



**THE PROHIBITION OF ABSENTEE OWNERSHIP OF AGRICULTURAL
LAND AND THE LEGAL LIABILITY OF THE NATIONAL LAND
AGENCY**

Shintyana Dewi¹
Soediro²
Amjad Majdi bin Muhamad Amin³

ABSTRACT

Absentee ownership of agricultural land is a situation where agricultural landowners are not directly involved in the agricultural activities carried out on their land. This abstract aims to evaluate the legal aspects of absentee agricultural land ownership by considering several factors. First, we analyse the application of Government Regulation No. 41/1964 on the Amendment and Supplement to Government Regulation No. 224/1961 on the Implementation of Land Division and Compensation in Plaosan Village regarding absentee land. Several studies have shown that the absence of landowners can hinder growth and innovation in the agricultural sector. However, the factor depends on the skill level of the farmers. Analysis of the legal responsibility of the National Land Agency (BPN) in resolving absentee land ownership issues. The role of the National Land Agency (BPN) as a government agency responsible for land management and registration is very important. This research uses normative legal research methods by conducting a literature study of laws and regulations relating to absentee ownership of agricultural land. The results of this research are expected to form the basis of better policies in managing agricultural land ownership involving absentee owners, so as to increase productivity, efficiency and welfare for all parties involved in the agricultural sector.

Keywords: Agricultural Land; Absentee; National Land Agency.

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¹Faculty of Law, University of Muhammadiyah Purwokerto, Indonesia. shintyanad13@gmail.com

²Faculty of Law, University of Muhammadiyah Purwokerto, Indonesia, diro_dl66@yahoo.co.id.

³Faculty of Law, University of Islamic Science, Malaysia, amjad6125@gmail.com.



Abstrak

Kepemilikan lahan pertanian secara *absentee* adalah keadaan dimana pemilik lahan pertanian tidak terlibat langsung dalam kegiatan pertanian yang dilakukan di lahannya. Tujuan dari penelitian untuk mengevaluasi aspek hukum kepemilikan lahan pertanian secara absensi dengan mempertimbangkan beberapa faktor. Pertama, kami menganalisis penerapan Peraturan Pemerintah Nomor 41 Tahun 1964 tentang Perubahan dan Tambahan Peraturan Pemerintah Nomor 224 Tahun 1961 tentang Pelaksanaan Pembagian Tanah dan Pemberian Ganti Kerugian di Desa Plaosan tentang tanah *absentee*. Analisis tanggung jawab hukum Badan Pertanahan Nasional (BPN) dalam menyelesaikan persoalan kepemilikan tanah secara *absentee*. Peran Badan Pertanahan Nasional (BPN) sebagai lembaga pemerintah yang bertanggung jawab di bidang pengelolaan dan pendaftaran tanah menjadi sangat penting. Penelitian ini menggunakan metode penelitian hukum normatif dengan melakukan studi literatur terhadap peraturan perundang-undangan yang berkaitan dengan kepemilikan *absentee* atas tanah pertanian. Hasil penelitian ini diharapkan dapat menjadi landasan kebijakan yang lebih baik dalam pengelolaan kepemilikan lahan pertanian yang melibatkan pemilik yang tidak hadir, sehingga dapat meningkatkan produktivitas, efisiensi dan kesejahteraan bagi semua pihak yang terlibat di sektor pertanian.

Kata Kunci: Lahan Pertanian; Absentee; Badan Pertanahan Nasional.



A. Background

Agricultural land is one of the natural resources that needs to be managed properly by the people of Indonesia. Regulating agricultural land is important to prevent land ownership being concentrated in the hands of a few individuals. The principles of agrarian reform play a major role in regulating such issues because agricultural land is closely linked to land reform.¹ Land reform is an arrangement regarding changes in the control of agricultural land ownership.² Land reform aims to raise the income and standard of living of sharecroppers, as a basis or prerequisite for organizing economic development towards a just and prosperous society.³ According to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the land and water and the natural resources contained therein shall be controlled by the state and utilised for the greatest prosperity of the people. Based on Article 33(3) of the 1945 Constitution of the Republic of Indonesia, Law No. 5/1960 on Basic Agrarian Principles, or better known as UUPA, was issued. The protection of agricultural land is regulated in Article 7, Article 10 paragraph (1) and Article 17 of the UUPA. In the provisions of Article 10 paragraph (1), the protection of agricultural land is further regulated in Article 3 paragraph (1) of Government Regulation Number 224 of 1961, which basically states that landowners who reside outside the District where their 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.⁴ This is the regulation on absentee ownership of agricultural land.

The term "absentee" refers to the ownership of land by individuals or legal entities that are not actively engaged in agricultural activities or management of the land.⁵ Agricultural landowners living in urban areas or overseas may usually inherit or purchase agricultural land as an investment or for other purposes. But they may not be interested or understand enough to engage directly in agricultural activities. Absentee ownership of agricultural land is actually prohibited because it is basically incompatible with the

¹ Ishak Riyadi, "Studi Pendaftaran Tanah dengan Status Absentee dalam Pelaksanaan Pendaftaran Tanah Sistematis Lengkap di Kantor Pertanahan Kabupaten Gowa"(2018), hlm. 2.

² Siti Nurjannah, "Undang-Undang Pokok Agraria (UUPA) Sebagai Induk Landreform," *UIN Alauddin* 3, no. 5 (2014): 195.

³ Achmad Nizam, "Penerapan Larangan Pemilikan Dan Penguasaan Tanah Pertanian Secara Absentee Sebagai Obyek Landreform Dalam Perspektif Undang – Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok – Pokok Agraria (UUPA)," last modified 2020, <https://achmadnizamlaw.wordpress.com/2020/04/26/penerapan-larangan-pemilikan-dan-penguasaan-tanah-pertanian-secara-absentee-sebagai-obyek-landreform-dalam-perspektif-undang-undang-nomor-5-tahun-1960-tentang-peraturan-pokok-pokok/>.

⁴ Afrisna Masdiana, "Pelaksanaan Pengelolaan Tanah Absentee Dalam Program Pendaftaran Tanah Sistematis Lengkap (PTSL) Berdasarkan Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria Di Kabupaten Ponorogo" (Universitas Muhammadiyah Yogyakarta, 2019).

⁵ Ariya Tarabifa, "Implementasi Penanganan Tanah Absentee (Guntai) Di Kabupaten Sumbawa" (Universitas Muhammadiyah Mataram, 2021).

principle of cultivating one's own agricultural land except for public servants.⁶ This is regulated in Article 3 paragraph (4) of Government Regulation Number 224 of 1961 concerning the Implementation of Land Division and the Granting of Compensation for Losses, which was later amended by Government Regulation Number 41 of 1964.⁷ In essence, the prohibition of absentee ownership of agricultural land is regulated in Article 3 of Government Regulation Number 224 of 1961 jo. Article 1 of Government Regulation Number 41 of 1964 on the Implementation of Land Division and Compensation of Losses.

The provision of Article 3 paragraph (1) of Government Regulation Number 224 of 1961 on the Implementation of Land Division and Compensation reads:

"Landowners who reside outside the sub-district where their land is located must within 6 months 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".

Article 3 paragraph (2) of Government Regulation Number 224 of 1961 on the Implementation of Land Division and Compensation reads:

"The obligation mentioned in paragraph (1) of this article does not apply to landowners who reside in a sub-district adjacent to the sub-district where the land is located, if the distance between the owner's residence and the land still allows efficient work on the land, according to the consideration of the Land Reform Committee."

This arrangement can cause problems, namely problems regarding exceptions, both the exclusion of persons or legal entities that can own agricultural land absentee and can create unfavorable things for the community such as less than maximum productivity, large rents for tenant farmers compared to the results of the farm. This problem legally lies in the effectiveness of the laws and regulations governing the land reform program, namely the prohibition of absentee land ownership. This has led to a decline in the social welfare of farmers because landowners are getting richer and farmers are becoming miserable and poorer so that in the end it will never achieve the objectives of the UUPA which is used as a tool to realize the greatest prosperity of the people and justice.⁸ The application of Government Regulation Number 41 of 1964 to absentee land in Plaosan Village, Wonosari Subdistrict, Malang Regency has not been maximized and has not been well accommodated by both central and regional governments. The phenomenon of

⁶Endraning Wahyu Asih, "Sinkronisasi Mengenai Pengaturan Pengecualian Larangan Pemilikan Tanah Pertanian Secara Absentee Bagi Pegawai Negeri Sipil Dengan Prinsip Kesamaan Hak Atas Tanah Dalam Undang-Undang Nomor 5 Tahun 1960" (Universitas Atma Jaya Yogyakarta, 2015).

⁷ Muhammad Fahmi Ariyanto, "Implementasi Larangan Kepemilikan Tanah Secara Absentee Berdasarkan Peraturan Pemerintah Nomor 224 Tahun 1961 Di Kabupaten Kotawaringin Timur" (Universitas Islam Indonesia, 2018).

⁸ Auliah Ambarwati et al., "Keberadaan Tanah Absentee Kini (Studi Kasus di Kota ParePare, Sulawesi Selatan)", *Jurnal Litigasi Amsir: Vol 9, no. 3 (2022), hlm. 246*

absentee agricultural land ownership occurs because most of the agricultural land in Plaosan Village has not been registered at the Land Office of Malang Regency. The previous owner had not registered the land and the sale and purchase process was not before a public official/PPAT but only before a local village official. This is due to the community's ignorance of the prohibition on absentee land ownership.⁹

Previous research that has the same research with this research as follows. First, Prabowo's entitled Absentee Agricultural Land Ownership and Legal Liability of the Boalemo Regency Land Agency for the Issuance of Certificates where the results of his research show that the factors causing Absentee land ownership are lack of public legal awareness, law enforcement apparatus factors, facilities and infrastructure factors and economic factors.¹⁰ The second research belongs to Rinaldo with the title Juridical Review of Absentee / Guntai Land Ownership Based on the Provisions of PP Number 41 of 1964 where the results of his research show the factors that cause absentee / guntai agricultural land ownership are lack of public legal awareness, inheritance culture, facilities and infrastructure, apparatus or law enforcement, and economy.¹¹

The problems that occur really require the role of the National Land Agency as a law enforcer who is given the authority and responsibility in land matters. As explained in Article 2 of the Presidential Regulation of the Republic of Indonesia Number 20 of 2015 concerning the National Land Agency which reads that the National Land Agency has the task of carrying out government duties in the land sector in accordance with the provisions of laws and regulations.¹² The responsibility given to the National Land Agency, namely to resolve existing problems in the land sector, is very heavy. The various problems in the land sector that occur in Plaosan Village require the role of this institution to solve any existing problems such as the problem of absentee ownership of agricultural land.

B. Problem Identification

Based on the background provided, the problem can be formulated as follows:

1. How is the application of Government Regulation Number 41 of 1964 Concerning the Amendment and Supplement to Government Regulation No. 224 of 1961 Concerning the Implementation of Land Division and the Granting of Compensation for Losses to absentee ownership of agricultural land in Plaosan Village, Wonosari District, Malang Regency?

⁹ Identification and Clarification of Legal Facts with Plaosan Village Government

¹⁰ Sigit Budi Prabowo et al., "Pemilikan Tanah Pertanian secara Absentee dan Pertanggung jawaban Hukum Badan Pertanahan Kabupaten Boalemo atas Penerbitan Sertifikat", Jurnal Universitas Brawijaya, Malang (2016).

¹¹ Rinaldo Parrulian Sianturi dan Edy Lisdiyono, "Tinjauan Yuridis terhadap Kepemilikan Tanah secara Absentee/Guntai berdasarkan Ketentuan PP Nomor 41 Tahun 1964", Jurnal Universitas 17 Agustus 1945, Vol. 1 no.1, Semarang (2019).

¹² *Ibid.*

2. How is the legal responsibility of the National Land Agency in resolving the problem of absentee ownership of agricultural land?

C. Research Objectives

From the problems that have been stated, the author has the following objectives:

1. understand and know the application of Government Regulation Number 41 of 1964 Concerning the Amendment and Supplement to Government Regulation No. 224 of 1961 Concerning the Implementation of Land Division and the Granting of Compensation for Losses to absentee ownership of agricultural land in Plaosan Village, Wonosari District, Malang Regency.
2. know the legal responsibility of the National Land Agency in resolving the problem of absentee ownership of agricultural land.

D. Research Methods

The type of research used in this research is normative juridical research, namely research conducted with an approach to legal norms, examining the main laws of study is law conceptualized as rules that apply in society.¹³ This normative legal research observes legal reality in various legal norms. The research approach used in this research method is a statutory approach or better known in academic terms, namely the Juridical Approach to research on legal products.¹⁴ This research method is analyzed descriptively analytically, through data collection techniques Library Research. Namely, the descriptive approach aims to describe a phenomenon or event accurately and in detail. While the analytical approach aims to analyse and explain a phenomenon by describing and compiling the data that has been collected into smaller and measurable parts. To obtain data in the preparation of this paper, secondary data sources and primary data sources were used.

E. Research Results and Discussion

1. The application of Government Regulation Number 41 of 1964 to Absentee Ownership of Agricultural Land

Government Regulation Number 224 of 1961 concerning Land Distribution and Compensation has undergone amendments and additions through Government Regulation Number 41 of 1964 regarding Amendments and Additions to Government Regulation Number 224 of 1961 concerning Land Distribution and Compensation.¹⁵ Article 3a,

¹³ Muh Rizal Ramli, Kairuddin Karim, and Muhammad Akbar Fhad Syahril, "Polemik Sengketa Hak Atas Tanah," *Jurnal Litigasi Amsir* 9, no. 1 (2021): 20.

¹⁴ Auliah Ambarwati et al., "Keberadaan Tanah Absentee Kini (Studi Kasus Di Kota Parepare, Sulawesi Selatan)," *Jurnal Litigasi Amsir: Julia* 9, no. 3 (2022): 247.

¹⁵ Natasha, "Perlindungan Hukum Terhadap Pemilik Tanah Pertanian Yang Berdomisili Di Luar Kecamatan Berdasarkan Peraturan Pemerintah No. 41 Tahun 1964 Tentang Pelaksanaan Pembagian Tanah Dan Pemberian Ganti Rugi," *Gagasan Hukum* 02, no. 41 (2020): 225.

paragraphs (1) and (2) of Government Regulation Number 41 of 1964 concerning Amendments and Additions to Government Regulation Number 224 of 1961 concerning Land Distribution and Compensation state that :¹⁶

(1) The owner of agricultural land who moves or leaves his place of residence outside the Subdistrict 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 expiration of the 2 (two) year period mentioned above he is obliged to transfer the ownership right to his land to another person who resides in the Subdistrict where the land is located.

(2) If the owner of the land referred to in paragraph (1) of this article moves or leaves his place of residence outside the Subdistrict where the land is situated and he does not notify the authorized local official, then within 2 (two) years as from the time he leaves his place of residence, he shall be obliged to transfer the title to his land to another person residing in the Subdistrict where the land is situated.

Exceptions only apply to landowners who live near the area where the land is located and the distance still allows for efficient cultivation of agricultural land. Government Regulation Number 41 of 1964 does not specifically regulate exceptions related to absentee land ownership. However, in practice, there are some exceptions or situations where absentee land ownership may not apply or be regulated in a different way, namely as follows :¹⁷

a. Location of the Land

The sub-district where the land is located is adjacent to the sub-district where the landowner resides as long as the distance between the residence and the owner and the land still allows efficient work on the land (Article 3 paragraph 2 of Government Regulation Number 41 of 1964 on the Amendment and Supplement to Government Regulation Number 224 of 1961).

b. Subject

- 1) Based on Article 3 paragraph (4) of Government Regulation Number 41 of 1964 on the Amendment and Supplement to Government Regulation Number 224 of 1961, namely for:
 - a) Those who carry out state duties (civil servants, military officials and those equated with them).
 - b) They fulfill their religious obligations.
 - c) They have other acceptable special reasons.
- 2) Based on Article 2 paragraph (1) of Government Regulation Number 4 of 1977, namely:
 - a) Retired public servants

¹⁶ *Ibid*, hlm. 226.

¹⁷ *Ibid*.

- b) Widows of public servants and widows of retired public servants as long as they are not remarried to someone who is not a public servant or retired public servant.¹⁸

On this basis, it can be interpreted that every landowner should not own agricultural land other than the owner's land area, because such ownership causes inefficient work on agricultural land in terms of maintenance, control and transportation of agricultural products, causing an exploitation system. The exploitation system in question is when people own land outside their area of residence and the land is worked by tenant farmers in the land area with a profit-sharing system. This can be interpreted that the farmer only gets part of the results of his hard work in working on the land while the landowner still gets the results of the agricultural land even though he is not directly involved in working on the agricultural land.

One of the influences that causes absentee ownership of agricultural land is that agricultural land is owned by owners who do not actively manage or work the land. In addition, there are several factors that cause absentee ownership of agricultural land, namely:¹⁹

- a. Community factors

Lack of information on laws and regulations that address absentee land ownership is one of the factors why people in cities own agricultural land in villages.²⁰ If there is not enough effort to disseminate such information or a lack of education given to the public about land regulations, then people tend to be unaware of the prohibition. In order for legal awareness from the community to run orderly and regularly, it must be supported by an order or rule so that the community understands and is aware.²¹ The lack of strict law enforcement in violations of absentee ownership of agricultural land causes people to not care and do not consider the prohibition important and necessary to pay attention to.

- b. Inheritance factor

Inheritance is the cause of absentee ownership of agricultural land that occurs in every family. Absentee land ownership can occur when a landowner passes on his land to his heirs, but the heirs do not have the

¹⁸ *Ibid.*

¹⁹ Ardiansyah Al Ghani, "Kebijakan Penyelesaian Tanah 'Absentee/Guntai' Di Kabupaten Boyolali Berdasarkan Undang-Undang Nomor 56 Prp Tahun 1060 Tentang Penetapan Luas Tanah Pertanian," *Jurnal Repertorium* 5, no. 1 (2018): 22-234.

²⁰ Marhendi, "Analisis Yuridis Kepemilikan Tanah Pertanian Secara Absentee Dihubungkan Dengan Peraturan Pemerintah Nomor 224 Tahun 1961 Dan Permasalahannya Di Kabupaten Cirebon," *FOCUS: Jurnal of Law* 2, no. 1 (2021): 85-109.

²¹ Mira Novana Ardani, "Peran Kantor Pertanahan Dalam Kegiatan Pendaftaran Tanah Sistematis Lengkap," *Gema Keadilan* 6, no. 1 (2019): 44.

interest or ability to manage the land directly. Usually, heirs rarely transfer land ownership to people who live in the area where the land is located.²² In fact, heirs rarely move to the area where the land is located after one year from the death of the heir. So that causes a lot of abandoned and unmanaged inherited land because the landowner is outside the region.

c. Economic factors

Some landowners may see agricultural land as a promising investment asset. They purchase agricultural land with the intention of making long-term gains from increased property values or income from agricultural produce. However, due to limited knowledge or personal interest in managing agriculture, they choose to become absentee landowners and lease or sell the land to others for management. These economic factors may interact with other social, demographic, and policy factors that influence absentee ownership of agricultural land. It is important to understand and analyze these complex dynamics to develop appropriate policies and solutions to promote sustainable agriculture and equitable land ownership.

Indirectly, the provisions regarding the prohibition of absentee land ownership are intended to ensure that agricultural land is actively cultivated by the owner.²³ The owner of agricultural land must reside in the area where the land is located. Owners of agricultural land who reside outside the area where the land is located must transfer their rights to the land or move to the place where the land is located, and are prohibited from transferring their rights to the land to persons or legal entities residing outside the area where the land is located.²⁴ However, this provision has not been implemented optimally, especially in Plaosan Village, Wonosari District, Malang Regency, many parties own land outside the area where they live and there are still many farmers who do not own a plot of agricultural land.

²² Sigit Budi Prabowo, "Pemilikan Tanah Pertanian Secara Absentee Dan Pertanggungjawaban Hukum Badan Pertanahan Kabupaten Boalemo Atas Penerbitan Sertifikat" (Universitas Brawijaya, 2016).

²³ R. Kunto Adi, "Penatagunaan Tanah Berbasis Masyarakat Dalam Menunjang Sistem Dan Usaha Agribisnis Di Indonesia," *SEPA: Jurnal Sosial Ekonomi Pertanian dan Agribisnis* 11, no. 1 (2017): 66.

²⁴ RR Ekarini, "Pelaksanaan Perlindungan Hukum Terhadap Pemilik Tanah Absentee Yang Diperoleh Dari Jual Beli Di Bawah Tangan Di Desa Gajah" (UPN Veteran Jawa Timur, 2022).

Data on Rice Field Area in Wonosari Sub-district and Type of Irrigation in Malang District (hectares), 2018-2019

2018			2019		
Irrigation	Non-Irrigation	Total	Irrigation	Non-Irrigation	Total
920	-	920	920	-	920

Source: Malang District Food Crops, Horticulture and Plantation Office²⁵

In the application of Government Regulation Number 41 of 1964 to absentee-owned land in Plaosan Village, Wonosari District, Malang Regency, there are several aspects that need to be considered.

a. Land Registration

Land registration aims to officially and legally record land ownership and provide legal certainty to landowners.²⁶ Pertaining to this matter, the assertion can be observed in Article 19 paragraph (1) of the UUPA in conjunction with Article 3 letter (a) of Government Regulation No. 24/1997, which essentially states that the purpose of land registration is to provide legal certainty and legal protection to the land rights holder.²⁷ With land registration, ownership rights over land are recorded and protected by law. Registration is done through the National Land Agency (BPN) or related agencies in the local area. Landowners must complete the necessary documents and apply for registration according to established procedures. Land registration as regulated in Government Regulation Number 41 of 1964 has an important role in providing legal certainty regarding land ownership in Indonesia. With land registration, the rights of landowners are protected and ownership disputes can be minimized.

b. Use and Utilization of Land

Government Regulation Number 41 of 1964 provides regulations regarding the use and utilization of absentee-owned land. Absentee landowners can manage their own land, or they can grant permission to a third party to use or manage the land. However, in the case of management by a third party, it is necessary to pay attention to the

²⁵ Badan Pusat Statistik Kabupaten Malang, "Luas Lahan Sawah Menurut Kecamatan Dan Jenis Pengairan Di Kabupaten Malang (Hektar), 2016-2019," <https://malangkab.bps.go.id/statictable/2020/06/05/831/luas-lahan-sawah-menurut-kecamatan-dan-jenis-pengairan-di-kabupaten-malang-hektar-2016-2019.html>.

²⁶ Esther Masri and Hirwansyah, "Kebijakan Penerbitan Sertipikat Elektronik Pada Sistem Pendaftaran Tanah Di Indonesia Untuk Mewujudkan Kepastian Hukum," *Krtha Bhayangkara* 17, no. 1 (2023): 157–174.

²⁷ Citra Dewi Marini, "Landreform Sebagai Solusi Masalah Ketimpangan Pemilikan Dan Penguasaan Tanah," *Aktualita*, no. Vol 6, No 3 (2002): 1–14, <http://jurnal.untad.ac.id/jurnal/index.php/AKTUALITA/article/view/2484>.

provisions stipulated in this regulation, such as payment of rent or other stipulated requirements. The cultivation of absentee land in Plaosan Village that we researched is mostly carried out by tenant farmers on agricultural land where the owner is outside the area where the land is located.²⁸ The purpose of sharecroppers managing the agricultural land is so that the land can provide benefits and is not classified as abandoned land. Consequently, the farmers have fulfilled the social function of land, implying that regardless of one's rights, it is unacceptable for their land to be used (or left unused) solely for personal interests, especially if it leads to harm for the community.²⁹

c. Rights and Obligations of Landowners

These rights include the right to utilize and control the land in accordance with applicable regulations. With the prohibition on absentee ownership of agricultural land, there are obligations that must be carried out by the owner, namely transferring ownership of the land to another person who resides in the sub-district where the land is located or the owner who moves to the sub-district where the land is located, and applying for a new right.³⁰ In addition, landowners also have the obligation to pay taxes and maintain the land they own. Based on Law No. 5/1960 on Agrarian Principles, there are several general rights and obligations of landowners that can be applied :³¹

1) Rights of Landowners:

- a) Landowners have ownership rights guaranteed by the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3).
- b) Landowners have the right to control and manage their own land, including utilizing it for agricultural activities or other uses in accordance with the land designation. (Article 5)
- c) Landowners have the right to the products produced from their land, including agricultural products, plantations, or other

²⁸ I Gede Surata, "Pelaksanaan Penguasaan Dan Pemilikan Tanah "Absentee"," *Kertha Widya* 6, no. 1 (2019): 1–7.

²⁹ Soedharyo Soimin, *Status Hak Dan Pembebasan Tanah*, Ed. Kedua. (Jakarta: Sinar Grafika, 2008).

³⁰ Asiska Roudhotul Mujtahidah, "Larangan Kepemilikan Tanah Absentee Dalam PP No. 224 Tahun 1961 Perspektif Masalah Mursalah" (Universitas Islam Negeri Maulana Malik Ibrahim, 2018), <http://search.ebscohost.com/login.aspx?direct=true&db=sph&AN=119374333&site=ehost-live&scope=site%0Ahttps://doi.org/10.1016/j.neuron.2018.07.032%0Ahttp://dx.doi.org/10.1016/j.tics.2017.03.010%0Ahttps://doi.org/10.1016/j.neuron.2018.08.006>.

³¹ Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria

activities that are in accordance with the land designation. (Article 9)

- d) Landowners have the right to transfer land ownership rights to other parties through sale, inheritance, or other legal forms of transaction. (Article 20)

2) Obligations of the Landowner:

- a) Landowners have the obligation to pay taxes and levies related to land ownership and utilization. (Law No. 12 of 1994 on the Amendment to Law No. 12 of 1985 on Land and Building Tax)³²
- b) Landowners have the obligation to maintain and care for the land so that it remains productive and does not damage the environment. (Article 12)
- c) Landowners have an obligation to comply with applicable agrarian regulations, including provisions regarding land use, land registration, and the protection of the rights of other parties related to the land.
- d) In the event of a change in ownership or transfer of land rights, the landowner has an obligation to report the change to the authorized agency, such as the National Land Agency (BPN) or other relevant agencies. (Article 19 paragraph (1))

For civil servants and military officials and their equivalents who are performing state duties, this exception is limited to absentee ownership of two-fifths of agricultural land and the maximum area determined by the region concerned. This exception includes the pattern of ownership by his wife and dependent children. In view of the above, Government Regulation No. 4 of 1977 on Absentee Ownership of Agricultural Land for Retired Civil Servants was issued, which emphasized, among other things, that the provisions for exceptions to the prohibition on absentee ownership of agricultural land apply to civil servants and the widows of civil servants and widows of retired civil servants, other than not remarrying a non-civil servant or retired civil servant.³³ The prohibition on land ownership explains that the use of land must be adapted to its condition and the nature of its rights, so that it is beneficial to the welfare and happiness of the owner, as well as beneficial to society and the state. This shows that basically land

³² I Wayan Putra Nugraha and Anak Agung Istri Ari Atu Dewi, "Larangan Kepemilikan Tanah Pertanian Secara Absentee Dan Pertanggung Jawaban Hukum Badan Pertanahan Di Kabupaten Tulungagung," *Acta Comitatus* 5, no. 2 (2020): 319.

³³ Marhendi, "Analisis Yuridis Kepemilikan Tanah Pertanian Secara Absentee Dihubungkan Dengan Peraturan Pemerintah Nomor 224 Tahun 1961 Dan Permasalahannya Di Kabupaten Cirebon."

cannot be neglected and must be useful in accordance with its condition and the nature of its rights.³⁴ Therefore, Article 10 of the UUPA emphasizes that landowners are obliged to work on their own or be actively involved. If the provisions in these laws and regulations are not implemented, there will be sanctions for the abolition of land tenure.

2. Legal Liability of the National Land Agency in Resolving Issues Regarding Absentee Ownership of Agricultural Land

The National Land Agency, hereinafter referred to as BPN, is a Non-Ministerial Government Institution under and responsible to the President.³⁵ BPN has the task of carrying out government duties in the land sector in accordance with the provisions of laws and regulations. The legal responsibility of the National Land Agency (BPN) in resolving absentee ownership of agricultural land can be seen from the roles and duties carried out by this institution in carrying out its functions.³⁶ As the agency responsible for land matters in Indonesia, BPN has the responsibility to protect the rights of landowners, including in cases of absentee land ownership. Absentee land ownership refers to a situation where the landowner is not near or does not live in the location of the land he or she owns.³⁷ In this context, BPN is responsible for ensuring that the rights of absentee landowners remain protected and respected and has legal responsibilities involving a number of measures and procedures to ensure legitimacy and fairness in land ownership.

The National Land Agency has an important role to play in protecting the rights of absentee landowners. Absentee landowners are those who have land ownership rights but are not actively involved in the management or use of the land. The National Land Agency is responsible for issuing land certificates that serve as legal evidence of land ownership. They maintain data and information related to land ownership, including updating data if there is a change in land ownership or status. By maintaining and updating accurate information, the National Land Agency helps ensure that the rights of absentee landowners are protected. As such, the National Land Agency plays a role in protecting the rights of absentee landowners and seeking fair settlements. In addition, the National Land Agency can also provide guidance and assistance to absentee landowners in the management or use of their land. They can provide information on the rights of landowners, the procedures to be followed, and the obligations to be fulfilled.

³⁴ Azhar, *Buku Sistem Hukum Indonesia* (Inderalaya: Universitas Sriwijaya, 2019).

³⁵ Meita Djohan Oe, "Tugas Dan Fungsi Badan Pertanahan Nasional Dalam Pendaftaran Tanah," *Pranata Hukum* 10, no. 1 (2015): 63.

³⁶ Yunizar Wahyu Tristanto, "Harmonisasi Regulasi Kepemilikan Tanah Pertanian Secara Absentee Bagi Pegawai Negeri Dalam Program Landreform," *Legality : Jurnal Ilmiah Hukum* 26, no. 2 (2019): 281.

³⁷ Prabowo, "Pemilikan Tanah Pertanian Secara Absentee Dan Pertanggungjawaban Hukum Badan Pertanahan Kabupaten Boalemo Atas Penerbitan Sertifikat."

As a land institution, the National Land Agency has an important responsibility in facilitating and implementing the registration of agricultural land ownership.³⁸ Land registration is organized by the Indonesian government in order to regulate the legal relationship between the subjects and objects of land parcels. The National Land Agency has the responsibility to receive and process applications from absentee landowners regarding their land ownership. They collect the necessary documents, such as land certificates, deeds of sale or letters of inheritance, to verify ownership. After receiving the application, the National Land Agency verifies and investigates the documents submitted. This process aims to ascertain the validity and veracity of the landowner's claim and to verify the existence of any other related disputes or claims. Furthermore, the National Land Agency verifies land ownership by referring to the applicable laws and regulations and using the principles of agrarian law to ensure that verification is conducted objectively, fairly and based on accurate facts.³⁹ If there are deficiencies or discrepancies in the documents, the National Land Agency may ask the landowner to complete or correct the information provided. During the verification process, the National Land Agency may also conduct field surveys to verify land boundaries and ensure conformity with the submitted documents which involves accurately determining land boundaries and recording related administrative information. This survey is important to ensure that the land claimed by the absentee owner matches that recorded in the documents and that there are no boundary disputes that interfere with land ownership. After carrying out the verification process, the National Land Agency will issue a verification decision confirming the ownership status of the agricultural land. This decision can take the form of granting a new land certificate or validating an existing one.⁴⁰ Once the process is complete, the National Land Agency issues a land certificate that confirms ownership of the farmland by the owner. This certificate serves as legal evidence of land ownership and provides legal certainty to the landowner. The National Land Agency also has a role in ensuring the sustainability of agricultural land ownership registration. They maintain data and information related to land ownership and update the data if there is a change in land ownership or status. With this role, the National Land Agency can provide legal certainty to landowners, protect the rights of owners, and support the sustainable development of the agricultural sector.⁴¹

³⁸ Mira Novana Ardani, "Peran Kantor Pertanahan Dalam Kegiatan Pendaftaran Tanah Sistematis Lengkap," *Gema Keadilan* 6, no. 1 (2019): 55.

³⁹ Prabowo, "Pemilikan Tanah Pertanian Secara Absentee Dan Pertanggungjawaban Hukum Badan Pertanahan Kabupaten Boalemo Atas Penerbitan Sertifikat."

⁴⁰ Boedi Harsono, *Hukum Agraria Nasional* (Jakarta: Djambatan, 2008).

⁴¹ Muhammad Ridwan Rasyid, "Perlindungan Hukum Terkait Pemegang Hak Milik Atas Tanah Dalam Kepemilikan Sertifikat Ganda (Studi Kasus Putusan Mahkamah Agung Nomor 3061 K/Pdt/2022)," *Al-Qalam* 17, no. 4 (2023).

The authority that the National Land Agency has to help resolve disputes is to mediate between the parties involved in the dispute.⁴² If a claim or dispute arises, the National Land Agency can act as a mediator or facilitate dispute resolution through legal channels. They play a role in ensuring that absentee landowners receive fair legal protection and that their rights are recognized and respected. The Land Agency is also a neutral mediator who helps the parties to reach a mutually beneficial and fair agreement. Through mediation, the Land Agency seeks to create constructive dialog, facilitate negotiations, and seek solutions that are acceptable to all parties involved. In addition to mediation, the National Land Agency can also provide guidance and assistance to the parties involved in the dispute. They can provide explanations regarding land law, the procedures to be followed, and the rights and obligations of each party. By providing clear and accurate information, the Land Agency plays a role in helping the parties involved understand the situation and find the best solution. During the dispute resolution process, the National Land Agency conducts investigations into absentee land ownership. By conducting careful investigations, the National Land Agency seeks to gather relevant information and support the fair resolution of disputes. As the competent authority in land matters, the National Land Agency can also provide a decision or recommendation regarding absentee agricultural land disputes. This decision or recommendation is based on legal analysis and the facts collected, and takes into account the applicable statutory provisions. By providing objective and law-based decisions or recommendations, the National Land Agency contributes to resolving disputes in an organized and reliable manner.⁴³ Through mediation, guidance, investigation, and appropriate decisions, the National Land Agency strives to create a stable environment and ensure the protection of landowners' rights and the sustainability of agriculture.

In ensuring fairness in management and protecting the rights of owners, the National Land Agency has the authority to enforce the law against violations or abuse of the rights of absentee owners of agricultural land. The National Land Agency maintains data and information related to land ownership, including verifying the existence of valid land certificates.⁴⁴ By having a valid land certificate, absentee landowners have strong evidence of their ownership rights. They can collect evidence, conduct field surveys, and examine relevant documents to uncover violations. If there is sufficient evidence, the National Land Agency can take legal action in accordance with applicable laws and regulations. In addition, the National Land Agency plays a role in providing legal assistance to absentee

⁴² Dewi Arnita Sari, "Sengketa Pendaftaran Hak Milik Atas Tanah," *Al-Adalah: Jurnal Hukum dan Politik Islam* 5, no. 2 (2020): 138–155.

⁴³ Surata, "Pelaksanaan Penguasaan Dan Pemilikan Tanah "Absentee"."

⁴⁴ Rahmat Ramadhani, "Pendaftaran Tanah Sebagai Langkah Untuk Mendapatkan Kepastian Hukum Terhadap Hak Atas Tanah," *Jurnal Sosial dan Ekonomi* 2, no. 1 (2021): 37, <http://jurnal.bundamediagroup.co.id/index.php/sosek>.

agricultural landowners who experience violations or abuse of rights.⁴⁵ They can provide information and guidance on steps that can be taken to protect their rights. The National Land Agency can also mediate in dispute resolution or cooperate with other law enforcement agencies to take necessary action. The National Land Agency also has a role in educating absentee agricultural landowners about their rights and the measures that can be taken to protect these rights. Through socialization and extension campaigns, the National Land Agency seeks to raise landowners' awareness of the importance of protecting their rights as well as the legal consequences of violating or misusing those rights.

F. Conclusion

Government Regulation Number 224 of 1961 on the Implementation of Land Division and Compensation has been revised and supplemented by Government Regulation Number 41 of 1964. The regulation regulates absentee ownership of agricultural land, which prohibits landowners from owning agricultural land outside their area of residence. This aims to prevent the exploitation of agricultural land and encourage landowners to actively work their land. The implementation of Government Regulation Number 41 of 1964 has not been optimal, as in Plaosan Village, Wonosari Subdistrict, Malang Regency, there are still many landowners who own land outside their area of residence, and there are still many farmers who do not own agricultural land so they decide to become sharecroppers. This shows that the implementation of the regulation has not run optimally in the area.

The National Land Agency (BPN) is a Non-Ministerial Government Institution responsible to the President and has the task of carrying out government duties in the land sector in accordance with statutory regulations. The National Land Agency has the responsibility to protect the rights of landowners, including in cases of absentee land ownership, where the landowner is not near or does not live in the location of the land they own. This responsibility involves the process of verifying land ownership, measuring land boundaries, issuing land certificates, maintaining land ownership data, resolving disputes, providing guidance and direction to landowners, resolving absentee agricultural land disputes including mediation between the parties involved, providing information and assistance to the parties involved, conducting investigations related to land ownership, and providing decisions or recommendations based on legal analysis and facts collected. Through the roles and tasks carried out by the National Land Agency, the rights of absentee landowners can be protected, legal certainty over land ownership can be guaranteed, disputes can be resolved fairly, and agriculture can be sustainable.

⁴⁵ Wiwi Eka Fiani, "Implikasi Larangan Kepemilikan Tanah Absentee Ditinjau Dari Undang-Undang Nomor 5 Tahun 1960 Tentang Pokok-Pokok Agraria" (Universitas Pancasakti Tegal, 2020), <https://core.ac.uk/download/pdf/322774484.pdf>.

G. Suggestion

Suggestions to overcome the problem of absentee ownership of agricultural land are:

1. Implement strict laws and regulations related to absentee land ownership, which could include limits on the amount of land that can be owned by certain individuals or legal entities
2. Provide incentives to landowners to develop their land productively, such as initiating agricultural programmes or local economic projects that can utilise the land
3. Ensure the availability of transparent information on landowners, especially those in the absentee category
4. Organise education and training programmes for absentee landowners on the benefits of productive land development and use
5. Educate landowners on their rights and obligations in safeguarding their property.

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