

The Review Of Agricultural Land Transfer Related Juridical *Absentee* That Made Before PPAT

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Abstract. The purpose of this study as follows 1) To identify and explain the transfer of agricultural land *Absentee* made before PPAT. 2) To identify and explain the barriers and solutions *Absentee* transfer of agricultural land made before PPAT. The method used by researchers is sociological approach juridical law and specification in this study were included descriptive analysis. The source and type of data in this study are primary data obtained from field studies with interview, and secondary data obtained from the study of literature. Based on the results of the research are Strict monitoring of the transfer of agricultural land through cooperation between the relevant agencies, namely the Village Head, District and PPAT / Notary. Barriers: a) Lack of public awareness, b) Since the Inheritance Land where many families who left their land to her son while her son stayed in town and have settled the town even had a decent job in the city than in the rural location of his land, it is also one causes of land ownership is due to inheritance. c) Land Office did not have accurate data on their ownership of agricultural land by *Absentee*. Solution: Perform legal counseling for the creation of legal order are carried out continuously to the community and local authorities with regard to land issues.

Keywords: Judicial Review; Diversion; Farmland; *Absentee*; PPAT

1. Introduction

Indonesia is an agricultural country, agriculture is the livelihood most people, they generally perform activities of farmers in the broadest sense including agriculture, plants, food, agriculture, livestock and fisheries that some of them only existed as a laborer or farmer in other words they farmed only work on land owned by others.

Land is one of the main sources for the survival and livelihood of the nation in achieving the overall prosperity of the people who are fairly and evenly, then the land is to be developed or used for the fulfillment of the real needs. In relation to that, supply, allocation, control, use and maintenance needs to be regulated in order to ensure legal certainty in the acquisition and utilization as well established legal protection for the masses, especially the peasantry, while maintaining the sustainability of its ability to support sustainable development activities.

Indonesia already has a specific provision governing the land that is in Act No. 5 of 1960 on Basic Regulation of Agrarian commonly called BAL, which came into force on 24 September 1960.

In the age reaches 48 years, there were five issues in the land sector are often sticking to the surface, namely the social function of the land (Article 6), the maximum limit of land ownership (Article 7), land ownership *Absentee* (Article 10), monopoly of land ownership (Article 13), and the determination of compensation of land for public purposes (Article 18). The fifth case is either directly or indirectly lead to the emergence of various forms of land conflict, which is not easily solved. The problems

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become more complicated, because of the incessant development activity led to the element of justice in the land sector. BAL Application of Article 6 of the social function of land, for example, they are often biased in practice in the field.

The social function of land means any land rights that exist in a person, can not be justified that the land will be used (or not used) solely for their own interests, especially if it is harmful to society.³ Meanwhile, the application of Article 7 BAL maximum limit of land ownership, in fact too often violated. Various chaos that occurred during this indicates the accumulation of land ownership in one hand, while on the other hand, many farmers landless and work on land owned by others. The imbalance in the distribution of land ownership it is good for agriculture and non-agricultural land causing both economic inequality, political and sociological. In the end, the bottom layer farmers who bear the heaviest burden as a result of this distribution imbalance.

One important aspect of the law with the enactment of the BAL is proclaiming "land reform program" in Indonesia aimed at increasing the income and standard of living of farmers tilling the soil, as a foundation or prerequisite for organizing economic development towards a just and prosperous society based on *Pancasila*.⁴

The implementation of restrictions on land ownership up to 48 years of age BAL still not as expected. It appears from the *Absentee* land ownership, which is often the case that are known, but difficult to prove because of various reasons. While agricultural land ownership by *Absentee*, is expressly prohibited by BAL. This prohibition relates to the principal provisions of the Land Reform under Article 7.10 and 17 BAL. The purpose of the prohibition of land ownership by *Absentee* this so that farmers can actively and effectively in work on his farm land, so that productivity can be high, and eliminate the collection of land in the hands of a few landlords.

Based on their problems above, the purpose of this study as follows: To identify and explain the transfer of agricultural land *Absentee* made before PPAT; To identify and explain the barriers and solutions *Absentee* transfer of agricultural land made before PPAT.

Research methods

The method used is a sociological juridical approach, an approach is made to analyze in detail the extent to which a rule / law or the law in force effectively⁵. Specifications of this research is descriptive analytical research, which is a depiction of the various problems that become the object of research and provides a conclusion that is not public. The sources and types of data in this study are primary data obtained from field studies with interview, And secondary data obtained from the study of literature.

2. Results and Discussion

2.1. Transfer of Agricultural Land *Absentee* Which Made In front of PPAT

To realize the goal of a just and prosperous nation Indonesia, the Government has made various regulations on land. On September 24, 1960 the Government of

³Boedi Harsono, 2005, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta: Djambatan, p. 296

⁴Effendi Perangin, 1986, *Hukum Agraria di Indonesia, Suatu Telaah dari Sudut Pandang Praktisi Hukum*, Jakarta: Rajawali, p. 122

⁵ Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, Jakarta: UI Press, p. 6

Indonesia has enacted Act No. 5 of 1960 About the Basic Regulation of Agrarian. Hereinafter referred to as BAL. BAL has mandated a ban related to the ownership of agricultural land by *Absentee*. In accordance with Article 10 paragraph (1) BAL which states that "every person and legal entities that have rights over agricultural land in principle obliged to work on their own or working on actively preventing means blackmail"

With the existence of these provisions are expected to all holders of agricultural land may seek or working on its own soil so that the soil of agricultural land has become unproductive and there is farmland on leave or *Absentee*. To comply with regulations in the Law on the land reform policy and then on 19 September 1961 the Government issued Government Regulation of the Republic of Indonesia Number 224 of 1961 on the Implementation of the Granting Land Distribution and Compensation has been added and improved through Government Regulation No. 41 of 1964. The Regulation is implementing the provisions of Article 10 paragraph (1) BAL and Act No. 56 of 1960 on Agricultural Land Ownership Restrictions.

The related provisions abolishing agricultural soils in *Absentee* been specifically regulated in Article 3 (1) of the Government of the Republic of Indonesia Number 224 of 1961 on the Implementation of Land Distribution and Provision of Compensation that says that landowners who reside outside the sub-geography, in the run 6 months must transfer their land rights to others in the district where the land lies or move to the district the land lies.

The provision aims to prohibit the ownership of land by *Absentee* land ownership so that the result was largely enjoyed by the rural communities where lay of the land in question because the land owner will reside in the area where the farm is located.⁶

natural implementation of Government Regulation No. 224 of 1961 has been considered to be less than perfect, then the government made changes and additions to Regulation 224 of 1961 on the Implementation of Land Distribution and give the Compensation as stipulated in Government Regulation No. 41 of 1964 on the Amendment and Supplement to the Government Regulation Number 224 of 1961 on the Implementation of Land Distribution and Provision of Compensation. In Article 3 of Regulation 41 of 1964, written as follows:

Article 3a. Paragraph (1) The owners of farmland who move or leave the residence out of the District where the location of that land for two (2) consecutive years, while he reported to local officials who authorized, within 1 (one) year after the expiration of period of two (2) years of the above it is required to transfer ownership of the land to others who reside in the district of the lay of the land. Paragraph (2) If the owner of the land contemplated in paragraph (1) of this article migrate or leave the residence out the District where the land lies, while he does not report to the competent local authorities,

Article 3b. Paragraph (1) Servants and Members of the Armed Forces and others equated with them, who had stopped in carrying out the task of the State and who has the rights to farmland outside the District residence within 1 (one) year since he put an end to these duties required to move to the District's lay of the land or transfer ownership of the land to others who reside in the district where the land is located.

Paragraph (2) In certain things that can be considered to have a reasonable excuse, the period in paragraph (1) above may be extended by the Minister of Agrarian.

⁶Boedi Harsono, 2003, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta: Djambatan, p. 371

Article 3c. (1) If a person has the right to farmland outside the District in which he resided, obtained from inheritance, then within 1 (one) year after the testator dies required to move it to other persons who reside in the district where the land is located or moved to the District's lay of the land.

Paragraph (2) In certain things that can be considered to have a reasonable excuse this time period in paragraph (1) above may be extended by the Minister of Agrarian.

Article 3d. It is prohibited to carry out all forms of transfer of new rights over agricultural land which resulted in landowners concerned have plots of land outside the District in which he resided.

Article 3e. Non-compliance with these provisions in the articles 3a, 3b, 3c and 3d resulted in both soil and land owners in question subject to such provisions in article 3, paragraph (5) and (6) of Government Regulation No. 224 of 1961 (Official Gazette of the States 1961 No. 280).

With the existence of these regulations then in *Absentee* ownership of agricultural land in principle not allowed, because afraid of the things that will foster act of extortion against the farmers as it happened to the farmers in the Dutch colonial period.

The soil of *Absentee* the object of which is agricultural land, but possession of the land must comply with the rights on land that is set in the BAL, namely Properties, Broking, leasehold, and right over the State Land and Right Management. Although in reality are still many farms with customary property rights, but with the increase in land titling services then ultimately lands to indigenous property rights in the future is expected to be carried out land registration. That's also the object of the provisions of abandonment of land covering areas of land that are already registered, although it is not merely about land for agriculture, but the consequences for subjects who abandon the land has almost the same sanctions. Nevertheless, the development of law about *Absentee* land seemed to stop in the era of the old order and development of the law on abandoned land is quite up to date. While our society there are many who have jobs as farmers, as well as the many problems of agricultural land have been converted to non-agricultural land, the law governing agricultural land is actually important.

So the transfer of agricultural land by *Absentee* made before PPAT namely the strict monitoring of the transfer of agricultural land through cooperation between the relevant agencies, namely the Village Head, District and PPAT / Notary.

2.2.Obstacles and Solutions of Agricultural Land Diversion Created By *Absentee* In Front of PPAT

Absentee land or farmland is located outside the seat / domicile of the owner of the land, the land is located far away with their owners. Basic Agrarian Law (BAL) does not allow *Absentee* ownership of land, with less reason social interests and the protection of soil. It is feared that if the unprocessed *Absentee* land will be abandoned or unproductive land because its owner away. *Absentee* land can be owned by people who live in districts that still borders the districts where the land is located. In addition, *Absentee* land also owned by the civil service or the military, arguing both are servants of the state that can move tasks from one area to another. To that end, *Absentee* land owner can sell the land to the surrounding community. Can also swap the land, leased land Or provide voluntarily in grants to local people. But if you still want to have it, he can ask one member of his family to move to the location of the land. On the field, often much happening fraudulent practices against *Absentee* land. Usually the owner

of the land around this by making the absolute power of attorney or ID cards double. However, it turns out *Absentee* land ownership ban only for agricultural land, not for land to be used to build the property.⁷

The authority of the government to take legal actions that related to public law or by private law, must result from the legislation. The authority itself has a meaning as a right and power to act, or also ruled. By Philip M. Hadjon own share how to obtain the authority of two ways, namely: "attribution; and delegations and also mandate".⁸

Transfer of Agricultural Land obstacle *Absentee* The Made In front of PPAT is:

- Lack of public awareness, which is still a lot of buying and selling land that is done under the hand and a transfer is not registered in the Land Office so much land owned by *Absentee* who escaped from monitoring the Land Office.
- Because Inheritance Land where many families who bequeathed his land to her son while staying in the city and have settled the town even had a decent job in the city than in the rural location of the land, this is also one of the causes of land ownership is due to inheritance.
- Land Office did not have accurate data on their ownership of agricultural land by *Absentee*.

That the special administration order Agricultural Land in *Absentee* ownership, when pleading for the land ownership will be seen first domicile of the owner of the land, and if it is outside the District of lay of the land it will be immediately rejected by the Land Office.

Prohibition of *Absentee* land ownership must have a purpose. This was stated by Boedi Harsono, who said that "the purpose of the prohibition is to provide the results of farmland to a large extent can be enjoyed by the rural communities where the location of agricultural land, because the land owners residing in the area of the land is the result of agricultural land was more maximum."⁹ Article 2 (1) of the Regulation of the Minister of Agricultural and Spatial Planning / Head of National Land Agency Number 18 of 2016 About Controlling Land Tenure Farms also mentions the intent and purpose of the prohibition of ownership of agricultural land by *Absentee* is "to reduce social inequalities, equalize the welfare of society and guarantee food security."

Solutions to overcome obstacles *Absentee* diversion of agricultural land made before PPAT is doing legal counseling for the creation of legal order are carried out continuously to the community and local authorities with regard to land issues.

Incidence of ownership of agricultural land *Absentee* is not the absence of roles and responsibilities of the Land Office, but the Land Office does not have the authority to judicial review of an ownership right to land and cancellation of land rights without any report or request it from concerned or officials local, because the Land Office based on the Regulation of Ministry Agrarian State / Head of National Land Agency No. 9 of 1999 on Procedures for Granting and Cancellation of Rights to Land State and Rights Management and Regulation of the National Land Agency No. 3 of 2011 on the Management Assessment and Handling of Cases land.

3. Closing

⁷ <https://www.rumah.com/berita-properti/2013/7/4916/tanah-absentee-apakah-itu>

⁸ Philip M Hadjon. 1987. *Perlindungan Hukum Bagi Rakyat Di Indonesia*, Surabaya: Bina Ilmu, p. 2

⁹ Boedi Harsono, 2005, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta: Djambatan, p. 385

3.1. Conclusion

- The transfer of agricultural land by *Absentee* made before PPAT. Strict monitoring of the transfer of agricultural land through cooperation between the relevant agencies, namely the Village Head, District and PPAT / Notary.
- Obstacles and Solutions of Agricultural Land Diversion Created By *Absentee* The front of PPAT. Obstacles encountered are: Lack of public awareness; Because Inheritance Land where many families who bequeathed his land to his son while staying in the city and have settled the town even had a decent job in the city than in the rural location of the land, this is also one of the causes of land ownership is due to inheritance; Land Office did not have accurate data on their ownership of agricultural land by *Absentee*.
Solutions that do are: Conducting legal counseling for the creation of legal order are carried out continuously to the community and local authorities with regard to land issues.

3.2. Suggestion

- Need for coordination between the Land Office with the District Office and PPAT / Notary, but strengthening this coordination should be accompanied by sound management and orderly administration of the District Office.
- With the integrated control between relevant agencies of the Office of Land and PPAT.

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