

Reconstruction of Agricultural Absentee Ownership Regulation based on Justice Value

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Abstract

The purpose of this research is first to examine and find weaknesses in *Absentee* agricultural land ownership regulations in the Indonesian legal system. Second, to reconstruct *Absentee* agricultural land ownership regulations based on the value of justice. This study uses a constructivist paradigm with a sociological juridical approach to solving research problems by examining secondary data and primary data by discovering the legal reality experienced in the field. The results of the research show that the weak factors consist of legal structure factors, legal substance factors, and legal culture factors. (1): Owners of agricultural land who live outside the sub-district where the land is located, within 6 months must transfer their land rights to another person in the sub-district where the land is located, if the remaining period is 6 months then the land will be transferred into assets village in the district. While the reconstruction of Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Granting of Losses Article 3d: Land in the sub-district where the land is located cannot be owned by someone outside the sub-district, so it is prohibited to transfer it for any reason.

Keywords: Agrarian Tree Law, Land, *Absentee*.

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INTRODUCTION

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the land, water, and natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people. As a norm of authority (bevoegdheidsnorm), Article 33 paragraph (3) has attributed authority to legal subjects, in this case, to carry out legal actions against natural resources (earth, water, and the natural resources contained therein).

The implementation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia resulted in Law Number 5 of 1960 concerning Basic Agrarian Regulations. The Basic Agrarian Law has two substances from the point of view of its application, namely first, not to re-enact or revoke colonial agrarian law, and second, to develop national agrarian law.

As a country of law and an agricultural country, Indonesia itself has specific land regulations, namely Law Number 5 of 1960 concerning the Basic

Agrarian Law. Regarding land, there needs to be regulatory renewal with the aim and hope that the farming community gets legal protection and can improve their standard of living, and most importantly avoid the object of extortion of landlords (Amiludin and Ahmad, 2022).

Law Number 5 of 1960 concerning Basic Agrarian Regulations is still seen as a parameter of national land law, the Basic Agrarian Law regulates almost all land rights as regulated in Article 16 except management rights. However, the Basic Agrarian Law does not provide an explicit understanding of land law, the Basic Agrarian Law only mentions the meaning of land law as stipulated in the provisions of Article 4 paragraph 1 which states: based on the right to control from the State as referred to in Article 2 determined that there are various kinds of rights to the surface of the earth, called land, which can be given to and owned by people, either alone or together with other people and legal entities (Zaman, 2016).

The land is an important resource for the community, especially farmers. Farmers need agricultural land as a means of enhancing agricultural production and efforts to survive. Agricultural land is a very important value in a nation, because as one of the pillars of food security in a country (Mayuni and Suhita, 2020).

The right to land which contains the authority to use the right to the land by the right holder is still limited by law, including; the existence of the social function of land rights, the maximum limit and minimum limit of land ownership, and only Indonesian citizens and legal entities based on government regulations who get ownership rights to land (Ramadhani, 2018).

One of the issues regarding agrarian land that is still controversial is the issue of Absente (Guntai) land ownership, what meant by *Absentee* land is land ownership owned by a person while the person is not domiciled where the land is located. *Absentee* land ownership is one of the things prohibited by the Agrarian law. The prohibition of *Absentee* land ownership is in principle prohibited because it violates the principle of nationality contained in Article 9 paragraph (1), stipulating that "only the Indonesian state can have full relations with the earth, water, and space.

Within the limits of the provisions of Article 1, Article 2 paragraph (2) determines that every Indonesian citizen, both male, and female, has the same opportunity to obtain certain rights on land to obtain benefits and results, both for themselves and their family. In that article, it can be determined that every citizen has the right to own land without discrimination. The state as the ruling party has the right to control land as stated in Article 33 of the Constitution of the Republic of Indonesia Year 1945 which regulates the basis of the economic system and economic activities in terms of social welfare, on this basis, the purpose of the right to control the country over resources nature, especially land, is social justice and as much as possible for the prosperity of the people (Zakie, 2013).

As implementing regulations of the Basic Agrarian Law which regulates *Absentee* or concurrent ownership of land, it is regulated in Article 3 paragraph (1) of Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Granting of Compensation, states that:

"Land owners who live outside the sub-district where the land is located, within a period of 6 months must transfer their land rights to another person in the sub-district where the land is located or move to the sub-district where the land is located"

This regulation shows that *Absentee* or joint ownership of land is not permitted and violates the principle in Article 10 of the Basic Agrarian Law. The prohibition to own land in *Absentee* or guntai terms is intended so that the agricultural land in the sub-district is managed by the farmers in the sub-district where the land is located so that the results are maximized. And if it is allowed for a person or legal entity to own land in *Absentee* or incremental terms it will cause injustice because those who work are not the owners of the agricultural land. So it is not by the goals of Landreform held in Indonesia.

The implementation of the Basic Agrarian Law and implementing regulations on land ownership or *Absenteeism* has not been maximized, meaning that it has not been properly accommodated by the government, both central and regional. This is due to the absence of norms in Article 3 of Government Regulation Number 224 of 1961 Juncto Government Regulation Number 41 of 1964, namely: states that:

- (1) Landowners who live outside the sub-district where the land is located, within 6 months must transfer their land rights to another person in the sub-district where the land is located or move to the sub-district where the land is located.
- (2) The obligation referred to in paragraph 1 of this article does not apply to landowners who live in sub-districts bordering the sub-district where the land is located, if the distance between the owner's residence and the land is still possible to work on the land efficiently, according to the considerations of the Regional Land Reform Committee. II.
- (3) Without prejudice to the provisions referred to in paragraph 2 of this article, if the land owner moves his place of residence or leaves the sub-district where the land is located for 2 consecutive years, he is obliged to transfer his land ownership rights to another person who lives in that district.
- (4) The provisions in paragraphs (1) and (3) of this article do not apply to those who own land in the district where they live or in the district as referred to in paragraph (2) of this article, who are carrying out state duties, fulfilling religious obligations, or have other special reasons that can be accepted by the Minister of Agrarian Affairs. For civil servants and military officials and their equivalent, who are carrying out state duties, the exception referred to in this paragraph is limited to the ownership of agricultural land up to 2/5 of the maximum area determined for the area concerned according to the law. Number 56 Prp of 1960.
- (5) If the obligations referred to in paragraphs (1) and (3) of this article are not fulfilled, then the land in question is taken by the Government,

to then be distributed according to the provisions of this Regulation.

- (6) The former landowners referred to in paragraph 5 of this article shall be compensated according to the provisions of this regulation.

The article does not explicitly stipulate the requirements for someone to own agricultural land in the district where he lives. Apart from that, Article 3 of Government Regulation No. 224 of 1961 in conjunction with Government Regulation Number 41 of 1964 does not stipulate what requirements are needed to determine the correctness of one's domicile.

The main factors that cause *Absentee* land ownership are from the community that the community lacks legal awareness and only wants to seek economic benefits derived from *Absentee* land ownership. Cultural factors such as inheritance and infrastructure. In the facilities and infrastructure, there are no reports that help overcome *Absentee* land ownership from Village and District officials, as well as a lack of coordination and cooperation (Pravitasari, 2021).

Absentee ownership of agricultural land is expressly prohibited by the Basic Agrarian Law. This prohibition relates to the main provisions of Land reform regulated in Articles 7, 10, and Article 17 of the Basic Agrarian Law. The purpose of the ban on *Absentee* land ownership is so that farmers can be active and effective in working on their agricultural land so that productivity can be high and eliminate land collection in the hands of a few landlords (Rosmiati and Amiludin, 2019).

The owner of the agricultural land who has moved his place of residence or left his residence outside the sub-district where the land is located for 2 (two) consecutive years, while he is reporting to the local authority, then within 1 (one) year from the end of the 2 (two) year period. two) years mentioned above he is obliged to transfer the ownership rights over his land to another person who resides in the District where the land is located.

This creates a loophole for legal smuggling so that someone can own agricultural land *Absentee*. To date, these provisions have not been amended. Many frauds that arise in the implementation of provisions regarding the prohibition of *Absentee* ownership of agricultural land are the result of the absence of norms in that article. Based on the explanation above, a study was conducted with the title "Reconstruction of Agricultural Absent Land Ownership Regulations Based on Justice Values". Where the main problem discussed is as follows:

1. What are the weaknesses of *Absentee* agricultural land ownership regulations in the Indonesian legal system?
2. How is the reconstruction of *Absentee* agricultural land ownership regulations based on the value of justice?

METHOD OF RESEARCH

This study uses a legal research approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivism paradigm, the social reality 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.

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 the:

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 Legislation relating to the practice of medicine and health.
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.

Regarding secondary data, the search for general truths will be carried out using deductive logic, especially during the initial analysis (the use of theories), but it is also possible to carry out an analysis using inductive logic for cases of election dispute resolution after the election and vote counting has been documented in the form of study results, records, and research results. And in this study, the researchers used deductive and inductive analysis so that the data obtained could be processed optimally (Hardiyanti, *et al.*, 2022).

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. Weaknesses of Absent Land Ownership Regulations in the Indonesian Legal System

Land *Absenteeism* results in lower social welfare, landowners continue to get richer and farmers or the poor will continue to suffer. This is not to the objectives of the land reform being carried out in Indonesia. The goal of land reform is to increase the income and standard of living of land-cultivating farmers and as a basis for carrying out economic development towards a just and prosperous society based on Pancasila.

Lawrence M. Friedman explained that a legal system in actual operation is a complex organism in which structure, substance, and culture interact. To explain the background and effects of each part, the role of many elements of the system is required (Friedman, 2013). The thought of making rules alone without thinking about how the legal structure and culture should ideally exist will not be able to enforce a rule so the purpose of making the law cannot be achieved.

Based on Lawrence M Friedman's legal system theory, we can examine the implementation of Absentee land ownership law regulations, including:

a. From Legal Factors

Implementation of tasks within the National Land Agency, among others, relates to provisions in land reform, namely reforms regarding land ownership and control and the relationship concerned with land exploitation. One of the Land reform programs is the prohibition of *Absentee* or guntai land ownership, namely land ownership that is located outside the area where the owner lives.

The problem of ownership of agricultural land in the relationship between landlords and cultivators is the most actual problem in agriculture, especially in developing countries, including Indonesia. This act is not a problem if it is not carried out in excess at the expense of the common people which can lead to a deep enough gap between the owners of money who wish to own as much land as possible and the people or small farmers who are generally unable to afford so they are forced to surrender part or all of their land. land to the owner of the money.

Farmers who own land sometimes in urgent situations need money which is expected from the sale of their land. The owners of money who buy agricultural land in the villages are generally city people who already have jobs not as farmers, and they live permanently in the city. This is one of the reasons for *Absentee* or guntai ownership of agricultural land.

Limits on *Absentee* land supervision by the National Land Agency are given to Land Deed Officials

who have entered into a work agreement with the BPN office, if the applicant does not meet certain criteria then the registration is rejected.

This research shows that supervision of *Absentee* land ownership at the Office of the National Land Agency is not effective or not optimal, this is shown in Article 12 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning or the National Land Agency that every 6 months a report on the results of supervision is addressed to the minister of agrarian affairs, while according to sources the limitation of supervision is only given to the Sub-District Head and Notary Land Deed Officials and according to one source, this is because the National Land Agency is not directly involved in overseeing *Absentee* land ownership, lack of socialization or facilities and infrastructure, lack of data owned by the Office of the National Land Agency, supervision techniques used are Officials for Making Land Deeds, Officials for Making Land Deeds, Sub-District Heads, and Officials for Making Land Deeds, Notary Officials for Making Land Deeds.

Although the prohibition of owning agricultural land *Absentee* or the sequence is regulated in Government Regulation No. 224 of 1961 in conjunction with PP No. 41 of 1964 and Law No. 5 of 1960 concerning Basic Agrarian Principles which is still valid today, it turns out that in Batang Regency, especially in Bandar District, there are still many *Absentee* or guntai lands, and so far the Office of the National Land Agency has not done anything concrete to support its implementation. The effectiveness of the ban on *Absentee* or guntai land ownership. This is evident from the existence of *Absentee* or guntai lands that have passed from the Office of the National Land Agency. According to the source, the Office of the National Land Agency did not dare to refuse to process the documents, because formally all the requirements were fulfilled.

b. From Legal Substance Factors

The implementation of the Basic Agrarian Law and implementing regulations on land ownership or *Absenteeism* has not been maximized, meaning that it has not been properly accommodated by the government, both central and regional. This is due to the absence of norms in Article 3 of Government Regulation Number 224 of 1961 Juncto Government Regulation Number 41 of 1964.

It has been known previously that the provisions prohibiting Absentee/guntai land ownership include coercive legal provisions, in other words, the provisions in Article 10 of the Basic Agrarian Law include regulations that cannot be ruled out. From a legal point of view, this law is clear that formally all the laws and regulations that govern it are valid because

they were formed by an authorized official/agency and in their formation have gone through the process as specified.

However, from a material standpoint, all of the regulations governing the prohibition of absent or continuous ownership of agricultural land are products of the 1960s. Thus, the thoughts at that time turned out to be in reality no longer appropriate to the current conditions and needs of society.

Article 3 Government Regulation Number 224 of 1961 in conjunction with Government Regulation Number 41 of 1964 does not regulate what requirements are needed to determine the correctness of a person's domicile.

Article 3a paragraph (1) Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Compensation, which explains:

"The owner of the agricultural land who moves his place or leaves his residence outside the District where the land is located for 2 (two) consecutive years, while he reports to the local authorized official, then within 1 (one) year from the end of the 2 (two) years mentioned above he is obliged to transfer ownership of his land to another person who lives in the District where the land is located".

This creates a loophole for legal smuggling so that someone can own agricultural land *Absentee*. To date, these provisions have not been amended. Many frauds that arise in the implementation of provisions regarding the prohibition of *Absentee* ownership of agricultural land are the result of the absence of norms in that article.

c. From Legal Culture Factors

The factors that cause *Absentee/guntai* land from the cultural aspect, namely due to inheritance. This inheritance is a form of human behavior. Inheritance is a legal event that normally occurs everywhere in every family, however, this legal event becomes important to note in connection with the prohibition of *Absentee* ownership of agricultural land, especially if the heirs are far outside the district where the agricultural land is located. *Absentee/guntai* ownership of agricultural land can be avoided if the heirs move to the sub-district where the inherited land is located or the inherited land is transferred to residents who live in that sub-district.

However, in reality, what is found in the field is that inheritance is rarely immediately followed by inheritance distribution within one year of the heir's

death. This is due to the customs in the community, and the feeling of being unethical if there is a will to immediately distribute the inheritance before the 1000 days of the heir's death.

Therefore, the juridical alternative offered to avoid the *Absentee/Guntai* land provision is difficult to fulfill. However, despite this happening, village heads or village officials generally also protect the interests of the heirs. The considerations used as the basis for doing so, among others, are because they know both the heir and their heirs. The heirs generally stated that they wanted to continue to own the inherited land as a support for life in old age. The desire to go abroad for them is to improve their lives, and when they are old they want to spend the rest of their lives in their area of origin. For reasons like that, village officials have never reported *Absentee/guntai* land as a result of this inheritance. Even if there is an inheritance, the heirs who are overseas are always considered to be residents of their village. Thus, *Absentee/guntai* lands materially do exist and occur because of this inheritance; formally the data are never known so that the government avoids the possibility of being designated as land reform objects.

Thus, seen from the values that live in a farming community, the prohibition of owning *Absentee/guntai* land is because inheritance is not by their wishes. Most of the farmers said that the concept of agricultural land for farmers and that it is obligatory to cultivate it themselves must be upheld. Many agricultural lands are neglected or not properly cultivated because the owners are not farming families and live in other areas which are generally in urban areas and already have other sources of livelihood.

2. Reconstruction of Agricultural Absent Land Ownership Regulations Based on Justice Values

a. Agrarian Reform with the Pancasila Paradigm in the Restructuring of National Agrarian Politics

Land has an eternal relationship with humans. Its function which is so vital in supporting human life has made the land so often contested. The cosmic-magical-religious relationship between humans and land has caused the land to be valued not only from an economic perspective but more than that (Sadono, 2012). Therefore, the urgency of regulating land ownership has been recognized for centuries by countries around the world.

From historical studies, the idea of structuring and dividing land areas is estimated to have occurred thousands of years before Christ. The term 'landreform' was first used in Ancient Greece, during the reign of Solon, 594 years before Christ. Meanwhile, the formation of agrarian reform laws first started in 486 BC. The law stipulated that every Roman citizen had the right to use part of the state's territory (burger

gerechtigd zou zijn gebruik te maken van een deel van de nog niet toegewezen staatsdomeinen). The law provides for a maximum land limit of "500 iugera" and land use that exceeds the maximum, given to the poor (Candra, 2016).

The politics of agrarian law in Indonesia must adhere to the Pancasila paradigm as a source of national basic law. That is, Pancasila is the source of all state laws (Hamidi, 2006). As emphasized by A. Hamid Attamimi, Pancasila is the fundamental norm of the Republic of Indonesia. The argument is that because Pancasila is the legal ideal of the Indonesian people, or in other words the fundamental norms of the state, Pancasila is the basis and source for all of its subordinate norms (Hamidi, 2006). Legal renewal with the Pancasila paradigm means changing existing laws or making new laws that contain and radiate Pancasila values (Sumardjono, 2007).

In this case, agrarian reform includes a restructuring of ownership, control, and use of agrarian resources, especially land for the benefit of farmers, farm laborers, and the common people in general, the essence of which is the redistribution of land as well as the foundation for prosperity (Adhim, 2012). According to Dianto Bachriadi, the essence of agrarian reform is land reform in the sense of redistribution of land ownership and control (Bachriadi, 2007). Maria S.W explained that agrarian reform is to overcome imbalances in the structure of ownership or control and utilization of natural resources (agrarian sources) including land (Sumardjono, 2007).

So the substance or character of agrarian reform based on political orientation to achieve the ideals and goals of the nation with the Pancasila paradigm must:

- 1) First, the politics of national agrarian law consistently protects the interests of its people, obtains the right to live in physical and spiritual prosperity in a just manner, has the right to own property rights and these property rights may not be taken over arbitrarily by anyone.
- 2) Second, the politics of national agrarian law must be guided by religious moral values and protect human rights without discrimination. From these two things, it can be seen that two social values are integrated into one in the political concept of agrarian law with the Pancasila paradigm. The social values of *paguyuban* with its emphasis on the value of togetherness must be synergistically integrated with the social values of *patembayan* with its emphasis on individual interests and freedom.

It is these distinctive values that distinguish the Indonesian legal system from other legal systems so

that the term Pancasila Law country appears which, when associated with the literature on the combination of more than one choice of social values, is referred to as a prismatic choice which is why in a legal context it can be referred to as prismatic law (Mahfud, 2011). Therefore, if the Pancasila paradigm is translated into agrarian reform as a legal development paradigm, especially to ensure that the law is obeyed or that the law becomes upright, it has at least four guiding principles:

First, the law must protect the entire nation and guarantee the integrity of the nation, and therefore laws are not allowed to plant the seeds of disintegration. Second, the law must be able to guarantee social justice by providing special protection for weak groups so that they are not exploited in free competition against strong groups. Third, the law must be developed democratically as well as building democracy in line with *nomocracy* (rule of law). Fourth, the law must not be discriminatory based on any primordial ties and must encourage the creation of religious tolerance based on humanity and civility.

The enactment of the Basic Agrarian Law was an important milestone in Indonesian national law, at that time President Soekarno and members of the DPR brilliantly and visionary saw this nation's problems from the perspective of the development of agrarian reform which urgently had to be implemented. In a general explanation, the Basic Agrarian Law considered that the neglect of people's rights and agrarian conflicts occurred because the agrarian structures inherited from the colonial imposed the Dutch agrarian law *Agrarische Wet 1870* to the forced cultivation system during the colonial period.

The agrarian policies that ignored the rights of the people and the occurrence of various conflicts were because the concepts underlying the land tenure structure during the colonial period were not rooted in the basic principles and values of Indonesian personality. Therefore, since the agrarian reform took place, a paradigm of populist values has been awakened which is rooted in Pancasila. From a legal point of view, Pancasila is used as the guiding principle of law, becoming the legal ideals (*rechtside*) or the ideals of the nation (*stateside*) of the nation which is called state philosophy, which means that Pancasila is the basis and goal of every law in Indonesia.

In the future, it is hoped that agrarian reform will no longer revive the principle of *domain verklaring* (territories that cannot be formally proven ownership are considered to be owned by the state), so the state must lay down the political foundations of agrarian law which prioritize the content of populist values (populist values). Reflection of populist principles can be seen in the preamble in the opinion of the Basic Agrarian Law

which in its implementation must embody the embodiment of the five points of Pancasila. This is intended so that the politics of national agrarian law is rooted in shared ideals and goals on a philosophical basis, the general goal of society, or general acceptance of the same philosophy of government.

Looking at the description of the theoretical study mentioned above, the promulgation of the Basic Agrarian Law is an important milestone in the current and future agrarian reform program. The reason is that the Basic Agrarian Law has regulated basic provisions in land reform such as provisions regarding the maximum and minimum area of land ownership rights (Article 7 and Article 17 paragraph (1) of the Basic Agrarian Law), distribution of land to farmers landless (Article 17 paragraph (3) of the Basic Agrarian Law) and other fields. Furthermore, the regulation is contained in Law Number 56 Prp 1960 concerning the Determination of Agricultural Land Areas (better known as the Landreform Law) and Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Provision of Compensation.

b. Reconstruction of the Value of Absent Land Ownership of Agriculture Based on the Value of Justice

The reconstruction of the norm to be achieved in Article 3 Paragraph 1 is that agricultural landowners who live outside the sub-district where the land is located, within 6 months must transfer their land rights to other people in the sub-district where the land is located if the remaining grace period is 6 months, the land will be transferred to village assets in the sub-district. The reason is that the abuse of ownership of *Absentee* land owned by residents outside the sub-district must be disciplined, and the government must return to paying attention to the welfare of the local community, in this case, the local village where the *Absentee* land is located.

Likewise in Article 3d Land in the sub-district where the land is located cannot be owned by someone outside the sub-district, so it is prohibited to be transferred for any reason. This needs to be done to prevent such incidents from ending and allow land speculators to freely own *Absentee* land even though their domicile is outside the sub-district.

The regulatory reconstruction produced in this study is explained as follows:

- 1) Government Regulation Number 224 of 1961 in conjunction with Government Regulation Number 41 of 1964,

Article 3 Paragraph 1

"Agricultural landowners who live outside the sub-district where the land is located, within a period of 6 months must transfer their land

rights to another person in the sub-district where the land is located or move to the sub-district where the land is located."

Reconstructed to be:

"The owner of agricultural land who lives outside the district where the land is located, within a period of 6 months must transfer his land rights to another person in the district where the land is located, if the remaining grace period is 6 months then the land will be transferred to become village assets in the district."

- 2) Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Granting of Losses

Article 3d

"It is prohibited to carry out all forms of transferring new rights to agricultural land which results in the land owner concerned owning parcels of land outside the sub-district where he resides."

Reconstructed to:

"Land in the sub-district where the land is located cannot be owned by someone outside the sub-district, so it is prohibited to transfer for any reason".

CONCLUSION

Based on the discussion of the problems above, it can be concluded that:

1. The weaknesses in *Absentee* agricultural land ownership regulations in the Indonesian legal system consist of three factors, namely:
 - a. From the legal structure factor. So far, the Land Offices in various regencies/cities do not have accurate data regarding the existence of *Absente/guntai* ownership of agricultural land, that is, there are no reports that help overcome the occurrence of *Absent/guntai* land ownership or control from officials at the sub-district/village and sub-district levels.
 - b. From the factor of legal substance. Article 3a paragraph (1) Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation creates loopholes for legal smuggling so that a person can own agricultural land in the absence. To date, these provisions have not been amended. Many frauds that arise in the implementation of provisions regarding the prohibition of *Absentee* ownership of

- agricultural land are the result of the absence of norms in that article
- c. From the legal culture factor related to the factors that cause Absente/guntai land from the cultural aspect, namely due to inheritance. This inheritance is a form of human behavior. Inheritance is a legal event that normally occurs everywhere in every family, however, this legal event becomes important to note in connection with the prohibition of *Absentee* ownership of agricultural land, especially if the heirs are far outside the district where the agricultural land is located.
2. Reconstruction of *Absentee* agricultural land ownership regulations based on justice values. As for the reconstruction of Government Regulation Number 224 of 1961 in conjunction with Government Regulation Number 41 of 1964, namely: Article 3 Paragraph (1) Owners of agricultural land who live outside the sub-district where the land is located, within 6 months are obliged to transfer their land rights to another person in the sub-district where the land is located, if the remaining grace period is 6 months, the land will be transferred to become village assets in the sub-district. While the reconstruction of Government Regulation Number 41 of 1964 concerning Amendments and Supplements to Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Granting of Losses Article 3d: Land in the sub-district where the land is located cannot be owned by someone outside the sub-district, so it is prohibited to transfer it for any reason.

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