

Legal Review of Absentee Land Ownership (Study at Kendari City Land Office)

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Abstract. *This study aims to determine and analyze how the regulation prohibits absentee land ownership at the Kendari City Land Office and to determine and analyze how effective the prohibition of absentee land ownership at the Kendari City Land Office is. The approach method used in this study is the Qualitative Descriptive approach. This type of research is an empirical legal research. The types and sources of data in this study are primary, secondary and tertiary data. Data analysis in this study is qualitative. The results of the study indicate (1) that the Regulation on absentee land ownership is currently ineffective and irrelevant to the current state of society, so that many regulations need to be revised or replaced. In relation to the regulation prohibiting absentee land ownership, there is no specific regulation regulating absentee land. In addition, the size of the sub-district boundary as the basis for determining absentee land needs to be reviewed. The Kendari City Land Office only contributes to the prohibition of absentee land ownership (guntai) by providing counseling to the community about the importance of effective and efficient land registration both directly to the Kendari city community and through partners, namely the Land Deed Making Officer (PPAT) as an effort to provide legal certainty for land rights holders. (2) The implementation of the prohibition on absentee land ownership at the Kendari City Land Office is not yet fully effective or has not been maximized, in several cases regarding agricultural land based on research results such as from inheritance, agricultural land that is the object of auction, falsification of documents against the buyer in an authentic deed made before a land deed official (PPAT).*

Keywords: Absentee; Land; Ownership; Prohibition.

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1. Introduction

Regulations governing absentee land ownership are needed to provide protection and legal certainty for related parties.³ This regulation may contain provisions regarding the rights of tenants, cultivators, or other parties who have interests in the land, such as the right to use, contract extension, or compensation rights in the case of a change in land ownership. With clear regulations, related parties can feel more secure and recognized in their rights, and have certainty in carrying out activities or investments related to the land.

Article 10 Law no. 5 of 1960 concerning Basic Agrarian Principles Regulations, known as the Basic Agrarian Law (UUPA), states that, "Every person and legal entity that has rights to agricultural land is in principle obliged to work or cultivate it actively themselves, by preventing extortion."⁴

The current phenomenon, although the land reform program has been implemented since 1960, it turns out that the principle of agricultural land for farmers and their owners are required to cultivate their own agricultural land has not been able to be worked on properly. Agricultural land is still used as an object of speculation which results in the area of agricultural land decreasing because it is converted. In addition, the prohibition on absentee land ownership is not regulated in a separate regulation. It is only used as one of the contents of the land redistribution regulation. And in the regulation, the prohibition is not explicitly stated but is referred to as an obligation to transfer or an obligation to move the location of the land. For this reason, the aspiration to uphold the supremacy of law has been made one of the priorities in national development. In this case, the land reform program regarding the prohibition on absentee land ownership needs to be revitalized and reviewed.⁵

Seeing these conditions, the author is interested in conducting research with the title: "Legal Review of Absentee Land Ownership (Study at the Kendari City Land Office)."

2. Research Methods

³Yunizar Wahyu Tristanto, 2019, "Harmonisasi Regulasi Kepemilikan Tanah Pertanian Secara Absentee Bagi Pegawai Negeri dalam Program Landreform", *Legality : Jurnal Ilmiah Hukum*, Vol. 26, No. 2, hal. 281-293, <https://doi.org/10.22219/jihl.v26i2.7801>, diakses pada tanggal 3 Januari 2025 pukul 23.08 WIB.

⁴Boedi Harsono, 2005, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jilid 1, Edisi Revisi. Djambatan, Jakarta, hal. 153.

⁵Asiska Roudhotul Mujtahidah, 2018, "Larangan Kepemilikan Tanah Absentee dalam Peraturan Pemerintah No. 224 Tahun 1961 Perspektif Masalah Mursalah", *Jurnal Bisnis Syariah*, <http://etheses.uin-malang.ac.id/id/eprint/11893> diakses pada tanggal 5 Januari 2025 pukul 14.03 WIB

The approach method in this research includes the Descriptive Qualitative approach. Qualitative research is conducted to build knowledge through understanding and discovery. The qualitative research approach is a process of research and understanding based on methods that investigate a social phenomenon and human problems.⁶In this research, researchers create a complex picture, examine words, detailed reports of respondents' views and conduct studies in natural situations.⁷This approach aims to identify new meanings or test legal terms in theory and practice.⁸In this study, analysis was conducted. The types and sources of data in this study are primary, secondary and tertiary data. In this study, the data collection methods used are legislation (statute approach) and interviews and observations. In this study, data analysis was conducted through qualitative analysis, namely what the informant stated in writing or verbally and also the real behavior that was studied and studied as a whole.

3. Results And Discussion

3.1. Legal Basis for the Prohibition of Absentee Land Ownership (Study at the Kendari City Land Office)

Legally, the legal basis for the prohibition of absentee/guntai agricultural land ownership has been stated in Article 3 of Government Regulation No. 224 of 1961 and Government Regulation No. 41 of 1964 (additional Articles 3a to 3e). These two Government Regulations are implementing regulations for the provisions stated in Article 10 of the Basic Agrarian Law, which aims to prevent the occurrence of an extortion system carried out against the economically weak.⁹

In Article 10 of the Basic Agrarian Law, it has been stated that those who own agricultural land are obliged to actively work or cultivate it themselves, so that provisions were then made to abolish control of agricultural land in what is called absentee/guntai, namely ownership of land located outside the sub-district area where the land owner lives.

In principle, it is prohibited to own land outside the sub-district where the land is located. This prohibition does not apply to owners who reside in sub-districts bordering the sub-district where the land in question is located, as long as the distance between the owner's place and the land still allows him to work the land efficiently. Given that the purpose of the provisions of Article 10 of the Basic

⁶Mukti Fajar dan Yulianto Achmad, 2015, *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan Ke3, Pustaka Pelajar, Yogyakarta, hal 185

⁷*Ibid*, p.186

⁸Hajar M, 2015, *Model-Model Pendekatan Dalam Penelitian Hukum dan Fiqih*, UIN Suska Riau, Pekanbaru, hal. 41

⁹John Salindeho, 2012, *Masalah Tanah dalam Pembangunan*, Sinar Grafika, Jakarta, hlm 235.

Agrarian Law is related to the public interest, then legally the provisions in this article include mandatory legal provisions or "Dwingend Recht".

According to the provisions of Article 3 of PP No. 224 of 1961, it is stated that:

Article (1) Owners of agricultural land who reside outside the sub-district where their land is located, within a period of 6 months are required to transfer their land rights to another person in the sub-district where the land is located or move to the sub-district where the land is located.

Paragraph (2) The obligations in paragraph (1) do not apply to land owners who reside in the sub-district bordering sub-district where the land is located, if the distance between the residence and the land still allows for efficient working of the land.

Article (3) Without reducing the provisions in paragraph (2) of Article this, then if the land owner moves or leaving his residence outside the sub-district where he lives the location of the land for 2 consecutive years, he is obliged transfer ownership rights to the land to another person residing in that sub-district.

Paragraph (4) The provisions of paragraphs (1) and (3) do not apply to those who carry out state duties, fulfill religious obligations or have other special reasons that are acceptable to the Minister Agrarian. For civil servants and military officers and carrying out state duties, the exceptions in this paragraph limited to ownership of agricultural land up to 2/5 of the area the maximum area specified for the area concerned according to Law No. 56 of 1960.

Article (5) If the obligations in paragraphs (1) and (3) are not fulfilled, the land in question will be taken by the Government.

So anyone in relation to the problem of absentee/guntai land ownership must comply with the Government Regulation. In addition, Article 19 of Government Regulation No. 224 of 1961 stipulates criminal sanctions for land owners who refuse or intentionally obstruct the acquisition of land by the government and its distribution. What happens in practice is that there is a plot of agricultural land owned by someone in reality is no longer controlled by him because it has been secretly transferred to another person who lives outside the sub-district where the land is located. This absentee/guntai land ownership is generally known by the surrounding community.¹⁰

The symptoms that appear are that on the one hand the original owners who depended on agricultural products for their livelihood were actually forced out of their land because of the need for money, and on the other hand there were people who had excess capital who wanted to accumulate land as a means of

¹⁰Maria S.W. Sumardjono, 2011, Kebijakan Pertanahan, Antara Regulasi dan Implementasi, Penerbit Buku Kompas, Jakarta, hlm 21.

investment. So what happened was the symptom of becoming laborers on their own “owned” land.

3.2. Effectiveness of Implementation of Absentee Land Ownership Prohibition at Kendari City Land Office

The role of the National Land Agency which has duties and obligations in the land sector is emphasized in Presidential Regulation Number 20 of 2015 concerning the National Land Agency. One of the considerations for the issuance of this Presidential Regulation is that land is the glue of the Unitary State of the Republic of Indonesia so that it needs to be regulated and managed nationally to maintain the sustainability of the national and state life system.¹¹

The National Land Agency is authorized by the government through laws and regulations, namely Presidential Regulation Number 20 of 2015 concerning the National Land Agency, so that all land issues are the responsibility of the National Land Agency. This responsibility also includes the ownership of agricultural land in absentee. The resolution of the problem of Land Ownership in Absentee is a form of responsibility of the government agency, namely the National Land Agency in this case the Kendari City Land Office. This legal act is an authority granted by the government to the National Land Agency which is implemented based on laws and regulations, which is known as the principle of legality in a concept of a State of Law.

Based on these considerations, Presidential Regulation Number 20 of 2015 places BPN as a Non-Departmental Government Institution that is under and responsible to the President. Previously, this institution was under the coordination of the Minister of Home Affairs and is now one with the Ministry of Agrarian Affairs and Spatial Planning.

Furthermore, the National Land Agency carries out government duties in the land sector nationally, regionally and sectorally.¹²

While its functions include 11 functions, some of which are:

- a. Preparation and determination of policies in the land sector;
- b. Formulation and implementation of policies in the field of surveying, measurement and mapping;
- c. Formulation and implementation of policies in the field of land rights determination, land registration, and community empowerment;

¹¹Arie Sukanti Hutagalung dan Markus Gunawan,2012, *Kewenangan Pemerintah di Bidang Pertanahan*, Raja Grafindo Persada, Jakarta, hlm. 88

¹²Indonesia, Presidential Regulation Number 20 of 2015 concerning the National Land Agency, Article 2.

- d. Formulation and implementation of policies in the field of regulation, arrangement and control of land policies;
- e. Formulation and implementation of policies in the field of land acquisition;
- f. Formulation and implementation of policies in the field of controlling and handling land disputes and cases;
- g. Supervision of the implementation of tasks within the BPN environment;
- h. Implementation of task coordination, coaching, and provision of administrative support to all organizational units within the BPN;
- i. Implementation of data management of sustainable food agricultural land information and information in the land sector;
- j. Implementation of research and development in the land sector; and
- k. Implementation of human resource development in the land sector

With the determination of the main tasks and functions of the BPN as mentioned above, Presidential Regulation Number 20 of 2015 has several fundamental significances in the context of implementing agrarian reform in Indonesia.

First, Presidential Regulation Number 20 of 2015 raises and re-emphasizes the reference values that have been emphasized in the Basic Agrarian Law Number 5 of 1960 concerning the unity of the eternal relationship between the nation and the Indonesian homeland. Second, this Presidential Regulation also re-emphasizes the position of land as the glue of national unity and its social function as a foundation for advancing public welfare. Third, this Presidential Regulation also states that land policies must be national in nature and must not be compartmentalized by sectoral and regional barriers. Fourth, this Presidential Regulation revitalizes the BPN institution to carry out functions that have been expanded, including implementing agrarian reform and handling agrarian disputes, conflicts and cases. Fifth, in the new function and structure of the BPN RI there is also an emphasis on the function of community empowerment inland sector which opens up space for the implementation of post-land redistribution support programs as part of an agrarian reform package.¹³

The prohibition regulation regarding Absentee Ownership of Agricultural Land is very clearly prohibited, however based on the results of research in the field there are still many Absentee land ownerships in Kendari City with evidence that the owner of the agricultural land is domiciled or resides outside. The factors that cause Absentee Ownership of Agricultural Land are caused by:

¹³Yusup Napiri , Moh. Sohibuddin, Iwan Nurdin, Syahyuti,2018, "Reforma Agraria, Kepastian Yang Harus Dijaga", Koalisi Rakyat Untuk Kedaulatan Pangan/KRKP, Bogor, hlm. 33-34.

a. Legal factors, in this case including the prohibition of absentee land ownership and the regulations in Article 10 of the UUPA are regulations that cannot be set aside and are mandatory in nature. In general, statutory regulations whose form and content are made by authorized officials are made to regulate life in society, so that these regulations are made to be obeyed by the community, such as regulations regarding Absentee Ownership of Agricultural Land. This regulation is a product of a law made around the 60s, so that if adjusted to current conditions it is no longer appropriate or in the expression of an adage, namely *het rech hinkt achter de faiten aan* That in essence the law follows the development of society, and not vice versa.

b. Facilities and Infrastructure Factors, do not have accurate data on absentee land ownership by the Kendari City Land Office and also cooperation or reports that are helpful from the Village/Sub-district and District officials. Lack of coordination is a very big factor that can cause absentee land ownership. That the Kendari City Land Office requires a tool that can detect land ownership data that is connected to all regions of Indonesia and also the civil registry office which is expected to be able to provide domicile data from the community.

c. Cultural Factors, inheritance is a cultural factor where this is the lifestyle of humans themselves. Inheritance is a legal event that can occur in every family, but in absentee agricultural land ownership, the public needs to know that there are prohibitions on this legal event. The heirs should first pay attention to where the heir lives, if the heir lives outside the district where the land is located. If the heir is outside the sub-district, the heir should first advise the heir to move to the sub-district where the land is located, so that the heir can own the land absently, or the inheritance is transferred to local residents. The concept of agricultural land for farmers and cultivated by farmers should work well and be upheld, because many agricultural lands are neglected because they are absentee owners who do not work as farmers but have other sources of livelihood.

d. The factor of society itself that still does not understand and implement existing legal regulations. To create order and peace in community life, of course there needs to be a regulation in society, with this regulation, life in society can be regulated properly. There are several legal awarenesses that need to be carried out and understood by the community, namely: Legal Knowledge, Legal Understanding, Legal Attitude, and Legal Behavior.

e. The factors of the apparatus and law enforcement, the lack of coordination between the village apparatus and the Land Office provides an opportunity to own land in absentee. That the village head has no obligation to notify the existence of land ownership that is absentee, whether the owner no longer lives in the sub-district or sells the land to someone outside the sub-district where the land is located. So that the Land Office cannot detect the existence of land owned in absentee.

f. Economic factors, with the launch of the Southeast Sulawesi Provincial Government to advance agriculture in Kendari City, it invites many people to make agricultural land in Kendari City a future investment, because with the launch of the government, many people hope that the results of the agriculture are very promising to guarantee their economy or in the future the price of the land when sold will have a very high value.

To overcome the violation of the prohibition on absentee land ownership, the Kendari City Land Office has taken several steps:

a. Carrying out administrative order

Efforts made through administrative order are by tightening supervision of the transfer of agricultural land rights and granting permits for the transfer of these rights. In tightening supervision and transfer of rights, it is expected that village and sub-district officials are obliged to make land mutations or transfer of agricultural land rights in their respective areas. Because the Kelurahan/village officials are considered to know more directly the condition of their village land and its owners. Therefore, before the PPAT (Land Deed Official) makes a deed, it must first be examined whether the party transferring is truly the person entitled to the land and the party receiving the transfer of rights is not a person who lives outside the sub-district. If the official doubts the authority of the person transferring the rights, he can request that the making of the deed be witnessed by the Village/Head of Sub-district. For this reason, integrated cooperation is needed between the Head of Sub-district/Head of Sub-district, Sub-district Head, PPAT and the Land Office.

b. Law enforcement

Conducting targeted legal counseling and continuously organized widely. Counseling is carried out by coming to the field to collect or monitor the inventory conditions in the regions, namely monitoring such as in the sub-districts, the sub-district is the center of the transfer of rights so that land sales and purchases are not carried out in absentee.

With this counseling, legal discipline can be developed, namely that officials related to land issues comply with the application of applicable land laws, the community with their knowledge of land laws will comply with them, so that if there is a deviation from the applicable regulations, it can be straightened out properly.

Government Regulation 224 of 1961, which contains a prohibition on absentee land ownership, is no longer effective to implement. The relevance of Government Regulation 224 of 1961 to current developments can be seen from several things, namely:

a. Technological progress aspect

Ownership of agricultural land by someone who is outside the area where the land is located, in its development in terms of technological progress where someone can monitor from a distance with communication technology either via cellphone, telephone or even the internet. For example, a person who currently owns land is in and lives in Kalimantan and his land is in Kendari City, that person can order someone else to work on his land, so that the land remains productive and can be used for economic needs, and create jobs for local residents who do not have agricultural land. The work can be effective with the advancement of agricultural technology from the existence of sophisticated agricultural tools and superior plant quality that produces maximum results.

b. Aspects of Transportation Progress

Owners of agricultural land that is located far away or not adjacent to their agricultural land, currently in accordance with the progress of transportation where everyone has a motorized vehicle makes the distance to manage their agricultural land closer even though the location is far away, different from before people who had agricultural land outside the place where they lived had to travel long distances on foot, because there were no adequate means of transportation like now.

4. Conclusion

The implementation of regulations on absentee land ownership is currently ineffective and irrelevant to the current state of society, so that many regulations need to be revised or replaced. Regarding the regulation prohibiting absentee land ownership, there are no regulations specifically regulating absentee land. In addition, the size of the sub-district boundaries as the basis for determining absentee land needs to be reviewed. The Kendari City Land Office only contributes to the prohibition of absentee land ownership (*guntai*) by providing counseling to the community on the importance of effective and efficient land registration both directly to the Kendari city community and through partners, namely Land Deed Officials (PPAT) as an effort to provide legal certainty for land rights holders. The effectiveness of the implementation of the prohibition on absentee land ownership at the Kendari City Land Office is not yet fully effective or has not been maximized, in several cases regarding agricultural land based on research results such as from inheritance, agricultural land that is the object of auction, forgery of documents against the buyer in an authentic deed made before the land deed official (PPAT). In contributing to the prohibition of absentee land ownership (*guntai*) by providing education to the community regarding the importance of effective and efficient land registration as an effort to provide legal certainty and for land rights holders.

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