

Legal Protection Regarding the *Absentee* Sale and Purchase of Agricultural Land in Pekalongan City, Central Java

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Abstract

The objective of this study is to examine and analyze the considerations used by the Land Office of Pekalongan City in rejecting applications for the transfer of ownership rights over agricultural land in Pekalongan City, Central Java. Additionally, this study aims to explore and analyze the resolution of issues related to the sale and purchase of agricultural land that do not meet the minimum land area requirements stipulated by law.

This research adopts a descriptive approach with an empirical juridical method. The study involves library research to obtain secondary data through document analysis, while field research is conducted to gather primary data through interviews with research subjects using structured interview guidelines. The analysis employed in this study is qualitative and presented descriptively.

Based on the anticipated findings, the author expects that the considerations used by the National Land Office include the following: first,



the land is being purchased by a buyer who resides outside the subdistrict where the agricultural land is located, with a distance of approximately nine kilometers between the land and the buyer's residence. The second consideration pertains to the land size, as the object of the sale measures less than two hectares.

To address these issues, buyers may pursue several resolution strategies. One approach is to designate one among them as the sole owner or transfer ownership to another party, in accordance with Article 9(2) of Law No. 56 Prp of 1960. Another possible solution is land conversion through drainage, as the land in question does not fall within a designated green area.

KEYWORDS

Sale and Purchase, Agricultural Land, Absentee Ownership

Introduction

Land is one of the fundamental elements of human life, serving as a place of residence, a source of livelihood, and a key factor in social and economic activities. As population growth and economic development continue, the demand for land has increased, leading to rising land prices and the widespread conversion of agricultural land into residential areas. This phenomenon presents various challenges, including land fragmentation, environmental degradation, and threats to national food security and sovereignty¹.

The conversion of agricultural land into non-agricultural areas has significantly reduced the land's capacity to sustain ecological balance and economic viability for farmers. The shrinking size of agricultural land makes it increasingly difficult to achieve economies of scale in farming operations, ultimately affecting efficiency and farmer welfare. Therefore, it is crucial to regulate land conversion to ensure food security and improve the well-being of rural communities that rely on the agricultural sector.

In Indonesia's agrarian legal framework, agricultural land

¹ Sahnun, 2016, *Hukum Agraria Indonesia*, Setara Press, Malang, hlm. 132.

ownership is governed by Law No. 5 of 1960 on Basic Agrarian Principles (UUPA). One of its derivative regulations is Law No. 56 PRP of 1960 on the Determination of Agricultural Land Area, which aims to prevent the concentration of land ownership in the hands of a few. Additionally, Government Regulation No. 224 of 1961 and Government Regulation No. 41 of 1964 explicitly prohibit absentee land ownership, which refers to ownership by individuals who do not reside in the district where the land is located².

The prohibition of absentee land ownership is intended to ensure that agricultural land is optimally managed by its owners, thereby increasing agricultural productivity. Article 3(1) of Government Regulation No. 224 of 1961 stipulates that landowners residing outside the district where their agricultural land is located must transfer their ownership rights within six months to someone who resides in that district or relocate to the district themselves. Exceptions to this rule apply to individuals serving in government roles or those with special circumstances deemed acceptable by the Minister of Agrarian Affairs³.

In addition to restrictions on absentee ownership, agrarian law also sets a minimum land size requirement for agricultural land transactions. According to Articles 8 and 9 of Law No. 56 PRP of 1960, the sale and purchase of agricultural land must involve a minimum area of two hectares. This regulation aims to prevent excessive land fragmentation, which could render agricultural operations economically unviable⁴.

Despite these legal provisions, challenges persist in their implementation. One of the recurring issues is the continued occurrence

² Erna Sri Wibawanti dan R. Murjiyanto, 2012, *Hak Atas Tanah dan Peralihannya*, Liberty, Yogyakarta, hlm. 119.

³ Budi Harsono, 1999, *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA*, Djambatan, Jakarta, hlm 350.

⁴ Muchtar Wahid, 2008, *Memaknai Kepastian Hukum Hak Milik Atas Tanah*, Republika, Jakarta, hlm. 69

of agricultural land transactions that do not meet the minimum size requirement or are conducted under absentee ownership. These practices raise legal concerns regarding land ownership validity and expose the parties involved to potential administrative sanctions.

Based on these considerations, this study aims to analyze the legal reasoning behind the Land Office's rejection of agricultural land ownership transfers and to explore legal solutions to the issue of agricultural land transactions that do not comply with the minimum land area requirements established by prevailing regulations.

Methods

This research employs the normative juridical method, a legal research approach that focuses on examining the applicable legal norms. This approach is chosen because the study centers on analyzing regulations and legal policies governing agricultural land ownership and restrictions on absentee land ownership⁵.

This method is carried out by examining primary, secondary, and tertiary legal materials. Primary legal materials include relevant legislation, such as Law No. 5 of 1960 on Basic Agrarian Principles, Law No. 56 PRP of 1960, and related government regulations. Secondary legal materials consist of academic journals, books, and expert opinions in agrarian law, while tertiary legal materials include legal dictionaries and legal encyclopedias⁶.

The analysis is conducted using a descriptive method, aiming to illustrate how legal regulations are applied and the challenges that arise in their implementation. Additionally, a normative analysis is employed to assess the extent to which existing regulations address legal issues related to land ownership and the transfer of agricultural land rights.

⁵ Sugiyono. (2014). *Metode Penelitian Pendidikan (Pendekatan Kuantitatif, Kualitatif, dan R&D)*. Bandung: Alfabeta.

⁶ Riduwan. (2014). *Metode dan Teknik Menyusun Proposal Penelitian (Untuk Mahasiswa S-1, S-2, dan S-3)*. Bandung: Alfabeta.

Through this approach, the study seeks to provide a comprehensive understanding of the effectiveness of agrarian law regulations in controlling the conversion of agricultural land while offering more effective policy recommendations⁷.

Result and Discussion

1. The Legal Basis of PPAT in Drafting the Deed of Sale and Purchase of Absentee Land in Pekalongan City

The sale and purchase of agricultural land on an absentee basis, or ownership outside the district, is indeed prohibited because such ownership does not grant the right to use the land arbitrarily. Ideally, the owned land should be properly managed to prevent it from being neglected. This regulation is solely intended for the welfare of the people, ensuring that the benefits derived from cultivating the land can be directly enjoyed by the community⁸.

This provision is stipulated in Article 10, Paragraph (1) of Law Number 5 of 1960 concerning the Basic Agrarian Law, which states that: "Every person and legal entity that has a right to agricultural land is, in principle, obliged to cultivate or work on it actively, preventing exploitative practices." In accordance with Article 3, Paragraph (1) of Law Number 224 of 1961 concerning the Implementation of Land Redistribution and Compensation, which states that: "A landowner who resides outside the district where the land is located must transfer their rights to another party who meets the requirements as an agricultural landowner within six months required to transfer their land rights to another person within the district where the land is located or relocate to the district where the land is situated."

⁷ Hendriyani. (2013). Analisis Isi: Sebuah Pengantar Metodologi yang Mendalam dan Kaya dengan Contoh. Jurnal Komunikasi Indonesia, 2(1)

⁸ Absente (Def.1) (n.d). Dalam kamus Bahasa Indonesia (KBBI) Online. Diakses melalui <https://kbbi.web.id/absente>. Diakses pada tanggal 10 Maret 2025.

Based on the aforementioned article and its essence, it can be concluded that this prohibition aims to ensure that farmers actively and effectively cultivate agricultural land. Additionally, the yields obtained from working on the agricultural land can be directly enjoyed by the local community residing in the area where the land is located⁹. In accordance with the agrarian law provisions mentioned above, absentee ownership of agricultural land is indeed not permitted. However, there are several exceptions to absentee land ownership. These exceptions apply to individuals carrying out state duties, fulfilling religious obligations, or having other special reasons deemed acceptable by the Minister of Agrarian Affairs.

Exceptions for Civil Servants and Military Officials are regulated under Government Regulation No. 4 of 1977 concerning the Ownership of Agricultural Land in an Absentee Manner for Retired Civil Servants, which states that: *"A Civil Servant within two (2) years before retirement is allowed to purchase agricultural land in an absentee manner (guntai) up to 2/5 (two-fifths) of the maximum land ownership limit for the relevant Level II Region."* The prohibition on absentee ownership of agricultural land also does not apply to landowners residing in a district bordering the district where the land is located. This is regulated in Article 3, paragraph (2) of Government Regulation No. 224 of 1961 concerning the Implementation of Land Redistribution and Compensation, provided that the distance between the owner's residence and the land still allows for efficient land cultivation. The content of Article 3, paragraph (2) of Government Regulation No. 224 of 1961 states: *"The obligation in paragraph (1) of this article does not apply to landowners residing in a district bordering the district where the land is located if the distance between the owner's residence and the land still*

⁹ Effendi Perangin, 1994, Praktik Jual Beli Tanah, Raja Grafindo, Persada, Jakarta, hlm.2.

allows for efficient land cultivation, as determined by the Level II Regional Land Reform Committee."

The exception for Civil Servants and Military Officials is also stipulated in Government Regulation No. 4 of 1977, which states: *"A Civil Servant within two (2) years before retirement is allowed to purchase agricultural land in an absentee manner (guntai) up to 2/5 (two-fifths) of the maximum land ownership limit for the relevant Level II Region."*

This provision is further reinforced by Article 3b of Government Regulation No. 41 of 1964 concerning Amendments and Additions to Government Regulation No. 224 of 1961 on the Implementation of Land Redistribution and Compensation, which explains that Civil Servants (PNS) may own absentee land because they are considered to have contributed significantly as enablers of the state system.

In addition to Civil Servants (PNS), the exception also applies to retired Civil Servants, widows of Civil Servants, and widows of retired Civil Servants, as regulated in Article 2, paragraph (1) of Government Regulation No. 4 of 1977 concerning the Ownership of Agricultural Land in an Absentee Manner for Retired Civil Servants. The Pekalongan City Land Office actually allows the sale and purchase of agricultural land in an absentee manner, provided that one of the methods to legalize the transaction is by applying for a change in land use. The technical aspects of filling out the special transfer form for agricultural land refer to Article 1 of Government Regulation No. 41 of 1964 concerning the prohibition of absentee/guntai land use.

The function of the special transfer form for agricultural land is to obtain permission for the transfer of rights to agricultural land. This form is an official document from the Land Office that must be completed by the Land Deed Official (PPAT) handling the sale and purchase of agricultural land. Furthermore, the form must be submitted back to the

Land Office¹⁰. This process is carried out to obtain a recommendation on whether the agricultural land can be bought and sold. Furthermore, absentee land transactions can still be conducted if the agricultural land being sold directly borders the buyer's place of residence¹¹. This is regulated in Article 3, paragraph (2) of Government Regulation Number 224 of 1961, which states that "The obligation in paragraph (1) does not apply to landowners who reside in a sub-district bordering the sub-district where the land is located, provided that the distance between their residence and the land still allows for efficient land cultivation."

Based on the explanation of the article above, land transactions across sub-district borders are still permitted, provided that the distance between the agricultural land being transacted and the landowner's residence still allows for efficient land cultivation. In this case, it can be observed that access to the agricultural land is very convenient since the road infrastructure already includes paved roads.

2. Potential Issues in the Process of Absentee Agricultural Land Transactions in Pekalongan City

Potential issues that may arise in the process of absentee agricultural land transactions in Pekalongan City include concerns that landowners residing outside the subdistrict where the agricultural land is located may neglect the land. This could result in the agricultural land, which should be properly cultivated, being left idle without any farming activities. The above provisions contain several essential aspects that regulate absentee ownership, including¹²:

¹⁰ Harun Al Rashid, 1986, *Sekilas Tentang Jual Beli Tanah (berikut Peraturan-peraturannya)*, Ghalia Indonesia, Jakarta, hlm.48.

¹¹ Soetomo, 2001, *Pedoman Jual Beli Tanah Peralihan Hak dan Sertifikat*, Lembaga Penerbitan Universitas Brawijaya, hlm. 17.

¹² Parlingungan, *Landreform di Indonesia Suatu Studi Perbandingan*, Alumni, Bandung, 1987, hlm 123.

- a. Agricultural land must be actively cultivated or managed by the owner.
- b. Agricultural landowners must reside in the subdistrict where the land is located.
- c. Agricultural landowners who reside outside the subdistrict where the land is located must transfer their land rights or relocate to the subdistrict where the land is situated.
- d. It is prohibited to transfer or assign agricultural land rights to individuals or legal entities residing or based outside the subdistrict where the land is located.

This regulation is also stipulated in Article 3, paragraph (1) of Law Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation, which states that: *"A landowner who resides outside the subdistrict where their land is located must, within six months, transfer their land rights to another person within the same subdistrict or relocate to the subdistrict where the land is situated."*

The purpose of this regulation is to ensure that farmers remain active and effective in cultivating agricultural land. Additionally, it ensures that the agricultural yields can be directly enjoyed by the local community where the land is located.

Furthermore, absentee land ownership has contributed to a form of agricultural labor exploitation in Indonesia, as many agricultural land buyers are not actual farmers. This aligns with Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation, specifically in Article 3, paragraph (1), which reiterates that landowners residing outside the subdistrict where their land is located must transfer their land rights within six months or relocate to the subdistrict where the land is situated. From the above article, it can be concluded that agricultural

land ownership by individuals residing outside the subdistrict where the land is located is prohibited. This regulation ensures that agricultural yields from self-cultivated land can be directly enjoyed by the local community¹³.

Law Number 56 Prp of 1960 concerning the Determination of Agricultural Land Area, specifically Article 8, states: *"The government shall undertake efforts to ensure that each farming family owns a minimum of 2 hectares of agricultural land."* The purpose of this article is to regulate the minimum ownership of agricultural land to prevent excessive fragmentation of agricultural land ownership. The regulation on the minimum ownership of agricultural land aims to achieve equitable distribution of community welfare. This is further stipulated in Article 3, paragraph (1) of Ministerial Regulation Number 18 of 2016 concerning the Control of Agricultural Land Ownership, which states: *"The area of agricultural land ownership and control needs to be limited to achieve equitable community welfare."*

The seller is required to sell the entire agricultural land they own at once to prevent excessive fragmentation of ownership into very small plots. This principle serves as one of the bases for the Land Office in ensuring that agricultural land purchases are not excessively divided. This prevents misuse by absentee buyers or buyers from outside the subdistrict where the land is located, who are often not farmers themselves¹⁴.

¹³ Adrian Sutedi, 2017, *Peralihan Hak Atas Tanah dan Pendaftarannya*, Sinar Grafika, Jakarta, hlm. 77.

¹⁴ J. Andy Hartanto, 2015, *Panduan Lengkap Hukum Praktis Kepemilikan Tanah*, LaksBang Justicia, Surabaya, hlm. 135.

Conclusion

This research highlights the legal foundation and potential issues surrounding the practice of absentee land ownership in agricultural land transactions in Kota Pekalongan. The legal basis for prohibiting absentee land ownership is rooted in Undang-Undang Nomor 224 Tahun 1961, which mandates that agricultural landowners must reside in the same district where their land is located. Exceptions exist for those living in bordering districts, provided the distance allows efficient land management. The prohibition aims to ensure that agricultural land is actively cultivated by its owners, thereby supporting local agricultural productivity and benefiting the surrounding community.

Despite the prohibition, Badan Pertanahan Kota Pekalongan provides a mechanism to facilitate the sale of absentee agricultural land through land-use conversion. This process requires the completion of specific transfer forms, as stipulated in Peraturan Pemerintah Nomor 41 Tahun 1964, to obtain permission for land transfer. Additionally, transactions may be permitted when the buyer resides in a bordering district and can manage the land efficiently, in accordance with Pasal 3 ayat (2) Peraturan Pemerintah Nomor 224 Tahun 1961.

However, the potential problems arising from absentee land transactions remain significant. A major concern is the neglect of agricultural land, as absentee owners may fail to cultivate the land effectively, leading to a decline in agricultural productivity. The legal framework, including Undang-Undang Nomor 56 Prp Tahun 1960, emphasizes the need to prevent excessive land fragmentation and ensures that each farming family possesses a minimum of two hectares of land to maintain sustainable agricultural practices. Moreover, absentee land transactions could contribute to a land monopoly by non-farmers, further exacerbating rural economic inequality.

Given these findings, it is recommended that stricter enforcement of existing regulations be implemented to prevent absentee ownership

from disrupting local agricultural sustainability. Additionally, alternative policies such as government-led agrarian reform or community-based land stewardship programs could help maintain the balance between land ownership rights and agricultural productivity. This research underscores the importance of aligning land ownership policies with social and economic sustainability to protect farmers and ensure food security in Kota Pekalongan.

References

- Adrian Sutedi, 2017, *Peralihan Hak Atas Tanah dan Pendaftarannya*, Sinar Grafika, Jakarta.
- Budi Harsono, 1999, *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA*, Djambatan, Jakarta.
- Effendi Perangin, 1994, *Praktik Jual Beli Tanah*, Raja Grafindo, Persada, Jakarta
- Erna Sri Wibawanti dan R. Murjiyanto, 2012, *Hak Atas Tanah dan Peralihannya*, Liberty, Yogyakarta.
- Harun Al Rashid, 1986, *Sekilas Tentang Jual Beli Tanah (berikut Peraturan- peraturannya)*, Ghalia Indonesia, Jakarta.
- Hendriyani. (2013). Analisis Isi: Sebuah Pengantar Metodologi yang Mendalam dan Kaya dengan Contoh. *Jurnal Komunikasi Indonesia*, 2(1).
- J. Andy Hartanto, 2015, *Panduan Lengkap Hukum Praktis Kepemilikan Tanah*, LaksBang Justicia, Surabaya.
- Muchtar Wahid, 2008, *Memaknai Kepastian Hukum Hak Milik Atas Tanah*, Republika, Jakarta.
- Riduwan. (2014). *Metode dan Teknik Menyusun Proposal Penelitian (Untuk Mahasiswa S-1, S-2, dan S-3)*. Bandung: Alfabeta.
- Sahnan, 2016, *Hukum Agraria Indonesia*, Setara Press, Malang
- Soetomo, 2001, *Pedoman Jual Beli Tanah Peralihan Hak dan Sertifikat*, Lembaga Penerbitan Universitas Brawijaya.
- Sugiyono. (2014). *Metode Penelitian Pendidikan (Pendekatan Kuantitatif, Kualitatif, dan R&D)*. Bandung: Alfabeta.
- Parlindungan, *Landreform di Indonesia Suatu Studi Perbandingan*, Alumni, Bandung, 1987, hlm 123.
- Absente (Def.1) (n.d). Dalam kamus Bahasa Indonesia (KBBI) Online. Diakses melalui <https://kbbi.web.id/absente>. Diakses pada tanggal 10 Maret 2025.

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