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## **From Idle Assets to Public Welfare: Legal Mechanisms for Integrating Abandoned Land into Agrarian Reform Policies**

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### **Abstract**

Abandoned land constitutes an important yet underutilized component in agrarian reform, particularly in Indonesia where land inequality persists alongside ineffective utilization of land resources. Although the principle of the social function of land is recognized under Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), its implementation through Government Regulation No. 11 of 2010 on Abandoned Land and its integration with agrarian reform under Presidential Regulation No. 86 of 2018 remain fragmented and lack normative clarity. This study examines the legal conceptualization of abandoned land and evaluates the adequacy of existing regulatory mechanisms in supporting agrarian reform objectives.

Using a doctrinal legal method combined with a comparative approach, this study analyzes Indonesian land regulations alongside Brazil and South Africa to identify differences in the treatment of abandoned land within agrarian reform systems. The findings show that Indonesia faces legal ambiguity and weak institutional integration, while comparative jurisdictions demonstrate stronger alignment between land non-use and redistributive state intervention. The study concludes that a shift toward function-based land governance is necessary, where abandoned land is systematically integrated into agrarian reform through clearer legal standards and stronger institutional mechanisms such as land banking.

### **Keywords:**

*Abandoned land, agrarian reform, social function of property, land governance, comparative law.*

### **Background**

Land remains one of the most significant legal, economic, and social resources in agrarian governance. In many jurisdictions, however, substantial areas of land remain abandoned, idle, or underutilized despite persistent demands for equitable redistribution, agricultural productivity, and rural welfare. This paradox raises a fundamental legal question regarding how land that is formally owned but functionally neglected can be transformed into a productive instrument of public benefit. Within agrarian reform discourse, abandoned land should

therefore be understood not merely as an administrative anomaly, but as a potential legal instrument for addressing structural inequality in land access and ownership.<sup>1</sup>

The concept of abandoned land must be analyzed through the broader principle of the social function of property. Contemporary property theory increasingly rejects the absolutist notion of ownership and instead recognizes that property rights are inherently conditioned by social obligations. Gregory S. Alexander emphasizes that property law must serve human flourishing, thereby justifying state intervention when land use undermines collective welfare.<sup>2</sup> In agrarian contexts, this principle is particularly relevant where land remains idle while rural populations face land scarcity and economic exclusion. Accordingly, the doctrine of social function provides a normative foundation for legal mechanisms aimed at reclaiming or reallocating abandoned land for public benefit.

Historically, agrarian reform has focused on redistributive justice, particularly addressing unequal land concentration and historical injustices. However, much of the existing literature has concentrated on expropriation of large estates, tenancy reforms, or market-based land redistribution, while abandoned land has received relatively limited attention as a distinct legal category.<sup>3</sup> This gap is significant because abandoned land differs structurally from conventional reform targets; it involves land that is already disconnected from productive, economic, or social use. Therefore, its integration into agrarian reform requires specialized legal mechanisms that go beyond compensation-based models, including land banking systems, public trusteeship, and social utilization schemes.

From a policy perspective, international development institutions consistently emphasize the importance of effective land governance for poverty reduction and sustainable development. The World Bank highlights that secure and productive land use is central to economic growth and rural development.<sup>4</sup> Similarly, the Food and Agriculture Organization of the United Nations underscores that underutilized land contributes to inefficiencies in food systems and threatens long-term food security.<sup>5</sup> In this context, abandoned land represents not only a governance challenge but also a strategic opportunity to enhance food security, environmental sustainability, and social equity.

Comparative legal experiences demonstrate that abandoned or underutilized land can be integrated into agrarian reform frameworks under appropriate legal conditions. In Brazil, the constitutional principle of the social function of property has enabled state intervention in redistributing unproductive land. In South Africa, land reform programs have attempted to balance restitution, redistribution, and tenure security within a historical justice framework.<sup>6</sup> These experiences show that abandoned land can be transformed into a legitimate object of public policy when supported by clear legal standards and institutional capacity, although implementation challenges remain significant.

<sup>1</sup> Klaus Deininger, *Land Policies for Growth and Poverty Reduction* (Washington, DC: World Bank; Oxford University Press, 2003).

<sup>2</sup> Gregory S. Alexander, *The Social Function of Property: A Fundamental Principle of Property Ownership* (Oxford: Oxford University Press, 2018).

<sup>3</sup> Saturnino S. Borras Jr., Cristóbal Kay, and Edward Lahiff (eds.), *Market-Led Agrarian Reform: Critical Perspectives on Neoliberal Land Policies and the Rural Poor* (London: Routledge, 2008).

<sup>4</sup> World Bank, *The Land Governance Assessment Framework* (Washington, DC: World Bank, 2011).

<sup>5</sup> Food and Agriculture Organization of the United Nations, *The State of the World's Land and Water Resources for Food and Agriculture 2021* (Rome: FAO, 2021).

<sup>6</sup> Ruth Hall, "Land Reform in South Africa: Problems and Prospects," *Progress in Development Studies* 4, no. 3 (2004): 213–227.

A persistent problem across jurisdictions is the absence of a coherent legal definition and enforcement framework for abandoned land. Different legal systems use overlapping but inconsistent terms such as idle land, vacant land, or neglected agricultural land, each carrying different legal consequences.<sup>7</sup> This inconsistency creates regulatory uncertainty and allows land to remain unused without effective legal consequences. As a result, land may be excluded from both market circulation and redistributive reform processes, reinforcing structural inequality and inefficiency. Addressing this issue requires a reconfiguration of legal doctrine to align ownership rights with enforceable social obligations.

Based on the foregoing background, this study addresses the following research questions:

1. The legal conceptualization and regulation of abandoned land within the framework of the social function of land rights and agrarian reform practices across different legal systems.
2. The legal mechanisms required to integrate abandoned land into agrarian reform policies oriented toward public interest and agrarian justice.

This study employs a doctrinal legal research method combined with a comparative legal approach. The doctrinal method is used to analyze statutory regulations, legal doctrines, and jurisprudence related to abandoned land and agrarian reform. This includes examination of national agrarian laws and relevant principles of property law, particularly the doctrine of social function.

In addition, a comparative approach is applied to selected jurisdictions, including Brazil and South Africa, to identify different regulatory models for managing abandoned or underutilized land within agrarian reform frameworks. Data are collected from primary legal materials, academic literature, international organization reports, and policy documents. The analysis is conducted qualitatively by identifying legal patterns, normative gaps, and institutional challenges across jurisdictions.

## Discussion

### 1. Legal Conceptualization and Constitutional Tension in Abandoned Land Governance

The legal construction of abandoned land within Indonesian agrarian law reflects a persistent tension between private property protection and the constitutional mandate of the social function of land. This dualism is explicitly grounded in Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), particularly Article 6, which establishes that all land rights carry a social function. Normatively, this provision rejects absolute ownership and introduces a conditional property regime in which land rights are justified only to the extent that they serve social utility and productive use.

However, the operationalization of this constitutional principle through Government Regulation No. 11 of 2010 on the Control and Utilization of Abandoned Land exposes a significant doctrinal and institutional gap. Although the regulation defines abandoned land as land rights that are not used, not utilized, or not maintained, it fails to provide measurable legal thresholds or a structured proportionality test to determine abandonment. As a result,

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<sup>7</sup> Saturnino Borrás Jr. and Jennifer Franco, "Contemporary Discourses and Contestations around Pro-Poor Land Policies," *Journal of Agrarian Change* 10, no. 1 (2010): 1–32.

enforcement relies heavily on administrative discretion, creating a system of legal indeterminacy that undermines both legal certainty and equal treatment before the law.

This ambiguity produces a deeper constitutional issue: the absence of a clear proportionality framework between property rights and state intervention. In mature constitutional systems, interference with property rights is generally subject to structured proportionality analysis, ensuring that limitations are necessary, legitimate, and balanced. In the Indonesian context, however, such doctrinal safeguards are not explicitly articulated within abandoned land governance, resulting in a regulatory structure that is vulnerable to inconsistent application and potential abuse of discretion.

From a critical legal perspective, this condition reflects not merely a technical deficiency but a state capacity problem in land governance, where legal norms exist but are weakly translated into enforceable institutional practice. The World Bank has consistently emphasized that land governance failures often arise not from absence of regulation, but from fragmented implementation structures and weak enforcement capacity across institutions.<sup>8</sup> In this sense, abandoned land policy becomes a site of governance inefficiency rather than a coherent redistributive mechanism.

Comparatively, Brazil provides a structurally more integrated model, where the constitutional principle of the social function of property (Constitution of the Federative Republic of Brazil, Articles 184–186) directly enables state expropriation of underutilized land for agrarian reform. This creates a direct constitutional-operational linkage between non-use of land and redistributive intervention. By contrast, Indonesia maintains a dual-track system in which abandoned land is regulated administratively under Government Regulation No. 11 of 2010, while agrarian reform operates under Presidential Regulation No. 86 of 2018, resulting in institutional fragmentation and weak normative coherence.

This fragmentation reveals a deeper structural issue: the absence of a unified doctrinal framework that clearly transforms “land non-use” into a legally actionable trigger for redistribution. As a consequence, the social function principle remains normatively strong but institutionally under-enforced, limiting its transformative capacity in addressing land inequality.

## **2. Legal Mechanisms, Institutional Design, and the Reconstruction of Abandoned Land Governance**

The integration of abandoned land into agrarian reform requires a shift from fragmented administrative control toward a structured redistributive governance model grounded in function-based property theory. In Indonesia, agrarian reform is formally regulated under Presidential Regulation No. 86 of 2018 on Agrarian Reform, which establishes three pillars: land redistribution, asset legalization, and empowerment programs. However, the regulation does not explicitly position abandoned land as a core redistributive asset category, resulting in a weak institutional linkage between land neglect and reform implementation.

A key institutional innovation is the establishment of the Indonesian Land Bank (Bank Tanah) under Law No. 11 of 2020 on Job Creation (Job Creation Law). The Land Bank is designed to consolidate land assets, including abandoned land, for strategic redistribution and development

<sup>8</sup> World Bank, *Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector* (Washington, DC: World Bank, 2011).

purposes. In theory, this institution represents a shift toward centralized land governance aimed at improving efficiency and reducing fragmentation. However, in practice, its effectiveness depends on three critical variables: cadastral data accuracy, inter-agency coordination, and transparency in land allocation decisions.

From a governance perspective, land banking can be understood as a transitional institutional mechanism between ownership-based land law and redistributive land governance. Nevertheless, without strong accountability mechanisms, land banks risk functioning as accumulation institutions rather than redistributive justice instruments. This concern is consistent with global land governance literature, which warns that centralized land institutions may reproduce inequality if not accompanied by participatory oversight and transparent allocation criteria.<sup>9</sup>

The Food and Agriculture Organization of the United Nations (FAO) emphasizes that sustainable land governance must simultaneously ensure tenure security and enforce responsible land use obligations to prevent land degradation and underutilization.<sup>10</sup> This dual requirement reinforces the normative basis for treating abandoned land not merely as regulatory non-compliance but as a governance failure with direct implications for food security and social equity.

Comparative analysis further illustrates alternative institutional designs. In Brazil, constitutional enforcement of the social function doctrine allows direct expropriation of unproductive land, thereby creating a legally binding pathway from land inefficiency to redistribution. In South Africa, land reform operates through a structured tripartite system of restitution, redistribution, and tenure reform aimed at correcting historical dispossession while expanding equitable access to land resources.<sup>11</sup> Both systems demonstrate a clearer alignment between normative principles and institutional mechanisms compared to Indonesia's fragmented regulatory architecture.

Despite these mechanisms, Indonesia continues to face significant structural constraints. These include overlapping institutional mandates between national and regional land authorities, incomplete integration of cadastral systems, and political economy pressures affecting land allocation decisions. Furthermore, the absence of a clear legal threshold for defining abandonment weakens the legitimacy of state intervention and increases the risk of legal contestation.

Therefore, a doctrinal reconstruction is required to transform abandoned land governance into a coherent redistributive framework. This reconstruction must be based on three fundamental shifts: (i) from ownership-centered to function-based land law, (ii) from administrative sanction to redistributive governance instrument, and (iii) from fragmented regulatory instruments to integrated agrarian reform architecture. The following conceptual model illustrates this transformation:

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<sup>9</sup> David J. Tung, "Land Banking and Urban Redevelopment: Governance Risks and Institutional Design," *Land Use Policy* 115 (2022): 106012.

<sup>10</sup> Food and Agriculture Organization of the United Nations, *The State of the World's Land and Water Resources for Food and Agriculture 2021* (Rome: FAO, 2021).

<sup>11</sup> Republic of South Africa, *Restitution of Land Rights Act 22 of 1994; Extension of Security of Tenure Act 62 of 1997*.

**Abandoned Land → Legal Identification (UUPA + Gov Reg 11/2010) → State Acquisition (Land Bank under Law 11/2020) → Redistribution (Presidential Reg 86/2018 Agrarian Reform Program)**

This model demonstrates that abandoned land can function as a systemic entry point into agrarian reform, provided that legal and institutional linkages are harmonized within a unified governance framework.

### **Conclusion**

The legal framework governing abandoned land in Indonesia remains fragmented and insufficiently integrated into the broader agrarian reform system. Although the principle of the social function of land is established under Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), its implementation through Government Regulation No. 11 of 2010 on Abandoned Land lacks clear operational thresholds and consistent enforcement standards, resulting in significant legal uncertainty and wide administrative discretion.

In addition, the relationship between abandoned land regulation and agrarian reform policy under Presidential Regulation No. 86 of 2018 on Agrarian Reform remains weakly structured. This disconnect limits the potential of abandoned land to function as a systematic resource for land redistribution and public welfare, thereby reducing the effectiveness of agrarian reform objectives in addressing structural land inequality.

Comparative analysis indicates that jurisdictions such as Brazil and South Africa demonstrate more coherent integration between land non-use and redistributive state intervention through stronger constitutional and statutory frameworks. Accordingly, this study emphasizes the need for a doctrinal shift toward function-based land governance, where abandoned land is explicitly positioned as a legal trigger for agrarian reform through integrated mechanisms such as land banking and redistribution policies.

### **References**

- Alexander, G. S. (2018). *The social function of property: A fundamental principle of property ownership*. Oxford University Press.
- Borras, S. M., Kay, C., & Lahiff, E. (Eds.). (2008). *Market-led agrarian reform: Critical perspectives on neoliberal land policies and the rural poor*. Routledge.
- Borras, S. M., & Franco, J. C. (2010). Contemporary discourses and contestations around pro-poor land policies. *Journal of Agrarian Change*, 10(1), 1–32.
- Deininger, K. (2003). *Land policies for growth and poverty reduction*. World Bank & Oxford University Press.
- Food and Agriculture Organization of the United Nations. (2021). *The state of the world's land and water resources for food and agriculture 2021*. FAO.
- Hall, R. (2004). Land reform in South Africa: Problems and prospects. *Progress in Development Studies*, 4(3), 213–227.
- Republic of Indonesia. (1960). *Law No. 5 of 1960 on Basic Agrarian Principles (UUPA)*.

- Republic of Indonesia. (2010). *Government Regulation No. 11 of 2010 on Control and Utilization of Abandoned Land*.
- Republic of Indonesia. (2018). *Presidential Regulation No. 86 of 2018 on Agrarian Reform*.
- Republic of Indonesia. (2020). *Law No. 11 of 2020 on Job Creation (Job Creation Law)*.
- Republic of South Africa. (1994). *Restitution of Land Rights Act No. 22 of 1994*.
- Republic of South Africa. (1997). *Extension of Security of Tenure Act No. 62 of 1997*.
- Tung, D. J. (2022). Land banking and urban redevelopment: Governance risks and institutional design. *Land Use Policy*, 115, 106012.
- World Bank. (2011). *Land governance assessment framework: Identifying and monitoring good practice in the land sector*. World Bank.
- World Bank. (2023). *From the ground up: Secure land rights and agrarian reform in Indonesia*. World Bank.