



## Legal arrangements on absentee land ownership for retired civil servants in Indonesia

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### Abstract

Absentee land is agricultural land that is currently mostly owned by village communities that still uphold customary law regarding land ownership and management. Land issues are fundamental to human life from a customary law perspective. Looking at this social phenomenon, whether retired civil servants in Indonesia can be given the right not to own land, even though land ownership is prohibited under the Basic Agrarian Law. The research method used is normative legal research (doctrinal research). The purpose of normative legal research is to examine positive legal norms and use positive legal documents that are examined normatively as legal materials. This research uses a type of normative legal research that uses legal approach methods and conceptual approaches. Absentee ownership of agricultural land for retired civil servants is provided with a profit-sharing system, considering that during their tenure civil servants could not choose a suitable workplace depending on their place of residence. Similarly, retired civil servants are given absentee land ownership, this is due to the age factor of retired civil servants who are no longer productive in working and whose daily lives are very different from farmers in rural areas. Therefore, the distribution of benefits for absentee land ownership for retired civil servants is intended to show gratitude from the state for their achievements and to maintain the health of retired civil servants, this is also due to the fact that the salary received during retirement is not as large as the salary received while working as a civil servant. Retired civil servants can take over agricultural land because there are exceptions regulated in Government Regulation Number 4 of 1977.

**Keywords:** Absentee land, legal arrangements, retired civil servants

### Introduction

Land is one of the most important resources for human survival and livelihood and must be distributed fairly and equitably so that people can achieve the highest possible welfare. In addition, land is an important resource for society, both as a medium for farming and as a space and place for various activities. Land is also a very important factor of production for human life and national development. Indonesia is a very large archipelago with a land structure in the form of land that is widely spread among the islands. Therefore, the Agrarian Law was enacted to regulate this matter. Agrarian Law comes from the word "ager" which means land or part of land, and in Dutch it is known as "akker" which means agricultural land<sup>[1]</sup>. After independence, Indonesia enacted Law No. 5 of 1960 on the Basic Agrarian Regulations Law (UUPA) which reformed the colonial-era land system and issued new regulations to replace the national land system for the benefit of the people<sup>[2]</sup>. Agrarian reform here aims to reorganize the guidelines/basis for the utilization and development of agricultural resources in order to implement the land rights of Indonesian citizens based on Article 33 of the 1945 Constitution<sup>[3]</sup>.

Indonesia already has certain government regulations known as Law Number 5 of 1960 concerning Basic Agrarian Regulations or commonly known as UUPA which came into force on September 24, 1960. In its 63rd year, the land sector is often at the forefront, namely, the social mission of the state (Article 6), the upper limit of land ownership (Article 7), absentee/guntai land ownership (Article 10), land ownership monopoly (Article 13), and the decision on compensation for land, public interest (Article 18). These five issues directly or indirectly lead to various land disputes that are not easy to resolve<sup>[4]</sup>. Since one of the

objectives of agrarian reform is to increase productivity, the impact of agrarian reform on agriculture as the frontline is clear. Land ownership exceeds cultivation capacity and ultimately leads to low productivity. This is especially true if the owner is an "absentee landowner" i.e. a farmer who does not cultivate his own land but leaves its management to the local population. Land cultivation is not intensive, simply because the owner usually has another job in the city where he lives.

After the agrarian reform, the concept of land reform emerged, which aims to provide land to farmers with the aim of increasing their income and living standards, because many poor farmers work on land owned by landowners who own large tracts of land. Therefore, based on Article 17 of the UUPA, regulations were issued limiting the maximum and minimum size of land in Indonesia<sup>[5]</sup>. The purpose of land reform was emphasized by the then Minister of Agriculture Sajjarwo in his speech which read as follows<sup>[6]</sup>

1. The aim is to ensure the equitable distribution of farmers' livelihoods, changes in the shape of the land due to a review of the land structure in the context of equalizing social conditions;
2. To uphold the principles of land for farmers so that land is not used as an object of speculation and extortion;
3. As a social function, strengthening and expanding land ownership rights for all Indonesian citizens, regardless of gender, recognition and protection of inherited property rights;
4. Abolish the landlord system and the extensive and unlimited land administration system with maximum and minimum limits on land ownership by each family. This undermines the liberal system of land and capitalism and provides protection for the economically weak;

5. Increase national production and promote intensive agriculture through cooperatives and other forms of gotong royong supported by the Farmer Group Credit System to support agricultural operations in Indonesia.

As one of the legal instruments in the field of agriculture, UUPA is a benchmark, and UUPA provides direction for the regulation and preparation of various legal instruments that are closely related to the Agricultural Law (Agrarian Law). The land reform program itself aims to increase the income and living standards of farmers, especially agricultural workers<sup>[7]</sup>. The objectives of land reform are further detailed according to the opinion of Urip Santoso, where the land reform program includes

1. Prohibition of cross-border agricultural land management;
2. Prohibition of land ownership;
3. Redistribution of land that exceeds the upper limit, land subject to absentee prohibition, former autonomy land and other state-owned land;
4. Regulations regarding the return and withdrawal of agricultural land;
5. Reorganization of agricultural production sharing agreements;
6. Setting minimum limits on agricultural land ownership and prohibiting the performance of acts that result in the division of agricultural land ownership into too small parts.

Basically, land reform is an effort to make structural changes based on intra- and inter-farm relations regarding access (management and use) of agricultural products. But specifically, agrarian reform aims to change the structure of land ownership and tenure security for those who use the land and the natural resources associated with it<sup>[8]</sup>. The explanation of land reform normatively is contained in Article 10 Paragraph 1 of the UUPA which basically states that every person and legal entity who has the right to agricultural land must actively cultivate or cultivate it themselves, while still preventing ways of illegal levies is the duty to manage as a general rule, you must manage your own agricultural land. This will help some landowners living in urban areas avoid land hoarding by absentee landowners who only wait for the results of land management by other parties using the illegal levy system. Absentee land is agricultural land that is currently mostly owned by rural communities who still uphold customary laws regarding land ownership and management. Land issues are fundamental to human life from a customary law perspective. Looking at this social phenomenon, can retired civil servants in Indonesia be given the right not to own land, even though land ownership is prohibited under the Basic Agrarian Law? To answer this question, the author tries to conduct research to obtain analytical results for the answer.

### Research Method

The research method used is normative legal research (doctrinal research). The purpose of normative legal research is to examine positive legal norms and use positive legal documents that are examined normatively as legal materials. This research uses a type of normative legal research that uses the following approach method: This research uses legal research using a legal approach, namely

an approach that uses a review and analysis of legal regulations on agricultural land. Then this research discusses the analysis of legal regulations and understands the problems and appropriate solutions based on legal guidelines and principles of legal regulations. Second, researchers also use a conceptual approach, which considers concepts related to exceptions to land regulations that are still valid<sup>[9]</sup>.

### Result and Discussion

The meaning of absentee farmland comes from the English language. The word "absentee" means not present or present in a place. Absentee agricultural land is agricultural land whose owner is not near the land and is not cultivated. The definition of land included in agricultural land is based on a joint directive of the Minister of Home Affairs and Local Government and the Minister of Agriculture dated January 5, 1961 (Secretariat No. 9/1/12). Agricultural land includes all plantation land, as well as fisheries, livestock pastures, shrubs, former fields and forests, which are a source of livelihood for those entitled<sup>[10]</sup>. According to Butar-Butar, there are several main regulations regarding absentee land provisions, including<sup>[11]</sup>

1. The agricultural land itself must be actively managed;
2. The owner of the agricultural land must reside in the same area where the agricultural land is located;
3. The owner of agricultural land who is not in the same land division as the agricultural land, shall transfer the right to the land to another person within the land division, or if the owner moves to the division where the property is located, if necessary;
4. It is prohibited to transfer the right to agricultural land to another natural person or legal entity located outside the area of the sub-division where the land is located;
5. Prohibition of unauthorized possession of land for agricultural land only.

In accordance with the actual legislation, agricultural land is not allowed to be absentee according to Article 10 paragraph (1) of the UUPA which reads "every person and legal entity who has a right to agricultural land is basically obliged to work on or cultivate it themselves actively, by preventing methods of extortion". Then according to Boedi Harsono, the purpose of prohibiting absentee agricultural land that is not utilized is so that the landowner resides in the same place as the land, so that the rural area where the land is located can benefit from the results of the management of the land to do so in the production area concerned<sup>[12]</sup>. However, behind the legal regulations related to the prohibition of absentee agricultural land ownership, there are exceptions. Exceptions to absentee agricultural land based on Article 10 paragraph (3) of the UUPA which reads "exceptions from the principle of working their own agricultural land are regulated in statutory regulations" which means that there are several exceptions to this absentee land. According to Santoso<sup>[13]</sup>, the parties who are exempted from absentee agricultural land ownership include

1. Farmland owners who reside not far from the farmland, e.g. just on the border of the farmland zone; allowed to effectively manage their own farmland, even after consideration by the provincial/city land reform committee;
2. Civil servants and members of the Indonesian military or their equivalents include retired widows of civil

servants who have not remarried to another civil servant, and immediate family members of civil servants and members of the Indonesian military who are still dependents;

3. Persons performing state or religious duties (Hajj or similar events);
4. Persons with special reasons approved by the Director General of the National Land Agency of the Republic of Indonesia.

Based on the above explanation, it can be understood that one of the parties who obtained an exception to absentee land ownership is retired civil servants. The reason why the status of property rights over absentee agricultural land is important to discuss is because in reality, in the process of transferring property rights over absentee land, the land can be abandoned so that the objective cannot be achieved because it should be avoided as much as possible. This goal ultimately results in the deprivation of land ownership. Regulations related to the mechanism of transferring or transferring ownership of absentee agricultural land still cause many problems in its development<sup>[14]</sup>.

Except for retired civil servants who receive it through inheritance, a person who owns agricultural land outside his/her area of residence must transfer the agricultural land to another transferor within one year after the death of the testator. For those who reside in the sub-district where the property is located. This obligation does not apply if the owner of the agricultural land moves his residence to the area where the agricultural land is located, or if the owner of the agricultural land moves his residence to an area adjacent to the agricultural land. So against agricultural land owned absentee by retired civil servants is still allowed to be employed by way of profit sharing, but only temporarily and with an area of agricultural land that has been determined by the applicable laws and regulations<sup>[15]</sup>.

As a scheme for retired civil servants on agricultural land owned absentee, provided that the agricultural land does not exceed the maximum land area specified in Government Regulation No. 224/1961. Article 3(4) of Government Regulation No. 224/1961 stipulates that the maximum area of absentee land owned by a civil servant is two-fifths (two-fifths) of the maximum area stipulated for us to confirm that there is. Then under Article 2(1) of Government Regulation No. 224/1961, if a retired civil servant owns vacant land that exceeds the maximum area allowed for land ownership, the employee is given the opportunity to propose to the Minister of Agriculture any part of their land that he or she wishes, to remain in his or her possession as long as the land is controlled by the state.

Absentee ownership of agricultural land for retired civil servants is provided with a profit-sharing system, considering that during their tenure civil servants could not choose a suitable workplace depending on their place of residence. Similarly, retired civil servants are given absentee land ownership, this is due to the age factor of retired civil servants who are no longer productive in working and whose daily lives are very different from farmers in rural areas. Therefore, the distribution of benefits for absentee land ownership for retired civil servants is intended to show gratitude from the state for their achievements and to maintain the health of retired civil servants, this is also due to the fact that the salary received during retirement is not as large as the salary received while working as a civil servant.

In Article 3 of Government Regulation No. 224 of 1961 (State Gazette of 1961 No. 280) plus Articles 3a through 3e of Government Regulation No. 41 of 1964 (State Gazette of 1964 No. 112): prohibited: A person engaged in agriculture may own land in a kecamatan other than the kecamatan where he resides. This regulation is known as the prohibition on ownership of agricultural land in Guntai, or "absentee". Those who owned agricultural lands in the district at the time of the enactment of Decree No. 224/1961, or those who received inheritance of agricultural lands outside the district of settlement within a certain period of time after this prohibition, had to relocate within the specified time period. There is an obligation to either reside in the area where the land is located, or transfer the land rights to another person residing in the area where the land is located. This regulation stipulates that the owner of agricultural land transferred to another area is obliged to transfer ownership of the land to another person who may own the land within a certain period of time. Purchases and other activities leading to private ownership of agricultural land are prohibited. Guntai land whose owners did not comply with the above obligations would be expropriated by the Government and distributed to compliant farmers in accordance with the provisions of Government Regulation No. 224/1961 (State Gazette 1961 No. 280).

In view of the foregoing and that retired civil servants are in many ways similar to civil servants, this government regulation provides an exception to the prohibition on the sole ownership of agricultural land by civil servants, and also applies to retired civil servants. It stipulates that civil servants and widows of retired civil servants can purchase agricultural land within two years before retirement, unless they remarry a non-civil servant or retired civil servant. However, the area of land owned by individuals cannot exceed two-fifths of the maximum area of the relevant second-class district. Land ownership can continue after retirement, and can be increased to the maximum if one later moves to the district where the land is located. The definition of "civil servant" is defined in accordance with the provisions of the Basic Civil Service Law, which includes civil servants (central and regional civil servants) and members of the Indonesian National Army. This is also what is meant by the definition of "retired civil servant"<sup>[16]</sup>.

## Conclusion

Basically, agrarian reform refers to the spirit of land reform, which is carried out by local residents who also own agricultural land. However, retired civil servants can take over agricultural land because there are exceptions stipulated in Government Regulation No. 4 of 1977. There are exceptions to the prohibition of land ownership without the presence of the official concerned with the land, and retired civil servants have options regarding the ownership of the land. These options may include transfer of ownership. Officials may also exercise usufruct rights over the land and temporary rights in accordance with laws and regulations. The application of these provisions means that retired civil servants, as civil servants, do not have the freedom to determine their own place of residence in relation to the land of their official position, in the sense that they can choose the farm where they worked. If the land already existed at the time of the enactment of Decree No. 224/1961, or if it was acquired by inheritance after the enactment of the decree.

Then at their own discretion there is also no need to transfer land ownership to another party if they move to another sub-district. However, the district ownership of agricultural land that will still be permitted will be limited to two-fifths of the maximum area of the district. This maximum area is determined based on the provisions of Federal Law No. 55. 1960 (State Gazette No. 174). If the area reaches 5 hectares, then a person may only own a maximum of 2 hectares of land. This exception also applies to his wife and/or dependent children.

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