

Status of the Ban on Absentee Ownership of Farmland in Indonesia

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Abstract

This research investigates whether the ban on absentee land ownership retains its significance in today's context. The goal is to provide an updated perspective on the prohibition of absentee ownership of agricultural land in Indonesia. This investigation is normative, supported by empirical evidence, and employs both a statutory and a conceptual framework throughout the paper. The findings yield the following conclusions: initially, the underlying rationale for banning absentee land ownership is to ensure that agricultural land is actively cultivated and managed by its rightful owner for optimal yield. This emphasizes the principle that agricultural land should be actively utilized by its owner, as outlined in Article 10 of the UUPA. There is a necessity for oversight and preventive actions, such as rejecting registration applications, enforced by the district or city land office, to halt the ongoing issue of absentee land registration. Secondly, the importance of the absentee land ownership prohibition in Indonesia has diminished in light of contemporary realities, as the legislative framework established sixty years ago is no longer aligned with present-day societal conditions. The regulations regarding absentee land ownership require modernization; previously, ownership of agricultural land was restricted to the sub-district level, which should be revised or replaced by new laws allowing agricultural land ownership at the district or city level. This transformation would enable the new regulations to respond to the evolving landscape and address the increasingly complex challenges that arise.

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1. INTRODUCTION

Humans, as living creatures who continuously fulfill their needs to maintain their survival, require land as their primary support. This is not only related to the life phase, namely survival, but also to the death phase of humans. During the life phase, humans depend on land to meet their needs by utilizing and managing land in the agricultural sector. Furthermore, in the death phase, humans depend on land to bury the deceased. So central is land to life that it becomes "*epicenter*" for the order of human life, especially since it has become a daily fact of life that the majority of people in Indonesian society earn their living or livelihood by depending on the land,[1] therefore it is appropriate that the land needs to be regulated so that its use and management are carried out sustainably.

As mandated of Pancasila as *philosophy grounds Lach* and the main legal guidelines in the administration of the state itself[2] and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), as a follow-up to the above mandate, the Indonesian state, in this case the government, enacted Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA). The state has an obligation

to organize the allocation, use, supply and maintenance of all natural resources in order to create legal certainty and legal protection for the wider community in relation to land.[3]

One of the very vital objectives reflected in the UUPA *land reform* is nothing more and nothing less than a support, reference and legal protector for farmers and will further increase the welfare of the farmers themselves, and will also have a broad impact on the national economy and food security, this will be in accordance with the points of Pancasila towards a just and prosperous society.[4] Influence *land reform* and agriculture reciprocally, is clear, because one of the goals *land reform* is an increase in productivity. Poverty appears When a very large land is not accompanied by the corresponding energy to work the land, this will affect the level of productivity, ultimately resulting in low productivity. Especially when the owner is "*absentee landlords*" (landowners), whose land is worked by other people or tenant farmers, the cultivation of the land will be less than optimal because there is no special intensity on the land and it even seems to be worked haphazardly which is very unproductive, this is also because landlords usually have competent jobs outside the area where the land they own is located, there are also some vacant lands because the owners do not want their land to be worked by other people.[5]

Land reform is a fundamental change regarding land ownership and control and the legal relationships related to land management. The program *land reform* includes:[6]

- a. Prohibition to dominate agricultural land that exceeds the limit;
- b. Prohibition of ownership of agricultural land *absentee*;
- c. Redistribution of land beyond the maximum limit and other lands
- d. Regulations on the return and compensation of agricultural lands;
- e. Arrangement of agreements on sharing of agricultural land profits;
- f. Establishing minimum limits on land ownership, followed by a prohibition on carrying out actions that result in the division of land ownership into very small parts.

As a form of the state's seriousness in regulating land allocation and its management in a sustainable (active) manner, especially for agricultural land, it is contained in Article 10 of the UUPA which states that "Every person and legal entity who has a right to agricultural land is in principle obliged to work or actively manage it themselves, by preventing extortion." This states that it is not permitted for a person to own agricultural land with the *absentee* status (hereinafter referred to as land) (*absentee*). Until in one of the programs *land reforms* arranged land ban *absentees*. Prohibition against land ownership *absentee* is a type of land that is located far from the owner of the right and conceptually the land *absentee* contrary to the principle that every person who has rights to land is obliged to actively cultivate the land himself.[7]

After sixty years since the legislation was enacted, namely UUPA and its implementing regulations Government Regulation No. 224 of 1961 concerning the Implementation of Land Distribution and Provision of Compensation (hereinafter referred to as PP No. 224 of 1961) was amended by Government Regulation No. 41 of 1964 concerning Amendments and Additions to Government Regulation No. 224 of 1961 concerning the Implementation of Land Distribution and Provision of Compensation (hereinafter referred to as PP No. 41 of 1964) the formation of provisions regarding land *absentee* ownership. The relevance of these laws and regulations to current conditions and circumstances is now being questioned. Considering that these laws and regulations were formulated in a context of Indonesia at that time, which was very different from the current situation. Therefore, the legal issue to be examined concerns whether the regulation prohibiting land *absentee* ownership still relevant to the current situation.

2. METHOD

This research is normative research and is assisted by empirical data to analyze the renewal of the rules prohibiting agricultural land *absentee* ownership in Indonesia [8] Furthermore, using a legislative approach (*statute approach*) and conceptual approach (*conceptual approach*) [9] in this paper. The legislative approach will be used in studying and analyzing the regulations including UUPA, PP No. 224 of 1961 and PP No. 41 of 1964. The conceptual approach is used to examine legal issues with existing views and doctrines, especially land law.

3. DISCUSSION

I.1 Legis Ratio of the Prohibition on Land *Absentee* Ownership

Implicitly, the provisions of Article 10 of the UUPA stipulate a prohibition on land *absentee* ownership. The purpose of the prohibition on land *absentee* ownership, intended for land owners or land rights holders so that the agricultural land is managed actively and sustainably. Any form of transfer of ownership rights to agricultural land in the form of sale, exchange, gift, or inheritance that causes its status to become *absentee* or which does not remove the *absentee* status is not allowed (prohibited). Up to the ground *absentee* will be controlled by the state, in this case the government, and will then be made an object *land reform* (distributed) to farmers who need land and to former land owner's *absentee* given compensation.

However, in practice in society, injustice is often found in the process because the price offered by the Owner is too high and conversely the compensation from the Government is also too low.[10] Therefore, ideally, it should focus on the form of compensation that must benefit the people as the goal of implementing the policy so that it is not justified to harm the individual rights of the community as land owners.[11]

Land ownership prohibition *absentee* regulation implicitly, contained in Article 10 of the UUPA and its implementing regulations, namely PP No. 224 of 1961 *because*. PP No. 41 of 1964. In Article 3 and additional articles, namely Articles 3a to 3e in PP No. 224 of 1961 *because*. PP No. 41 of 1964. The description of Article 3 of PP No. 224 of 1961 is as follows:

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

Article (2): The obligation in Article (1) no longer applies to land owners who have a residence in a sub-district adjacent to the sub-district where the land is located, if the distance between the residence and the land still allows for maximum cultivation of the land.

Article (3): Without limiting the rules in Article (2) of this Article, if the land owner moves or leaves his domicile outside the sub-district where the land is located for 2 consecutive years, he is obliged to transfer the ownership rights to his land to another party domiciled in that sub-district.

Article (4): The provisions of Article 1 and Article 3 no longer apply to parties who carry out state duties, carry out religious obligations or have other special reasons that can be accepted by the Minister of Agrarian Affairs. For Civil Servants and Military Officials and carrying out state duties, the exception in this Article is limited to the ownership of agricultural land up to an area of 2/5 of the maximum area regulated for the relevant area according to Law Number 56 of 1960.

Article (5): If the obligations in Article 1 and Article 3 are not fulfilled, the related land will be taken over by the Government."

The following is a description of the additional regulations in Articles 3a to 3e of PP No. 41 of 1964:

a. Pasal 3a.

"Article (1): Owners of agricultural land who move or leave their place of residence outside the sub-district where the land is located for 2 (two) consecutive years, and report this to the authorized local official, then within 1 (one) year from the end of the 2 (two) year period mentioned above, they are required to transfer ownership of their land to another person who resides in the sub-district where the land is located";

Article (2): If the land owner referred to in paragraph (1) of this article moves or leaves his residence outside the sub-district where the land is located, and he does not report this to the authorized local official, then within 2 (two) years from the time he leaves his residence he is obliged to transfer ownership of his land to another person who resides in the sub-district where the land is located."

b. Pasal 3b.

"Article (1): Civil servants and members of the Armed Forces and other people who are equal to them, who have stopped carrying out their state duties and who have rights to agricultural land outside the sub-district where they live within 1 (one) year from the time they finish their duties, are required to move to the sub-district where the land is located or transfer ownership rights to their land to another person who lives in the sub-district where the land is located;

Article (2): In certain cases which can be considered to have reasonable grounds, the time period referred to in paragraph (1) above may be extended by the Minister of Agrarian Affairs."

c. Article 3c.

"Article (1): If a person has rights to agricultural land outside the sub-district where he lives, which he obtained through inheritance, then within 1 (one) year from the time the heir dies, he is obliged to transfer it to another person who lives in the sub-district where the land is located or move to the sub-district where the land is located;

Article (2): In certain cases which can be considered to have reasonable grounds, the time period referred to in paragraph (1) above may be extended by the Minister of Agrarian Affairs."

d. Article 3d. "It is prohibited to carry out any form of transfer of new rights to agricultural land which results in the land owner in question having a plot of land outside the sub-district where he/she resides."

e. Article 3e. "Failure to comply with the provisions in Articles 3a, 3b, 3c and 3d will result in both the land and the landowner in question being subject to the provisions in Article 3 paragraphs (5) and (6) of Government Regulation No. 224 of 1961 (State Gazette of 1961 No. 280)"

The regulation has a very clear essence and urgency that it is not permitted to own land individually *absentee*, because it causes unexpected things such as extortion and forced labor, perhaps for farmers who do not have rice fields, as in the colonial era before Indonesia's independence. [12] Furthermore, this article does not explicitly regulate the requirements for someone to be able to own agricultural land in the sub-district where the owner lives, what requirements are needed to determine the truth of

someone's location. [13] This creates room for legal abuse so that a person/party can own land *absentee* legally. The rule has not been changed until now, causing irregularities that appear in the implementation of the rule about the prohibition of land ownership in accordance with absenteeism. This results in a legal vacuum in the regulations.

Therefore, ownership of *absentee* land will result in the agricultural land being managed ineffectively, for example; *First*, Regarding the results obtained, farmers who work on land owned by other parties only receive a portion of the results they manage, this is in contrast to land owners who are far from the location of the land but receive more results from their share of the land. *Second*, Regarding its management, the farmers manage the land with all their might and a full sense of responsibility, accepting all the risks involved. Meanwhile, the landowners do not manage their land, exert any effort, or participate in accepting all the risks. Implicitly, this appears to result in a system of exploitation.

I.2 Relevance of the Land Ownership Prohibition Rule of *Absentee* with the Current Situation Conditions

The problems that arise can be seen from the extent to which the legislation regarding the prohibition on land ownership is relevant *absentee* the situation that occurs in society. The effectiveness of a regulation is of course due to causal factors. The factors that cause *absentee* land, namely:[14]

a. Community Factors;

Regulations can operate properly if they are supported by a social order that adheres to applicable laws. For example, if the owner is aware of the provisions regarding *absentee* land, but intentionally and negligently because there are no checks. This indicates that there are still factors in society that are not responsive to applicable laws.

b. Cultural Factors;

Inheritance is one of the causes of land *absentee* ownership. *Because*, inheritance is a traditional event that has been passed down from generation to generation and has been going on for a long time in Indonesia.

c. Legal Factors;

Seen in terms of legality, all provisions regarding the prohibition on land ownership are *absentee* is valid in the eyes of the law, because it was compiled by an authorized official and its compilation went through the proper process, but from the aspect of *material*. However, these regulations are old and are no longer easy to implement today.

d. Facilities and Infrastructure Factors;

There is no inventory regarding the existence of absentee land is a result of increasing *the complex* ownership of agricultural land. Of course, in terms of supervision and recording, this is the task and authority of the land office in terms of supervising absentee land implemented at the district or city level.[15] This, of course, requires considerable effort and time. This situation is also not balanced by the active participation of the community in reporting land *absentee* ownership so that supervision does not run effectively.

e. Community Institution Factors;

The presence of the Sub-district Head/Village Head is expected to assist the Land Office in implementing regulations regarding the prohibition on private ownership of agricultural *absentee* land. The situation that happened even helped to protect the interests of the land owner *absentee* so that you can pass the

registration process, one of which is by making it easier to make a Domicile Certificate.

f. Economic Factors;

The demand for land is increasing day by day, in line with rising land prices and its potential as an investment. Most land owner's *absentee*. Previously, they lived on the farmland, then after their economic conditions improved enough while away from home, they were encouraged to buy the farmland as an investment for their retirement. Similarly, for farmers who own farmland, when they want to improve their economy and then migrate to the city, whether they realize it or not, their farmland becomes an *absentee*.

Thus, the relevance of the prohibition on land *absentee* ownership in Indonesia, it is no longer relevant to current conditions. This is based on the thinking expressed at the time the provisions were made, which no longer aligns with current conditions and societal needs twenty years since the legislation. It will be difficult to adapt and apply to the conditions of society which are increasingly developing dynamically and giving rise to increasingly complex problems.

4. COVER

I.3 Conclusion

First, that the legal ratio of the prohibition on land *absentee* ownership is so that agricultural land can be worked and managed sustainably (actively) by its owner in order to obtain maximum results. This is a form of realization of the principle that agricultural land must be worked actively by its owner as stated in Article 10 of the UUPA. *Second*, relevance regarding the prohibition on land ownership of *absentee* in Indonesia is no longer relevant to current conditions because the conditions of the laws and regulations that were created sixty years ago are no longer in accordance with the current conditions of society which continue to develop dynamically and increasingly complex problems arise.

I.4 Suggestion

First, there needs to be supervision and preventive measures in the form of rejection of files to be registered. This is carried out by the district or city land office to prevent land registration *absentee practices* which still often happens today. *Second*, regulations regarding the prohibition of land *absentee* ownership. There needs to be a renewal of the previous agricultural land ownership which was only allowed at the sub-district level, replaced or revoked with the existence of new legislation so that agricultural land ownership can be relaxed to the district or city level so that the new legislation can adapt to conditions which continue to develop dynamically and answer all the problems which arise which are increasingly complex.

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