



## The Effectiveness of Regulations Related to the Regulation of Abandoned Land in the Ideology of Pancasila Values

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<http://dx.doi.org/10.18415/ijmmu.v11i2.5430>

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### **Abstract**

Optimization of land exploitation, use, utilization, and maintenance in Indonesian territory is needed to improve the environment, reduce poverty, and create jobs as well as improve food and energy security as mandated through Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles. The formulation of the problem in this study is (2) Procedures and stages in the issuance of abandoned land? (2) Factors Causing the Ineffectiveness of Laws and Regulations Related to the Control of Abandoned Land According to Soerjono Soekanto's Theory of Effectiveness?. The method used is descriptive. The result of this study is If the land is deliberately not used in accordance with its condition or nature; if the land is not used in accordance with the purpose for which it was granted; The land is not well maintained; and Especially for Land Management Rights, if the authority of the right to control from the State over the land is not exercised by the holder of the management right in accordance with the purpose for which the authority is granted. ineffectiveness of human resource factors or those that establish and that propose land as an object of wasteland. If you look at the Supreme Court Decision on the authority aspect, it is found that the authority error in terms of determining a decree related to abandoned land objects, the ineffectiveness of human resource factors from procedural aspects, specifically regarding the stages of identification and research of abandoned land objects that are not in accordance with what is normed in laws and regulations related to the regulation of abandoned land.

**Keywords:** *Wasteland; Regulation; Pancasila*

### **Introduction**

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia as the legal basis for control and ownership of natural resources in Indonesia determines that the earth, and water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity people. The state as the highest entity is given the authority to control natural resources through the right to

control the state.<sup>1</sup> The meaning of "controlled by the state" does not mean the state is the owner or entrepreneur, but the state plays more of a role as policy maker (beleid) and management actions (bestuursdaad), regulation (regelendaad), management (beheersdaad) and supervision (toezichthoudensdaad) for the greatest possible purposes. prosperity of the people.<sup>2</sup>

Land availability and development are two things that cannot be separated. The availability of land for development is urgent, although it sometimes causes problems<sup>3</sup>. The problem that often occurs in the dynamics of development targeted by the government is the availability of land for development. The integrity of increasing development needs is accompanied by the increasingly limited availability of land which results in the increasingly difficult optimization of land use utilization, especially for the implementation of development<sup>4</sup>. The most common problem is when the government wants development, but land is not available. In fact, land that is converted into development is an important factor supporting the success of an agency, especially the construction of various public interest facilities that require a large enough land<sup>5</sup>

Land that has been controlled and/or owned, whether there is already land rights or new ones based on land acquisition, is still largely abandoned, so that lofty ideals to increase people's prosperity are not optimal<sup>6</sup>. Optimization of land exploitation, use, utilization, and maintenance in Indonesian territory is needed to improve the environment, reduce poverty, and create jobs as well as improve food and energy security as mandated through Law No. 5 Year 1960 concerning Basic Regulations on Agrarian Principles<sup>7</sup>

Law No. 5 The Year 1960 has regulated legal consequences if there is a neglect of land rights, namely by the abolition of the right to the land concerned and the termination of legal relations and affirmed as land directly controlled by the state. For land that does not yet have Land Rights, but there is already a basis for control, the use of the land must be based on Land Rights in accordance with the provisions of Article 4 juncto Article 16 of Law No. 5 of 1960<sup>8</sup>. Therefore, the provisions of Article 4 juncto Article 16 of Law No. 5 Year 1960 for persons or legal entities who have obtained a basis of tenure over land, either by releasing land from the rights of others, by obtaining a location zone, or obtaining a decree on the release of forest areas, are obliged to maintain their land, cultivate it well, not abandon it and apply for land rights<sup>9</sup>.

The government issued Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration which is the legal basis for management rights which is the implementing regulation of Law Number 11 of 2020 concerning Job Creation. This Government Regulation unites, harmonizes, synchronizes, updates and revokes Management Rights provisions that are no longer relevant based on the Job Creation Law, including Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Use Rights, Regulations Government Number 24 of 1997 concerning Land Registration, and Government Regulation Number 103 of 2015

<sup>1</sup> Rahmawati, S. (2023). Internalisasi Nilai-Nilai Pancasila Terhadap Pengaturan Hak Pengelolaan Atas Tanah. *AGRIFITIA: Journal Of Agribusiness Plantation*, 3(1), 52–60.

<sup>2</sup> Trijono, R. (2015). Hak Menguasai Negara Di Bidang Pertanahan. *Jurnal Badan Pembinaan Hukum Nasional*, 1(1), 1–175

<sup>3</sup> Tao Zhuo. Factors Influencing Land Development And Redevelopment During China's Rapid Urbanization: Evidence From haikou City 2003—2016.

<sup>4</sup> Ranitya Ganindha. Urgensi Pembentukan Kelembagaan Bank Tanah Sebagai Alternatif Penyediaan Tanah Bagi Masyarakat Untuk Kepentingan umum. (*Jurnal Arena*. Volume 9. No. 3. 2016).

<sup>5</sup> Muwahid. *Hukum Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum*. (Jakarta: Duta Media. 2020).

<sup>6</sup> Raffi Noor. *Manajemen Bank Tanah*. (*Jurnal Direktorat Dan Tata Ruang BAPPENAS*. Volume 1. Maret. 2014)

<sup>7</sup> Maria S.W. Soemardjono. Kewenangan Negara Untuk Mengatur Dalam Konsep Penguasaan Tanah Oleh Negara. Pidato Pengukuhan Jabatan Guru Besar Pada Fakultas Hukum Universitas Gadjah Mada. 14 Februari. Yogyakarta. 1998. (Selanjutnya Disebut Maria S.W. Soemardjono II). H. 6-7.

<sup>8</sup> Marfugah, L., Redi, A., Saly, J. N. ., & Sudiro, A. . (2022). Internalisasi Nilai-Nilai Pancasila Terhadap Penertiban Kawasan dan Tanah Terlantar. *Pancasila: Jurnal Keindonesiaan*, 2(1), 49–61.

<sup>9</sup> Boedi Harsono. *Hukum Agraria Indonesia. Sejarah Pembentukan Undang-Undang Pokok Agraria. Isi Dan Pelaksananya*. (Jakarta: Djambaran. 2003)

concerning Ownership of Residential or Residential Houses by Foreigners Domiciled in Indonesia, as well as several regulations regarding strengthening Management Rights will also update the provisions of Government Regulation Number 8 of 1953 concerning Tenure State Lands.<sup>10</sup>

This legal writing provides an analysis of legislative regulations based on Pancasila regarding Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration. The formation of legislative regulations cannot be separated from the foundation of the Indonesian state, namely Pancasila. The position of Pancasila as the basis of the state, which means as the source of all sources of law in Indonesia, has the consequence that all laws and regulations must adhere to and be an elaboration of the values of Pancasila.

Legislation that bases its substance on Pancasila values will be more effective to implement because a regulation will not be able to change people's lifestyles if it does not use an approach to values originating from society itself.<sup>11</sup> Based on this description, the writing of this law reflects the substance of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration with Pancasila values as the State Basis. paragraph IV, MPRS decree NO XX/MPRS/1966 in conjunction with TAP No. V/MPR/1973 and Decree no. IX/MPR/1978. If the law in all its aspects, including substance, structure and culture, is based on Pancasila, it will be in line with the values of society so that the law will easily achieve its goals, namely as social control and social engineering. Social control carried out by law will be effective because it is carried out by law based on community values, but on the other hand, legal social control will be weak if it is not based on Pancasila. This also applies to social engineering carried out by law. Law will not be able to change societal patterns if it does not use an approach to the values that exist in society itself.

## ***Discussion***

### **1.Procedures and Stages in Issuance of Abandoned Land**

Article 33 (3) of the 1945 Constitution of the Republic of Indonesia increased. Earth and water and the natural resources they contain are controlled by the state and used for the greatest prosperity of the people. Furthermore, in Article 5 and Article 2 (1) of the Basic Law on Agriculture of 1960 concerning Basic Agricultural Regulations, "The universe including earth, water, and the natural resources contained therein is a nation as a unity of power of all nations." . . . Paragraph 2 The power of the nation. Similar to Article 6 of the UUPA, it states: In addition, Presidential Regulation No. 20 of 2021 states that abandoned land is land of rights, administrative land, and land that is deliberately not cultivated, not used, not used, and/or completed.

Article 2 PP Number 20 of 2021 regulates the stages of land being declared abandoned, including the following stages: Warning of abandoned land; and the fate of abandoned lands. Abandoned land assessment ensures that the owner, control owner, or owner of the land cultivates, uses, utilizes, and/or maintains the land he owns or controls, I aim to do that. This means that the right to land belongs to the owner with the right to use the land for its intended purpose.<sup>12</sup> In connection with abandoned land

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<sup>10</sup> Pemerintah, P. (N.D.). Peraturan Pemerintah Republik Indonesi Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, Dan Pendaftaran Tanah(P. 2021).

<sup>11</sup> Diab, A. (2014). Peranan Hukum Sebagai Social Control, Social Engineering, Dan Social Welfare. Al -'Adl, 7(2), 53–66.

<sup>12</sup> Putu Amalia, Diva Prasista, Ketut Kasta Arya Wijaya, Luh Putu Suryani. Pengaturan Tanah Terlantar Dalam Peraturan Perundang-Undangan Di Bidang Pertanahan.Jurnal Konstruksi Hukum Vol. 3, No. 3, September 2022, Hal 515-520

warnings, there are three warnings to rights holders, namely the first, second and third written warnings. If the right owner, control owner or property owner does not carry out a third written warning, the head of the regional office submits a decision within 30 working days of the Minister's Abandoned Lands (Article 27 PP No. 20 of 2021). If the land designated as abandoned land is land with land rights or administrative authority and constitutes an entire area, then the designation of abandoned land also includes: Removal of land rights or administrative rights<sup>13</sup>. Termination of legal relations; confirmation as state land, abandoned land previously managed directly by the state.

Based on the description in the discussion above, the procedures for managing abandoned areas and land can be seen from the highest regulations, Article 33 (3) of the 1945 Constitution of the Republic of Indonesia. The earth and water and the natural wealth they contain are controlled by the state and used for the greatest prosperity of the people. Furthermore, in Article 5 and Article 2 (1) of the Basic Agricultural Law of 1960 concerning Basic Agricultural Regulations, "The universe, including the earth, water and natural resources contained therein, is a nation as a unified power of all nations."

Paragraph 2 Strength of the nation. Similar to Article 6 of the UUPA, it is stated: In addition, Presidential Decree no. 20 of 2021 states that abandoned land is private land, administrative land, and land that is intentionally not cultivated, not used, not used, and/or not maintained properly. Article 22, Article 2 PP Number 20 of 2021 regulates the stages of land that is declared abandoned, including the following stages: Warning of abandoned land; and the fate of abandoned lands.

Abandoned land assessment ensures that the owner, control owner, or owner of the land cultivates, utilizes, utilizes, and/or maintains the land they own or control. This means that the right to land belongs to the owner with the right to use the land for its intended purpose. In connection with abandoned land warnings, there are three warnings to rights holders, namely the first, second and third written warnings. If the rights owner, control owner or property owner does not issue a third written warning, the head of the regional office submits a decision within 30 working days. Minister's Abandoned Land (Article 27 PP No. 20 of 2021). If the land designated as abandoned land is land with land rights or administrative authority and constitutes an entire area, then the designation of abandoned land also includes: Removal of land rights or administrative rights. Termination of legal relations; confirmation as state land, abandoned land previously managed directly by the state.

If the entire land is abandoned, the order for determining abandoned land applies to the entire land. If part of the route is abandoned, the area is abandoned until all rights up to the area will be determined and some areas that were completely built, used and abused previously Will be returned to your rights. In accordance with the grant notification through the land rights application process. For abandoned land of 25 (twenty five) percent or less, the decision to allocate abandoned land only applies to abandoned land and the right holder can request a transfer of the land area.

Land declared as abandoned land must be evacuated within days by the former right holder, control holder, or basic management holder. If the owner of the original rights does not fulfill this obligation, the property in question no longer belongs to him, but is under state control and Presidential Decree no. 20-32 of 2021. This is regulated in that article. Area and property. Therefore, state management of land can be divided into two types of management: direct management and indirect management.<sup>14</sup> Direct management is land management by the state which does not have individual rights to the land, and is abbreviated as state-owned land.<sup>15</sup>

<sup>13</sup> Tutiek Retnowati. 2018. Tinjauan Yuridis Perlindungan Hukum Pemilik Hak Atas Tanah Terlantar. Lex Journal: Kajian Hukum & Keadilan

<sup>14</sup> Fidri Fadillah Puspita1, Fitri Nur Latifah, Diah Krisnaningsih.2021. Urgensi Kehadiran Bank Tanah Sebagai Alternatif Memulihkan Perekonomian di Indonesia Dalam Perspektif Hukum Islam. Jurnal Ilmiah Ekonomi Islam, 7(03), 1761-1773

<sup>15</sup> Akhmad Safik1, Mira Ewinda.2023. Pengelolaan Tanah Di Ibu Kota Negara IKN. Jurnal Hukum dan Kesejahteraan Universitas Al Azhar Indonesia Vol. 01, Nomor 08,

Indirect rights of state power, on the other hand, preclude individual rights but are not exercised at a certain time, indirectly designated as state-controlled land, or free state land. .. Soil needs to be well cared for to increase fertility and prevent damage. The obligation to maintain is not only transferred to the right holder, but also to the burden of individuals, groups or groups who have a legal relationship with the goods.<sup>16</sup> Article 25 of Decree Number 20 of 2021 and the Head of the Abandoned Land Management Regional Office proposes to the Head of Service to classify the land in question. As an abandoned land.

In determining abandoned land, there are several stages to regulate land that is included in the abandoned category. In the stages carried out to regulate abandoned land, this is an important matter and is of great concern, if in the determination of abandoned land there is a case of lawsuit and several stages are not implemented then the decision letter regarding abandoned land can be revoked and cancelled. In the procedures or stages of controlling land that is categorized as abandoned based on Articles 4 to Article 13 of Government Regulation no. 11 of 2010 in conjunction with Perkaban Article no. 4 of 2010, which contains the division of several stages in the implementation of abandoned land before determining a land as abandoned land, which includes:

1. Inventory of land suspected of being abandoned land. The implementation of this inventory stage is carried out by the Head of the Regional Office who receives various news and stories obtained from the results of direct surveys conducted by the Land Office, Regional Office, as well as information from other bodies, reports written by local people, even reports made by people who have rights to the land. At this stage, the person who has the right to the land has been notified that he has obligations that must be carried out regarding the utilization and use of the land he owns in accordance with the decision of the authorized land official regarding the basic land control rights owned by the right holder.
2. Identify and conduct research on land that is estimated to be included in the abandoned land category. In this stage there is identification and research into aspects in the administrative field related to the certificate issuance period which is calculated as 3 years from the end of the basis of control over the land. After knowing the administration of the land, the Head of the BPN Regional Office will carry out an analysis of the land records or inventory in order to organize and determine the land to be analyzed by paying attention to several considerations, including the area of land that is suspected to be abandoned land. Before the identification and research process is carried out on land which is thought to be abandoned land, the right holder will be notified by the Head of the BPN Regional Office who will be notified through a written letter, an announcement at the Land Office, and a notice board installed at the place where the land is suspected to be abandoned land. the.
3. Giving warnings to people or bodies who have rights to land. In this warning stage, the person who has rights to the land is given three warning letters. The period between the first warning letter and the third warning letter is given one month for the person who has rights to the land to make changes by taking action in the form of utilize or utilize the land owned in accordance with the purpose of granting rights to the land by the authorized land sector party. During the first warning to the third warning, the holder of land rights must report the progress he has made in utilizing and exploiting the land he owns to the Head of the Regional Office, but if after the first warning, the second warning, and the third warning, the person or body that owns it the right does not fulfill the warning or does not utilize the land it owns, so that the land it owns will be designated as abandoned land by the competent authorities.
4. Determination of abandoned land. In this case the Head of the Regional Office BPN can make recommendations to the Head of BPN when people or bodies who have control over land rights have been given warnings three times and still do not comply with these warnings. The status of the land that has been proposed by the Head of the BPN Regional Office becomes statu quo and the holder of land rights cannot or is not permitted to take legal action on the land. After this

<sup>16</sup> Santoso, U. (2005). *Hukum Agraria dan Hak-hak Atas Tanah*. Jakarta Kencana.

proposal was made, the Head of BPN made the land into abandoned land. In determining abandoned land, this must be in accordance with the area of land that has been abandoned. After the determination of abandoned land, the Head of the Land Office must remove the land title certificate from the list of land that has been registered in the land registration administration (TU), and issue a news announcement in the form of a newspaper or newspaper once a month after the Head's decision. The BPN has been issued and the person or body that has control over the land must vacate whatever is on the land, because the land is controlled by the State.

## **2. Factors Causing the Ineffectiveness of Laws and Regulations Related to Controlling Abandoned Land According to Soerjono Soekanto's Effectiveness Theory**

PP No. 11 of 2010 concerning the Control and Utilization of Abandoned Land, in general, continues the UUPA order regarding land must be maintained and must not be abandoned, among other things, regulating:

1. objects for controlling abandoned land;
2. identification and research;
3. warning;
4. determination of abandoned land;
5. utilization of former abandoned state land.

Meanwhile, the Regulation of the Head of the National Land Agency No. 4 of 2010 concerning Procedures for the Control of Abandoned Land is broadly an implementation guideline related to the stages of regulating abandoned land which regulates as follows: (1) land invention rights or basis for control over land indicated as abandoned; (2) identification and research of land indicated as abandoned; (3) warnings to rights holders; (4) Designation of abandoned land.

As for the Land Bill, which until now is still pending discussion, it has produced several norms related to the regulation of abandoned land, including:

1. State Land former abandoned land that is utilized for the benefit of society and the state through Agrarian Reform;
2. Land Control is implemented through
  - a. monitoring and evaluation of the use and utilization of Land Rights and
  - b. control and utilization of abandoned land;
3. Further provisions regarding the regulation and utilization of abandoned land shall be regulated by Government Regulation.

The theory of legal effectiveness according to Soerjono Soekanto is whether or not a law is effective is determined by 5 (five) factors, namely:<sup>17</sup>

### **1. Legal Factors**

Law consists of elements of justice, certainty, and expediency. However, in practice its application there is often a conflict between legal certainty and justice. Legal certainty is concrete, while justice is abstract, so that when judges decide a case based on the application of the law alone, there is a possibility that the value of justice is not achieved. Thus, when looking at a legal issue, at least justice is a top priority. This is because the law is not only seen from written law, but there are also considerations of other factors that develop in society. While from the other side, justice is still a debate because justice contains subjective elements that are very dependent on the opinions or thoughts of each person.

<sup>17</sup> Soerjono Soekanto, *Pokok-pokok Sosiologi Hukum*, Jakarta: PT. Raja Grafindo Persada, 2007, hal. 110

## 2. Law Enforcement Factors

Law enforcement factors relate to those who make and implement laws. The law enforcement section is a law enforcement apparatus that is able to provide certainty, justice, and legal expediency proportionally. Law enforcement apparatus covers the understanding of law enforcement institutions and law enforcement officials, while law enforcement officials in a narrow sense start from the police, prosecutors, judiciary, legal advisors, and prison guards. Each officer and apparatus is given authority in carrying out their respective duties which include receiving reports, investigating, prosecuting, proving, sentencing and imposing sanctions and efforts to rebuild convicts. There are 3 (three) important elements that affect the working mechanism of law enforcement officials and apparatus, including:

- a. law enforcement institutions along with various supporting facilities and infrastructure and institutional work mechanisms;
- b. work culture related to its apparatus, including regarding the welfare of its apparatus; and
- c. regulatory instruments that support, both institutional performance and those that regulate legal material that is used as work standards, both material law and formal law.

Law enforcement efforts must systematically pay attention to these three aspects simultaneously, so that the process of law enforcement and justice internally can be realized in reality.

## 3. Legal Facility or Facility Factor

Supporting facilities can simply be formulated as a means to an end. Its scope is primarily physical means that serve as supporting factors. Supporting facilities include educated and skilled human labor, good organization, adequate equipment, sufficient finances, and so on. In addition to the availability of facilities, maintenance is also very important in order to maintain sustainability. It often happens that a regulation has been functioned, even though the facilities are not yet fully available. This kind of condition will only cause counterproductive which should expedite the process instead of causing congestion.

## 4. Community Factors

Law enforcement aims to achieve peace in society. People have certain opinions about the law. That is, the effectiveness of the law also depends on the will and legal awareness of the community. Low awareness from the public will make it difficult for law enforcement. The steps that can be taken are socialization by involving social layers, power holders and law enforcement itself. The formulation of law must also pay attention to the relationship between social change and law which in the end the law can be effective as a means of regulating community behavior.

## 5. Cultural Factors.<sup>18</sup>

Cultural factors that are actually integrated with community factors are deliberately distinguished, because in the discussion presented the problem of value systems that are the core of spiritual or immaterial culture. This is distinguished because law as a system or subsystem of the social system includes structure, substance, and culture. The structure includes the container or form of the system, for example relating to the institutional order of formal legal institutions, the law between these institutions, their rights and obligations, and so on.

A law can be effective if the role of money by law enforcement officials is closer to what is expected by the law and becomes ineffective if the role performed by law enforcement is far from what the law expects. To be able to see the effectiveness of laws and regulations related to the regulation of abandoned land, Soerjono Soekanto's theory of legal effectiveness is used. For this reason, the author first describes some jurisprudence and Supreme Court decisions with legal force related to the ineffectiveness of the norms of laws and regulations on the regulation of abandoned land.

<sup>18</sup> Soerjono Soekanto, *Pokok-pokok Sosiologi Hukum*, Jakarta: PT. Raja Grafindo Persada, 2007, hal. 112

The defeat of the Ministry of Agrarian and Spatial Planning (central and regional) in the court in the context of regulating abandoned land was caused by several factors, as follows:

1. Juridical defect factors in the aspect of authority. The authority to control abandoned land is a delegated authority from the government (president) to BPN (now the Ministry of Agrarian Affairs and Spatial Planning). This provision is implied in Article 17 PP no. 11 of 2010 which states that "The implementation of controlling abandoned land and utilizing abandoned land is carried out by the Head and the results are reported periodically to the President". Furthermore, what is meant by Head in Article 1 number 5 of the PP states "In this Regulation what is meant by Head is the Head of the National Land Agency of the Republic of Indonesia". Aspects of the authority to issue a Decree on Determining Abandoned Land as regulated in Article 9 paragraph (1) PP No. 11 of 2010 jo. Article 19 Perkaban no. 4 of 2010 states "The Head determines the decision to determine abandoned land based on the proposal of the Head of the Regional Office". Meanwhile, the Head of the Land Office's source of authority is in the provisions of Article 22 paragraph (2) Perkaban No. 4 of 2010. Thus, based on these provisions, the Head of the BPN and the Head of the Land Office are state administrative officials who have the authority to carry out government affairs in the land sector and thus have the authority to issue decision letter determining abandoned land. According to Indroharto, a decision can be considered contrary to statutory regulations because:<sup>19</sup>
  - a. The relevant TUN body or official thinks that they have the authority to issue or refuse to issue a decision when in fact they do not have the authority to do so;
  - b. Based on the regulations in question, it is true that there is authority to issue a decision, but this authority is not actually given to the agency that has issued the decision that is being challenged. This can happen if the agency has done so based on a delegation, where the delegation is not actually based on a delegation decision from the delegate, or the delegation may not actually be carried out because it has no basis in a regulation;
  - c. The authority in question is indeed based in a statutory regulation, but the disputed decision itself is in conflict with that basic regulation or is in conflict with other statutory regulations;
  - d. The statutory regulations that form the basis for the issuance of the decision in question actually conflict with higher regulations; And
  - e. The disputed decision was issued in defiance of the procedural rules that must be established.

## 2. Juridical Defect Factors in Procedural Aspects

The procedural aspect is one of the main requirements that must be fulfilled in a decision or decree issued by the TUN Agency or Official. The procedural aspect is also one of the bases for a state administrative court decision to cancel a land title certificate if the TUN Agency or Official has carried out a legal act in issuing a decision or decree where there was a procedural error in its issuance. If a procedural error is found to be the basis for the court's decision to declare the decision or decision of the TUN Agency or Official as null and void. Procedural aspects in controlling abandoned land are regulated in Article 4 Article 13 PP No. 11 of 2010 and clarified in Article 3 of Perkaban no. 4 of 2010.

## 3. Juridical Defect Factors in the Substantive Aspect

The substantive aspect is a data error due to the procedural aspect being considered as a formality or even not implementing this procedural aspect at all. This is a very fatal mistake, which results in loss of energy, time and state money because the party who loses in court is required to pay court costs. The same thing was stated by Indroharto who stated that in the state administrative court

<sup>19</sup> Menurut Indroharto, suatu keputusan dapat dianggap bertentangan dengan peraturan perundangundangan karena: 28



the judge's examination of the state administrative decision letter includes 3 (three) aspects, namely:<sup>20</sup>

- a. Aspects of authority include matters of being authorized, not authorized or violating authority. The basis of a TUN Official's authority is attribution (originating from the legislation attached to a position), delegation (the transfer or transfer of an existing authority), and mandate (in this case there is no recognition of authority or transfer of authority).
- b. The substance or material aspect includes the implementation or use of authority whether materially or substantially it is in accordance with the provisions of the law or applicable laws and regulations.
- c. Procedural aspects, namely whether the procedures for making state administrative decisions required by statutory regulations in the exercise of authority have been followed or not.

Based on Soejono Soekamto's theory of legal effectiveness, the author believes that of the five factors, the legal factor (law) must be improved first. This is because the other four factors only implement what is regulated in statutory regulations. If the norms are good, law enforcement factors will be improved. The law enforcement factor in controlling abandoned land, namely the party who determines and proposes the land as an abandoned object. The party who determines and proposes land as an abandoned object must work professionally based on the norms regulated in the applicable laws and regulations. The author found the ineffectiveness of human resource factors or those who determine and propose land as an abandoned land object.

Based on Soejono Soekamto's theory of legal effectiveness, the author believes that of the five factors, the legal factor (law) must be improved first. This is because the other four factors only implement what is regulated in statutory regulations. If the norms are good, law enforcement factors will be improved. The law enforcement factor in controlling abandoned land, namely the party who determines and proposes the land as an abandoned object. The party who determines and proposes land as an abandoned object must work professionally based on the norms regulated in the applicable laws and regulations. The author found the ineffectiveness of human resource factors or those who determine and propose land as an abandoned land object.

## **Conclusion**

1. Article 33 Paragraph 3 which states that the earth's water and natural resources contained therein are controlled by the state and utilized to the greatest extent for the prosperity of the people. Then it can be seen in the Basic Agrarian Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles states in Article 2 paragraph (1) that "Earth, water and space, including natural wealth, are controlled by the state at the highest level, as well as Article 6 of the UUPA which states "all rights land has a social function. Government Regulation Number 20 of 2021 states that abandoned land is private land, land with management rights, and land obtained based on the basis of land control, which is intentionally not cultivated, not used, not exploited, and/or not maintained. If the land is intentionally not used according to its condition or nature; if the land is not used in accordance with the purpose for which the rights were granted; The land was not well maintained; and Specifically for Management Rights land, if the State's control rights authority over the land is not exercised by the management rights holder in accordance with the purpose of granting the delegation of authority.
2. Ineffectiveness of human resource factors or those who determine and propose land as an abandoned land object. If we look at the Supreme Court's decision regarding the aspect of

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<sup>20</sup> Indroharto, *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara Buku II Beracara di Pengadilan Tata Usaha Negara*, Jakarta: Pustaka Sinar Harapan, 2005, hal. 324.

authority, we can find an error in authority in determining a decision letter relating to abandoned land objects. It should be the Head of BPN who determines the abandoned land as an abandoned land object based on a decision letter, not the Head of the Regional Office. The author also found the ineffectiveness of human resource factors from the procedural aspect specifically regarding the identification and research stages of abandoned land objects which are not in accordance with what is normed in the laws and regulations related to controlling abandoned land.

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