



Reconstruction of absentee value-based transfer of land ownership regulation

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Abstract

Land policies that are increasingly adaptive to market mechanisms can be understood in the context of neoliberalism ideology which encourages the Government to implement policies that provide opportunities for the market to make meaningful social and political decisions and give the widest possible opportunities for companies to develop. land ownership transfer regulation *absentee*, which is currently still not fair, has resulted in weaknesses in the *absentee* current this research consists of 2 (two) problems, namely the weaknesses of the *absentee* current *absentee's land* based on the value of justice. approach method *socio-legal research*, research data sources: primary data sources and secondary data sources, qualitative descriptive analysis. The results of the research and discussion show the Weaknesses of Absentee Land Ownership Transfers, namely a). Weaknesses in the Legal Structure, are that the PPAT refuses to arrange/make deeds related to land rights because it violates the applicable laws and regulations. The Land Office refuses the application for transfer of title to land rights because the buyer is not domiciled in the same district as the location of the object land; b). Weaknesses in Legal Substance, that PP No. 224 of 1961 in Article 3 paragraph (1) and paragraph (5) is no longer relevant. Likewise with Candies. ATR/BPN No. 18 of 2016 Article 4 paragraph (1) injustice appears, and c). The weakness of the Legal Culture *is* that although it is prohibited, absentee land rights obtained from legal events are often found in society. Reconstruction of value: to provide a value of justice, that the right holder can transfer and register the transfer of his land rights within one province. Agricultural land can be transferred to other parties provided that the other party must be domiciled in 1 (one) province where the land is located. Regulatory reconstruction: revising PP No. 224 of 1961 Article 3 paragraph (1) also deletes Article 3 paragraph (5) and revises the ATR/BPN Regulation No. 18 of 2016 Article 4 paragraph (1). The new idea is the transfer of absentee land ownership based on the value of justice.

Keywords: transfer of rights, agricultural land, *Absentees*, justice

Introduction

National development aims to create a just and prosperous society that is evenly distributed materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia. target.

Efforts to reform law in Indonesia which have started since the birth of the 1945 Constitution of the Republic of Indonesia cannot be separated from and at the same time the objectives to be achieved as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia, in short, are "to protect the entire Indonesian nation and to promote general welfare based on Pancasila. ". This is the general policy line which is the goal of Indonesian legal politics (Wahyuningsih, 2013) ^[1].

Indonesia is known as an agricultural country. This title is certainly intended for a country that has extensive agricultural land and the majority of the population work as farmers. Birth of Law No. 5 of 1960 concerning the Basic Agrarian Regulations or known as the UUPA, was considered a product of legislation that with the conditions of Indonesian society at that time. With the enactment of a fundamental and fundamental change in agrarian law in Indonesia, especially law in the land sector which is often referred to as land law, as the original law of the majority of the Indonesian people. The underlying conception and content stated in the section argue that must be in the interests of the Indonesian people and manipulate their needs according to the demands of the times (Harsono, 2008) ^[2].

UUPA which has been enacted and was born 59 years ninto be reviewed and strengthened so that it can be adapted to social conditions, politics, culture, economy, technology, and the changing times of the very fast future. The legal objectives of the regulation and legislation of land ownership must provide justice and prosperity for all Indonesian people. In addition, it must be able to contribute to suppressing and reducing the number of land conflicts that exist in Indonesia (Yubaidi, 2019).

The status of land ownership is divided into property rights (article 20 Agrarian Law), Cultivation Rights (article 28 Agrarian Law), Building Use Rights (article 35Agrarian Law), and Usage Rights (article 41 Agrarian Law) (Widayati & Suryawan, 2017) ^[4].

Land as a necessity that is quite important for humans requires legal certainty in terms of ownership in society. Therefore, to issue legal certainty in terms of land ownership rights, land registration is needed at the land office where the land is located so that those who control the land can obtain land title certificates to guarantee control and ownership of the land they occupy. (Pearl & Prime, 2022).

Land policies that are increasingly adaptive to market mechanisms can be understood in the context of neoliberalism ideology which encourages the Government to implement policies that provide opportunities for the market to make important social and political decisions and provide the widest possible opportunities for companies to develop. Thus, the role of the state is reduced with the result

that protection for groups who are socio-economically weak is neglected (Sodiki, 2013)^[6].

In the current paradoxical condition, it must be admitted that it is impossible to avoid the effects of economic globalization. However, it is necessary to make efforts to make policies that are fairer for those who have not yet received justice for the fulfillment of their basic needs guaranteed in the 1945 Constitution of the Republic of Indonesia.

Achieving equal distribution of ownership and control of land rights is not easy, especially for land with the status of private property, because even the holder of land ownership rights has felt that their ownership has exceeded the maximum limit or has felt that he or she is the holder of land rights absentee (Surata, 2018).

The legal basis for the prohibition of absentee land ownership is Article 10 Paragraph (1) of the UUPA, namely that every person who has a right to agricultural land is obliged to work on it or work on it actively himself, by preventing extortion. Absentee ownership of agricultural land is expressly prohibited by UUPA. This prohibition is related to the main provisions of Land reform which are regulated in Articles 7, 10, and Article 17 of the BAL. The purpose of the ban on absentee land ownership is so that farmers can be active and effective in working on their agricultural land so that productivity can be high and eliminate land collection in the hands of a handful of landlords (Rosmiati & Amiludin, 2019).

Based on this reality, the researcher is interested in digging deeper into the transfer of land ownership by *absentees*. Based on this background, the authors are interested in conducting research with the title "*Land Ownership Transfer Regulations Absentee Based on the Value of Justice*".

This problem is what the author urges to study further in a research with the following issues:

1. What are the current weaknesses in absentee land ownership transfer regulations?
2. How is the reconstruction of absentee land transfer regulations based on the value of justice?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge (Faisal, 2010)^[9]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

The method used by researchers is a sociological juridical approach, namely research conducted on the real condition of society or the community environment including legal culture/legal effectiveness, law and development to find facts (fact-finding) and then identify (problem identification) which in the end leads to on problem solving (Soekanto, 1982).

As for the source of research used in this study are :

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.

2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author use data collection techniques, namely literature study, interviews and documentation where the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions (Moleong, 2002)^[12].

Research Result and Discussion

1. Weaknesses of the current Absentee Land Ownership Transfer Regulations

The Legal Construction of Transfer of Agricultural Land Rights, that one of the programs of Landreform is the prohibition of absentee land ownership of the programs of Landreform is the prohibition of absentee land ownership because Absentee ownership of Agricultural Land distances the ideals and spirit of Landreform which is the basic rule of every National Agrarian legislation.

The implementing regulations of the UUPA governing absentee land ownership are regulated in Article 3 paragraph (1) PP No. 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation (amended and supplemented by PP No. 41 of 1964). The prohibition of absentee land ownership stems from the legal basis contained in Article 10 paragraph (1) of the UUPA which stipulates that: "*Every Individuals and legal entities that have rights over agricultural land are in principle obligated to actively work on or work on it themselves, by preventing extortion*" (Adjie, et al, 2018)^[13].

Most of the agricultural lands are located in villages, while those who own land in absentee/guntai 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.

Implementation of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) the government issued Law Number Areas with Implementation of PP Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation, in Article 3 paragraph (1) PP Number 224 of 1961 jo. Article 1 PP No. 41 of 1964 regulates the prohibition of absentee land ownership, which states that it is prohibited to own agricultural land by people who live outside the district where the land is located. Article 3 paragraph (1) and paragraph (5) of Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation is no longer relevant. If in a state of dire need and urgency, in the end the land owner is forced to sell his land.

The theory of the legal system put forward by Lawrence M Friedman states that law includes 3 (three) components, namely legal substance, legal structure, legal culture. In this dissertation, the author will describe the weaknesses of the current absentee land ownership transfer regulations that are still not fair, using 3 (three) components of the legal system theory put forward by Friedman, namely as follows:

a. Weaknesses in the Legal Structure and Institutional System Dimensions

The structural components of a legal system include various institutions (institutions) created by the legal system with various functions to support the functioning of the legal system. On this subject, Friedman wrote, "...structure is the body, the framework, the longlasting shape of the system; the way courts of police departements are organized, the lines of jurisdiction, the table of organization" (Adjie, et al, 2018)^[13].

Weaknesses in the Legal Structure, are that landowners cannot and have difficulty selling their land because it is difficult to find buyers who must be in the same sub-district area. The role of the Deed Making Officer (PPAT) who expressly refuse to take care of/draw up deeds related to land rights, if this violates the applicable laws and regulations.

The legal consequences that can occur if the object has been sold and the buyer of agricultural land is domiciled in a different district from the location of the agricultural land, then he will be faced with difficulties in managing the transfer of the name of the object.

In this case, several important things must be considered, including:

1. Agricultural lands have to be worked on or actively cultivated by themselves;
2. The owner of the agricultural land must reside in the district where the land is located;
3. Owners of agricultural land who live outside the sub-district where the land is located, must transfer their land rights or move to the sub-district where the land is located;
4. It is prohibited to transfer or transfer rights over agricultural land to persons or legal entities residing or domiciled outside the district where the land is located;
5. The prohibition on absentee land ownership only applies to agricultural land.

Based on the things mentioned above, it can be concluded that absentee ownership of agricultural land is expressly prohibited. So, if the domicile is in a different district from the agricultural land object, then the buyer legally cannot become the owner of the rights to the agricultural land.

So that in practice there is no violation of the ban on absentee land ownership, anticipatory steps are taken by involving the role of the Land Deed Making Officer (PPAT) who can expressly refuse to carry out the management/making of deeds relating to land rights, if this violates laws and regulations. applicable. This is in line with the provisions of Article 39 paragraph (1) letter g of Government Regulation Number 24 of 1997 concerning Land Registration which explains as follows: "PPAT refuses to make a deed, if: other conditions are not met or the prohibitions specified in the laws and regulations are violated. relevant invitation."

Zultrisman, Bachelor of Law Notary and PPAT Senior in the work area of Pandeglang Regency, his response to Government Regulation Number 224 of 1961, especially in Article 3 and Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 18 of 2016, especially in Article 7 concerning Limitations of absentee land ownership areas.

As a Notary and PPAT, this Government Regulation is very much complained about or unsettled by the farming

community, especially the land that is already certified, the farming community finds it very difficult to sell their land because they have to find buyers who enter the sub-district area, because it is difficult to find buyers, so their needs cannot be fulfilled in the end seeking loans, this can also conflict with Article 33 of the 1945 Constitution for the welfare and prosperity of the people. This also has an impact on the PPAT profession in making the Deed of Sale and Purchase.

b. Weaknesses in the Legal Substance

Juridical obstacles accompanying the performance of law enforcement against crimes in the forestry sector can come from factors of legal substance and law enforcement officials.

Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation, Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulations of 1961 concerning Implementation of Land Distribution and Provision of Compensation, have regulated restrictions on the existence of agricultural lands that are located outside the District where he lives.

Article 3 d PP No. 41 of 1964 states that: "*It is prohibited to carry out all forms of transferring new rights to agricultural land which results in the owner of the land concerned owning plots of land outside the District where he resides*".

Summing up these arrangements, it means that if there are buyers who live outside the sub-district, they cannot buy the agricultural land object. Although there has been an agreement between the seller and the buyer regarding the price and plot of land. If the problem does not have the best solution, then there will be more and more buying and selling of agricultural land under the hands, meaning that the agreement between the seller and the buyer is only written down on a piece of paper or a receipt. Of course, the state will experience losses from the tax sector, namely BPHTB and PPH taxes. Legal protection for buyers in the form of legal certainty and justice is not obtained. Buyers cannot carry out the process of transferring rights over their land. The certificate is still in the name of the seller, as long as the land registration has not been carried out at the Regency/City Land Office. This means that the opportunity for a lawsuit against the buyer is still open.

Weaknesses in Legal Substance, that Article 3 paragraph (1) and paragraph (5) of Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation is no longer relevant. If in a very needy and urgent situation, in the end the land owner is forced to sell his land.

Landowners cannot and have difficulty selling their land, because it is difficult to find buyers who must be in the same district. Landowners who are going to buy must change their address according to the address of the object and even be forced. It must be transferred immediately. If it is not implemented, then the state will take it and distribute it to the people in that region.

Likewise Article 4 paragraph (1) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2016 concerning Control of Agricultural Land Tenure. The verse reads that injustice appears and that the landowner must change the address according to the address of the object.

The regulation in the paragraph above raises injustice, that landowners must change their address according to the object's address and are even forced to do so. It must be diverted immediately, if it is not implemented then the state will take it and distribute it to the people in that region.

Likewise, the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2016 concerning Control of Agricultural Land Tenure, in Article 4 paragraph (1), states: (1) Agricultural land owned by individuals as referred to in Article 3 paragraph (2) letter a, can be transferred to other parties with the provisions

- a. The other party must be domiciled in 1 (one) sub-district where the land is located, and
- b. The land must be used and utilized for agriculture.

The verse reads that injustice appears and that the landowner must change the address according to the address of the object.

c. Weaknesses in the Legal Culture

Weakness of the Legal Culture, that in everyday life, even though it is prohibited, absentee land rights ownership may occur if the acquisition is from an inheritance event, where the heir resides outside the location of the sub-district where the inheritance in the form of agricultural land is located. For example, someone who lives in a city inherits from his parents in the form of agricultural land located in a village, this automatically makes the heirs become absentee land voters.

Based on the results of research in the field with Mr. Azis as the Head of Mandalawangi Village, Mandalawangi District, Pandeglang Regency as his response to PP 224 of 1961. His experience as the Village Head was that residents were coming to his house pawning their rice field certificates. The residents will sell their land and there are buyers from outside the sub-district. The buyer knows that the land he is going to buy cannot be renamed to the Land Office, so the buyer cancels it. According to the village, there is Government Regulation Number 224 of 1961 which regulates the limitation of land ownership areas in absentees who may not transfer their agricultural land to people whose addresses are outside the sub-district area.

Based on the results of an interview with Mr. Aan, a resident of Sobang Village, Panimbang District, Pandeglang Regency, they once wanted to sell their rice fields and then consulted with a Notary and further clarified with the Land Office. With his bitter experience at that time, he needed money to renovate a house that was already fragile and leaking, so it took quite a long time for the land to be offered almost one year. As soon as there is a buyer from out of town and then goes to the PPAT Notary. Then after enlightenment from the Notary and PPAT, the Buyer finally cancelled it because he was afraid and worried that he would not be able to transfer the name and be rejected by the Land Office. If the buyer doesn't change the address, it will also have an impact on the land office, the community is reluctant to certify their land because if you want to sell it, it will be even more difficult. Look at the condition of farming communities and remove regulations that do not protect farming communities and are Unjust.

2. Reconstruction of Absentee Land Ownership Transfer Regulations based on the Value of Equity

In order to realize Justice, it is necessary to reconstruct values in order to provide value for optimizing the transfer of land ownership in an *absentee* in Government Regulation Number 224 of 1961 Regarding the Implementation of Land Distribution and Compensation, in Article 3 paragraph (1) states that: "*Landowners who live outside the district where the land is located, within 6 months must transfer their land rights to other people in the sub-district where the land is located or move to the sub-district where the land is located.*"

In these regulatory arrangements, injustice appears. If in a very needy and urgent situation, in the end, the land owner is forced to sell his land. Landowners cannot and have difficulty selling their land, because it is difficult to find buyers who must be in the same district.

Furthermore, in Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation, in Article 3 paragraph (5) it states that: "*If the obligations referred to in paragraphs 1 and 3 of this article are not fulfilled, then the land in question is taken by the Government, to be distributed according to the provisions of this Regulation.*"

The regulation in the paragraph above raises injustice, that landowners must change their address according to the object's address and are even forced to do so. It must be diverted immediately, if it is not implemented then the state will take it and distribute it to the people in that region.

Likewise, the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2016 concerning Control of Agricultural Land Tenure, in Article 4 paragraph (1), states: Agricultural land owned by individuals as referred to in Article 3 paragraph (2) letter a, can be transferred to another party with the following conditions:

- a. The other party must be domiciled in 1 (one) sub-district where the land is located, and
- b. The land must be used and utilized for agriculture In the reading of the verse, injustice appears, that the land owner must change the address according to the address of the object.

Government Regulation Number 224 of 1961, particularly in Article 3 and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2016 concerning Control of Agricultural Land Tenure in particular in Article 4, should no longer be relevant to enact, because this article is an article discriminatory towards the farming community especially in terms of justice is very unfair to the farming community. Concretely, it is difficult for the community to sell if there is an urgent need to find a buyer, or if there are buyers from outside the sub-district area. Buyers also do not want to buy, because the buyer must immediately change the address at the location of the object. If the buyer does not change the address as stated in the object, then he cannot be registered at the Land Office. The Land Office as the executor of land registration is also afraid to carry out the transitional registration. So it can be concluded that this regulation is very discriminatory.

Based on the description above, it is necessary to carry out Value Reconstruction related to Absentee Land Transfers based on the Value of Justice. Reconstruction of these

values, namely: Transfer of Land Ownership to transfer and register the transfer of land rights within one district/city. Agricultural land owned by individuals can be transferred to other parties provided that the other party must be domiciled in 1 province of land.

Reconstruction of regulations, reconstructing the regulations of Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Compensation by revising Article 3 paragraph (1) which reads "Landowners who live outside the sub-district where the land is located, within 6 months must transfer their rights of his land to another person in the sub-district where the land is located or move to the sub-district where the land is located. After being reconstructed it becomes *"Right holders can transfer and register the transfer of their land rights within 1 (one) province"*.

The reconstruction of this regulation also deletes Article 3 paragraph (5) of the Government Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation which reads "If the obligations in paragraphs 1 and 3 of this article are not fulfilled, then the land in question is taken by the Government, for later shall be distributed according to the provisions of this Regulation".

Furthermore, it is necessary to amend Article 4 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2016 concerning Control of Agricultural Land Tenure which reads *"Agricultural land owned by individuals as referred to in Article 3 paragraph (3) letter a, can be transferred to another party with the following conditions:*

- a. *The other party is domiciled in 1 (one) sub-district where the land is located, and*
- b. *The land must be used and utilized for agriculture."*

This article is replaced by *"Agricultural land owned by individuals as referred to in Article 3 paragraph (2) letter a, can be transferred to other parties with the following conditions:*

- a. *The other party must be domiciled in 1 (one) province where the land is located, and*
- b. *The land must be used and utilized for agriculture."*

The government and the House of Representatives should revise the regulations contained in Article 3 paragraph (1) and paragraph (5) of Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation by removing these regulations.

The government and DPR should revise the regulations contained in Article 4 paragraph (1) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2016 concerning Control of Agricultural Land Tenure by removing the regulation.

Land Ownership Transfers *Absentee* Based on Justice Values above, the new formulation produced by the author is *Absentee* based on justice values.

The philosophy of the new idea of *"Transition of Absentee Land Ownership based on the value of Justice"*, that the right holders can transfer and register their land rights in one province. Agricultural land owned by individuals can be transferred to other parties provided that the other party must be domiciled in 1 (one) province where the land is located.

The new idea is based on the Reconstruction of Regulations on Transfer of Land Ownership in the Absentee Value-Based Justice above, so the new formulation produced by the Author is the Transition of Land Ownership in an Absentee manner based on the value of justice. Whereas right holders can transfer and register the transfer of rights over their land in one province. Agricultural land owned by individuals can be transferred to other parties provided that the other party must be domiciled in 1 (one) province where the land is located.

Conclusion

1. The current weaknesses in absentee land ownership transfer regulations are based on the theory of the legal system by Lawrence M. Friedman, which consists of:

- a. Weaknesses in the Legal Structure, are that landowners cannot and have difficulty selling their land, because it is difficult to find buyers who must be in the same sub-district area.
- b. Weaknesses in Legal Substance, that Article 3 paragraph (1) and paragraph (5) of Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation is no longer relevant. If in a very needy and urgent situation, the land owner is forced to sell his land.
- c. The weakness of the Legal Culture is that even though it is prohibited in everyday life, absentee land rights obtained from legal events are often found in society.

2. Reconstruction of the regulation on the transfer of land ownership in absentee is carried out by reconstructing the law of Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation by revising Article 3 paragraph (1) and deleting Article 3 paragraph (5), in addition to revising the regulation Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 18 of 2016 Concerning Control of Agricultural Land Tenure Article 4 paragraph (1). The government and the People's Legislative Assembly should revise the regulations contained in Article 3 paragraph (1) and paragraph (5) of Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Providing Compensation by removing these regulations. The government and the House of Representatives should revise the regulations contained in Article 4 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2016 concerning Control of Agricultural Land Tenure by removing the regulation.

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