

## Legal Review of the Four Orderly Land Procedures in the Field of Absentee Land Ownership

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**Abstract.** *This study aims to analyze: 1) Implementation of the Catur Tertib Pertanahan policy on absentee land ownership in Demak Regency. 2) Obstacles and solutions in the implementation of the Catur Tertib Pertanahan program in overcoming absentee land ownership in Demak Regency. This type of research is included in the scope of empirical legal research. The approach method in this study is a sociological legal approach. The types of data in this study are primary and secondary data sourced from primary, secondary and tertiary legal materials. The data collection method uses interview and literature techniques (study documents). The analysis in this study is prescriptive. The results of the study concluded: 1) The implementation of the Catur Tertib Pertanahan policy on absentee land ownership in Demak Regency aims to create legal certainty, equal distribution of land control, and optimal land use in accordance with the principles of social justice. Various regulations have regulated the prohibition of absentee land ownership, including Law Number 5 of 1960 concerning Basic Agrarian Regulations and Government Regulation Number 224 of 1961. Local governments, through the National Land Agency (BPN) and related agencies, conduct data collection, supervision, and land redistribution to ensure that land owned absentee can be allocated to farmers who need it more. However, the implementation of this policy still faces various challenges, especially in terms of law enforcement, land administration, and social and cultural factors in the community. 2) The implementation of this program faces several obstacles, including legal loopholes that allow landowners to avoid regulations, weak law enforcement, and lack of validity of land ownership data. In addition, limited coordination between institutions and low legal awareness in the community also hamper the effectiveness of this policy.*

*To overcome these problems, solutions that can be applied include revising regulations to strengthen rules and sanctions, increasing supervision through digital systems, and optimizing coordination between local governments, BPN, and law enforcement. Education and outreach to the community also need to be improved so that understanding of this policy is broader. With these various strategic steps, the implementation of the Catur Tertib Pertanahan in Demak Regency can run more effectively in overcoming absentee land ownership, so that land distribution becomes fairer and its utilization is more optimal.*

**Keywords:** Absentee Land; Election; Land; Rights; Orderly Chess.

## 1. Introduction

Indonesia has had special provisions governing land, namely in Law Number 5 of 1960 concerning Basic Agrarian Principles, commonly referred to as UUPA, which came into effect on September 24, 1960. UUPA mandates that in order to guarantee legal certainty in the land sector, land rights registration is required throughout the territory of Indonesia. The certificate is the final result of land registration and is authentic evidence. The power of the certificate is a guarantee of legal certainty for the certificate holder as perfect evidence as long as no party against which proves otherwise.<sup>1</sup>

Legal certainty of land ownership begins with a legal product in the form of a land ownership certificate issued by the National Land Agency. Land registration is carried out to protect the rights of the community to their land ownership.<sup>2</sup> BPN as the party organizing land registration guarantees the accuracy of land data, both physical and legal, on the land title certificate, and provides legal certainty by implementing the latest principles, so that the community will feel safe because the community places its trust in BPN as the government that provides guarantees of certainty of land rights.<sup>3</sup> In this regard, the provision, allocation, control, use and maintenance need to be regulated in order to ensure legal certainty in control and use and at the same time ensure protection. law for the people, especially farmers,

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<sup>1</sup>Adrian Sutedi, (2011), *Sertipikat Hak Atas Tanah*, Jakarta : Sinar Grafika. p. 1.

<sup>2</sup>Putri, C. A., & Gunarto, (2018), Efektivitas Pengecekan Sertifikat Terhadap Pencegahan Sengketa Tanah Dalam Proses Peralihan Hak Atas Tanah, *Jurnal Akta*, Vol. 5, No. (1), p.268.

<sup>3</sup>Ni Made Rian Ayu Sumardani & I Nyoman Bagiastra, (2021), *Tanggung Jawab Hukum Badan Pertanahan Nasional Terkait Ketidaksesuaian Hasil Pengecekan Sertifikat Secara Elektronik* . *Acta Comitas : Jurnal Hukum Kenotariatan*, Vol. 06 No. 02, p.224

while maintaining the sustainability of their ability to support activities developments sustainable. One of the important legal aspects with the enactment of UUPA is the launching of the "Landreformil" Program in Indonesia which aims to increase the income and standard of living of farmers working the land, as a foundation or prerequisite for carrying out economic development towards a just and prosperous society based on Pancasila.<sup>4</sup>

The prohibition on absentee ownership of agricultural land is the ownership of agricultural land located outside the area where the owner lives. Article 10 of the UUPA expressly prohibits absentee ownership of land. The implementation of land ownership restrictions up to now, which is more than 50 years since the UUPA was enacted, has still not been able to be implemented properly. This is evident from the large number of absentee land ownerships, which are often known but difficult to prove for various reasons. Absentee ownership of agricultural land is expressly prohibited by the UUPA. Article 3 paragraph (1) of Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation states that 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.

Agricultural land is still used as an object of speculation which results in the area of agricultural land decreasing due to conversion. So legally, this problem lies in the effectiveness of the laws and regulations governing the land reform program itself, one of the principles of which is the prohibition of absentee/guntai land ownership. So it can be said that the failure of land reform is because the prohibition of absentee/guntai land ownership based on the maximum limit of agricultural land cannot be implemented properly. Demak Regency as a region dominated by agricultural activities faces various challenges in implementing land policies, including supervision of absentee land ownership. There are many cases where agricultural land is owned by owners who do not live in the area, which can hinder the optimization of land use for local welfare. This has an impact on social and economic inequality, and raises legal issues related to land management that is not in accordance with the principles of justice and benefit.

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<sup>4</sup>Effendi Perangin, (2019), *Hukum Agraria Di Indonesia, Suatu Telaah Dari Sudut Pandang Praktisi Hukum*, Jakarta : CV Rajawali. p. 122.

## 2. Research Methods

This type of research is included in the scope of empirical legal research. The approach method in this research is a sociological legal approach. The types of data in this research are primary and secondary data sourced from primary, secondary and tertiary legal materials. The data collection method uses interview and literature techniques (study documents). The analysis in this research is prescriptive.

## 3. Results and Discussion

### 3.1. Implementation of the Four-Level Land Order Policy on Absentee Land Ownership in Demak Regency

The Republic of Indonesia as a unitary state places land in an important position.<sup>5</sup> Legal certainty of land can be realized through two efforts. First, by providing complete and clear written legal instruments. Second, by organizing land registration that allows land rights holders to prove their rights to the land they control and for the government to implement land policies.<sup>6</sup>

Administrative order in the field of defense is part of an effort to obtain legal certainty. The rules have placed the task and also the authority on the Government by conducting data collection and registration of land in Indonesia and for the community of rights holders to be able to register the land they control based on the applicable provisions, namely the UUPA. The provisions in the UUPA, namely article 19, regulate subjective legal certainty, namely provisions regarding legal entities and people who are holders of land rights (subjective requirements) and related to objective certainty in the form of boundaries, length, location to width in their control.<sup>7</sup>

The legal basis for land registration is Law Number 5 of 1960 concerning UUPA, Government Regulation No. 24 of 1997, furthermore in its implementation it is further elaborated in the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 dated October 1, 1997 concerning the Implementing Regulation of Government Regulation Number 24 of 1997 concerning Land Registration. The purpose of land registration is to guarantee legal certainty of land

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<sup>5</sup>Arvita Hastarini and Gusti Fadhil Fithrian Luthfan, (2022), 'Kedudukan Hukum Masyarakat Adat Dalam Memperoleh Hak Atas Tanah Di Indonesia', *Jurnal Hukum Sasana*, Volume 8 No. 2, p. 243

<sup>6</sup>Dyara Radhite Oryza Fea, (2018), *Panduan Mengurus Tanah Rumah dan Perizinannya*, Yogyakarta : Legality. p. 90

<sup>7</sup>Irwan Soerodjo, *Op.cit.*, p.78

rights, including legal certainty of land plot objects (rights objects) legal certainty of rights subjects (rights subjects), legal certainty of types of land rights.<sup>8</sup>

*Output* the result of land registration is a land certificate. Legal certainty in the land sector in everyday life intersects with the issue of land certificates. A land certificate is a document issued by the National Land Agency (BPN) as proof of ownership and a person's rights to land.<sup>9</sup>

Land policy in Indonesia aims to create legal certainty, justice, and welfare for the community. One of the main policies implemented by the government is the Catur Tertib Pertanahan, which includes legal order, land administration order, land use order, and maintenance and environmental order. This policy is based on Presidential Decree Number 7 of 1979 concerning the Five-Year Development Plan (Pelita) III, which aims to reorganize the use, control, and ownership of land in accordance with the principles of justice and people's prosperity.

One of the important issues in land policy is absentee land ownership, which is land ownership by someone who does not reside at the location of the land. This ownership system is contrary to the principle of land equality and its direct management by the owner.

The Demak Regency Government has implemented the Catur Tertib Pertanahan policy for absentee land ownership with various strategic steps, including the following:

1. One of the initial steps is the data collection and verification of land owners carried out by the National Land Agency (BPN). This process aims to inventory land ownership, ensure ownership status, and match data with ownership documents and the owner's domicile. This inventory is important to identify land owned in absentee and ensure that land ownership is in accordance with applicable regulations.
2. The government also implements a land redistribution policy through a land reform program. Land that is proven to be owned absenteeely and not in accordance with regulations can be categorized as land for land reform, which will then be allocated to farmers who need it. This land redistribution program aims to improve the welfare of farmers and ensure that the land can be used productively by those who actually manage it.

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<sup>8</sup>Nurhidayah, (2012), Pelaksanaan Pemenuhan Tanggung Jawab Ppat Dalam Pembuatan Akta Jual Beli Tanah Beserta Akibat Hukumnya, *Naskah Publikasi*, Surakarta : Universitas Muhammadiyah. p.16

<sup>9</sup>Ahmad Yani dan Rezky Amalia Syafiin, (2021), Pengarsipan Elektronik Sertifikat Tanah untuk Menjamin Ketersediaan Arsip sebagai Alat Bukti yang Sah pada Sengketa Pertanahan, *Khazanah: Jurnal Pengembangan Kearsipan*, Volume 14 No. 1, p.59

3. In addition to land redistribution, local governments are also trying to enforce the law by imposing sanctions on landowners who violate absentee land ownership provisions. The sanctions applied can be in the form of administrative sanctions, such as warnings and revocation of ownership rights, to the release of land rights owned absentee. This step is taken to provide a deterrent effect to landowners who do not comply with the rules, while preventing land ownership practices that are detrimental to local farmers.

4. To increase public awareness, the local government also held counseling and socialization of land policies. This program aims to provide understanding to landowners and farmers regarding regulations related to land ownership and the importance of direct land management by the owner. Counseling is carried out through various activities, such as meetings with farmer groups, agrarian law seminars, and publication of information through local media.

Based on the analysis of Soerjono Soekanto's theory of legal effectiveness, the implementation of the Catur Tertib Pertanahan policy on absentee land ownership in Demak Regency still faces various challenges in five main factors. From a legal perspective, the regulation is quite clear but there are still loopholes that can be exploited by landowners. The law enforcement factor is still weak due to the lack of coordination between agencies and weak supervision.

### **3.2. Obstacles and Solutions in the Implementation of the Land Orderly Four-Piece Program**

The increase in land use has given rise to various forms of land control and management, and on the other hand, has given rise to the development of normative law, both in terms of statutory and doctrinal approaches.<sup>10</sup> Land issues have long been a complicated and complex legal issue and have broad dimensions in both developed and developing countries, so they are not easy to resolve quickly.<sup>11</sup> Therefore, this land issue needs to be arranged and planned carefully and wisely. Article 20 of the Basic Agrarian Law explains that ownership rights are hereditary, strongest and most complete rights that can be owned by a person over land, taking into account the provisions in Article 6. From this explanation, it can be seen that ownership rights are the strongest rights over land, which give the owner the authority to be able to grant back another right over the land area of ownership that he owns (can be in the form of building use rights or use rights,

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<sup>10</sup>Zakie & Mukmin, (2016), Konflik Agraria yang Tak Pernah Reda, *Legality Jurnal Ilmiah Hukum* , Volume 24, No. 1, p. 42.

<sup>11</sup>Irwan Soerodjo, *Op.cit.*, p. 25.

with the exception of business use rights), which is almost the same as the authority of the State (as the ruler) to provide land to its citizens.<sup>12</sup>

Land administration problems often arise as land disputes, such as disputes caused by unregistered land ownership rights, overlapping land use, and the issuance of duplicate land certificates.<sup>13</sup> Administrative order in the defense sector is part of an effort to obtain legal certainty. To guarantee legal certainty and certainty of land rights by the government is regulated in Government Regulation Number 10 of 1961 which was improved by Government Regulation Number 24 of 1997, namely concerning Land Registration. The Government Regulation was issued as an effort to prevent forms of legal acts that often occur in society.<sup>14</sup> The provisions in the UUPA, namely Article 19, regulate subjective legal certainty, namely provisions regarding legal entities and people who are holders of land rights (subjective requirements) and related to objective certainty in the form of boundaries, length, location and width in their control.<sup>15</sup>

The Four Land Orders is a policy that emphasizes four main aspects, namely legal order, land administration order, land use order, and maintenance and environmental order. Land administration problems that often cause disputes, such as unclear ownership rights, overlapping land use, and the issuance of multiple certificates, show the importance of implementing administrative order in land policies.

The Four Orderly Land Policy, consisting of Legal Order, Administrative Order, Land Use Order, and Maintenance and Environmental Order, is the government's effort to regulate land ownership, control, and utilization in accordance with the principles of social justice and national development goals. One of the issues that is a concern in this policy is absentee land ownership, namely land ownership by someone who does not reside in the area of the land and does not manage it directly.

The implementation of the Catur Tertib Pertanahan program to overcome absentee land ownership in Demak Regency faces various obstacles including

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<sup>12</sup>Kartini Muljadi dan Gunawan Widjaja, (2008), *Seri Hukum Harta Kekayaan : Hak-hak atas tanah*, Jakarta : Kencana. p.30

<sup>13</sup>Anatami & Darwis, (2017), Tanggung Jawab Siapa, Bila Terjadi Sertipikat Ganda Atas Sebidang Tanah, *Jurnal Hukum Samudera Keadilan* 12, No. 1, p. 10.

<sup>14</sup>Rifan Agrisal Ruslan & Umar Ma'ruf, (2017), Kesadaran Hukum Masyarakat dalam Jual Beli Tanah dengan Akta PPAT di Kecamatan Tinanggea Kabupaten Konawe Selatan Sulawesi Tenggara, *Jurnal Akta*, Vol. 4 No. 3 September, p.426

<sup>15</sup>Irwan Soerodjo, *Op.cit.*, p.78



regulatory, administrative, social, and cultural aspects. Therefore, a comprehensive strategy and solution are needed so that this program can run effectively.

Obstacles and solutions to the implementation of the Land Orderly Four-Piece Program for Absentee Land Ownership in Demak Regency, including:

a. Obstacles in the Implementation of the Land Orderly Program for Absentee Land Ownership in Demak Regency

1). In terms of regulation and law enforcement, although there are already rules prohibiting absentee land ownership, as stated in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) and Government Regulation Number 224 of 1961, in practice there are still many legal loopholes that allow absentee landowners to avoid regulations. One way is to transfer land to relatives or register land certificates in the name of another party, making it difficult for the government to identify the actual land ownership.

2). Weak law enforcement is also a factor that exacerbates this problem, because supervision from the authorities is still less than optimal. Many absentee landowners maintain their ownership without direct management, and the lack of strict sanctions makes existing regulations difficult to implement. Although there are provisions regarding the redistribution of absentee land to farmers in need, in reality this effort often faces legal resistance from landowners, thus hampering the implementation of equitable agrarian reform.

3). In addition to regulatory aspects, other obstacles arise from the land administration and governance system. One of the main problems is the lack of valid and integrated land ownership data, which results in difficulties in identifying absentee land. The land registration system still faces various inaccuracies, allowing manipulation in land ownership.

4). Lack of coordination between the National Land Agency (BPN), local governments, and legal institutions also worsens the situation, because without good coordination, supervision and redistribution of absentee land becomes ineffective.

5). Limited human resources and technology in land management also slow down the land ownership verification process, so that policies that should be implemented immediately actually take a long time.

6). Social and cultural factors are also obstacles in implementing this policy. Many people in Demak Regency still have a culture of maintaining land as a family inheritance, even though they no longer live in the area. Land is considered a symbol of family honor that cannot be sold, so many absentee landowners are reluctant to let go of their ownership. In addition, land is also seen as a high-value investment asset, so more owners choose to leave their land unmanaged directly rather than release it to sharecroppers.



7). Lack of legal awareness in the community is also an influential factor, where many farmers and residents do not understand the rules regarding absentee land ownership and its impact on fairer land distribution. This causes land abuse practices to often occur without any reports or actions from the local community.

**b. Solutions to Overcome Obstacles in Implementing the Land Orderly Four-Piece Program in Demak Regency**

1). From the regulatory and law enforcement side, it is necessary to revise the rules that still have legal loopholes, especially in tightening supervision of land transfers that are carried out in a non-transparent manner.

2). It is necessary to strengthen the digital-based land ownership monitoring system to make it easier to identify land ownership that does not comply with the rules. The government needs to improve the digital land data system by utilizing Geographical Information System (GIS) technology, so that land ownership information is more transparent and accurate.

3). The government must also apply stricter sanctions against absentee landowners who do not directly cultivate their land, including prioritizing land redistribution to farmers who need it more.

4). Coordination between BPN, local governments, and legal institutions must also be improved so that land policies can be implemented more effectively.

5). The land certification program for tenant farmers must be accelerated to ensure a more equitable and fair distribution of land ownership.

6). Another effort that needs to be done is to increase socialization and education to the community regarding land policies and regulations related to absentee land ownership. Legal counseling must be intensified so that the community understands their rights and obligations in land ownership and management. In addition, community leaders and religious leaders also need to be involved in socializing the importance of fairer land distribution, so that the community can more easily accept existing policies. Communication channels between the government and the community must also be strengthened so that land problems can be resolved with a more persuasive approach and avoid social conflict.

7). From an economic perspective, there needs to be incentives for absentee landowners who are willing to relinquish their land rights, for example by offering more competitive prices in the land reform program. Partnership programs between absentee landowners and local farmers can also be developed so that the land remains productive even though it is not managed directly by the owner. In addition, the government can encourage the use of land based on cooperatives or other partnership schemes, so that farmers can gain access to land with more flexible and sustainable mechanisms.

Legal certainty can be interpreted as a certain condition and in accordance with the provisions and provisions of the purpose of the formation of a law. Legal certainty is closely related to a sense of security and comfort, because the essence of legal certainty is to create certainty regarding everything that concerns doubt, uncertainty and fear that is human in nature. Furthermore, the study of legal certainty is closely related to the study of legitimacy. A certain condition is considered a legitimate condition according to laws and regulations both formally and materially.<sup>16</sup>

Certainty is a definite state, provision or stipulation. Law must essentially be certain and fair because then the law can operate its function. Certainly as a guideline for behavior and fairness because the guideline for behavior must support an order that is considered fair. Legal certainty is a question that can only be answered normatively, not sociologically.<sup>17</sup> Normative legal certainty is a regulation that is made and enacted with certainty because it regulates clearly and logically. Clear means that it does not cause doubt and is logical. Legal certainty refers to the implementation of clear, permanent, consistent and consequent which in its implementation is not influenced by subjectivity.<sup>18</sup>

These efforts are in line with the principle of legal certainty as stated by Radbruch, where the law must be positive and written in clear regulations, based on objective facts, formulated firmly to avoid ambiguity, and have stability in order to provide consistent legal protection. With legal certainty in land policy, the implementation of rules regarding absentee land ownership can run more effectively, reduce the potential for disputes, and provide certainty for farmers in managing land sustainably.

Radbruch's theory of legal certainty in the context of implementing the Catur Tertib Pertanahan policy in Demak Regency shows that the main obstacle in this program lies in the weak implementation of the law. This condition causes low certainty in enforcing regulations related to absentee land ownership. Therefore, the solutions that need to be implemented include revising regulations to close legal loopholes, increasing the validity of land ownership data, simplifying regulations to make them easier to understand and implement, and maintaining policy stability so that they do not change so that the community can adjust to the

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<sup>16</sup>Rahmat Ramadhani, Jaminan Kepastian Hukum yang Terkandung dalam Sertipikat Hak Atas Tanah, *Jurnal De Lega Lata*, Volume 2, No. 1, January – June 2017, p. 139-157.

<sup>17</sup>Dominikus Rato, (2010), *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*. Yogyakarta : Laksbang Pressindo. p.59

<sup>18</sup>Cst Kansil, Christine, S.T Kansil, Engelien R, Palandeng dan Godlieb N Mamahit, (2000), Jakarta : *Kamus Istilah Hukum*. p.385.

applicable provisions. With these efforts, it is hoped that the Catur Tertib Pertanahan program can run more effectively and legal certainty in land policies can be optimally realized.

#### 4. Conclusion

The implementation of the Catur Tertib Pertanahan policy in Demak Regency aims to create legal certainty, equal distribution of land ownership, and fair land use, by prohibiting absentee land ownership in accordance with applicable regulations. The government through the BPN conducts data collection, supervision, and land redistribution, but faces challenges in law enforcement, administration, and socio-cultural factors. The main obstacles to the implementation of this policy include legal loopholes, weak enforcement, lack of valid data, and minimal coordination between institutions. The proposed solutions include regulatory revisions, digitalization of supervision, increased coordination, and public education, so that land distribution and use are fairer and more optimal. The government needs to increase the effectiveness of the implementation of the Catur Tertib Pertanahan policy by strengthening the land ownership data collection and supervision system through digital-based technology. In addition, coordination between the National Land Agency (BPN), local governments, and law enforcement officers must be strengthened so that supervision of absentee land is more optimal. The application of strict sanctions for violators and the acceleration of land redistribution to farmers in need are also important steps to ensure that this policy runs in accordance with the goals of social justice and equal access to land.

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