

# Protection of Heirs Against Absentee Land Ownership

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**Abstract:** Land ownership is often non-existent in communities. Ownership through the process of inheritance, where the heirs live outside the district area where the object of inheritance is located. For example, a person living in a city inherits from his parents a farm in the village; this automatically made the heirs the absentee landowners. This study aims to provide legal protection for absentee land ownership obtained from the inheritance process. This study uses normative legal research methods with several approaches, namely the statutory approach and the conceptual approach. Legal protection for heirs of owners of land rights that do not exist in positive law. If the heirs do not exploit or utilize land that does not exist as mandated by law adequately, then there is no legal protection for the heirs. The prohibition of absentee land does not apply to persons or legal entities residing outside the sub-district which borders the location of agricultural land and allows agricultural land owners to cultivate or cultivate it efficiently.

## 1. Introduction

According to the Government Regulation of the Republic of Indonesia, Number 18 of 2021, concerning Management Rights, Land Rights, Flats Units, and Land Registration, article 1 point one states that land is the surface of the earth both in the form of land and covered by water, including the space above and inside the body. The earth, within certain limits, the use and utilization of which are directly or indirectly related to the use and utilization of the earth's surface.

The land is a gift God Almighty gives that cannot be separated from human life. Land can be used as a place to live, a place to cultivate land, and a business place until humans will always need land. This shows that land is a significant factor in supporting human life. Indonesia is an agrarian country, so land is the most important and central in meeting the needs, especially in the food sector. Not a few Indonesian people depend on their livelihoods by using land for farming.<sup>1</sup> The correct understanding of agrarian (land law) is essential for the Indonesian people because most of the people's work is farming; that is why Indonesia is also known as an agricultural country.<sup>2</sup>

<sup>1</sup> Eka Rustiana, and Kholid Hidayat. "Kepemilikan Hak Atas Tanah Pertanian Absentee Dalam Perspektif Maqashid Syariah." *Jatiswara* 37, no. 2 (July 29, 2022): 185-94. <https://doi.org/10.29303/jtsw.v37i2.395>.

<sup>2</sup> Chita Herdiyanti, "KEPEMILIKAN TANAH ABSENTEE OLEHPEGAWAI NEGERI SIPII BERDASARKAN PERATURAN PEMERINTAH NOMOR 4 TAHUN 1977." *Jurnal Magister Hukum Argumentum*, (May 3, 2019). <https://doi.org/10.24123/argu.v6i1.1848>.

The land is synonymous with “land acquisition/reclamation,” which is getting worse due to land reclamation practices. Land acquisition is handing over land to the rightful owner by paying adequate and reasonable compensation. Sumardjono’s opinion regarding the explanation of land acquisition, namely: “Land acquisition is an act of the government to acquire land for use in various development activities, especially for the public interest.”<sup>3</sup> Soil is a natural resource that can be renewed because the amount is enormous. Juridically, the concept of land is regulated in detail in the Agricultural Law, which regulates the acquisition of land rights. The State and how to get everything is regulated because the State is an object of law. As well as land is one of the many natural resources created by God, which in this case is regulated by agricultural law because God no longer makes the earth; because the population is increasing day by day, the government makes agricultural laws to organize the people so that they make sure that there are no disputes over land.<sup>4</sup>

The land also plays a role as the principal capital in development with a social function. This social function means that the use of the land must be adapted to circumstances according to its nature and rights so that it can be beneficial for increasing the welfare and happiness of those who own it as well as for the surrounding community and the country. Given the usefulness of this precious land for the community, in addition to housing needs, inheritance for the next generation, and agricultural land, its control, control, and management must be regulated strictly and in detail by laws and regulations in force. Indonesia so as not to harm other parties later and help improve the welfare of Indonesia and its people.<sup>5</sup> The land is communal property and belongs to the people; farmers are entrepreneurs, so land is an essential resource for their agricultural business, so the BAL is made so that the government/State must direct land use and regulate land. This arrangement has a significant impact on income and welfare.<sup>6</sup>

In Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that: Earth, Water, and Natural wealth contained therein is controlled by the State and used as much as possible for the prosperity of society. The provisions of this article are a constitutional basis in the regulations on land in Indonesia, which became the basis for the party forming Law Number 5 of 1960 concerning Basic Agrarian Regulations (from now on referred to as the UUPA). In the general explanation of the UUPA it is stated regarding the purpose of its promulgation, namely: a. Laying the foundations for drafting national agrarian law, which will be a tool to bring prosperity, happiness, and justice to the State and the people, especially the peasantry, within the framework of a just and prosperous society; b. Laying the foundations for establishing unity and simplicity in land law; c. Laying the foundations to provide legal certainty regarding land rights for the people.<sup>7</sup>

When the BAL came into effect, it was a statement that the Colonial Agrarian law was no longer valid as regulated in Agrarische Wet Stb.1870 No.55 and Agrarische Belsuit Stb.1870 No.118.

<sup>3</sup> Andi Besse Tenriawati, “PELAKSANAAN GANTI RUGI PENGADAAN TANAH PADA BENDUNGAN NIPA-NIPA DI KABUPATEN GOWA,” (2021). <https://repository.unibos.ac.id/xmlui/handle/123456789/1155>.

<sup>4</sup> Muhammad Iqbal Hamdani, “Perlindungan Hukum Ahli Waris Terhadap Tanah Absentee” *UNTAG SURABAYA REPOSITORY*, n.d., (2019), <http://repository.untag-sby.ac.id/1349/>.

<sup>5</sup> Santoso, Urip. *Hukum Agraria (Kajian Komprehensif)*. (Jakarta, Indonesia: Kencana Prenada Media, 2012), 323.

<sup>6</sup> Djanggih, Hardianto, and Salle Salle. “Aspek Hukum Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum.” *Pandecta: Research Law Journal* 12, no. 2 (January 1, 2017): 165–72. <https://doi.org/10.15294/pandecta.v12i2.11677>.

<sup>7</sup> Urip Santoso, *Hukum Agraria (Kajian Komprehensif)*. (Jakarta, Indonesia: Kencana Prenada Media, 2012), 47.

According to Boedi Harsono, UUPA is a law that carries out agrarian reform because it contains a program known as the Panca Agrarian Program, which includes: a. Renewal of Agrarian Law through legal unification with a national concept and guarantee of legal certainty; b. The abolition of foreign rights and colonial concessions to land; c. Put an end to land ownership and control and legal relations related to land ownership to achieve an even distribution of prosperity and justice; d. Planning for the supply and allotment of land, water, and the natural resources contained therein and their planned use by their carrying capacity and capability; e. Planning for supply and allotment of land, water, and the natural resources contained therein and their planned use by their carrying capacity and capabilities.<sup>8</sup> Legal protection for agricultural land owners who are domiciled outside the sub-district where the land is located by positive law, namely Government Regulation Number 41 of 1964 concerning the Implementation of Distribution, does not protect land owners because, in the Government Regulation, it states that agricultural land owners Those who live outside the district where the land is located must transfer their land ownership to another person by the stipulations that have been determined.<sup>9</sup> The application of legal protection for absentee landowners has not been maximized because one of the factors is low legal awareness and not optimal law enforcement.<sup>10</sup>

Land reform is a change program that regulates land ownership and control and legal relations related to land tenure. Land reform programs include the following: a. The prohibition to control agricultural land exceeds the limit; b. Prohibition of absentee land ownership; c. Redistribution of land over the maximum limit and land subject to absentee prohibition, ex-self-governing land, and other state land; d. Arrangements regarding the return and redemption of mortgaged agricultural lands, e. Re-arrangement of agricultural land production sharing agreements; f. Determination of the minimum limit for the ownership of agricultural land, accompanied by a prohibition to carry out actions that result in the division of ownership of agricultural land into too small parts.<sup>11</sup>

The program is more aimed at agricultural land, considering that Indonesia is an agricultural country where most of the population has livelihoods as farmers and is more popularly known as the redistribution of agricultural land. Land redistribution is regulated in Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Compensation for Losses, which was later amended by Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation (from now on referred to as PP No. 224/1961 Jo PP No 41/1964) although PP No. 224/1961 Jo PP No 41/1964 as the executor of Perpu Number 56 of 1960 concerning Determination of Agricultural Land Areas, this regulation does not only regulate only the remaining lands exceed the maximum limit, but also regulate land taken by the Government, because the owners live outside the area and autonomous and former

<sup>8</sup> Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. (Jakarta, Indonesia: Djambatan, 2002), 67.

<sup>9</sup> Natashia Natashia, "PERLINDUNGAN HUKUM TERHADAP PEMILIK TANAH PERTANIAN YANG BERDOMISILI DI LUAR KECAMATAN BERDASARKAN PERATURAN PEMERINTAH NO 41 TAHUN 1964 TENTANG PELAKSANAAN PEMBAGIAN TANAH DAN PEMBERIAN GANTI RUGI." *Jurnal Gagasan Hukum* 2, no. 02 (December 30, 2020): 222-55. <https://doi.org/10.31849/jgh.v2i02.8560>.

<sup>10</sup> Rinaldo Parulian Sianturi, and Edy Lisdiyono. "TINJAUAN YURIDIS TERHADAP KEPEMILIKAN TANAH SECARA ABSENTEE/GUNTAI BERDASARKAN KETENTUAN PP NOMOR 41 TAHUN 1964." *Notary Law Research* 1, no. 1 (December 29, 2020): 71. <https://doi.org/10.56444/nlr.v1i1.1385>.

<sup>11</sup> Urip Santoso, *Hukum Agraria (Kajian Komprehensif)*. (Jakarta, Indonesia: Kencana Prenada Media, 2012), 45.

self-governing lands that have been transferred to the State, and other lands controlled directly by the State. Land redistribution is motivated by a situation where only a few people own extensive agricultural lands. On the other hand, there is small/non-wide agricultural land owned by most people, especially farmers who depend very much on the agricultural business they manage and make serious use of it.

## 2. Method

This research is juridical-normative law research. The technique for collecting legal materials in this study used literature and documents or archives, namely by collecting materials related to the needs of the research to be studied, in addition to various books and other supporting legal materials. The analysis technique used is descriptive qualitative.

## 3. Absentee Land

The word absentee comes from the Latin word which means absent.<sup>12</sup> The definition of absentee control of agricultural land is the ownership of agricultural land owned by legal subjects, both individuals and legal entities, where the location of the agricultural land is outside the sub-district opposite where the owner lives. The provisions in Article 10 paragraph (1) explain that “every person and legal entity is prohibited from having rights to land outside the sub-district where he lives” The article implies that everyone must transfer their land rights to other people who live in the same sub-district with the location of the land. However, the author thinks this article is no longer relevant to the current condition of society because, in Article 10, there is the word, “in principle, it is obligatory to cultivate the land actively” This creates a vague norm. Because at this time, the distance feels closer because of the accessible means of transportation; the distance is not difficult to overcome anymore. Meanwhile, this article’s paragraphs (2) and (3) require further regulations.

Most agricultural lands are located in villages, while those who own land in absentee/guitar terms generally live in cities. People who live in cities own agricultural land in villages, of course, in line with the principle of agricultural land for farmers. People who live in cities do not belong to the category of farmers.<sup>13</sup> The prohibition on absentee land, located in Article 10, is the foundation or basis for making Government Regulations that regulate absentee land. Based on Article 3 of Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Distribution of Compensation. The elucidation of Article 3 stipulates that anyone who owns land outside the district that is across from where he lives, the owner must transfer his rights to another person who lives in the same district as the location of the land. If the land owner does not transfer his land rights to other people, then the land will be taken over by the state and distributed to people who need it by this regulation. Another intention other than the ban is an effort used so that village communities can manage and enjoy absentee land not only owned by urban people.<sup>14</sup>

<sup>12</sup> Budi Harsono, *Hukum Agraria Indonesia*. (Jakarta, Indonesia: Djembatan, 2008), 21.

<sup>13</sup> Elfira Permatasari, Habib Adjie, and Hardianto Djangih. “Perlindungan Hukum Kepemilikan Tanah Absentee Yang Diperoleh Akibat Pewarisan.” *Varia Justicia* 14, no. 1 (June 26, 2018): 1–9. <https://doi.org/10.31603/variajusticia.v14i1.2052>.

<sup>14</sup> Butarbutar, Dicky Jhon Anderson. “MENGATASI KEPEMILIKAN TANAH ABSENTEE/GUNTAL.” *PALAR (Pakuan Law Review)*, (June 1, 2015). <https://doi.org/10.33751/palar.v1i1.929>.

After the provisions of Article 3 of Government Regulation Number 224 of 1961 were added and amended with Government Regulation 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1964 concerning Implementation of Land Distribution and Provision of Compensation. All of the provisions prohibiting absentee land ownership are based on Article 10 of the BAL; the provisions in that article stipulate that every person and legal entity that has a right to agricultural land is, in principle, obligated to work on it and work on it actively by themselves, by preventing extortion.

Then in Article 3 paragraph (1) of Government Regulation Number 224 of 1961, it is stated that anyone who has land rights outside the sub-district where the owner lives, within six months, must sell, grant or transfer ownership of the land rights – then based on Article 3d of Government Regulation Number 41 of 1964, which explains that all people and legal entities are required to carry out all forms of transferring rights to agricultural land, which will result in ownership of rights to new agricultural land whose location is outside the place where the owner lives. Regarding legal certainty, the most important thing is to direct the law so that multiple interpretations and contradictions do not arise to achieve legal certainty and act to protect the law in accordance with statutory regulations.<sup>15</sup>

Absenteeism is one of the topics of land reform, so its success will also provide a better life for farmers. These absentee lands are usually located in rural areas, while the people who become landlords are primarily people who live in cities. Therefore, the aim of the land reform to ban absentee land was so that rural people who generally work as farmers could use and cultivate it so that the results of this agricultural land could be enjoyed directly by these farmers. The community that owns the land is often absent because of the legal relationship between buying and selling, so the village community is only a cultivator.<sup>16</sup>

The land reform program, which prohibits absentee land, is also in line with the 5th Pancasila precepts, which aims to create social justice for all Indonesian people. Moreover, to realize the 5th Pancasila Sika, the government has made a land reform program, and it must be carried out.<sup>17</sup> As for the prohibition regarding absentee land ownership, which does not explicitly state boundaries of the area, but if it is possible to work on the land measurably.<sup>18</sup> Exceptions to people who are allowed to have absentee land rights are civil servants, armed forces members, and people carrying out religious duties who carry out tasks outside their area. So that it is considered fair if this country allows or excludes absentee land ownership for people who carry out tasks outside their area of residence, whether it is state or religious duties.

People like them deserve to have absentee land because it is for savings or savings for their retirement. Arrangements for exceptions to absentee land ownership are regulated in Article 3 paragraph (4) of Government Regulation Number 224 of 1961 and Article 3b of Government Regulation 41 of 1964. Then there is a further Government Regulation regarding absentee ownership

<sup>15</sup> Andi Asti Handayani, "PENDAFTARAN TANAH MELALUI PROGRAM PENDAFTARAN TANAH SISTEMATIS LENGKAP (PTSL)." *Notarius* 12, no. 1 (June 9, 2019): 537-49. <https://doi.org/10.14710/nts.v12i1.28903>.

<sup>16</sup> Chandra Anugrah Putra, "PENERAPAN LARANGAN PEMILIKAN TANAH PERTANIAN SECARA ABSENTEE." *Jurnal Hukum dan Kenotariatan* 3, no. 2 (July 19, 2019): 159. <https://doi.org/10.33474/hukeno.v3i2.3364>.

<sup>17</sup> Elza Syarif, *Menuntaskan Tanah Melalui Pengadilan Khusus Pertanahan*. (Jakarta, Indonesia: Kepustakaan Gramedia Populer, 2012), 98.

<sup>18</sup> Muhammad Akbar, Arba Arba, and Thoby Araya Kattsoff. "Kajian Yuridis Penguasaan Tanah Absentee Yang Disebabkan Pemekaran Wilayah Daerah." *Indonesia Berdaya* 4, no. 2 (February 17, 2023): 759-66. <https://doi.org/10.47679/ib.2023481>.



of agricultural land for retirees – civil servants in Government Regulation 4 of 1977. Even though there is already a legal basis governing absentee land, its implementation takes work. One solution that can be implemented is changing the status of the land from absentee to yard land, better known as a drying permit.<sup>19</sup>

#### **4. Protection of Heirs Against Absentee Land Ownership**

The process of inheritance is transferring assets or rights between heirs to heirs, which is a standard provision in an inheritance. In agrarian law, it is stipulated that Government Regulations supervise all forms of transfer of ownership rights to land. In this case, it is regulated in Article 26 of the UUPA. In the provisions of Article 26 paragraph (1), it is said that all forms of transfer of land rights, be it customary inheritance or grants. That statutory regulations monitor all forms of transfer of land rights. Whereas the provisions of Article 26 paragraph (2) explain that every sale and purchase, gift, grant, and all things that make the transfer of land rights to foreigners prohibited and, if carried out, will be null and void by law, which means that a process of transferring land rights is invalid. Moreover, if a sale and purchase have been made, the granting of a will, and all acts of transferring rights over land, the owner is not obliged to return the payments made and cannot be demanded to return all of these payments.

Inheritance is a familiar thing in society; inheritance is the fall of the heir's assets (parents) to the heirs (children), which occurs due to death. It does not rule out the possibility that agricultural land will also become the heir's inheritance which will be transferred or transferred to the heir's successor, in this case, referred to as the heir. Based on the statutory provisions discussed above, the state prohibits this absentee land. At the same time, it does not rule out the possibility that land inheritance in absentee land will occur in people's lives. From this, the question arises what is the legal status if the heir who receives the land inheritance is absent? Answering this question, the statutory provisions are unambiguous that absentee land status is prohibited. However, the state provides a time limit for heirs with two provisions, discussed in Government Regulation Number 224 of 1961 jo Government Regulation Number 41 of 1964 in Article 3. Contents in Article 3 provide 2 (two) options for the absentee land owner: a. Transfer ownership rights to land to other people who live in the exact location as the land; b. Move to the location of the land. The right to control land is based on the 1945 Constitution, stated in Article 33 paragraph (3), which contains: a. Earth, water, and the natural resources contained therein; b. controlled by the state; c. He used as much as possible for the prosperity of the people.

The prohibition of absentee land does not apply to persons or legal entities residing outside the sub-district, which borders the agricultural land's location and allows the agricultural land owner to work or cultivate it efficiently. The rules contained in Article 10 tend to be coercive regulations because this is a matter of public interest. This violation of absentee land ownership occurred because agricultural land was only located in the villages while the owner lived in the city. Therefore the possibility of absentee land ownership is enormous because the agricultural land is in the village while the owner is in the city. Therefore the owner of agricultural land cannot work

<sup>19</sup> Annisa T. F., Nur Adhim, and Mira N. Ardani. "KEBIJAKAN KANTOR PERTANAHAN TERHADAP LARANGAN KEPEMILIKAN TANAH "ABSENTEE/GUNTAI" DI KABUPATEN SLEMAN." *Diponegoro Law Journal* 11, no. 3 (2022): ##plugins.citationFormats.chicago.noPages## Accessed: July 19, 2023. <https://doi.org/10.14710/dlj.2022.34374>.

or cultivate it efficiently. The prohibition of absentee land ownership that is not in one area is the government's attempt to implement legal objectives, including justice. The government can revoke and provide compensation if the owner is in a different area.<sup>20</sup> Inheritance in the form of agricultural land obtained from inheritance is an absolute right the heirs must own. However, ownership of this agricultural land is prohibited by law if the location of the land is outside the district where the heir lives. Therefore, the inheritance remains an absolute right for the heirs, but if the heirs still want to own the inherited land, according to the law, they must move to the location of the agricultural land so that their rights to the land are not lost.

Legal protection for heirs who have inheritance rights in the form of absentee land at this moment is legal protection provided by statutory regulations to heirs when the inheritance is by statutory regulations in the sense that these heirs are legal according to laws and heirs. The person is the legal owner of the inheritance rights in the form of absentee land. However, the heir lives outside the sub-district where his agricultural land is located, and the heir can cultivate and work on the agricultural land. Thus the regulations provide legal protection for heirs, based on Article 10 of the UUPA, that heirs can actively cultivate and work on agricultural land by preventing extortion.

Thus the provisions of Article 53 of the UUPA that lien rights, profit-sharing business rights, ride-hailing rights, and agricultural land rental rights, thus that if the heirs cultivate the inherited agricultural land by extortion, then the heirs cannot receive legal protection from the Regulations Legislation. Legal events due to inheritance cause the heirs who get inheritance rights to absentee land. If the heirs in cultivating and cultivating agricultural land are not by the Laws and Regulations, then there is no legal protection for the heirs. Based on Government Regulation 224 of 1961, this absentee agricultural landowner must transfer his land rights to another person. If this is not carried out, the state will take over the agricultural land rights, and then the heirs will receive compensation from the state.

## 5. Conclusion

Inheritance legal events cause heirs to have an inheritance in the form of land absentee. Legal protection for the heirs of absentee land rights owners who live outside the area, in this case, legal protection has been provided by statutory regulations to heirs if the inheritance is by statutory regulations in the sense that the heirs are indeed experts the heir of the absentee landowner, as well as the heir working on his agricultural land. If the heir does not exploit or utilize the absentee's land as mandated by laws and regulations, then there is no legal protection for the heir.

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<sup>20</sup> Udin Saripudin, "Posisi Negara Dalam Menangani Kepemilikan Publik; Tanah Absentee Dalam Perspektif UUPA Dan Hukum Islam". *AT-TASYRI: JURNAL ILMIAH PRODI MUAMALAH* 9 (1), (2018), 17 - 30. <https://doi.org/10.47498/tasyri.v9i1.33>.

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