

# Legal Reconstruction of Absentee Land Registration Arrangements through Complete Systematic Land Registration Based on Justice Value

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## Abstract

The objectives of this study are to analyze the weaknesses of the absentee land registration arrangements through Complete Systematic Land Registration (PTSL) that are not yet fair, and how to reconstruct the law based on justice value. The research method used is socio-legal research, using the constructivism paradigm. The approach method used in this research is social legal research, concept approach, and comparative approach. This research uses primary data and secondary data. Data collection techniques through interviews, observation, and literature studies. The data collected was analyzed qualitatively. The legal theory used as an analysis tool is the grand theory of Pancasila justice and the rule of law theory, the middle theory of legal system theory, and the applied theory of development law theory and progressive law theory. The results of the study found that the Weaknesses in legal substance namely Article 5, Article 7, Article 25 paragraph 1, Article 30 paragraph 2, and Article 32 of Minister of Agrarian Regulation Number 6 of 2018 concerning Complete Systematic Land Registration (PTSL), Weaknesses in the legal substance of absentee land registration arrangements in the Minister of Agrarian Regulation Number 6 of 2018 concerning Registration Complete Systematic Land (PTSL), while the legal structural weaknesses in absentee land registration are limited land management, limited number and capacity of human resources, limited quantity and quality of measurement facilities and infrastructure, and weaknesses in the legal culture of society, namely economic and social factors. Therefore the Reconstruction of absentee land registration arrangements through the Complete Systematic Land Registration based on Pancasila values of justice in the arrangement of absentee land registration must not contradict religious values and beliefs, protect the rights of citizens, and uphold the values of unity and equality, and able to protect the wider community, and the rules are clear and do not cause conflicts with higher rules as contained in the Minister of Agrarian Regulation Number 6 of 2018 concerning Complete Systematic Land Registration (PTSL).

**Keywords:** Legal Reconstruction, Absentee, Land Registration, Justice Value.

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## INTRODUCTION

One of the important legal aspects of the promulgation of the UUPA is the declaration of the "Land reform Program" in Indonesia which aims to increase the income and standard of living of land cultivators, as a basis or prerequisite for carrying out economic development towards a just and prosperous society based on Pancasila.

One of the land reform programs is the prohibition of absentee/guntai land ownership. The word Absentee comes from English which means one who is not there or who is not present in his place. Boedi Harsono (2008) states that absentee land is land

ownership that is located outside the area of residence that owns the land.

Land reform in Indonesia aims to be able to increase the income and standard of living for farmers, especially for rice field cultivators, because this is the basis for development in the economic sector to achieve a just and prosperous society based on Pancasila.

The purpose of land reform is to increase the productivity of agricultural land is very clear, with the existence of agricultural land ownership that exceeds the limit can result in low agricultural productivity, and if the owner is in absentee status, then the owner automatically does not work on his own agricultural

land, but only provides management and care for the people in the area, so that the cultivation of agricultural land is not carried out intensively and results in poor agricultural productivity.

The prohibition of absentee/guntai land ownership stems from the legal basis of Article 10 of the UUPA, namely *"Every person and legal entity that has a right to agricultural land is in principle obliged to work on or actively cultivate it himself, by preventing extortion methods."*

As the implementation of this prohibition, Law No. 56 Prp of 1960 concerning The Determination of Agricultural Land Areas, and Government Regulation No. 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation, which was later amended by Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulation No. 224 of 1961 concerning Implementation of Land Distribution and Compensation.

Article 3 paragraph (1) Government Regulation Number 224 of 1961 jo Article 1 Government Regulation Number. 41 of 1964 stipulates that: *"Agricultural landowners who live outside the District where the land is located, within a period of 6 months must transfer their land rights to another person in the District where the land is located or move to the District where the land is located"*

Then Article 19 paragraph (1) UUPA, confirms that in order to guarantee legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions stipulated in Government Regulations. Furthermore, the Government issued Government Regulation Number 24 of 1997 concerning Land Registration, to provide means of providing guarantees of legal certainty. Article 3 letter a PP No. 24 of 1997 states that Land Registration aims to provide legal certainty and legal protection to rights holders over a parcel of land, apartment units, and other registered rights so that they can easily prove themselves as the holder of a valid right concerned.

Land registration not only serves to protect the owner, but it also functions to find out the status of a piece of land, who owns it, what rights it has, how large it is, what it is used for, and so on. In addition, the guarantee of legal certainty to be realized in this land registration includes certainty of the status of the registered rights, the certainty of the subject of rights, and certainty of the object of rights. This land registration produces a certificate as proof of his rights (Wahyu, 2019).

The registration activities are carried out in two ways, namely systematically and sporadically.

Systematic land registration is a land registration activity carried out simultaneously by the government in an area or part of a village or sub-district.

Its implementation to realize registered land throughout Indonesia, in fact, has not resulted in satisfactory land registration. This is as stated in the first government regulation on land registration, namely PP No. 10 of 1961 which was valid for more than 35 years, approximately 16.3 million new parcels have been registered out of approximately 55 million parcels of private land (see the explanation of PP No. 24 of 1997). Likewise, the enactment of PP No. 24 of 1997 regarding the Refinement of PP no. 10 of 1961, shows that it has not been maximized in implementing land registration out of 126 million land parcels in Indonesia, only 46 million have been registered, this means that there are 80 million land parcels which have not been registered. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled *"Legal Reconstruction of Absentee Land Registration Arrangements through Complete Systematic Land Registration Based on Justice Value"* where the main problem discussed in this article is as follows:

1. What are the current weaknesses in the Absentee Land Registration Arrangements Through Complete Systematic Land Registration?
2. How is the legal Reconstruction of Absentee Land Registration Arrangements through Complete Systematic Land Registration Based on Justice Value?

## METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Current Weaknesses in the Absentee Land Registration Arrangements through Complete Systematic Land Registration

Minister of Agrarian Regulation Number 6 of 2018 regulates Complete Systematic Land Registration (PTSL). This Ministerial Regulation is a guideline for the implementation of PTSL activities carried out village by village in regency areas and sub-district by sub-district in urban areas covering all land parcels throughout the territory of the Republic of Indonesia.

This Ministerial Regulation aims to realize the provision of legal certainty and legal protection of community Land Rights based on the principles of simple, fast, smooth, safe, fair, equitable, and open as well as tabular accounts, so as to improve the welfare and prosperity of society and the country's economy, as well as reduce and prevent disputes and land conflicts (Wahyu, 2018).

Implementation of Complete Systematic Land Registration covers all Land Registration objects throughout the territory of the Republic of Indonesia. The PTSL object as referred to include all land parcels without exception, both land parcels that do not yet have rights to the land and private land parcels that have rights in order to improve the quality of land registration data. It also includes plots of land that already have boundary markings or those that will be marked with boundaries in the implementation of PTSL activities.

PTSL activities really demand a guarantee of legal certainty. One of the important issues related to legal certainty is the publicity principle which has different arrangements between Government Regulations and Ministerial Regulations. To fulfill the publicity principle in proving land ownership, physical data and juridical data are announced for 14 (fourteen)

calendar days (Article 24) Regulation of the Minister of ATR/Ka BPN Number 6 of 2018).

This provision is different from Article 26 of Government Regulation Number 24 of 1997 concerning Land Registration which requires 30 days and Article 63 PMNA/Ka. BPN Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration.

Different arrangements on the principle of publicity provide room for potential disputes in the future because basically lower regulations cannot conflict with higher regulations. According to Soeprapto (1998), based on the theory of levels of legal norms put forward by Hans Kelsen, namely *stufenbau* theory, which states that legal norms are tiered and layered in a hierarchy, where a lower norm applies, sourced, and based on higher norms, higher norms apply, originate and are based on even higher norms, and so on up to a norm called the basic norm.

In line with this problem, Herdarezki (2021) stated that the asynchronism cancels the lower legal regulations, but in practice, the implementation of this asynchronous state does not automatically cancel the lower regulations before the lower regulations are annulled by the competent court in conducting a judicial review. For this reason, Ministerial Regulation ATR/Ka BPN Number 6 of 2018 concerning PTSL remains in effect before a judicial review decision is made by the Supreme Court. From the government's perspective, the time for announcing physical data and juridical data, 14 calendar days, is still too long, opening the possibility to shorten the announcement if referring to Presidential Instruction No. 2 of 2018 concerning the Acceleration of Complete Land Registration which basically orders the Ministry of ATR/BPN to revise changing the ATR/Ka ministerial link. BPN Number 12 of 2017 related to:

- a. The categorization of K1 to K4 was revised into 3 clusters,
- b. The Making of regulations and taking steps to resolve PTSL acceleration in the process of proving and/or land tenure,
- c. The Making/preparing/revising of the regulations governing the timeframe for the announcement of physical data and juridical data to expedite the completion of PTSL,
- d. Delivering PTSL output to strengthen the one map Policy database,
- e. Conducting evaluation and monitoring and report to the President periodically.

However, Ministerial Regulation Number 6 of 2018 as a result of the revision of Ministerial Regulation Number 12 of 2017, there are still no substantive changes as requested in Presidential Instruction Number 2 of 2018, changes are only at the normative level. Still using the K1 to K4 cluster system

(Article 25); the period for the announcement of physical data and juridical data is still the same 14 calendar days (Article 24); the steps for completing PTSL acceleration are only accommodated in a separate Chapter V, in substance there is no change with Ministerial Regulation Number 12 of 2017. Likewise, PTSL output is regulated too briefly only one paragraph in Article 38 paragraph (3) states that the results of PTSL activities are submitted also to the One Map Policy Acceleration Team to strengthen the One Map Policy database.

Conflicting arrangements between Ministerial Regulation Number 6 of 2018 and Government Regulation Number 24 of 1997 concerning the time of publication of physical data and juridical data. This provision, when viewed from the principles of legislation, can be described as follows: First, the principle of *lex superior derogat legi inferior*, which means that higher regulations overrule lower ones (hierarchical principle), then what is used is Government Regulation Number 24 of 1997 because Government Regulations have a higher degree than Ministerial Regulations because provisions of Ministerial Regulations of lower rank cannot change or overrule provisions of Government Regulations of a higher degree, even Ministerial Regulations do not have legal force and are not binding if their contents conflict with Government Regulations; secondly, the principle of *Lex Specialis Derogat Legi Generali*, namely the principle of law which is specific in nature rules out general laws, also cannot be applied in the use of this principle because the provisions of *lex specialis* must be equal to the provisions of *lex generalis*, for example, laws with laws, government regulations with Government Regulations, and so on, third, the Principle of *Lex Posterior Derogat Legi Priori*, this principle is also for equal regulations, the most recent regulations paralyze the old regulations (Djahuri, 2017).

The next problem is how binding Ministerial Regulation Number 6 of 2018 is. Referring to Article 8 paragraph (2) of Law No. 12/2011 confirms that: "*Legal Regulations as referred to in paragraph (1) are recognized and have binding legal force as long as ordered by higher Legislation or formed based on authority*".

In this provision, there are two conditions so that Ministerial Regulations have binding power as statutory regulations, namely ordered by higher statutory regulations or formed based on authority. When referring to Article 19 of the UUPA, PTSL activities are an order from Article 19 of the Basic Agrarian Law as a source of law for Ministerial Regulations. This means that lower regulations may not conflict with higher regulations.

To resolve this conflict, at least: First, synchronization/harmonization between Government

Regulations and Ministerial Regulations is needed so that they meet the formal requirements of legal certainty and legal protection for holders of land rights without a clear concept. Changes in PTSL arrangements have undergone changes 4 times, such as the ATR/Ka BPN Regulation Number 35 of 2016 amended by the ATR/Ka BPN Regulation Number 1 of 2017, and refined by the ATR/Ka BPN Regulation Number 12 of 2017. With the issuance of Presidential Instruction Number 2 In 2018, which required a change in regulation regarding PTSL, the PTSL arrangement was amended by Ministerial Regulation Number 8 of 2018.

Second, the regulation regarding PTSL should be regulated in a Government Regulation so that it has a higher degree compared to Ministerial Regulations and/or partially revise it to support the acceleration of PTSL or replace it with a new Government Regulation in accordance with current conditions.

## **2. Legal Reconstruction of Absentee Land Registration Arrangements through Complete Systematic Land Registration Based on Justice Value**

Absentee land is land ownership that is located outside the area where the owner lives. The rules regarding absentee land are listed in Article 10 paragraph (1) of Law no. 5 of 1960 stated that: Every person and legal entity that has a right to agricultural land is basically obliged to work on or work on it actively by themselves, by preventing extortion.

Furthermore, in Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1960 concerning Implementation of Land Distribution and Compensation, in particular, Article 3a stipulates that agricultural land owners who move or leave their place of residence and leave the sub-district where the land is located for two years in a row and he does not report to the competent authority, then he is obliged to transfer his ownership rights to another person.

As for the background to the prohibition of absentee land ownership, namely the prohibition of absentee land ownership in principle is prohibited because it violates the principle of nationality contained in Article 9 paragraph (1), stipulating that, "*Only Indonesian citizens can have full relations with earth, water, and space, within the limits of the provisions of Article 1 and Article 2*", and in paragraph (2) stipulates that, "Every Indonesian citizen, both male and female, has the same opportunity to obtain a right to land to obtain benefits and yields, both for himself and his family. In this article, it can be determined that every Indonesian citizen has the right to have land rights without distinction. In addition, Article 10 of the UUPA paragraph (1) stipulates that every person and legal entity that has a right to agricultural land is in principle obliged to work on or cultivate it. Themselves actively,



by preventing means of extortion. The article does not explicitly explain that it is prohibited to own agricultural land on an absentee basis, but this article can be interpreted that way.

Since the beginning, it has been stated that Article 10 of the UUPA stipulates, “..... *in principle it is obligatory*.....”, this means that this article requires further regulation and it allows for exceptions to be made. This can be seen from the elucidation of the LoGA in chapter II number 7 which stipulates that the implementing regulations will still need to open up the possibility of holding dispensations, for example, civil servants, who have agricultural land and work related to their old age cannot make it possible to work on it themselves, presumably it must be possible to continue to own the land as long as the land can be handed over to another person to be cultivated, such as with a lease and production sharing agreement, but after he is no longer working, for example when he retires, he must actively cultivate the land himself.

Further provisions regarding exceptions to absentee land ownership are in Government Regulation Number 224 of 1961 jo. Government Regulation Number 41 of 1964, namely in Article 3. In that article, it stipulates that those who get exemptions from owning land in groups (absentees), namely:

- a. For landowners who live in sub-districts bordering the sub-district where the land is located, provided that the distance between the owner's residence and the land is still possible to work the land efficiently according to the considerations of the level II regional land reform committee;
- b. Those who are carrying out state duties, fulfilling religious obligations, or have other special reasons that can be accepted by the Minister of Agrarian Affairs;
- c. For civil servants and military officials as well as those who are equivalent to those who are carrying out state duties.

Specifically for Civil Servants, it is further regulated in Government Regulation Number 4 of 1977, namely in Article 2, which stipulates that the exemption from absentee land ownership also applies to retired civil servants and widows of civil servants as long as they are not remarried. Civil Servants and military officials as well as those who are equated can also own land on an absentee basis, limited to 2/5 of the maximum area determined for the area concerned. And especially a Civil Servant within 2 years before retirement is allowed to buy agricultural land in the absentee area of 2/5 of the maximum limit of land rights for the level 2 area concerned. Then, for those who carry out state duties, after their term of office is over, they are required to move to the sub-district where the land is located or transfer ownership rights to the land to another person who lives in the sub-district where the

land is located, no later than 1 year after their term of service finished.

The prohibition on absentee land ownership applies if the land object is agricultural land. Article 1 point 4 of Law Number 19 of 2013 concerning the Protection and Empowerment of Farmers, defines Agriculture as the activity of managing biological natural resources with the help of technology, capital, labor, and management to produce Agricultural Commodities which include food crops, horticulture, plantations and/or livestock in an agro-ecosystem. While agricultural land is a plot of land used for agricultural business.

The prohibition of absentee land ownership is usually because these agricultural lands are located in the villages, while the owners are outside the village. Under these circumstances, it is very likely that the land will not be exploited or utilized for the purpose of increasing welfare, so in the end the goal of community development through reform in the land sector will not be achieved.

For the sake of upholding the ban on absentee land ownership, it is necessary to carry out monitoring efforts, involving both related institutions and community participation (Yubaidi, 2022).

One of the efforts in monitoring absentee land ownership is community participation in reporting the existence of agricultural land ownership to the local Land Office.

Community participation in the form of reporting absentee land ownership is very important and strategic considering that in practice there is a plot of agricultural land that is owned by a person in reality that he no longer controls because it has been transferred secretly into the hands of another person who is domiciled outside the sub-district where he is located. The land is generally known by the local community (Toebagus, 2022).

Regarding the need for a supervisory function involving the participation of the community, this is important, bearing in mind that the demand for land for housing and businesses is increasing, so it does not rule out the possibility of agricultural land owned by people who are not in the area of agricultural land, for long-term investment purposes.

In the life of the state, the people are actually the holders of the highest sovereignty, community participation is in an increasingly important position. This happened as a logical consequence of the opening of the faucet for freedom of expression in society as a result of the reform process. Likewise in the process of national life, in the process of developing the

community has supervisory rights, including the ban on absentee agricultural land ownership.

In the 1945 Constitution it is determined that 'sovereignty is in the hands of the people and implemented according to the Constitution' (Chapter I, article 1) and also, 'everyone has the right to advance himself in fighting for his rights collectively to build a nation and state society' (1945 Constitution article 28C). As also in several laws and government regulations that have confirmed the participation and participation of the community, it always has a place as a function of oversight and control in the development process.

Based on this, Below are several provisions in the Regulation of the Minister of Agrarian Affairs Number 6 of 2018 concerning Complete Systematic Land Registration (PTSL) considered not to be based on justice, so it is necessary to carry out reconstruction so that it is based on justice, namely in Article 5 concerning the Implementation of PTSL, Article 7 regarding the determination of the location of PTSL, Article 25 paragraph 1 point c Regarding products from PTSL in the form of K1 – K4, Article 30 paragraph 2 point c regarding PTSL objects, then Article 32 point a that stipulates that PTSL locations in which there are land reform objects, land consolidation or transmigration objects can be If a certificate of land rights is issued, in this case, there should be additional articles/provisions related to land absentees who have already issued a certificate through this PTSL. For example, Article 10 paragraph (1) of the UUPA which should states that: *"Every person and legal entity that has a right to agricultural land is basically obliged to work on or actively work on it himself, by preventing extortion methods."*

Finally, to carry out the mandate of the UUPA, Article 3 paragraph (1) PP Number 224 of 1961 jo. PP No. 41 of 1964 needs to be supplemented with Article 3d which contains: *"It is prohibited to carry out all forms of transferring new rights to agricultural land which results in the owner of the land concerned owning plots of land outside the sub- district where he or she lives"*.

## CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses in the arrangement for absentee land registration through the current Complete Systematic Land Registration, is the fact that the absentee land registration are limited to only land management, limited number and capacity of human resources, limited quantity and quality of measurement facilities, infrastructure, and weaknesses in the legal culture of society, namely economic factors and social factors.

2. The legal reconstruction referred to is in Article 5 concerning the Implementation of PTSL, Article 7 regarding the determination of PTSL locations, Article 25 paragraph 1 point c Related to products from PTSL in the form of K1 – K4, Article 30 paragraph 2 point c concerning PTSL Objects, then Article 32 point a which stipulates that a PTSL location in which there is a land reform object, land consolidation or transmigration object, a certificate of land rights can be issued. There should be additional articles/provisions related to land absentees who have already issued a certificate through this PTSL contained in Article 10 paragraph (1) of the UUPA, which must be changed as follows: *"Every person and legal entity that has a right to agricultural land is basically obliged to work on or actively work on it himself, by preventing extortion methods."* Finally, to carry out the mandate of the UUPA, Article 3 paragraph (1) PP Number 224 of 1961 jo. PP No. 41 of 1964 needs to be supplemented with Article 3d which contains: *"It is prohibited to carry out all forms of transferring new rights to agricultural land which results in the owner of the land concerned owning plots of land outside the sub-district where he or she lives"*.

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