

# Legal Implications of Absentee Agricultural Land Ownership: Study in Suka Maju Village, Sibolangit District, Deli Serdang Regency

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**Abstract.** Prohibition of ownership of agricultural land in absentees is still often found in various areas, especially rural areas. Agricultural land absentee until now can still be found in Suka Maju Village. Implementing the prohibition that has not been able to apply optimally in the village causes a new problem. One of the absentee lands in the village was abandoned by the owner, causing a dispute over the ownership of land rights with the villagers. The purpose of this study was to determine the cause of absentee land ownership in Suka Maju Village and the legal implications that can occur if you own agricultural land absentee. The approach method used in this research is empirical juridical with descriptive-analytical research specifications. The data used in this study are primary data and secondary data, which are then processed using qualitative analysis techniques. The results showed two causes of absentee ownership of agricultural land in Suka Maju Village. First, there is a legal act in the form of buying and selling. Second, a legal event in the form of death causes inheritance. Absentee agricultural land owners can affect the abolition of land rights if their absentee land owner does not carry out the obligations stipulated in the legislation. Heirs who own agricultural land in the absentee are obliged to carry out the provisions stipulated in Article 3c of PP No. 41 of 1964 as one way to save stored land rights.

**Keywords:** legal implications, land reform, absentee land.

## 1 Introduction

The land is a source of national wealth for the Indonesian people. Most Indonesian people who make a living in the agricultural sector rely on the land to meet all the necessities of life. Land problems that, until now, often occur in the community are related to the availability of land. The land is fixed or limited, not proportional to the population in Indonesia.

The BAL1960 Basic Agrarian Law (BAL), which was not originally formed, meant that Indonesia did not have clear regulations regarding land ownership restrictions. The unclear regulation on land ownership restrictions eventually caused the land to be owned by a few unscrupulous landlords so that most of the people only worked as sharecroppers [1]. Land that has an important value for the Indonesian nation must be regulated so that some parties cannot control the land excessively [2]. Therefore, in developing national land law, the emphasis is on maximizing land use. To carry out the maximum utilization of land, the government, through

Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (BAL), established the Landreform Indonesia program [3] [4].

According to Boedi Harsono [5], land reform is an overhaul of land ownership and control as well as legal relations related to land exploitation. The land reform program was established as an effort by the government to rearrange or overhaul the land system in Indonesia.

One of the land reform programs prohibits absentee ownership of agricultural land. The prohibition of absentee ownership of agricultural land is a prohibition on land owners from owning agricultural land outside the sub-district where they live [6]. The land owner must reside in the same sub-district or directly adjacent to the sub-district where the land is located so that the land owner can actively cultivate the land [7][9]. The prohibition of absentee ownership of agricultural land aims to abolish the absentee/absentee landlord system, which causes farmers to lose money [10].

Juridically, the prohibition of absentee ownership of agricultural land is regulated in Article 10, paragraph 1 of the BAL, which states that there is a principle that requires land owners, both individuals and legal entities, to work or actively cultivate their own agricultural land. The provisions in Article 10 of the BAL have been clarified again in Article 3 paragraph (1) of Government Regulation No. 224 of 1961, which has then been amended and added to Article 1 (additional Articles 3a to 3e) of Government Regulation No. 41 of 1964.

Since the formation of the BAL, which is now 61 years old, the prohibition of absentee ownership of agricultural land has not worked optimally. It can be seen in the prohibition of absentee ownership of agricultural land, which is still often encountered today. The BAL explicitly stipulates that it prohibits all actions that cause absentee ownership of agricultural land to protect land and social interests. In fact, even though the prohibition has been regulated in the BAL, there is still a lot of absentee ownership of agricultural land, especially in rural areas.

Suka Maju Village is one of the areas where there is still absentee ownership of agricultural land. Absentee ownership of agricultural land in Suka Maju Village is obtained from various events and legal actions that occur in the community, such as legal events of death that cause inheritance and legal actions in the form of buying and selling land.

Absentee landowners obtained through buying and selling transactions usually deliberately buy land in the village only for investment facilities. The land is used to increase their income by renting it out to the community around the village; even the land is deliberately bought and will be resold when land prices are high. The absentee owners of agricultural land who obtain land from inheritance are also the same. The land is used as an old age allowance or a resting place when they are old so that the land obtained is deliberately not sold to others.

Absentee ownership of agricultural land in this village causes problems ranging from local residents who can only work as sharecroppers on land owned by others to deliberately left abandoned by the owner so that land use is not optimal and even causes a dispute in the village in society such as the dispute between the Gover and the heirs of the late Kodi Tarigan.

When the late Kodi died in 2013, he bequeathed several gardens (fields) plots to his heirs, resulting in absentee land ownership. From some of these inherited lands, there is a plot of land that has been left abandoned for a long time. In the end, the land left abandoned worked on by the Gover without the knowledge of the land owner, which eventually led to a dispute over the ownership of land rights between the two parties.

In the problems above, it can be seen that the implementation of the prohibition on absentee ownership of agricultural land that is not implemented properly creates new

problems. Land that is owned absentee not only becomes neglected but even leads to disputes over ownership of land rights in the community.

Based on the background above, several problems can be formulated that will be discussed in this study. The formulation of the problem, among others:

- a. What is the cause of absentee ownership of agricultural land in Suka Maju Village?
- b. What are the legal implications arising from absentee ownership of agricultural land in Suka Maju Village?

## **2 Method**

The method is a scientific activity related to working to understand a subject or object of research in an effort to find answers that can be scientifically justified and include their validity [11]. The method used is an empirical juridical approach, which is an approach taken to analyze the extent to which a regulation/law or law is currently in effect effectively [12]. This study conceptualizes law as behavior, meaning that this study sees law not as law in the book but the law in action, which is related to how the law is applied or the law in reality.

The research specifications used in writing this law are analytical descriptive. This research aims to describe a problem in a certain area or at a certain time so that this descriptive research method is used to systematically describe the facts or characteristics of a particular population or field [11]. In this study, the author intends to describe and report systematically and thoroughly on the Legal Implications of Absentee Agricultural Land Ownership in Suka Maju Village, which is the subject of the problem through the facts obtained.

The data collection method used in this study was sourced from primary and secondary data. Primary data is obtained directly from the community through observations and interviews [12]. The author's primary data in this study was obtained through direct interviews with sources. Secondary data is collecting data from laws and regulations, journals, books and the results of previous research related to absentee ownership of agricultural land, consisting of primary, secondary and tertiary legal materials.

The data analysis method used in this study is a qualitative analysis method, which aims to find an explanation of a phenomenon. The qualitative data analysis method is a method of processing data in depth with data from observations, interviews, and literature.

## **3 Results and Discussion**

### **3.1 Causes of Absentee Agricultural Land Ownership in Suka Maju Village**

#### **Absentee Ownership of Agricultural Land in Suka Maju Village**

The land reform program in Indonesia is basically formed to cultivate agricultural land in accordance with its use and optimization. The land referred to in these regulations, as explained in the Joint Instruction of the Minister of Home Affairs and Regional Autonomy with the Minister of Agrarian Affairs dated January 5, 1961, includes land for fish ponds, all plantation land, land for grazing, scrub land former fields and forests as a place of livelihood for those who are entitled [13].

According to the results of the author's interview with Sofyan [14] as the Coordinator of the Substance Land Reform and Community Land Empowerment Group, he said that the prohibition of absentee ownership of agricultural land in the Deli Serdang Regency has been implemented, but considering the development of today's increasingly sophisticated technology, socialization related to the prohibition of absentee ownership of agricultural land has never been done before conducted. However, the author thinks that socialization related to this prohibition still needs to be done. The problem is that currently, absentee ownership of agricultural land is often found in rural areas, not in urban areas. Village communities, who are generally still unfamiliar with the use of technology, will still not know about the prohibition.

Likewise, in Suka Maju Village, residents and village officials are still unaware of this prohibition. Finally, this ignorance is one of the driving factors for the emergence of various causes of new absentee ownership of agricultural land. Absentee ownership of agricultural land in Suka Maju Village occurs due to 2 things, namely

a. Legal Action

Legal acts are all actions carried out by humans that give rise to rights and obligations. Legal acts consist of 2, namely [15]:

- 1) Unilateral legal actions: legal actions that give rise to the rights and obligations of one party, for example, giving and making a will.
- 2) Two-party legal actions: legal actions that give rise to the rights and obligations of two parties, such as rental and purchase agreements.

Due to a land sale and purchase transaction, the absentee ownership of agricultural land in Suka Maju Village was absentee. The villagers' buying and selling of land are still carried out under their hands. Denny, as the Suka Maju Village Consultative Body, said that until now, there has never been a problem in buying and selling land under the hands as long as both parties, both the seller and the buyer, have agreed, then the sale and purchase transaction can be carried out immediately [16].

The sale and purchase of agricultural land that causes land ownership to become absentee in Suka Maju Village are basically, in addition, able to occur due to buying and selling carried out under the hands but can also occur because community land in Suka Maju Village is still not registered or not certified. This, of course, causes the transfer of rights, which causes the land to become absentee and can still be carried out. The land rights owned by the villagers are still in the form of a Land Certificate (SKT) given by the village. When the sale and purchase transaction is carried out as a form of transfer of land rights from the seller to the buyer, a Certificate of Compensation (SKGR) will be made, which will be signed by the village head, two witnesses and the seller and buyer. The following is an example of a statement of compensation that is proof of the transfer of rights in buying and selling in Suka Maju Village:



**Fig. 1.** Example of Land Certificate/Indemnity Certificate.

The community's sale and purchase, which ultimately makes the land owned absentee, must have violated the provisions stipulated in Article 3d Government Regulation (*Peraturan Pemerintah/PP*) No. 41 of 1964. Article 3d expressly prohibits any transfer of new land rights, which causes land ownership to become absentee. The residents of Suka Maju Village, who are still blind to the knowledge of agrarian law, have unconsciously committed various forms of law violations.<sup>9</sup>

After the enactment of Government Regulation No. 24 of 1997 concerning Land Registration, hereinafter referred to as PP No. 24 of 1997 in Article 37, paragraph (1) stipulates that all forms of transfer of land rights must be carried out before the Land Titles Registrar (*Pejabat Pembuat Akta Tanah/PPAT*). The problem is that the village community's buying and selling process is still carried out under the hands of the PPAT. People who only carry out the buying and selling process under their hands will certainly make it much easier to transfer land rights. Another reason that makes the transfer of land rights easy is that the land that is the object of sale and purchase has not been registered or certified. If the practice of buying and selling agricultural land that has not been registered is carried out before the PPAT, it will not be easy to do.

In this case, it will be different if the land that is the object of sale and purchase already has a certificate. Land that has been certified if you want to buy and sell it but violates a provision regulated by other laws and regulations, the PPAT will expressly refuse to make a deed of sale and purchase. The refusal to make this sale and purchase deed can be done by PPAT because the land that is the object of the sale and purchase causes agricultural land ownership to be absent. Article 39 paragraph (1) letter g PP No. 24 of 1997 explains that PPAT refuses to do a deed if the prohibition specified in the relevant legislation is violated. Article 3d PP No. 41 of 1964 explicitly stipulates that all transfer of rights that cause agricultural land ownership to become absentee are prohibited. Therefore, based on the provisions of the article, PPAT can refuse to make a land sale and purchase deed if the act violates the provisions stipulated in other laws and regulations.

a. Legal Event

A legal event is when certain legal regulations are moved by an event that occurs in society [17]. Legal events consist of several kinds, namely [15]:

- 1) Legal and unlawful events include births, deaths, marine pollution, and land occupation.
- 2) Single legal events and multiple legal events, for example, grants.
- 3) Passive legal events and continuous events.
- 4) Positive legal events and negative legal events.

The legal event discussed in this study is a death law event that causes land rights to the heirs. The legal event of death that causes inheritance is one of the main causes of absentee ownership of agricultural land. Agricultural land that is bequeathed to heirs can instantly become absentee without any action taken by the heirs.

The transfer of land rights that occurs due to inheritance causes agricultural land to be owned in absentee can occur anywhere. Suka Maju Village is an example where the majority of agricultural land ownership in absentee is obtained through inheritance. From the author's research results, at least 80% of absentee lands in this village were obtained through inheritance.

According to the writer's observations, agricultural land owned absentee in Suka Maju Village, which was obtained from the inheritance, was mostly intended as a source of additional income and allowances in old age for land owners. Absentee landowners intentionally defend the land and rent it out to local residents so that the results obtained from leasing the land can be used as additional income they have.

Absentee ownership of agricultural land in Suka Maju Village that occurred due to inheritance, as an example previously described, occurred on land belonging to the late Kodi. The late Kodi, who died in 2013, caused the inherited agricultural land to become absentee. All the heirs, namely a wife (who died in 2019) and five children, are domiciled outside the sub-district where the inheritance land is located in Medan City. The problem in the case of absentee ownership of agricultural land owned by the heirs of the late Kodi is that one of the inherited agricultural lands is allowed to be neglected, which eventually causes a dispute with the local community.

Inherited land owned absentee should not be owned for a long time except for those included in the exception as regulated in Article 3 paragraph (4) PP No. 224 of 1961. The absentee ownership of agricultural land obtained from inheritance is regulated in Article 3c of PP No. 41 of 1964, which reads:

- (1) If a person has a right to agricultural land outside the sub-district in which he resides, which he obtained from the inheritance, then within 1 (one) year from the date the heir dies, he is obliged to transfer it to another person who resides in the sub-district where the land is located or transfer to the sub-district where the land is located.
- (2) In certain cases which can be considered to have reasonable reasons, the period referred to in paragraph (1) above may be extended by the Minister of Agrarian Affairs.

The article clearly describes the heir as a person who receives the inheritance of agricultural land, which causes land ownership to be absent. Then one year after the heir dies, he is required to move to the location where the land is located or transfer the land rights to people who live in the location where the land is located. The provisions regarding the period of time may be extended if the Minister of Agrarian Affairs accepts the reasons. The

inheritance of agricultural land that causes the land to become absentee cannot be denied forever and will still occur. Therefore, to protect the rights to land owned by the heirs, the obligations stipulated in the article must be carried out.

The description above has explained that the agricultural land that is owned absentee in Suka Maju Village is caused by two things, namely in the form of actions and legal events. Agricultural land can be owned absentee not only because of a legal act but also because of a death law event that causes inheritance. These two things tend to happen because people, especially those living in rural areas, are still very ignorant in understanding knowledge about agrarian law. In addition, the village's location far from the land office makes rural areas often separated from the monitoring of the authorities.

The National Land Agency (*Badan Pertanahan Nasional/BPN*), which has a role in overcoming and resolving all land problems in Indonesia, will certainly not be able to follow up to enforce the law against violations in absentee ownership of agricultural land in Suka Maju Village. Evidence of ownership of community land rights in the form of a land certificate from the village proves that absentee lands in this village have not been registered with the local land office. It means that if the data related to absentee land in Suka Maju is not registered at the land office, then the BPN itself cannot take further action to address absentee land ownership in this village. In the end, this is what often encourages new absentee ownership of agricultural land

### **3.2 Legal Implications of Absentee Agricultural Land Ownership in Suka Maju Village**

Absentee ownership of agricultural land is one of the problems in the land sector, which is still common but rarely gets the government's attention. Absentee ownership of agricultural land, which is prohibited from being owned by a person or legal entity except for them as regulated in Article 3 paragraph (4) PP No. 224 of 1961, should be paid more attention to considering that absentee land ownership can occur only because of a legal event in the community.

Since the prohibition of absentee ownership of agricultural land was enforced, it can be said that this rule has not been implemented optimally. Absentee ownership of agricultural land that often escapes monitoring occurs on rural land. Suka Maju Village is an example of a rural area with a lot of absentee ownership of agricultural land. The village's location is very far from the city centre, and the land office often causes this village to escape monitoring and attention. Sofyan [14], as Coordinator of the Substance Land Reform and Community Land Empowerment Group, explained that if there is a land redistribution project, and someone who owns agricultural land is found absentee, it will be explained that this is not allowed because the land has exceeded the provisions, so a solution is made in the form of a statement letter.

It explains that the Deli Serdang Regency BPN as the authorized party in providing information related to the prohibition of absentee ownership of agricultural land is still not optimal. The application of this prohibition is only carried out when implementing a redistribution project in the field is found to have absentee ownership of agricultural land. Absentee land found during the redistribution will be resolved by giving an absentee statement letter. The absentee statement provided contains the land owner's identity, the land's location, the land, the boundaries of the land and a statement. Statement letter the absentee can be seen as follows:





parties. The governor who stated that the land was obtained from the buying and selling process did not have proof of a valid sale and purchase.

Based on the problems between the heirs of the late Kodi and the Gover, it can be seen that the implementation of the prohibition has not been applied optimally, so that agricultural land can be owned absentee for a very long period can trigger new problems such as disputes over land rights. Absentee agricultural land owners who abandon the inherited land they have cause inefficient land use and lead to disputes within the community.

Agricultural land owned in absenteeism can have a detrimental impact on the land owner. Article 3c PP No. 41 of 1964 has stated that the heirs who get an inheritance in the form of agricultural land and cause the ownership of the inherited agricultural land to become absentees must carry out their obligations. The heirs must move to the sub-district where the land is located or can also transfer the rights to the land to people who live in the sub-district where the land is located. The obligations of the heirs must be carried out within one year after the testator dies. The provisions stipulated in Article 3c of PP No. 41 of 1964, if it is not implemented as regulated in Article 3 paragraph (5) PP No. 224 of 1961, then the land will be taken by the government and redistributed to farmers in the framework of land reform.

The obligations of the heirs as land owners are basically carried out to protect the rights to the land they own. The author thinks that if the heirs do not fulfil their obligations as regulated, they can harm themselves because by not carrying out these obligations, the legal implications that can occur are the abolition of land rights owned by the heirs. Absentee land owners who do not fulfil the obligations that must be carried out as stipulated in Article 3c of PP No. 41 of 1964 will cause the abolition of land rights owned by land owners because the government will take the land.

Article 27 of the BAL has stipulated that the abolition of a person's property rights to the land he owns and causes the land to become state property can occur due to the revocation of land rights as regulated in Article 18. Article 18 of this BAL states that land rights owned by a person can be revoked in the public interest. Therefore, the heirs, absentee land owners, must carry out their obligations to save their rights from being taken by the government.

From the description above, the author argues that the prohibition of absentee ownership of agricultural land that has not been implemented optimally can trigger a new societal problem. The laws and regulations have clearly explained the legal implications that can occur from absentee ownership of agricultural land, which can result in the abolition of land rights if the obligations that have been regulated are not carried out. The case that happened to the heirs of Kodi with the government proves the concern about abandonment of land if the land owner is outside the sub-district where the land is located. Finally, the case of absentee ownership of agricultural land owned by the heirs of Kodi not only causes the use of land to be ineffective but also creates new problems in the form of disputes over ownership of land rights with local residents who own adjacent land.

## **4 Conclusion**

Based on the results of research and discussion that have been described previously, the authors draw the following conclusions: The causes of absentee ownership of agricultural land in Suka Maju Village are caused by two things. First, legal actions in the form of buying and selling transactions on land that have not been registered or not yet certified are carried out by villagers under their hands. Both legal events are in the form of death, which results in inheritance. The absentee ownership of agricultural land in Suka Maju Village is due to this

inheritance, one of which occurs in the inheritance of the late Kodi Tarigan. The absentee ownership of agricultural land in the case between the heirs of the late Kodi Tarigan and the Gover in Suka Maju Village led to a dispute over ownership of land rights. This case is clear proof that, in fact, concerns regarding absentee land abandonment have occurred and have even caused new problems in the community. Basically, agricultural land that is owned in absenteeism can lead to legal implications in the form of the abolition of land rights owned by a person if the obligations stipulated in Article 3c of PP No. 41 of 1964 were not implemented. The government can take over absentee land if the land owner does not fulfil his obligations so that in order to save his rights, the land owner is obliged to carry out his obligations.

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