation

The principle of the social function of land requires that every land right be understood not merely as a private title but as one that carries an obligation to ensure

socially beneficial and spatially orderly utilization. In the post-Job Creation Law architecture, this social function is operationalized through two parallel tracks: the rights-obligations track (governing the land-rights regime, including Rights to Cultivate, along with utilization standards) and the supervision-sanction track (enforcement, designation, and land reactivation).¹⁵ These are integrated through the framework established by Government Regulation No. 18 of 2021, Government Regulation No. 20 of 2021, and the technical procedures under Ministerial Regulation of ATR/BPN No. 20 of 2021, with the policy mandate reaffirmed by Law No. 6 of 2023. This synergy shifts practice from merely declaratory assertions of the land's social function toward an administrative apparatus whose legality can be judicially examined.

Conceptually, the implementation of the social function in abandoned-land cases begins with the operational definition of “non-utilization.” Government Regulation No. 20 of 2021 stipulates that the objects of enforcement include land held under rights, land under claims of control, Management Rights (HPL), and land released from forest areas that is not cultivated, used, utilized, or maintained in accordance with its nature, purpose, designated use, or spatial plans. The emphasis lies on the misalignment between plans or permits and the factual condition of the land, rather than on mere “physical vacancy.” Once the administrative examination process culminates in a designation, the land transitions into State Directly Controlled Land (TCUN) for further utilization. In this way, the social function operates both as a normative criterion and as a concrete legal consequence through the conversion of land status into TCUN.

To prevent the social function from becoming a mere slogan, the design of due process serves as the principal instrument. Government Regulation No. 20 of 2021 and Ministerial Regulation No. 20 of 2021 require sequential stages of inventory; clarification; graduated warnings; field inspections; designation; and subsequent

¹⁵ Tunggul Anshari Setia Negara et al., “Indonesian Job Creation Law: Neoliberal Legality, Authoritarianism and Executive Aggrandizement Under Joko Widodo,” *Law and Development Review* 17, no. 1 (2023), <https://doi.org/10.1515/ldr-2023-0022>.

utilization. Each stage demands a verifiable documentary trail: lawful proof of service of warnings, minutes of clarification, official records of field inspections, and technical assessments that link factual findings to permits and development plans. The lawful implementation of the social function is therefore inseparable from procedural compliance; neglect of these stages carries the consequence that the designation may be annulled in a legality review.

From the standpoint of administrative law, the General Principles of Good Governance (AUPB) play a central role as tools for assessing the rationality and proportionality of the social function's implementation. The key provisions of Law No. 30 of 2014 bind every administrative decision and action to statutory regulations and the AUPB, making judicial review before the Administrative Court commonly focus on legality, accuracy, transparency, and proportionality. Contemporary judicial practice and academic literature treat the AUPB not merely as ethical guidance but as binding legal parameters for reviewing the legality of administrative decisions, including in abandoned-land cases.

The implementation of the social function is often tested at the point where “non-utilization” is assessed. Challenges arise because quantitative indicators across commodities and ecological regions have not yet been fully standardized. Recent scholarship tends to interpret the element of “non-utilization” contextually and in a data-driven manner, drawing on permit parameters, utilization plans, technical documentation (such as business work plans), and properly recorded findings from field inspections. Literature from 2023–2024 highlights the need for transparent evaluative standards to prevent field-level discretion from devolving into excessive subjectivity. Such a design safeguards the social function from the risks of over-enforcement while preventing the protection of rights from sliding into absolutism.

The proportionality dimension serves as the bridge between the social function of land and business certainty. When external factors such as spatial-planning moratoria, social conflict, intersectoral licensing delays, or force majeure are present, administrative reasoning is required to consider the prospects of remediation through constructive warnings, plan adjustments, or staged improvements before moving

toward formal designation. Recent AUPB scholarship emphasizes that proportionality concerns not merely the severity of sanctions but the suitability of means to ends, the “necessity” of the sanction compared to less intrusive alternatives, and the overall balance of policy impacts. In practice, this reasoning is reflected in the substantive quality of the warnings issued, the opportunities for correction that are offered, and the documented substantive responses provided by the rights holder.

From the standpoint of rights structure, Government Regulation No. 18 of 2021 positions the Right to Cultivate (HGU) as a time-bound and conditional entitlement, making the social function inherent to the right rather than an externally imposed obligation. The duty to cultivate—linked to the purpose of the grant, risk-based business licensing, and utilization plans—constitutes an element that is auditable from the outset. The correlation between Government Regulation No. 18 of 2021 (the rights-obligations track) and Government Regulation No. 20 of 2021 (the supervision-sanction track) establishes a coherent corrective pathway: failure to meet utilization obligations is first examined through preventive stages, and only when neglect is confirmed does the abandoned-land designation function as an administrative *ultimum remedium*.

The utilization of State Directly Controlled Land (TCUN) after designation constitutes the policy-oriented expression of the social function of land. Government Regulation No. 20 of 2021 mandates that land reverted to state control be deployed in accordance with its designated purpose and the public interest, ensuring that the social function culminates in the redistribution of benefits rather than mere formal enforcement. At this stage, successful implementation is assessed not by the number of designations issued but by the socio-economic outcomes that follow: the provision of space for public purposes, agrarian reform programs, or strategic allocations for other measurable public needs. Structuring this aspect is essential to ensure that the social function does not end at the level of sanction but attains substantive policy significance.

A commonly raised counterargument concerns the risk of investment uncertainty if the standard of “non-utilization” is interpreted too elastically. This concern is valid

where evaluative indicators are vague and administrative documentation is weak. The appropriate policy response is not to dilute the social function but to clarify operational indicators (such as minimum commodity-based utilization parameters and business-cycle benchmarks), strengthen transparency (including access to plans, permits, and inspection results), and ensure the consistency of warnings as a vehicle for corrective action. In this way, business certainty and the social function operate as complements: certainty is produced through clear standards and orderly procedures, while the social function ensures that land does not stagnate in speculative holding at the expense of public benefit.

Within the judicial arena, the Administrative Court functions as the guardian of this balance. Disputes concerning abandoned land typically center on procedural legality (the validity of warnings, the quality of clarifications, and the legitimacy of field inspections) and substantive rationality (the adequacy of “non-utilization” findings in light of documentary records and on-site facts). Doctrine and case law indicate an increasing reliance on the General Principles of Good Governance as a basis for overturning designations marred by procedural or substantive defects. This trend is conducive to the functional realization of the social function: officials are encouraged to conduct careful assessment before imposing the maximum sanction, while rights holders gain an effective corrective avenue when the process deviates from legal standards.

The relationship with judicial precedent provides an instructive lens. Decisions reviewing the designation of land as “abandoned” indicate that courts place considerable weight on the authenticity of procedural steps and the quality of evidentiary substantiation; the mere affirmation of the obligation to cultivate does not automatically legitimate sanctions when the preventive stages are deficient. This trajectory aligns with the concept of a procedurally valid social function—one implemented through decisions that are both **rechtmatig** (lawful) and **doelmatig** (purpose-fit). Positioning jurisprudence as a point of comparison sharpens the consistency of governing principles without shifting the normative focus toward any single case.

From a governance perspective, the implementation of the social function requires adequate administrative capacity: the technical competence of inspectors, integration of licensing data, disciplined record-keeping, and responsive channels for objections. Weaknesses at any point in this chain can easily escalate into disputes – not because the social function itself is misguided, but because the process lacks due care. Therefore, institutional reform—including the standardization of warning forms and clarification minutes, quality audits of field inspections, and the involvement of experts when assessing specific commodities—is an intrinsic part of implementing the principle. This approach is consistent with contemporary developments in the doctrine of general principles of good governance, which regard due care and transparency as prerequisites of legitimacy.

At the level of remedial policy, the discourse often turns to the question of compensation. The abandoned-land regime operates as a mechanism to rectify non-compliance in land utilization, such that compensation does not attach **ex lege** as it does in land acquisition for public purposes. Nevertheless, non-compensatory remedies, limited regulatory relaxation, cross-sectoral licensing consolidation, or verified recovery plans may serve as proportionate instruments in cases demonstrably hindered by external factors. These policy options preserve the essence of the social function while accommodating legitimate investment interests.

Ultimately, the implementation of the land's social function in abandoned-land cases may be deemed successful only when four cumulative conditions are met: (i) a clear, data-driven operational definition; (ii) a transparent and well-documented administrative process; (iii) a genuine proportionality assessment with respect to external factors and policy alternatives; and (iv) effective avenues for review through administrative and judicial remedies. The post-2021 regulatory framework in fact provides the foundation for all four conditions. The epistemic and institutional task ahead is to ensure that evaluation standards are further specified, the competence of inspectors strengthened, and licensing data streams updated, thereby enabling the social function to operate not merely as an abstract principle but as a form of governance practiced lawfully, rigorously, and equitably.

CONCLUSION

Legal protection for HGU holders during the designation of abandoned land rests on three interconnected layers: preventive (inventory, clarification, tiered warnings, field inspection), administrative (application of AUPB and objection channels), and repressive (judicial review of the State Administrative Decisions (KTUN) at the State Administrative Court (PTUN)). The standard of “not being cultivated/not being utilized” must be assessed contextually against the permit, plan, business cycle, and verifiable external factors; the designation must be an administrative ultimum remedium after a real opportunity for recovery has been given. This architecture balances the land's social function with legal certainty, while linking state authority to an auditable process. Recommendations for further research: (1) developing quantitative indicators across commodities/eco-regions to reduce subjectivity in assessment; (2) multi-case empirical study on the effectiveness of tiered warnings and the quality of Field Inspection Reports (BAPL) as evidence; (3) modeling the “PTUN trial timeline” and its impact on the success of lawsuits; (4) evaluating the interoperability of permitting–spatial planning–land data to speed up verification; (5) testing non-compensatory remedy schemes (measured relaxation, verified recovery plans) and the conditions for their application.

The implementation of the social function in the designation of abandoned land runs on two tracks: rights-obligations (HGU as a term-limited/conditional right) and supervision-sanctions (regulation–designation–utilization). Its legitimacy requires an operational definition of “non-utilization” that is data-based, orderly and documented procedures, and a genuine proportionality test when external obstacles occur. Success is not measured by the number of designations, but by the quality of post-designation utilization for the public interest. Recommendations for further research: (1) formulating a measurement standard for “non-utilization” per sector with auditable minimum thresholds; (2) developing an outcome metric for utilization (access, productivity, equity) along with monitoring-evaluation methodology; (3) a study on institutional capability, inspector competence, archive format, and data transparency, as prerequisites for successful implementation; (4) comparative cross-country analysis

of social function vs. due process; (5) cost-benefit analysis between recovery options and designation sanctions to calibrate policy proportionality.

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