

Absence Practice Due to Latifundia Violation

¹Asep Thobibudin Qolyubi¹, ²Efridani Lubis

¹ Universitas Djuanda, Bogor, Indonesia

² Universitas Islam As-Syafi'iyah, Indonesia

¹ E-mail: thobibudin@unida.ac.id; ² Email: efridani@yahoo.com

Abstract

Article 33 paragraph (3) of the 1945 Constitution which reads: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." In this regard, for the sake of legal certainty in the control and utilization of land, it is necessary to seriously regulate the provision, arrangement, distribution and maintenance of land. In the UUPA 1960, there are at least a number of things that often stick out and become problems, namely: the maximum limit for land ownership, absentee land ownership, land ownership monopoly, and determination of compensation for land in the public interest. These four things trigger the emergence of various land conflicts, both directly and indirectly, and are difficult to resolve. Implementation of restrictions on land ownership is still not as expected. This can be seen from absentee/guntai land ownership which is often known but difficult to prove for various reasons. Meanwhile, absentee/guntai ownership of agricultural land is strictly prohibited by the BAL. This paper examines the absenteeism prohibition and latifundia practices from the UUPA 1960 and the reality on the ground. The approach used in this study uses the approach put forward by Peter Mahmud, namely the Statute Approach and the Conceptual Approach. The results of this study indicate that the implementation of Article 33 paragraph (3) of the 1945 Constitution and also Articles 7, 10 and 17 of the 1960 UUPA have not been implemented optimally. Likewise with the implementation of Permen ATR/BPN 18/2016 concerning Control of Agricultural Land Tenure. The limitation in this research is that land that is controlled exceeds the limit set by law.

Keywords: Land, absence, latifundia

I. INTRODUCTION

Land is one of the basic human needs because the function of land is not only to function as a place to build a house or residence but also as a major supporting factor for human life and welfare as well as for social, political and cultural development. Therefore, the land issue is a serious problem that must be the concern of all parties in order to realize people's welfare. Article 33 paragraph (3) of the 1945 Constitution reads: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." In this regard, for the sake of legal certainty in the control and use of land, it is necessary to seriously regulate the provision, regulation, distribution and maintenance of land. Land is also an important resource for humans as a place to carry out various activities or activities and also as a planting medium for the community. In Indonesia, arrangements regarding land are regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations, commonly known as UUPA, which was promulgated on September 24, 1960.

Indonesian nation and is a national wealth. Article 2 paragraph (1) of the UUPA states that based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, at the highest level all natural resources

including land and water are controlled by the State, as the exercise of the power of all the people. In the UUPA of 1960, there are at least a few things that often stick out and become problems, namely: the maximum limit for land ownership (Article 7), absentee land ownership (Article 10), monopoly on land ownership (Article 13).), and determination of compensation for land in the public interest (Article 18). These four things trigger the emergence of various land conflicts, both directly and indirectly, and are difficult to resolve.

In fact, the application of Article 7 regarding the maximum limit of land ownership is often violated which causes various problems and this is shown by the accumulation of land on the one hand, while on the other hand many farmers do not own land and only become cultivators of other people's land. This violation of Article 7 is what we know as latifundia, namely land ownership outside the boundaries determined by law. This imbalance in the distribution of land ownership for both agricultural and non-agricultural land causes inequality both economically, politically, and sociologically. In the end, it is the grassroots farmers who bear the brunt of this distributional inequality. Implementation of restrictions on land ownership is still not as expected. This can be seen from absentee land ownership which is often something that is known, but difficult to prove for various reasons. Meanwhile, absentee ownership of agricultural land is expressly prohibited by the BAL. As implementation of Article 7 and Article 17 of the UUPA, Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas has been promulgated. Carry out land redistribution as mandated by Article 17 paragraph (3) UUPA jo. Law Number 56 Prp of 1960, PP Number 224 of 1961 has been stipulated concerning the Implementation of Land Distribution and Provision of Compensation. This PP was later amended and supplemented with PP Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Providing Compensation. but difficult to prove for various reasons. Meanwhile, absentee ownership of agricultural land is expressly prohibited by the BAL. As implementation of Article 7 and Article 17 of the UUPA, Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas has been promulgated. Carry out land redistribution as mandated by Article 17 paragraph (3) UUPA jo. Law Number 56 Prp of 1960, PP Number 224 of 1961 has been stipulated concerning the Implementation of Land Distribution and Provision of Compensation. This PP was later amended and supplemented with PP Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Providing Compensation. Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas has been promulgated. Carry out land redistribution as mandated by Article 17 paragraph (3) UUPA jo. Law Number 56 Prp of 1960, PP Number 224 of 1961 has been stipulated concerning the Implementation of Land Distribution and Provision of Compensation. This PP was later amended and supplemented with PP Number 41 of 1964 concerning

Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Providing Compensation. Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas has been promulgated. Carry out land redistribution as mandated by Article 17 paragraph (3) UUPA jo. Law Number 56 Prp of 1960, PP Number 224 of 1961 has been stipulated concerning the Implementation of Land Distribution and Provision of Compensation. This PP was later amended and supplemented with PP Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Providing Compensation.

In the context of legal certainty in the field of land by the government, land can be used for the greatest possible prosperity of the people, so control and ownership of land that exceeds the limit and absentee land is not permitted. This is in accordance with Article 3 paragraph (1) PP Number 224 of 1961 jo. Article 1 PP No. 41 of 1964 states that the ownership of agricultural land by people who live outside the regency where the land is located is prohibited. In connection with this provision, agricultural land owners who live outside the sub-district where the land is located, within 6 months must transfer their land rights to another person in the sub-district where the land is located or move to the sub-district where the land is located. located, except for the distance from the district. the boundaries between the owner and the land, so that it is still possible to work the land efficiently. If this obligation is not carried out, the government will take the agricultural land and then distribute it to farmers who do not yet have agricultural land.

In fact, even though this prohibition is still in effect, absentee ownership and/or control of agricultural land also often occurs. The owner of agricultural land in absentee is not a farmer but a non-resident city person, who obtains his land through buying and selling, inheritance or other means, and the use of his land is not to be cultivated as the land was given but only as a means of investment and then resold after the price is high. Agricultural land is still used as an object of speculation which results in a reduction in the area of agricultural land due to conversion. With the many violations of the latifundia which allow and provide space for everyone to own land outside their area of residence for the sole purpose of investing and making land a business commodity, then the practice of absenteeism will continue to exist in society. This happened because the application of Article 7 and Article 10 of the UUPA 1960 was not optimal.

In this regard, it is necessary for owners of agricultural land who live in the regency where the land is located, in order to be able to work in accordance with the principles contained in Article 10 of the UUPA which stipulates that:

1. Every person and legal entity that has rights over agricultural land is obliged to actively seek or seek it by themselves, by preventing extortion;
2. The implementation of the provisions of paragraph (1) is further regulated by statutory regulations;
3. Exceptions to the principle mentioned in paragraph (1) are regulated in laws and regulations.

In fact, even though this prohibition is still in force, the absence of ownership and/or control of agricultural land often occurs. The owner of agricultural land in absentee is not a farmer but a non-resident city person, who obtains his land through buying and selling, inheritance or other means, and the use of his land is not to be cultivated as the land was given but only as a means of investment and then resold after the price is

high. Agricultural land is still used as an object of speculation which results in a reduction in the area of agricultural land due to conversion. With the many violations of the latifundia which allow and provide space for everyone to own land outside their area of residence for the sole purpose of investing and making land a business commodity, then the practice of absenteeism will continue to exist in society. This happened because the application of Article 7 and Article 10 of the UUPA 1960 was not optimal.

So juridically, this problem lies in the effectiveness of laws and regulations governing the land reform program itself, one of the principles of which is the prohibition of absentee land ownership. So that it can be said that land reform failed because the ban on absentee land ownership based on the maximum limit of agricultural land could not be implemented properly. In connection with the background above, this prompted the author to conduct research on Absentee Practices Due to Latifundia Violations.

II. LITERATURE REVIEW

The application of restrictions on land ownership up to the age of 52 years is still not as expected. This can be seen from absentee land ownership which is often something that is known, but difficult to prove for various reasons. Meanwhile, absentee ownership of agricultural land is expressly prohibited by the BAL. This prohibition is related to the land reform provisions regulated in Articles 7, 10 and 17 of the BAL. The purpose of prohibiting absentee land ownership is for farmers to be active and effective in cultivating their agricultural land so that productivity can be high and eliminating land grabbing in the hands of a handful of landlords. As implementation of Article 7 and Article 17 of the UUPA, Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas has been promulgated. Carry out land redistribution as mandated by Article 17 paragraph (3) UUPA jo. Law Number 56 Prp of 1960, PP Number 224 of 1961 has been stipulated concerning the Implementation of Land Distribution and Provision of Compensation. This PP was later amended and supplemented with PP Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Providing Compensation. In the context of legal certainty in the field of land by the government, land can be used for the greatest possible prosperity of the people, so control and ownership of land that exceeds the limit and absentee land is not permitted. This is in accordance with Article 3 paragraph (1) PP Number 224 of 1961 jo. Article 1 PP No. 41 of 1964 states that the ownership of agricultural land by people who live outside the regency where the land is located is prohibited. In this connection it is determined that the owner of agricultural land who lives outside the district where the land is located, within 6 months must transfer his land rights to another person in the district where the land is located or move to the sub-district where the land is located unless the sub-district is directly adjacent to between the owner and the land so that it is still possible to work the land efficiently.¹

III. METHODOLOGY

This study uses a normative juridical research method, by looking more deeply at the primary legal material in the form of laws and regulations that apply regarding restrictions on land ownership regulated in Articles 7 and 10 of the BAL which are linked to the MPR Decree on Agrarian Affairs. Reform (landreform). The approach taken in this study took two approaches, namely the Statute Approach and the Conceptual

¹ Butarbutar, DD (2015). OVERCOMING ABSENTEE/GUNTAI LAND OWNERSHIP. PAKUAN LEGAL REVIEW, 1 (2).

Approach, as explained by Peter Mahmud there are five approaches, including:² Statute Approach; Case Approach; Historical Approach; Comparative Approach; Conceptual Approach. The choice of these two approaches is intended to facilitate the research process in terms of latifundia practices that occur as if they were released from government control. Therefore, the Statute Approach and the Conceptual Approach are considered the most appropriate to answer the question as formulated in problem identification. The statutory approach (Statute Approach) is to look at the extent to which the laws and regulations governing land and of course, the extent to which the regulations governing the prohibition of latifundia and absentee practices are regulated by law. The conceptual approach (Conceptual Approach) is used to see the conception of legal certainty guarantees contained in Article 33 paragraph (3), Articles 7, 10 and 17 of the UUPA.

IV. RESULTS AND DISCUSSION

One of the efforts that can be made to realize land reform is to prohibit excessive land ownership (latifundia) and inappropriate land ownership (absentee). The meaning of the prohibition of land ownership in latifundia is the prohibition of controlling a very large area of land so that there is a maximum limit for someone to own land, especially agricultural land. This is in accordance with the provisions of article 7 of the UUPA. Meanwhile, the term absentee land will not be found in statutory regulations, but in Article 3 of Government Regulation Number 224 of 1961 that absentee land is land located outside the area where the land owner lives. Or also Boedi Harsono said that absentee land is land ownership that is located outside the owner's residence.³

Based on this, it means that every land owner is prohibited from owning agricultural land that is different from the sub-district where the owner lives because such ownership will result in inefficient land cultivation, for example in terms of management, supervision, transportation of agricultural products, so that it can also lead to an exploitation system. Exceptions only apply to landowners who live close to the district where the land is located, if the distance between the owner's residence and the land, according to the considerations of the district land reform committee, is still possible to cultivate the land efficiently. .⁴ Absentee land ownership continues to occur in Indonesia. This is caused by the following:

1. Lack of public understanding and knowledge of the rule of law regarding the prohibition of absentee land ownership.
2. There is a situation that makes absentee land ownership unavoidable, namely the land owner gives inheritance rights to his family who live in not one sub-district where the agricultural land is located or the land owner moves to another location while the land owner does not report. transfer.

²Marzuki, Peter Mahmud. Legal research . Kencana, 2005.

³Boedi Harsono, Indonesian Agrarian Law, Association of Land Law Regulations. Jakarta: Djembatan, 2007. Pg. 385

⁴Aminuddin Salle, (et al), Teaching Materials of Agrarian Law, (Makassar: AS Publishing, 2010), 232.

3. There are conditions where the local government (eg sub-district head), does not carefully review the requirements for obtaining a land certificate which can be done by providing a fake KTP.
4. The economic conditions of the people who live in agricultural land locations do not support owning land, so that in this case the local people tend to only work on managing the land, but land ownership rights remain with the stronger urban communities. economic conditions and affordability.
5. One of the land reform programs is the ban on absentee land ownership. 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 Compensation (amended and supplemented by PP No. 41 of 1964).

In the discussion of Article 10 of the UUPA, it has been stated that as a first step in implementing the principle that those who own agricultural land must actively cultivate or cultivate it themselves, provisions are made to abolish control of agricultural land. land in the so-called "Absentee", namely land ownership located outside the area where the owner lives. These provisions are regulated in Article 3 of Government Regulation No. 224 of 1960 and Article 1 of Government Regulation no. 41 of 1964 (additional articles 3a to 3e). To carry out the mandate of the UUPA, Article 3 paragraph (1) Government Regulation Number 224 of 1961 stipulates that: "Land owners who live outside the district where the land is located, Ownership of very large land is contrary to the principles of Indonesian socialism which requires equal distribution of the livelihood of the peasant people in the form of land so that justice is achieved. Because land is a natural resource that is very important for the survival of society.

In order to realize the national policy in the land sector as regulated in the UUPA, in particular to carry out the land reform program which limits the hoarding of land in the hands of certain groups, the government first promulgated Law Number 56/Prp/1960 concerning Determination of the Area of Agricultural Land, better known as the Law -law. Indonesian land reform. The land reform law regulates three main things, namely:

- a) Determination of the maximum area of ownership and control of agricultural land;
- b) Determination of the minimum area of agricultural land ownership and the prohibition of carrying out actions that result in the division of land that is too small; and
- c) Return and redemption of mortgaged agricultural land.

The maximum area of agricultural land that can be owned by one farming family is determined for each district/city by taking into account the conditions of each region and factors such as land availability; population density; soil type and fertility; the abundance of good business land and advances in agricultural technology.⁵For this reason, a distinction is made between densely populated areas (very dense, moderately dense, and less dense) and non-dense areas, as well as differentiating the type of soil, between paddy fields and dry land. More details can be seen in table 1 below:

Table of Criteria for Population Density and Regional Groups

⁵Pendastaren Tarigan, The Direction of a Democratic Law Country Strengthening Government Positions With Legislative Delegations But Controlled, Medan, Pustaka Bangsa Press, 2008, p. 307.

Population density per square kilometer Area Classification

Population density per square kilometer	Regional Classification
> 50	Not solid
51–250	Less dense
251–400	Pretty Solid
< 401	Very solid

Source: Law Number 56 Prp of 1960.

Taking into account population density, area size, and other factors, the maximum area referred to in Law Number 56 of 1960 is determined as follows:

Table of Population Density and Maximum Area of Ownership or Control of Agricultural Land

No	In areas that:	Type of soil	
		Rice fields (ha)	Dry Land (ha)
1	Not solid	15	20
2	Congested :		
	Less Dense	10	12
	Pretty Solid	7,5	9
	Very solid	5	6

Source: Law Number 56 Prp of 1960.

The table above is very clear regarding the boundaries of land tenure or control, meaning that if a person complies with the UUPA regulations or if the application of Article 7 is maximized, then there will be no more gaps for people to own land outside of their own land. place of residence (absentee) on the basis that there are already boundaries of land tenure or control.

There is a quote from the great thoughts of Bung Hatta, one of the founders of this republic who cared about the life of his nation. As a nationalist-populist who has life experience and has seen first-hand the bitter experience of his people, he is deeply moved by their living conditions. The land which is the foundation of the Indonesian nation's life has been uprooted from its life. he says:

"Land which is seen as the main factor of production, outside of residential land, can only be seen as a factor of production, and may no longer be a commercial object that is traded, solely for profit ..." (Bung Hatta).⁶

As stated above, both the UUPA and Bung Hatta strongly disagreed that land is seen as merchandise meant for profit. Thinking of land as a commodity means allowing whoever has economic power to own land and anyone with money can buy it anytime and anywhere. Likewise, if you view land as a business commodity, it means that you agree with the existence of a land market, which includes the notion of the attractiveness of the forces of demand and supply. And if this happens it is very dangerous and the welfare of the small community is threatened. In accordance with Article 33 paragraph (3) that land and water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people.

⁶Quoted from Sandy, I Made (1991) "A Brief Note on Obstacles to the Implementation of the LoGA" in the CSIS Analysis March 1991

The philosophy of land ownership in Law Number 5 of 1960 concerning Basic Agrarian Regulations is that land belongs to the nation, is controlled by the state, and can be owned by the people with the right to control it from the state. Based on the state's right to control, various types of land rights can be granted to individuals or legal entities according to laws and other legal regulations. 2 With the issuance of the Basic Agrarian Law, there has been a change in land ownership in Indonesia. so that the Basic Agrarian Law becomes the legal basis for land reform in Indonesia. Changes in agrarian regulations are supported by the restructuring process (rearrangement) of ownership, control and use of agrarian resources (especially land) as stipulated in article 2 of TAP MPR RI Number IX/MPR/2001. In the regulation it is explained that "Agrarian Reform includes a continuous process regarding the realignment of control, ownership, use and utilization of agrarian resources, which is carried out in the framework of achieving legal certainty and protection as well as justice and prosperity for all people". Indonesian people."⁷

The state's right to control over land originates from the Indonesian people's right to land, which in essence is an assignment to carry out the tasks of state power which contains elements of public law. The entire Indonesian nation cannot carry out the task of administering all the common land alone, therefore in carrying it out the Indonesian nation as the holder of rights and bearer of the mandate, at the highest level is delegated to the State of the Republic of Indonesia as the organizer of power for all the people (Article 2 paragraph (1) law). Basic Agrarian Law.⁸

V. CONCLUSION

1. Violations of law enforcement, namely owning or controlling land excessively, namely exceeding the limits set by laws and regulations, especially in Article 7 of the UUPA 1960, still occur and are one of the factors in the practice of absentee land tenure because the land is seen only as a commodity business, therefore ownership the land is not used for basic/main needs but is used as an investment and will be resold when the land price has risen.
2. Absentee land ownership is prohibited. This starts from the legal basis contained in Article 10 paragraph (1) UPA UPA. And also in Article 3 of Government Regulation no. 224 of 1960 and Article 1 PP No. 41 of 1964 (additional Article 3a to 3e). To carry out the mandate of the UUPA, Article 3 paragraph (1) of Government Regulation Number 224 of 1961 stipulates that: "Land owners who live outside the sub-district where the land is located, within 6 months are obliged to transfer their land rights to other people in the sub-district where the land is located. located or move to the district where the land is located."

REFERENCES

Salle, Aminuddin, et al. (2010). Agrarian Law Teaching Materials, Makassar: AS Publishing.
Protection, AP. (1980). Comments on the Basic Agrarian Law, Bandung: Alumni.

⁷Decree of the People's Consultative Assembly Number IX/MPR/2001 Concerning Agrarian Reform and Management of Natural Resources

⁸Firdasari, "Legal Review of Absentee Land Ownership in Wajo District, Tempe District" (Thesis, Alauddin State Islamic University, 2014), 21.

- Boedi Harsono, Indonesian Agrarian Law, Association of Land Law Regulations. Jakarta: Djembatan, 2007.
- Butarbutar, DD (2015). OVERCOMING ABSENTEE/GUNTAI LAND OWNERSHIP. PAKUAN LEGAL REVIEW, 1 (2).
- Quoted from Sandy, I Made. (1991) "A Brief Note on Obstacles to the Implementation of the LoGA" in March 1991 CSIS Analysis.
- Firdasari. (2014). "Legal Review of Absentee Land Ownership in Wajo District, Tempe District". Thesis, Alauddin State Islamic University.
- (2008). Legislation Yet Under Control, Medan: Pustaka Bangsa Press, pg. 307.
- Marzuki, Peter Mahmud. (2005). Legal research . golden.
- Pendastaren Tarigan, The Direction of a Democratic Law Country Strengthening Government Positions With Delegation.
- Gautama, Sudargo. (1981). Interpretation of the Basic Agrarian Law, Bandung: Alumni.
- Decree of the People's Consultative Assembly Number IX/MPR/2001 Concerning Agrarian Reform and Management of Natural Resources.