

## **Juridical Review of Absentee Ownership of Agricultural Land Rights through Inheritance Based on Basic Agrarian Law**

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**Abstract.** *Absentee land ownership can create legal uncertainty and risks for parties involved in using the land, such as tenants, cultivators, or parties who have other interests in the land. Thus, this research aims to determine and analyze the legal status of heritage objects in the form of absentee land, and legal protection for heirs who receive rights to absentee land. The research method used is normative juridical with a statutory approach and a conceptual approach. The type of data used is secondary data sourced from primary and secondary legal materials. Data collection method using literature study. The data analysis method uses perspective analysis. The results of the research conclude that the legal status of the inheritance object in the form of absentee land, if a legal event occurs which causes the transfer of ownership rights to the land is an inheritance process. This inheritance event causes absentee ownership of land. According to the law, absentee land ownership is clearly prohibited, but what is prohibited is absentee land ownership, isn't it? Therefore, when the heir is truly a legal heir according to law, the heir can receive the rights to the inheritance given by the heir, thus the heir can still receive the inheritance in the form of agricultural land even though the heir lives in outside the sub-district that borders the location of the land. Legal protection for heirs who have rights to absentee land according to the law is that when the heirs can cultivate and work on the agricultural land efficiently without using extortion methods, then the heirs can still have rights to the land by moving to the location of the agricultural land that the heir owns.*

**Keywords:** *Absentee; Heirs; Inheritance; Land; Protection.*

### **1. Introduction**

Land has a very important role for humans because it is impossible to separate land from human life itself. This is further clarified in Article 10 paragraph (1) The Basic Agrarian Law (UUPA), namely Law number 5 of 1960 concerning Basic

Agrarian Principles Regulations, states that every individual and legal entity that has rights to agricultural land is required to actively cultivate and manage the land, while preventing practices blackmail.

Land is an asset of the community, people and nation. Farmers are considered entrepreneurs who depend on land as an important asset in their agricultural business, therefore UUPA was created with the aim of making the government or state responsible for regulating land use and protecting land rights. This arrangement has a major impact on people's income and welfare, this is also in line with the Koran which explains that land and everything on this earth absolutely belongs to Allah. This essential principle is explained in the Qur'an as in the letter Ali Imran verse 189, To Allah belongs the kingdom of the heavens and the earth and Allah is all-powerful over all things. Allah gives/entrusts His possessions to humans as stated in Surah Al-Baqarah verse 29.

هُوَ الَّذِي خَلَقَ لَكُمْ مَّا فِي الْأَرْضِ جَمِيعًا ثُمَّ اسْتَوَىٰ إِلَى السَّمَاءِ فَسَوَّاهُنَّ سَبْعَ  
سَمَاوَاتٍ وَهُوَ بِكُلِّ شَيْءٍ عَلِيمٌ

Huwa lazi khalaqa lakum maa fi ardi jami'an summas lawaaa ilas samaaa' fistasaw walahunna sab'a samaa waat, wa Huwa bikulli shai'in Alim

This means that He (Allah) created everything on earth for you, then He went to the heavens, then He perfected them into seven heavens. And He is All-Knowing of everything.

The basic principle of agrarian law in Indonesia is that land can only be owned by the state, regional governments, Indonesian legal entities and Indonesian citizens. Absentee land ownership is a situation related to the land owner not living or not being in the land area he owns. Indonesia, absentee land ownership can be regulated based on Law no. 5 of 1960 concerning Agrarian Principles. This law regulates land ownership rights in Indonesia, including land ownership by parties who are not domiciled in the land object area. Currently, land ownership by parties who are not domiciled in the land object area is still limited by applicable regulations.

Absentee land ownership is a concern and needs to be regulated in law because it involves land owners who are not domiciled in the land area. Absentee land ownership can cause several problems and consequences that need to be overcome. Absentee land ownership can cause difficulties in managing the land. Landowners who are not in close proximity to their land may face obstacles in monitoring, maintaining, or managing the land effectively, which can have a negative impact on the productivity of the land or its optimal use.

Absentee land ownership can create legal uncertainty and risks for parties involved in using the land, such as tenants, cultivators, or parties who have other

interests in the land. Regulations governing absentee land ownership can provide legal protection and certainty for the parties concerned, ensuring that their rights are recognized and protected. Legal uncertainty can arise because there is a lack of clarity regarding the rights and obligations of the parties involved in using or exploiting the land. In the situation of absentee land ownership, parties who depend on the land for their activities, such as tenants or cultivators, may not have certainty whether they can maintain their rights in the long term.

Regulations governing absentee land ownership are needed to provide legal protection and certainty for related parties<sup>9</sup>. This regulation may contain provisions regarding the rights of tenants, cultivators, or parties who have other interests in the land, such as rights to use, contract extensions, or rights to compensation in cases of changes 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 the Basic Regulations on Agrarian Principles, 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 methods" <sup>10</sup>. In principle, this article requires agricultural land owners to work or cultivate their own land and are still allowed to use labor but must prevent practices that can cause unilateral losses. The first step towards implementing this principle, meaning that the owner of agricultural land is obliged to actively work or cultivate it himself, then provisions are made to abolish land control agriculture in absentee or in Sundanese guntai. One of the land reform programs is the prohibition of absentee or guntai land ownership. The implementing regulations of the UUPA which regulate absentee or guntai land ownership are regulated in Article 3 paragraph (1) PP No. 224 of 1961 concerning the Implementation of Land Distribution and Provision of Compensation (amended and supplemented by PP No. 41 of 1964) states that "land owners who reside outside the sub-district where their land is located, within a period of 6 months are obliged to transfer their land rights to another person. in the sub-district where the land is located or moving to the sub-district where the land is located".

The problem of absentee land ownership, the implementation of the regulations does not automatically work well. There are several previous studies which actually reveal the existence of a prohibition to examine the urgency of the current prohibition on absentee land ownership and to analyze the prohibition on absentee land ownership in the 1961 Government Regulation from the *masalah murlah* perspective. This research is normative legal research that uses a statutory approach and a conceptual approach. Collecting legal materials using the library study method obtained from the library through searches of literature and legislation books, both primary and secondary. The results obtained from

this research are first, the urgency of the prohibition on absentee land ownership in Government Regulation Number 224 of 1961 is the large number of people who control land that is not worked/cultivated efficiently, therefore until now the prohibition on absentee land ownership needs to be regulated in relation to prohibition regulations. Second, these regulations are in accordance with the concept of *maslahah murrasa* (something that is good according to reason with the consideration that it can bring about goodness or avoid evil for humans), where these regulations, apart from bringing benefits to humans, also do not conflict with the propositions of *sharia*'.

The research above shows that there are different points of view regarding absentee land ownership, in previous research there were prohibitions and permits but with regulations. The relevance of this research is as a continuation of exploring the effectiveness of absentee land ownership in terms of Law No. 5 of 1960. Putra's research (2019) also highlights Article 10 paragraph 1 as a form of prohibition on absentee land ownership. It was further emphasized that in order to create a just and prosperous farming community, the government would carry out a land reform program which includes an overhaul of land ownership and control as well as legal relations related to land control. Article 10 paragraph (1) of the Basic Agrarian Law mandates the prohibition of absentee ownership of agricultural land. Work on the land they own so that the agricultural land becomes productive and no agricultural land is abandoned or absentee. The aim of prohibiting absenteeism is so that most of the results obtained from land exploitation can be enjoyed by the village community where the land is located. The phenomenon of absentee/*guntai* land prohibitions actually occurs, but strict sanctions are not implemented. Both previous studies addressed absentee land ownership in the form of prohibitions on absentee land. Absentee land ownership, empirically, does not only occur due to buying and selling transactions, but can also occur due to inheritance. So, what would be the aspect of justice if the prohibition on the application of absentee land was responded to and actually became a prohibition?

## **2. Research Methods**

The research method is a type of research that is normative law, meaning legal research that places the law as building a system of norms. The norm system in question is about norms, rules and principles as the substance of law, the application of law by legal structures and observing the law when interacting with society. Researcher use this type of research because it will provide an overview of legal status of inheritance objects in the form of absentee land and legal protection for heirs who receive rights to absentee land.

The data analysis method used by the author is the perspective analysis method. Perspective analysis is intended to provide an argument for the results of the research that has been carried out. This argumentation is to provide a

perspective or assessment regarding right or wrong according to law regarding legal facts or events from the results of research that studies the research object of absentee land transfer, absentee land ownership status and legal protection. against heirs who receive rights to absentee land.

### **3. Results and Discussion**

#### **3.1. Legal Status of Heritage Objects in the Form of Absentee Land**

##### **a. Position of Absentee Land (history, philosophy, legal basis)**

The concept of land ownership occupies a central position in different historical periods. For example, in prehistoric times, when humans had a close relationship with the earth as a place to live and a place to carry out their daily lives. Even in this period, when people gradually abandoned their traditional ways and surrendered to a more modern life independent of natural conditions, the concept of the existence of land did not disappear, but became more important.

The close relationship between humans and land can be attributed to the fact that land is not only the basis and means of daily survival, but also has economic value for all aspects of human life. Benhard Limbong said that land is very important for human life because most of their lives depend on land. Land is a gift from God Almighty to mankind on earth. From birth to death, humans need land as a place to live and as a source of life. In this case, land has economic, social, cultural, political and environmental aspects.

##### **b. Position of Acquiring Rights Based on Inheritance**

Inheritance is a process of transferring a person's assets to his heirs which occurs only because of death. Therefore, inheritance will only occur if 3 requirements are met, namely:

1) Someone has died;

2) There is someone who is still alive as an heir who will receive a certain amount of inheritance when the testator dies. The heir or heirs must be present when the testator dies. This provision does not mean that it reduces the meaning of Article 2 BW, namely: "a child in a woman's womb is considered to have been born, if the interests of the child so require". If he dies at birth, he is considered to have never existed. This means that the baby in the womb has also had its rights regulated by law as an heir and has been deemed capable of inheriting. There are a number of assets left by the heir.

##### **c. Position of Absentee Land Acquired Based on Inheritance**

Law is a set of norms formed to order society, with the aim of creating a sense of security and a sense of justice. Indonesian law is the law that applies in

Indonesia, this explains that everything related to the survival of society, state and government must be based on law, so as to create a sense of justice in society and prevent the emergence of conflicts between individuals and individuals, individuals and groups, groups with groups and individual or group conflicts with the State.

The Indonesian state is a legal state, adhering to the concept of a welfare state, and this can be implicitly found in the general explanation of the 1945 Constitution IV Amendment, and if examined as a whole it can be concluded that the Indonesian state is a type of legal state, conceptualized to bring prosperity and realize justice. social citizenship.

Normatively, the aim of the Indonesian State as stated in the Preamble to the 1945 Constitution, Amendment IV, is to advance general welfare. Public welfare is a condition that can be felt by society for a peaceful and just life. The condition of a peaceful and just society can be described as a feeling that is free from helplessness, anxiety about it will happen next, and also feelings of fear of pressure that will lead to injustice.

Community welfare is not the sum of the welfare of all individuals in society. Social responsibility in the implementation of general welfare by the state through the government should be seen as an effort to facilitate society so that each individual can realize their welfare independently. Advancing general welfare means food security and improving population health.

Meeting the need for food is related to the availability of agricultural land. Land for agriculture in English is called Agrarian. The term Agrarian comes from Dutch, namely from the word Akker, according to Greek, agricultural land is called Agros, and the word agger is known in Latin which means land or a piece of land, while the word Agrarius is interpreted as cultivation, rice fields, agriculture.

UUPA Article 1 paragraph (1), explains that land is the surface of the earth, while land rights are rights to a certain part of the earth's surface, which has boundaries, has two dimensions, namely length and width. Arba further explained that control of land rights can be owned by the state, customary law communities, individuals or legal entities, and can benefit from the economic and cultural value it creates.

Regulations regarding absentee land are contained in Article 10 paragraph (1) of Law Number 5 of 1960 which states that: "Every person and legal entity who has a right to agricultural land is in principle obliged to work or actively try to do so yourself, by preventing extortion methods." Furthermore, the implementation of Article 10 UUPA through Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1960 concerning Implementation of Land Distribution and Provision of Compensation, especially Article 3a stipulates that:

That the owner of agricultural land who moves or leaves his place of residence outside the sub-district where the land is located for two consecutive years and does not report it to the authorized official, then he is obliged to transfer his ownership rights to another person who resides at the location of the land.

According to Bernhard Limbong, conceptually there is a connection between the agrarian reform program and poverty reduction, increasing productivity, food security, economic development and independence, and environmental preservation. Agrarian reform not only contributes to and improves the level of welfare of rural residents, but also strengthens food security and the national economic base. The demand for agrarian reform in the context of environmental protection is a reform demand that is beneficial for the current community and future generations. Land control rights over absentee land have been linked to certain rights as subjects or rights holders. Basically the source of land law in Indonesia can be divided into two sources of law, namely sources of written law and sources of unwritten law. Boedi Harsono explained that written legal norms are norms outlined in statutory regulations, while customary law norms are unwritten, in the form of customary law and new customary law which is not customary law.

In relation to absentee land ownership based on what is explained above, land ownership cannot be separated from the customary norms of each region or location of the land. Of course, regarding traditional matters, their existence is also recognized by legal norms in social life.

For parties who carry out certain legal actions regarding land rights, generally the prospective recipient of the rights is required to make a statement as mandated by Article 99 PMNA/KBPN Number 3 of 1997. The statement letter includes, among other things, the issue of absentee land ownership and land reform.

#### **4. Conclusion**

The state in prohibiting absentee land ownership does not in any way intend to eliminate the inheritance rights of the heirs, because the inheritance process occurs due to natural law. However, if the two provisions above are not met, the state will take over the rights to absentee land owned by the heir provided that the state will provide compensation to the heir. Thus, it can be concluded that the legal status of inherited land in the form of absentee land remains valid for inheritance, but provided that the owner of this absentee land inheritance from the time he receives the inheritance within a period of 2 (two) years must transfer ownership rights to the land if the owner of this inheritance does not want to move. to the sub-district where the land is located. The legal status of inherited land in the form of absentee land remains valid for inheritance, however, the owner of the inherited land must comply with the applicable regulations, namely within a period of 2 (two) years, if the owner does not move

to one sub-district with the location of the land, then he must transfer ownership rights to its legacy to the people who live in the district where the land is located. Or there could be harmonization of the latest regulations to keep up with the existing era or era, because currently there is a lot of transportation or vehicles and they can reach distant areas to make them feel close. And what's more, toll road access is now easier, which can shorten travel time.

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