

The Legal Protection of Heirs' Rights against Absentee Land Grants

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Abstract. *This study aims to analyze absentee agricultural land ownership obtained as a result of inheritance through a will grant. The research method used is a normative legal research method with a conceptual approach. The data analysis method uses qualitative data analysis, which is a scientific way to obtain valid data results. Based on the research, it was concluded that the results of the study showed that: First, the form of legal protection for heirs against absentee land grants in Pati Regency is to make a will made before a notary to serve as the basis for making a grant deed as a legal requirement for the transfer of rights. Second, protection of the absolute rights of the heirs as absentee land recipients based on the will-grant inheritance process if the heirs continue to seek their agricultural land so that the land is not abandoned.*

Keywords: Absentee; Land; Grant.

1. Introduction

Land is part of the earth that can be controlled by a person or legal entity. Land Law does not just regulate all aspects of land but regulates one of the juridical aspects called land tenure rights. So that the person or legal entity that has the right to the land has the right to use and utilize the land. In Article 4 of the Basic Agrarian Law (UUPA) explains that "On the basis of the right to control from the State ... it is determined that there are various rights to the surface of the earth, called land that can be given to and owned by someone" thus land is the surface of the earth, and what is meant by land rights is rights over the surface of the earth, but its use also includes water and space above it.

Indonesia is an agricultural country, most people in Indonesia earn through the use of land, one of which is agricultural land, by increasing the productivity of agricultural land it can improve the welfare of people in Indonesia. By increasing the value of agricultural productivity, it can support the selling value of agricultural products so that it can increase the economic level of the Indonesian

people. This agricultural land includes all agricultural land, ponds for fishery, land for grazing, scrubland of former fields and forests which are the livelihoods of those entitled to the agricultural land.

The general elucidation of Article 10 of the Basic Agrarian Law (UUPA) directly addresses agricultural lands. The obligation of the owner of agricultural land is to work or work on it himself actively, which means having the right to directly participate directly in the production process. This means that all work must be done by themselves, so that the land owner can directly participate in the production process, the main requirement is that the land owner must live close to the location of the land. By cultivating their own agricultural land properly so that they can produce crops that have high selling value and can support their lives.

In connection with the obligation to directly cultivate agricultural land as the first step in implementing the implementation of Article 10 of the Basic Agrarian Law (UUPA) is the implementation of Landreform. What is meant by Landreform in the Basic Agrarian Law (UUPA) is to make changes to the agrarian law concerned with land tenure, abolish foreign rights that can affect the agricultural sector and colonial concessions on land controlled by national entrepreneurs, ending feudal exploitation gradually -gradually, reform of land ownership and land control related to the legal tenure of land rights.

Land reform aims to support farmers' income levels so as to build the community's economy. Within the Landreform program there is a prohibition on absenteeism or guntai. The absentee or guntai is the ownership of agricultural land that is not located the same as the owner's domicile.¹ Basically, absentee land is regulated in Article 10 paragraph (1) of the UUPA, namely that every person or legal entity that has rights to agricultural land is required to actively work on the land themselves.

In reality, there are many legal events that cause the transfer of property rights which can lead to absentee land ownership. All forms of transfer of ownership rights to agricultural land, namely buying and selling, grants, exchanges, gifts according to custom, inclusion in companies or inbreng and testamentary grants or legaat which result in absentee ownership of agricultural land. Absentee ownership of agricultural land can be obtained through inheritance in absentee grants, for example if an heir who lives in a city obtains agricultural land in a village, then the heir automatically becomes the absentee land owner.

¹Ida Ayu Windhari Kusuma Pratiwi "Juridical Review of Legal Certainty for Owners of Absentee Land Rights whose Ownership Comes from Inherited Land", Untab Scientific Magazine, No. 2, Vol. 16, , 2019, p. 117

Basically, the prohibition of ownership of agricultural land by people who live outside the sub-district where the land is located, however, this prohibition does not apply if the land owner is in a sub-district that borders the sub-district where the land is located, as long as the distance between the owner's residence and the land is not too far and allows to work the land efficiently.² Basically, land ownership can occur due to various ways, one of which is by inheritance through a testamentary grant. Therefore the prohibition of ownership of agricultural land for heirs who are outside the location of this land can cause problems if the heirs do not manage the agricultural land so that their agricultural land becomes neglected. The actions of the heirs have violated the applicable law regarding absentee land, thus the heirs are obliged to transfer their land to people who are in the land area within 6 months.

In accordance with the discussion of Article 10 of the Basic Agrarian Law (UUPA) explains that the first step towards the obligations of agricultural landowners is to be obliged to maximize and actively work on their own agricultural land. If the owner of the agricultural land does not try to actively manage his own land, he will get a witness to the elimination of the control of the agricultural land. From the explanation above, it is undeniable that there will be sanctions for heirs who do not seek absentee land.

In connection with the description above to focus on research, the problem is limited to First, what is the form of protection for heirs against absentee land grants? Second, how is the legal protection of heirs' rights to absentee land grants?

2. Research Methods

The research method is a way of working to gain scientific or scientific knowledge, this research method is a systematic way of compiling knowledge so that it can be used to understand the object of this writing. To achieve the intended results of this study using normative legal research methods. The normative legal research method is research conducted or aimed at written regulations or legal materials such as library materials or secondary data.³ The conceptual approaches that can be used in this study are legal approaches, conceptual approaches, case approaches, historical approaches and comparative approaches. Therefore this research uses a conceptual approach which is applied by collecting secondary legal sources which provide various information about the concept of disciplinary rights contained in law books, legal articles and legal encyclopedias.

²Boedi Harso, Op. cit, p. 385

³Sri Mamudji & Soerjono Soekanto. 2003, Normative Legal Research: A Brief Overview, Pt. RajaGrafindo, Jakarta, pp. 13-14

3. Results and Discussion

3.1. Forms of Legal Protection of Heirs against Absentee Land Will Grants

3.1.1 Prohibition of Absentee Land Ownership

Absentee or it can also be called *guntai* in Sundanese comes from the word "Absent" which means not present, Absentee is one of the land reform programs regarding the prohibition of *guntai* land ownership.

According to Prof. Boedi Harsono, absentee or *guntai* land is land ownership whose owner lives outside the land.⁴ More specifically, absentee land is agricultural land where the owner lives outside the district where the land is located.

The legal basis for the prohibition of absentee land ownership is regulated in Article 10 of the Basic Agrarian Law (UUPA), Government Regulation Number 41 of 1964, Government Regulation Number 4 of 1977, Minister of Home Affairs Regulation Number 15 of 1974. Based on the regulations regarding absentee land, it can be concluded that some of the substances that become provisions for absentee land are:⁵

- a. Agricultural land must be cultivated alone and must be cultivated actively
- b. The owner of the agricultural land must reside in the same District as the location of the land
- c. Owners of agricultural land who live outside the district where the land is located, are obliged to transfer their land rights to people who live in the same area as the location of the land.
- d. Prohibition of transferring or transferring agricultural land rights to persons or legal entities residing in a different district from the location of the land

Most of the agricultural lands are located in villages, while those who own land in absentee generally live in cities. People who live in cities own agricultural land in villages, of course, in line with the principle of agricultural land for farmers. People who live in cities are unlikely to become farmers because agricultural land in cities is almost non-existent. The purpose of prohibiting absentee agricultural land ownership is so that the results obtained from the exploitation of

⁴Prof. Boedi Harsono, 2008, Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Content and Implementation, Djbatan, Jakarta p. 385

⁵AP Parlindungan, 1987, Landreform in Indonesia A Comparative Study, Alumni Publishers, Bandung, p. 123

agricultural land can mostly be enjoyed by farming communities who live in rural areas, not enjoyed by city people who live in villages.⁶

In the prohibition of absentee land ownership there are exceptions for certain people, namely:⁷

- a. People who carry out government tasks
- b. Those who fulfill religious obligations
- c. People who have special reasons that can be accepted by the Minister of Agrarian Affairs (Ministry of Agrarian Affairs / Head of BPN)

Ownership of agricultural land in absentee area of 2/5 of the maximum area specified for the area concerned:

- a. Civil Servants
- b. Military Officers and their equivalents
- c. Widows of civil servants and widows of retired civil servants but may not remarry people who are not civil servants or retired civil servants.

The exception to absentee or joint agricultural land ownership by Retired Civil Servants is regulated separately in Government Regulation Number 4 of 1977. In consideration of the Government Regulation it states that civil servants according to Government Regulation 224 of 1961 in conjunction with Government Regulation 41 of 1964, are exempt from the provisions for the ban absentee ownership of agricultural land. However, this exception does not apply to retired civil servants, because they are considered able to move their residence in the area where the land is located.

In the provisions of Article 41 of 1964 it is explained that the owner of agricultural land who lives outside the district where the land is located within a period of sixty months is obliged to transfer rights over his agricultural land to another person in the district where the land is located. This shows that absentee ownership of agricultural land is not permitted in accordance with Article 10 of the Basic Agrarian Law (UUPA), namely that every person and legal entity that has the right to agricultural land is obliged to work on or actively cultivate the agricultural land themselves.

3.1.2 Forms of Legal Protection of Heirs against Absentee Land Grants

⁶Elfira Permatasari, Habib Adjie, hardianto Djanggih, 2018, "Legal Protection of Absentee Land Ownership Obtained as a Result of Inheritance", ISSN-2579-5198, No. (1), Vol. 14, p. 3

⁷Prof. Boedi Harsono, Op. City, p. 386

Basically agricultural land obtained from inheritance is absolute property for the heirs, but the heirs of this agricultural land cannot become owners of agricultural land if the heirs are outside the sub-district where the agricultural land is located, this ownership has been prohibited according to Article 4 of the Ministerial Regulation Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016. This prohibition does not apply if the heir is in a sub-district which borders the location of the land in question, provided that the distance between the owner's residence and the land is the distance that allows the heir to work own land.

One of the transfers of land rights through inheritance is by inheritance through testamentary grants, where this transfer occurs when the right holder in question dies. In the sense that since then the beneficiary has the right to the land that has been inherited. Regarding who is the heir, the parts that are his rights to the land have been regulated in accordance with a will made by the maker of a will during his lifetime.

Regarding the making of a will deed that often occurs, namely the owner of the land certificate comes to the Notary to express his intention to make a will containing the granting of a certificate of ownership rights to the person he appoints to receive land rights later if he has died. After the deed of will is drawn up, the Notary is obliged to read the will to the appearer in the presence of two witnesses from the Notary's employees. After that, the appearer signed the deed, then the Notary and the Notary's employees also signed it. After all parties have signed the will, in accordance with the provisions of Article 16 paragraph (1) of Act No. 30 of 2004 concerning the Office of a Notary,

Sporadic land registration is a land registration activity for the first time concerning one or several land registration objects in an area or part of a village area individually or in bulk. This registration is carried out at the request of an interested party, namely the party entitled to the land object in question or their proxies.⁸

This form of legal protection for heirs can be carried out by the testator making a will in front of a notary, because a deed made by a notary is an authentic deed, based on Article 1868 of the Civil Code, an authentic deed is a deed made in accordance with the law or made before an employee public official in power where the deed was made. This authentic deed has the strength of external proof, which means that this deed is able to prove itself as an authentic deed,

⁸Ika Rahma Wanti, Musyarif Abdul Chalim, 2017, "Transition of Absentee Land Rights due to Inheritance (Case Study at the ATR/BPN Office of Kendal Regency, Where the Domicile of Heirs Is Outside the District Area", Journal of Deeds, No. 2, Vol. 4, p. 238

formal proof, namely proof that regulates how to apply evidence and material proof, namely that regulates whether or not evidence can be accepted.

If the will is drawn up before a notary, the deed will be binding on the parties as an authentic deed. The deed of will made before a notary is used as evidence which is considered the strongest and most complete, establishing a clear legal relationship between the giver of the will and the beneficiary regarding rights and obligations. The deed of will made before a notary is made to guarantee legal certainty in order to avoid disputes in the future.

3.2. Protection of Heirs' Rights against Absentee Land Grants

The relationship between people and objects in the legal concept is a relationship called ownership rights and control of an object. What is meant by the right of ownership and control is the right to own the object or what is known as the property right. In the legal concept, rights can be divided into 2 (two) namely individual rights and material rights. In relation to the concept of property law, it is not only in the form of tangible objects such as houses, motorbikes, cars and other objects, but also includes intangible objects such as patents, copyrights and others.

In the concept of land rights according to the National Agrarian Law, land rights are divided into two, namely primary land rights and secondary land rights.⁹What is meant by primary land rights are land rights that can be directly owned and controlled by a person or legal entity that has an indefinite period of time and can be transferred to another person or to their heirs.

Inheritance owned by heirs based on inheritance through testamentary grants is an absolute right that must be owned by heirs. However, ownership of agricultural land in different sub-districts and heirs is prohibited, in accordance with Article 4 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016 concerning Control of Agricultural Land Tenure. With the prohibition of ownership of agricultural land outside the territory based on Article 7 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016 concerning Control of Agricultural Land Tenure, the owner must transfer his land rights to another party who is domiciled in the area where the land is located within a period of 6 (six) months from the date of acquisition of the rights. If the heirs do not want to transfer their land rights to other parties, the heirs can move to the district where the land is located.

⁹Supriadi, SH, M.Hum, 2008, *Agrarian Law*, Sinar Graphic, Jakarta, p. 64

In protecting the rights of heirs who own absentee land based on the inheritance of this Testament Grant by legally proving if the heirs are legitimate as heirs who are entitled to receive the land according to the applicable law. Evidenced by the Deed of Grant based on the Deed of Will made before a Notary, because the deed made before a Notary is guaranteed legal certainty, and the heirs have absolute rights to the absentee's land based on the Deed of Will.

Thus laws and regulations can provide legal protection for heirs if these heirs can seek, cultivate and work on agricultural land actively in accordance with the provisions of Article 10 of the Basic Agrarian Law which explains that every person and legal entity has a right to Agricultural land is basically obliged to work or work on its own land actively by preventing extortion. In seeking agricultural land located far from the heir's residence, heirs can cultivate the agricultural land in accordance with the provisions of Article 53 of the Basic Agrarian Law, namely: Liens, Production Sharing Business Rights, Hitchhiking Rights, and Agricultural Land Lease Rights.

Legal events that took place due to inheritance through this testamentary grant caused the heirs to obtain inheritance rights over absentee land. If the heirs cannot cultivate and cultivate their agricultural land in accordance with Article 10 of the Basic Agrarian Law, the heirs are obliged to transfer their land rights to the same domicile as the location of the agricultural land.

4. Conclusion

The form of legal protection for heirs is to guarantee legal certainty that the heir owns absentee land based on the inheritance of a testamentary grant with the heir making a will before a notary.). The will deed made by this notary is authentic, which means that this deed has perfect proof, that is, it can be used as evidence in court. After the inheritance process based on a testamentary grant takes place in the form of absentee land, namely agricultural land whose location is different from the domicile of the heir, hereby the heirs are the owners of land rights whose ownership is absentee. In accordance with Article 3 of Government Regulation Number 224 of 1960 and Article 1 of Government Regulation Number 41 of 1964 whose legal basis is Article 10 paragraph 2 of the Basic Agrarian Law which regulates the prohibition of absentee land ownership, how is the protection of the heirs' rights to absentee land obtained based on testamentary inheritance? This protection can be obtained by heirs according to the law when the heirs can actively cultivate and work on the agricultural land by preventing extortion in accordance with Article 10 of the Basic Agrarian Law. The heirs can move their residence to the place of their agricultural land, so that they can maximize the work on their own agricultural land, if the heirs do not move their domicile, the heirs can transfer their land temporarily in accordance with Article 53 of the Basic Agrarian Law, namely with lien rights, profit-sharing business

rights, boarding rights, and land lease rights. If the heirs do not try to work on the agricultural land so that the agricultural land becomes neglected, then there is no legal protection that protects the rights of the heirs.

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