

Absentee Land Ownership: Problem or Solution for Indonesia Farmers

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Abstract

Food Resilience is a critical aspect of national sustainability programs. Indonesia has a large and diverse population necessitates prioritizing food resilience as a primary focus of government programs. Food security can be achieved by empowering the predominantly farming population of Indonesia. In this regard, the government can utilize Absentee Land to achieve food resilience goals and improve the welfare of farmers. However, the utilization of Absentee Land is hindered by regulations restricting land ownership to civil servants. These regulations pose a significant obstacle to farmers who seek to engage in or expand agricultural endeavors. The conflicts arising from these regulations constitute the most substantial barrier to farmers' efforts to realize food resilience programs in Indonesia. This research uses a normative legal research method, focusing on the Absentee Land through statutory and case approaches. The results of this research indicate that regulations regarding Absentee Land has no longer relevant given the current state of affairs, as they impede the maximization of food resilience, particularly for farmers in the agricultural sector.

Keywords: *Absentee Land; Farm; Food Resilience*

Abstrak

Ketahanan pangan merupakan hal yang sangat penting dalam program keberlangsungan bangsa. Populasi besar dan sangat beragam yang ada di Indonesia menjadikan ketahanan pangan ini harus menjadi prioritas utama dalam program pemerintah. Ketahanan pangan ini dapat diterapkan dengan cara memberdayakan masyarakat Indonesia yang kebanyakan berprofesi sebagai petani. Dalam hal ini pemerintah bisa memanfaatkan Tanah Absentee dalam mencapai tujuan ketahanan pangan dan dapat mensejahterakan petani. Namun dalam pemanfaatan tanah Absentee ini masih terhalang oleh peraturan yang menghambat kepemilikan tanah Absentee untuk para petani. Adanya peraturan tentang kepemilikan tanah Absentee yang hanya dapat dimiliki oleh Pegawai Negeri Sipil menjadi halangan bagi petani yang akan menjalankan atau mengembangkan usaha dalam pertanian. Konflik dalam peraturan kepemilikan tanah Absentee ini adalah hambatan terbesar dalam usaha petani mewujudkan program ketahanan pangan di Indonesia. Penelitian ini akan menggunakan penelitian hukum normatif, dimana dalam studi ini akan menggali penelitian dari tanah Absentee dengan menggunakan pendekatan Perundang-undangan dan pendekatan kasus. Hasil dari penelitian ini bahwa peraturan yang mengatur tentang tanah Absentee ini sudah tidak relevan diterapkan dengan keadaan saat ini karena ketahanan pangan sektor pertanian khususnya bagi petani tidak dapat dimaksimalkan.

Kata Kunci: Tanah Absentee; Pertanian; Ketahanan Pangan.



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A. INTRODUCTION

Indonesia is a country known as an agrarian nation, where farming serves as the main occupation for the majority of its population. Agricultural activities conducted by the community involve various sectors, including cultivation, crop production, food production, plantations, livestock, and fisheries. Consequently, economic development primarily focuses on the agricultural market sector to ensure the well-being of the people.

A substantial portion of the population falls under the category of agricultural workers or tenant farmers, meaning they work on and manage agricultural land that is not their own. These individuals often lack land ownership themselves and rely on cultivating land owned by others to sustain their livelihoods. The utilization of natural resources found in Indonesia is also stated in Article 33 of the 1945 Constitution of the Republic of Indonesia, which contains the notion that land, water, and air must be utilized as best as possible to ensure the welfare of the Indonesian people.

The utilization of land today is a very important aspect of daily life for the Indonesian people. The function of land includes serving as a medium for the growth of plants, which is a source of staple food, and as an area for other activities that can be carried out by the community. Land is also a critical or essential component in the success of production, which is vital for human life and the progress of a nation. The social function of land, as regulated in the Basic Agrarian Law (UUPA), means that any land rights within society cannot be justified if the land is used or unused solely for personal interests, especially if such actions could harm the community. Based on data from the Central Bureau of Statistics and the Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN), the area of rice fields in Indonesia experienced a significant decline in 2018 to 7.1 million hectares from the previous 8.1 million hectares in the period of 2010-2017.¹

The term "absentee" etymologically originates from the English language, where the word "absentee" means not present or not being in one's place.² Absentee land can be defined as agricultural land located outside the domicile of the landowner. The history of the term "absentee" itself is related to agricultural land. The prohibition of absentee land ownership is a manifestation of the land reform goals outlined in Article 10 of the Basic Agrarian Law. Besides embodying the spirit of land reform, absentee land ownership is also prohibited to avoid exploitative practices. This has led to significant differences in the wages earned by farmers.³ However, at the Article 11 paragraph (2) of the Basic Agrarian Law (UUPA) states that policies

¹ Fatchur Rozci and Ida Syamsu Roidah, "Factor Analysis Of The Conversion Of Agricultural Land To Non Agricultural Land Use In East Java," *Jurnal Ilmiah Sosio Agribis* 23, no. 1 (2023).

² Jhon M Echols and Hassain Sadhily, *Kamus Inggris-Indonesia* (jakarta: gamedia, 2012).

³ Anna Apriana Hidayanti and Rifani Nur Sindy Setiawan, "Peramalan Rata-Rata Upah Buruh Tani (Rupiah) Di Indonesia Menggunakan Arima Model Intervensi," *AGROTEKSOS* 34, no. 1 (May 3, 2024): 318, <https://doi.org/10.29303/agroteksos.v34i1.1102>.

must ensure the protection of vulnerable communities to achieve societal welfare, particularly for farmers.

In their research, Sarbini and I Ketut Adhi Kurnia Jaya Negara stated that the results showed that the implementation of E-KTP on a national scale has not yet been able to address the issue of agricultural land ownership in Bangli Regency by people living outside the districts of Bangli Regency. They are still in the process of changing their addresses, which does not result in the absence of the landowners.⁴ The difference with this research is that this study discusses the protection of farmers to enable them to maximize their performance in agriculture and the protection for farmers to own absentee land that they can utilize actively and independently.

Furthermore, in the research conducted by Muhammad Ngaziz et al., it is stated that according to the regulations on absentee land, the general public is prohibited from owning absentee land. As a result, the general public is also restricted from transferring such land to individuals who reside outside the land's location.⁵ This research is distinguished by its emphasis on the pressing need to create regulations for absentee land ownership. Its goal is to offer legal clarity for the community, particularly farmers, allowing them to hold absentee land specifically for agricultural purposes. This aligns with the government's goal of achieving food self-sufficiency.

The purpose of the research is based on parameters that illustrate whether the regulations on absentee land are outdated or no longer relevant to the present day. The irrelevance of these regulations can be seen in the expanded regions of Indonesia. In 1961, Indonesia had only 21 provinces. This number has increased due to regional expansion, and currently, Indonesia has 38 provinces⁶. The regulation on absentee land must be updated to improve the well-being of farmers in line with the values contained in the Basic Agrarian Law (UUPA). With Article 3 of Government Regulation No. 221 of 1961 only allowing civil servants to own absentee land, the nation's goal of improving the welfare of the community, especially farmers, becomes increasingly difficult to achieve. Farmers will find it increasingly challenging to develop their agricultural businesses if the regulations on absentee land are not revised efficiently.

If there is a problem like this, changes regarding the regulation of absentee land must be implemented immediately in order to avoid neglect by parties who are allowed to own absentee land and to make it easier for the community, especially farmers, to also own absentee land with the aim of developing agricultural businesses and to help the government in the aim of maintaining national financial security. Based on this description, this research is based on 2 (two) problems where the first problem is that the regulations regarding absentee land are no longer relevant to the current situation, the second is that absentee land can be a way out for the state to improve the welfare of the community, especially farmers and realize government goals in food security.

⁴ Sarbini and I Ketut Adhi Karunia Jaya Negara, "Transition Ownership Rights Land Of Agricultural Land With Absente Using E-Ktp In Bangli District," *Jurnal Notariil* 8 (2023).

⁵ Muhammad Ngaziz et al., "Reconstruction of Agricultural Absentee Ownership Regulation Based on Justice Value," *Saudi Journal of Humanities and Social Sciences* 8, no. 06 (June 3, 2023): 162–69, <https://doi.org/10.36348/sjhss.2023.v08i06.003>.

⁶ Maburri Pudyas, "Berapa Jumlah Provinsi Di Indonesia Ini Sejarah Pemekaran Di Indonesia Sejak Awal Kemerdekaan," *liputan6.com*, December 17, 2023.

B. METHOD

The legal research used is normative juridical research which aims to find the essence of norms and rules that are in accordance with the basic principles of the Indonesian state. This research analyzes the essence of absentee land ownership arrangements which are relevant today. The primary legal material in this research is positive law and secondary material related to literature related to primary legal material.⁷

This research uses a statue approach by reviewing and examining statutory regulations that are related to the legal issues that are the focus of discussion in this research and uses a literature review approach where the research process involves reviewing and critically evaluating sources. existing literature. The main aim of a literature review is to understand the current state of research in the field related to the topic under study.⁸ By using this literature review, it is used as a comparison that the regulations regarding absentee land ownership are no longer relevant today and regulations need to be updated.

The legal material analysis technique used in this research is systematic interpretation. Where is the technique of This analysis is used to interpret a statutory provision which must be linked to the provisions of other statutory regulations so that when interpreting statutory regulation, it cannot depart from or deviate from the legal system of a country.⁹

C. RESULTS AND DISCUSSIONS

1. The Concept Of Absentee Land According To Indonesian Positive Law

Indonesia is a rule of law country¹⁰ as Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia, states that "the State of Indonesia is a state of law". Thus, everything related to the actions of the state and citizens must have clear rules to maintain state behavior. The state as the regulator of the running of the state process must be able to improve the welfare of society as stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which stipulates that "The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". These provisions aim to encourage all agricultural landholders to cultivate or work their own land. This approach seeks to prevent agricultural land from becoming unproductive or left idle due to absentee ownership.¹¹

In the state's process to ensure the welfare of the Indonesian people is by making it easier for people to get jobs. Jobs that are often underestimated or devalued in the country's development process. One of the difficulties farmers have in carrying out their profession in the agricultural sector is the lack of land they can own. This problem can occur because if the selling value of land objects in the farmer's domicile remains at a high price. There are several farmers who want to own agricultural land outside the district where they live so that they can improve

⁷ P.M Marzuki, *Penelitian Hukum ; Edisi Revisi*, vol. 14 (Jakarta: Kencana, 2019).

⁸ Rudi Ferdiansah, "Literature Review," *International Journal Labs*, February 27, 2024.

⁹ Renata Christha Aulia, "Jenis Interpretasi Hukum Dalam Rechtsvinding," *hukumonline.com*, July 18, 2022.

¹⁰ Dyah Al Uyun and Isrok, *Ilmu Negara (Berjalan Dalam Dunia Abstrak)* (malang: UB press, 2010).

¹¹ Heris Ramadan, "The Review Of Agricultural Land Transfer Related Juridical Absentee That Made Before PPAT," *Jurnal Akta* 7, no. 2 (August 17, 2020): 257, <https://doi.org/10.30659/akta.v7i2.8102>.

their standard of living through farming, which is hampered by the regulations regarding absentee land.

The word absentee comes from the Latin word "absentee" which means not present. An absentee is someone who is absent or not present at their place. The control of agricultural land referred to as "absentee" as known as in Sundanese by "guntai," which describes land ownership located outside the region where the owner resides.¹² In other countries, the definition of absentee agricultural land varies according to local regulations. Some define it based on a specific distance between the agricultural land and the owner's residence, while others take a stricter approach, considering land as absentee if the owner is not directly working it and is employed in another sector.¹³

As a nation committed to the welfare of its citizens, the State has an obligation to meet basic needs by leveraging Indonesia's abundant natural resources. The government has the authority to carry out legal actions related to public law and private law and must have a source of legislation. This authority has the following meanings rights and powers to act or also to govern, which can be obtained by way of attribution and delegation.¹⁴ One of the state's obligations to improve community welfare is to provide agricultural land for underprivileged communities. The government has provided regulations regarding the provision of agricultural land which can be used as a basis for farmers to be able to develop their businesses in the agricultural sector. This arrangement also limits ownership of agricultural land outside the subdistrict where the farmer is domiciled. The following is a table of regulations regarding agricultural land and absentee land regulated by positive law in Indonesia, namely as follows:

Table 1. Absentee and agricultural land according to positive law in Indonesia

No	Absentee land arrangements	Regulatory Content
1	Article 10 Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations	The obligation of every person and legal entity to work on agricultural land actively without extortion
2	Article 1 paragraph (1) and paragraph (2) and Article 3 Government Regulation in Lieu of Law Number 56 of 1960 concerning Determination of Land Area	Regulates the maximum control of agricultural land that is permitted to be owned or worked on
3	Article 3 and Explanation of Article 3 Government Regulation of the Republic of Indonesia Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation	Implementation of compensation for absentee land ownership and views on why civil servants can own absentee land
4	Article 3a, Article 3b, Article 3c, and Article 3d of Government Regulation of the Republic of Indonesia Number 41 of 1964 concerning Amendments and Supplements to Government Regulation No. 224 of 1961 concerning	Additional explanation regarding compensation for absentee land release

¹² Budi Harsono, "Hukum Agraria Indonesia (Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya)" (Djambatan, 2018).

¹³ A. P Parlindungan, *Landreform Di Indonesia Suatu Studi Perbandingan* (Bandung: Mandar Maju, 1991).

¹⁴ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: PT. Bina Ilmu, 1987).

Implementation of Land Distribution and Provision of Compensation

Source: Indonesian positive legal regulations, (processed 2024)

In relation to Civil Law, particularly Property Law, it is the law that regulates the relationship between legal subjects and objects, which gives rise to property rights.¹⁵ A key aspect of the law with the enactment of the Basic Agrarian Law (BAL) is the initiation of a "land reform program" in Indonesia. This program aims to improve the income and living standards of farmers working the land, serving as a foundation or prerequisite for fostering economic development toward a just and prosperous society grounded in Pancasila.¹⁶

According to Table 1 above, the regulation of absentee land in Indonesia is outlined in Article 10, paragraph (1) of the Basic Agrarian Law (BAL). This article states that "Every individual and legal entity with rights to agricultural land is fundamentally required to actively work or cultivate the land themselves, thus preventing any form of exploitation by others". This article has a principle which can be interpreted as meaning that agricultural land owners work or cultivate their own land and are still allowed to use labor but must prevent the practice of extortion methods. Giving wages that are too low to farm workers who help work and cultivate the land in question is "exploitation de l'homme par l'homme" is a way of extortion, which is contrary to the ideals of justice.¹⁷ Based on the principles explained above, land owners are obliged to work or cultivate it actively and independently. Land owners are prohibited from renting out to other parties for any reason because Article 10 of the UPA states clearly that land must be actively cultivated.

So the Supreme Advisory Council in its proposal regarding "reforming land rights and land use" stated that land reform aims: so that a just and prosperous society can be implemented and in particular the standard of living of farmers increases and the standard of living of ordinary people increases.¹⁸ In the book written by Ahmad Sodiki it can be seen that One of the basic ideas and conceptions of the 1960 Basic Agrarian Law is its populist nature, namely its strong support for the interests of the farming people. one of the basic ideas and conceptions of the 1960 Basic Agrarian Law is its populist nature, namely its strong support for the interests of the farming people.¹⁹

Furthermore, the regulation of absentee land is regulated in Article 1 paragraph (1) and paragraph (2) and Article 3 of Government Regulation in Lieu of Law Number 56 of 1960 concerning Determination of Land Area, hereinafter referred to as PRP 56 of 1960. In Article 1 paragraph (1) states that "A person or persons whose livelihood is one family together are only permitted to control agricultural land, either their own or someone else's or controlled in total, not more than 20 hectares, whether rice fields, dry land or paddy fields and dry land ", then Article 10 paragraph (2) regulates that "Taking into account the very special regional

¹⁵ Djaja S. Meliala, *Hukum Perdata Dalam Perspektif Burgerlijk Wet Boek* (Bandung: Nuansa Aulia, 2013).

¹⁶ Effendi Perangin, *Hukum Agraria Di Indonesia, Suatu Telaah Dari Sudut Pandang Praktisi Hukum* (Jakarta: Rajawali, 1986).

¹⁷ Harsono, "Hukum Agraria Indonesia (Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya)."

¹⁸ Harsono.

¹⁹ Ahmad Sodiki, *Politik Hukum Agraria* (Yogyakarta: Mahkota Kata, 2019).

conditions, The Minister of Agrarian Affairs has the authority to increase the maximum area of 20 hectares specified in paragraph (1) of this article by an additional 5 hectares.

Regarding this area, it is then regulated in Article 3 of PRP 56 of 1960 that "Persons and heads of families whose family members control agricultural land whose total area exceeds the maximum area are obliged to report this to the relevant Regency/City Regional Agrarian Head. within 3 months from the entry into force of this Regulation. If deemed necessary, this period can be extended by the Minister of Agrarian Affairs." This article explains the maximum area of land ownership that a person can own or control. This article provides certainty so that there will be no monopoly in the ownership of agricultural land.

So the provisions in Article 3 and the Explanation to Article 3 of the Republic of Indonesia Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Providing Compensation can be concluded that land ownership outside the sub-district can lead to less efficient land cultivation and can make farmers who live in the sub-district have the same domicile. The land is for agricultural laborers only. However, in the explanation of Article 3, it provides an exception for civil servants who are carrying out their duties to be able to own land in the area where they carry out their duties, a maximum of 2/5 of the maximum area that has been determined.

Next, in Article 3a, Article 3b, Article 3c, and Article 3d of Government Regulation of the Republic of Indonesia Number 41 of 1964 concerning Amendments and Supplements to Government Regulation No. 224 of 1961 concerning the Implementation of Land Distribution and Providing Compensation regulates that the land owner is obliged to transfer it a maximum of 2 (two) years after he moves location and if the land owner does not report it to the authorities the land owner is obliged to transfer it to a resident who lives at the same address as the land address. the. In the case of civil servants and equivalents who have retired, they are given a maximum of 1 (one) year starting from the end of their term of office, and people who inherit, are given a maximum of 1 (one) year starting from the death of the testator.

In the explanation above, the regulations regarding absentee land have actually been regulated and arrangements have been made to prevent large-scale land control by just 1 (one) person. However, the ownership/control of agricultural land by a person residing outside the sub-district where the land is located falls under the category of absentee/guntai land ownership.²⁰ This regulation stipulates that absentee land ownership is prohibited so that the community, especially farmers, can maximize the use of agricultural land in the subdistrict the farmer is domiciled in. Farmers are given the right to have agricultural control of no more than 20 (twenty) hectares. In this way, arrangements have been made so that land ownership does not become a monopoly by just 1 (one) person.

However, in these Articles there are many exceptions included in the Regulation, making the Articles regulating absentee land ownership not optimal and not in favor of economically weak communities. This exception is contrary to Article 11 paragraph (2) of The Basic Agrarian Law, referred to as BAL, stipulates that "The varying conditions of society and the legal needs of different groups must be considered, particularly when they do not conflict with national interests. This includes ensuring the protection of the interests of economically

²⁰ Maria SW Sumardjono, *Kebijakan Pertanahan Antara Regulasi Dan Implementasi* (Jakarta: Penerbit Kompas, 2001).

disadvantaged groups". In the articles listed in table 1 above, there are several articles that conflict with Article 11 paragraph (2) of the BAL because the principle contained in this article has the aim that the state must prioritize the interests of the economically weak, in this case farmers.

This is accordance with the aspirations of the Indonesian State in the opening of the 4th (fourth) alenial Constitution of the Republic of Indonesia, which promotes general welfare, makes the life of the nation intelligent based on belief in the Almighty God, just and civilized Humanity, Indonesian Unity and Democracy guided by wisdom in Deliberation/Representation, and by realizing social justice for all Indonesian people. With the goals of the state stated in the 1945 Constitution of the Republic of Indonesia, justice must belong to all Indonesian people without having to differentiate from the work and position of the people themselves. This justice must be carried out directly so that the impact can be felt directly by the community, especially farmers. This is in accordance with Prof. Moh Fadli's view that the formulation and formation of legislative regulations must be sourced and aimed at strengthening the joints of Pancasila and the 1945 Constitution of the Republic of Indonesia, so it is important to explain the five principles of Pancasila where Pancasila is the philosophical basis which must be translated into legal values and legal norms on Indonesian legal system.²¹

2. The Urgency Of Renewing The Regulations Concerning Absentee Land Ownership

In the process, the regulations regarding absentee land are increasingly irrelevant to the current situation. This regulation regarding absentee land creates problems that arise in line with events in current life, for example problems that arise are in matters of inheritance, transfer of ownership rights and in terms of land use. This problem can arise because in the process there are difficulties with the regulations regarding absentee land which are regulated in Government Regulation Number 221 of 1961 and Government Regulation Number 41 of 1964. These regulations clearly only allow civil servants to own absentee land. This is contrary to Article 11 paragraph (2) of the UUPA which actually aims for the government to prioritize economically weak communities, which is actually violated by the existence of Government Regulation Number 221 of 1961 and Government Regulation Number 41 of 1964 which actually do not favor economically weak communities.

Land was previously viewed from a social perspective, encompassed within the scope of customary law, communal rights, and social functions. Today, it is also seen from an economic perspective. Therefore, it is appropriate that the United Nations (UN) indicates that land issues are no longer merely social issues but have evolved into economic issues.²² The majority population in Indonesia has eyes livelihood as a farmer. In this case, preserving the land and giving Legal protection for agricultural land is also a benchmark for the progress of agriculture and the nation's economy. In addition, land is a valuable resource most important for the community, whether it is used for farming or as a place to carry out an activity.²³ The following are several cases that arise in absentee land issues:

²¹ Moh Fadli, *Membangun Sistem Hukum Nasional Berbasis Pancasila (Forming National Legal System Based On Pancasila Values)*, ed. Giri Ahmad Taufik (Bandung: Unpad Press, 2021).

²² A Ridwan Halim, *Hukum Perdata Dalam Tanya Jawab* (Jakarta: Ghalia Indonesia, 1982).

²³ Rifaa' Adelya Herdiawan, Bambang Daru Nugroho, and Betty Rubiati, "Pelaksanaan Perjanjian Bagi Hasil Tanah Pertanian Di Desa Cileungsi Kecamatan Ciawi Kabupaten Bogor Berdasarkan Undang Undang Nomor 2 Tahun 1960 Tentang Perjanjian Bagi Hasil," *ULIL ALBAB J. Ilm. Multidisiplin 1* (2022).

Table 2. Previous research on the sources of absentee land problems

No	Researcher Name and Year	Case
1	Tommy Wijaya. 2022	Absentee land ownership by inheritance is a big problem in the Langkat area. A common problem is that no one has bought the transfer of rights to the land itself through sales at the land's domicile and those who are interested in buying are people who live outside the land's domicile.
2	Muhammad Akbar, Arba and Aris Mundandar. 2023	Absentee land ownership due to regional expansion where land that was previously domiciled with the same land owner becomes absentee land because the land domicile area has changed administrative areas as a result of regional expansion in Bima Regency.
3	Nanda Putri Ariska, Rahayu Subekti and Purwono Sungkowo Raharjo. 2024	Absentee land ownership in the Temanggung area is still high due to the lack of public knowledge about absentee land regulations and the lack of active role of BPN in collecting data on land ownership in the Temanggung area.

Source: literature, (processed 2024)

Based on Table 2 above, research conducted by Tommy Wijaya in Langkat Regency, North Sumatra Province where absentee land was caused by transition through inheritance. However, in this research it is further explained that the problem that arises is actually the obstruction of absentee land owners' intentions to carry out absentee land registration due to the existence of regulations regarding the prohibition of absentee land ownership by the general public. The community, in this case the farmers, has the intention to independently cultivate the agricultural land.²⁴ Events such as those examined by Tommy Wijaya can be a reference so that the government can provide a legal umbrella that can enable people, in this case farmers, to still be able to work on land owned in absentee through inheritance. The regulations governing absentee land only focus on ownership owned by civil servants and do not regulate absentee land ownership for the general public, whereas those who need regulations regarding absentee land nowadays are the general public, especially farmers. In research conducted by Tommy Wijaya, many farmers lost or were forced to relinquish their land ownership rights because the status of the land they owned was absentee land. Farmers who receive absentee land by inheritance and who depend on agricultural products for their living lose their livelihood as farmers and become farm laborers on land that farmers should be able to actively work on themselves.

Furthermore, in table 2 in research conducted by Muhammad Akbar, Arba and Aris Mundandar which was carried out in Bima Regency where this absentee land arose due to the expansion of the area of the land domicile and the domiciled owner. The expansion of this area resulted in land owners who were previously able to cultivate their land independently indirectly having to transfer the land because of regulations that prohibited the general public from owning absentee land. With the existence of regulations that prohibit absentee land

²⁴ Tommy Wijaya, "Akibat Hukum Kepemilikan Tanah Absentee Di Kabupaten Langkat" 2, no. 2808–6708 (May 5, 2022).

ownership and the lack of information regarding the prohibition on absentee land ownership, this means that people lose their land as farmers and cause a lack of prosperity for them in carrying out their work in the agricultural sector. People who want to register land at BPN Kota Bima are still accepted and issued certificates but are given a note that if the certificate has been issued then the owner is obliged to transfer ownership of the land or the people who own the land move to the domicile of the land.²⁵ One of the reasons for the problems that hit farmers in this research is the regulation of land ownership for farmers, which causes farmers' suffering to become increasingly felt. As a result of regional expansion that occurred, agricultural land that was previously domiciled with farmers turned land into absentee land due to regional expansion. In his professorship inauguration, Prof. Koerniatmanto Soetoprawiro stated that the reality to keeps farmers living at the poverty line is primarily due to the fact that agriculture in Indonesia is practiced on a small scale and within limited areas, resulting in significantly restricted efficiency.²⁶ The situation that forces farmers to remain at the poverty line is largely attributed to the fact that agriculture in Indonesia is conducted on a small scale and in confined areas, leading to considerably limited efficiency. This problem can arise because the process of land ownership owned by farmers who want to develop their business in agriculture is hindered because the land they own becomes absentee land due to regional expansion that occurs. This situation exemplifies the need for the government to ensure that regulations do not impede farmers' rights to welfare. It's essential for policymakers to recognize the impact of their decisions on the agricultural community and strive to create an environment that supports farmers' well-being.

Then in Table 2 in research conducted by Nanda Putri Ariska, Rahayu Subekti and Purwono Sungkowo Raharjo which was carried out in Temanggung Regency where absentee land occurred due to public ignorance about the regulations that prohibit absentee land ownership by the general public. The people of Temanggung, most of whom work as farmers, carry out buying and selling under their hands so that control by the government as supervisor plays less of a role in the occurrence of these buying and selling. This research also provides a view showing that existing legal regulations governing the ownership and control of absentee land are no longer relevant in view of the progress of the times and increasingly modern infrastructure today. Despite the great distance measured from the sub-district boundary, in reality the owner can still actively cultivate it due to increasingly advanced technology today, this is very different from the 1960s. In this way, the provisions prohibiting absentee ownership and control of land at this time, which are a product of the 1960 law, still need to be reviewed because they are not in accordance with current developments.²⁷ Based on research conducted in Temanggung Regency, the regulations regarding absentee land appear to be ignored by the people of Temanggung. This can happen because even though farmers have absentee land, they can still manage their land independently because of the ease of

²⁵ Muhammad Akbar, Arba, and Aris Mundandar, "Kajian Yuridis Penguasaan Tanah Absentee Yang Disebabkan Pemekaran Wilayah Daerah," *Indonesia Berdaya*, February 15, 2023.

²⁶ Koerniatmanto Soetoprawiro, "Hukum Bagi Si Miskin: Kasus Hukum Pertanian" (Universitas Parahyangan, 2007).

²⁷ Nanda Putri Ariska, Rahayu Subekti, and Purwono Sungkowo Raharjo, "Implementasi Peraturan Tanah Absentee Dalam Hubungannya Dengan Kepemilikan Tanah Pertanian Di Kabupaten Temanggung," *TERANG : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1 (March 1, 2024).

transportation and technological advances in processing the agricultural land itself. Economic growth can be influenced by several factors. In this theory, it is stated that the development of production factors and technological progress are important and determining factors in economic growth.²⁸

From the three studies described above, all rules created must be able to create justice for the general public. Justice as one of the pillars of legal ideals has become part of the views of not only academics and legal practitioners.²⁹ When examined from the perspective of justice put forward by John Rawls, who states that justice can be created through a balance of these interests, without privileging the interests themselves.³⁰ Examined from the theory put forward by John Rawls, the regulations regarding absentee land regulated in PP 224 of 1961 and PP 41 of 1964 are regulations that are not in accordance with the theory of justice itself. In absentee land regulations only allow civil servants to own land in absentee, while people, in this case farmers who actually need land to develop their business and obtain a prosperous life, are not allowed to own land in absentee. For example, research conducted in Temanggung Regency is a concrete form that the absentee land regulations are no longer relevant today. Farmers must be given the convenience to own absentee land because in Temanggung Regency it has been proven that farmers who own absentee land can utilize the land they own actively and independently.

This arrangement regarding absentee land must be changed immediately because it is not in accordance with the values of justice put forward by John Rawlson balance without privileging certain interests. This regulation regarding absentee land is also not in accordance with the value of justice contained in Article 11 paragraph (2) of the UUPA where the article regulates the state as the policy holder, even though there are national interests, it must still pay attention to and guarantee the interests of the weaker groups. Meanwhile, regulations regarding absentee land which only allow civil servants to own absentee land actually conflict with the UUPA which must prioritize economically weak groups.

Then in the theory of justice according to Ian Mcleod States that:

*All legal theory must contain elements of philosophy man reflections on his position in the universe and gain its color & specific content from political theory the ideas entertained on the best form of society, and analysis of earlier legal theories must lean more heavily on general philosophical & political theory, while modern legal theories can be more comprehensively discussed in the lawyer's own idiom & system thought; is based on ultimate beliefs whose inspiration comes from outside the law itself.*³¹

From this statement, the principle of justice must be in accordance with the philosophical foundations that exist in Indonesia. The philosophical foundation in Indonesia is reflected in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that all natural resources within the country are controlled by the state and utilized for the

²⁸ Dian Candra Sakti, "Pengaruh Output Sektor Pertanian, Industri Pengolahan Dan Perdagangan Terhadap Jumlah Penduduk Miskin Di Propinsi Jawa Timur (Tahun 2005 – 2013)," *Jurnal Ekonomi Dan Bisnis Airlangga* 26, no. 2 (August 31, 2016): 113, <https://doi.org/10.20473/jeba.V26I22016.113-124>.

²⁹ Imam Koeswahyono, "Tanah Untuk Keadilan Sosial : Perbandingan Penataan Dan Pengaturan Pertanahan Di Beberapa Negara," *Arena Hukum* 12 (March 18, 2019).

³⁰ Ahmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicial Prudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, vol. 1 (Jakarta: Kencana, 2009).

³¹ Ian Mcleod, *Legal Theory* (New York: Palgrave Macmillan Law Master, 2007).

greatest benefit of the people. This regulation regarding absentee land is certainly not in line with the ideals of Indonesian law which prioritizes people's prosperity because it only gives absentee land ownership privileges to certain groups.

Based on existing research, land regulations are no longer relevant to current conditions. The parameters indicating the irrelevance of these regulations are evident in previous research, which shows that the practice of absentee land ownership among farmers is frequently obstructed by existing absentee land regulations. Despite this, farmers are capable of actively and independently cultivating their agricultural land, even when it is located outside the area where they reside. In this context, it is mandated that any holder of farmland who resides outside the sub-district where the property is situated must either transfer their farmland to another individual within that sub-district or relocate to the sub-district where the property is located within a six-month period. This requirement is waived if the sub-district is reasonably proximate to the owner's residence, allowing for feasible management and cultivation of the land.³²

In the process of ensuring food security, regulations on absentee land ownership become crucial, as these rules directly affect farmers, who play a vital role in maintaining the stability of food security in Indonesia. The development of food reserves serves as an effort by the community to build food stocks, aiming to meet rural food needs during periods of scarcity.³³ The regulation of absentee ownership of agricultural land actually hampers farmers' potential to maximize land cultivation. The role of farmers in food security cannot be underestimated; they are the backbone of the agricultural industry and the primary support for the nation's economy in this sector. Without productive farmers, the country will face difficulties in independently meeting its population's food needs.³⁴

Farmers also play a key role in maintaining environmental sustainability. They are responsible for implementing sustainable agricultural practices, such as efficient irrigation systems, the use of organic fertilizers, and planting cover crops. Thus, farmers not only contribute to meeting current food needs but also ensure the sustainability of food production for the future. Changes to regulations on absentee agricultural land ownership are necessary to support agricultural sustainability and help secure food security in Indonesia.

The next parameter is ease of transportation and technological advances in the agricultural sector which really help in the mobility of farmers to cultivate land independently so that it becomes easier and more efficient. The final parameter is that by referring to the maximum land ownership limit regulations that are still in force based on positive law, absentee land ownership can be realized without distinguishing between groups in order to improve community welfare, in this case farmers.

Examined from the theory of justice, the arrangement of absentee land is not in line with the theory of justice according to experts and the principles of justice contained in the UUPA.

³² Putu Diva Sukmawati, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia," *Jurnal Ilmu Hukum Sui Generis* 2, 2022.

³³ Virginia V. Rumawas, Herman Nayoan, and Neni Kumayas, "Peran Pemerintah Dalam Mewujudkan Ketahanan Pangan Di Kabupaten Minahasa Selatan (Studi Dinas Ketahanan Pangan Minahasa Selatan)," *JURNAL GOVERNANCE* 1, no. 1 (April 13, 2021).

³⁴ Puskomedia Indonesia, "Petani Sebagai Pahlawan: Peran Ujung Tombak Negara Dalam Ketahanan Pangan," Cilabang, June 20, 2024.

Absentee land regulations which only allow certain groups to own regulated absentee land are no longer in accordance with the theory of justice and the principles contained in Article 11 paragraph (2) of the UUPA.

D. CONCLUSION

Regulations regarding absentee land are no longer relevant to current conditions seen from the ease of transportation and technological advances which really help farmers performance in actively working on agricultural land. The regulations regarding absentee land are studied in the theory of justice as something that is burdensome for farmers where farmers cannot own land outside the domicile where the farmer lives even though the farmer can work actively and independently. Farmers can also lose their land rights because they are hindered by absentee land regulations which require the general public not to own land in absentee. The problems that arise due to the regulations regarding absentee land must be addressed immediately so that they can be in line with the UUPA principles where the state must side with economically weak communities. Changes regarding absentee land regulations must also be made so that the state can be in line with the ideals of state law where natural resources are used as fully as possible for the welfare of the people, not just for the welfare of certain groups. The government, in the formulation or modification of regulations, can utilize the distance from a farmer's home to their cultivated land. The advancements in technology that increasingly facilitate farmers in land cultivation should be supported by regulations that ensure legal certainty regarding absentee land ownership. These regulatory changes can also support government programs aimed at ensuring food security, considering the vital role of farmers as the frontline defenders of food resilience. Recommendation for the government is to amend the regulations concerning absentee land ownership, where the ownership of land is measured from the owner's residence. Distance is the most rational factor to be applied in changing regulations about absentee land ownership because it can be supported by technological advancements and the ease of transportation, which enable farmers to actively cultivate their land.

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